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May 18, 2009

Opinion No. 09-90

Appointment of Temporary Judges

QUESTION

Pending the filling of a judicial vacancy as provided by law, does the Supreme Court or the Administrative Office of the Courts have any statutory or inherent power to appoint a temporary or interim judge to handle the work of the court until the vacancy is filled.

OPINION

Pursuant to Tenn. Code Ann. § 17-2-109, the chief justice has the authority to assign a retired or regular chancellor or judge to assist in the removal of congestion or delay in the disposition of litigation in any chancery, circuit, criminal, general sessions, juvenile, probate or appellate court of this state.

ANALYSIS

There are a number of statutory provisions providing for the appointment of special judges in the instance of a temporary disability, disqualification, or circumstance affecting the performance of an incumbent judge. *See, e.g.*, Tenn. Code Ann. § 17-2-102 (allowing the governor to appoint lawyers to replace disqualified supreme court judges); Tenn. Code Ann. § 17-2-104 (allowing the governor to commission persons learned in law during the illness of a supreme court judge); Tenn. Code Ann. § 17-2-105 (allowing the governor to appoint replacement judges on intermediate appellate courts in case of incompetence, sickness or other disability); Tenn. Code Ann. § 17-2-107 (allowing the governor to appoint replacement for disabled general sessions court judges and to permit sitting by interchange); Tenn. Code Ann. § 17-2-110 (allowing the chief justice to assign judges and chancellors outside their district); Tenn. Code Ann. § 17-2-115 (allowing the governor to appoint a qualified person to serve as judge or chancellor in cases of incompetency of incumbent); Tenn. Code Ann. § 17-2-116 (allowing the governor to appoint a special judge to replace a disabled judge or chancellor); Tenn. Code Ann.

§ 17-2-118 (allowing a state or county trial court judge of record to appoint a substitute judge when the regular judge is unable to hold court by reason of illness, physical incapacitation, vacation, or absence from the city or judicial district on a matter related to the judge's judicial office); Tenn. Code Ann. § 17-2-119 (allowing the governor to appoint a temporary judge, chancellor, or district attorney in an election contest involving any of those officers); Tenn. Code Ann. § 17-2-121 (allowing litigants to select a retired judge in certain complex civil cases); and Tenn. Code Ann. § 8-48-205 (allowing the governor to appoint a temporary replacement for a judge inducted in the military service). You have asked, however, whether there is any statutory or inherent authority that would allow the Supreme Court or the Administrative Office of the Courts to appoint a temporary judge to handle the work of a court pending the filling of a vacancy on that court.

Tenn. Code Ann. § 17-2-109 provides as follows:

> (a)(1) Whenever litigation in any chancery, circuit, criminal, general sessions, juvenile, probate or appellate court of this state shall become congested or delay in the disposition of litigation becomes imminent for any reason, the chief justice of the supreme court shall assign a retired or regular chancellor or judge to assist in the removal of such congestion or delay; provided, that such assignment shall not materially interfere with the performance of the assigned chancellor's or judge's official duties. In such situation both chancellors or judges may hear, try and dispose of litigation in such court at the same time, both signing their respective minutes.
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> (2) Whenever litigation in any chancery or circuit court of this state shall become congested, or whenever litigation in any chancery or circuit court has required the recusal of a chancellor or judge, or whenever delay in the disposition of litigation becomes imminent for any reason, the chief justice of the supreme court may assign a former chancellor or judge to assist in the removal of such congestion or delay.
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> (b) Notwithstanding the above, any chancellor or any judge has the discretion to request another chancellor or another judge to assist in the removal of congestion or delay if the original chancellor or judge becomes aware of the need for such assistance before the supreme court makes such assignment; and, in such situation, both the requesting chancellor or judge and the requested chancellor and judge may hear, try and dispose of litigation in such court at the same time, both signing their respective minutes.
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> (c) Nothing herein shall be construed to interfere with the appointment of special chancellors or judges as provided elsewhere by statute.

Under this statute, whenever litigation in any court of this state becomes congested or delay in the disposition of litigation becomes imminent *for any reason*, the chief justice is authorized to assign a retired or regular chancellor or judge to assist in the removal of such congestion or delay. A judicial vacancy certainly could lead to the congestion in the business of a court or delay in the disposition of litigation in that court, and, pursuant to Tenn. Code Ann. § 17-2-109, the chief justice would have the authority to assign a retired or regular chancellor or judge to assist in removing such congestion or delay.

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