

**Testimony of Joseph J. Mittleman, Director of Judicial Programs,  
Administrative Office of Pennsylvania Courts  
before the House Judiciary Committee Sub Committee on Courts  
HB 79 – Judicial Retirement  
April 18, 2013**

**Senior Judges in the Pennsylvania Unified Judicial System**

**Authority**

- The authority for retired judges to perform judicial duties is found in the Constitution at Article V, Section 16(c) which states, "A former or retired justice or judge may, with his consent, be assigned by the Supreme Court on temporary judicial service as may be prescribed by rule of the Supreme Court."
- Rule 701 of the Rules of Judicial Administration prescribe the rules for certification and assignment of senior judges.
- Various sections of the Judicial Code contain some of the provisions of Rule 701.

**Becoming a Senior Judge**

- The requirements to qualify as a senior judge as set forth in statute and in rule are as follows:
  - Shall have served at least one full term of office (or, if an MDJ retiring due to reaching age 70, have served at least 5 years.)
  - Shall not have been defeated for retention or reelection.
  - Must be at least sixty-five years of age or have a combination of age plus years of service that totals at least eighty. (Applies to judges seeking senior status on or after January 4, 2010.)
  - Cannot serve after December 31 in the year in which the judge reaches age seventy-eight.
  - Cannot serve as a senior judge for more than ten years absent extraordinary circumstances and the approval of the Chief Justice. (Applies to judges entering senior status on or after January 1, 2008.)
- Judges seeking to be certified as a senior judge must complete an application on a form approved by the Supreme Court. Most judges apply for certification before retirement so there is no gap between commissioned service and senior service. Judges are permitted to delay certification after retirement and engage in other activities such as the practice of law and seek certification at a later time.
- Applications are submitted to the Court Administrator of Pennsylvania and if the applicant meets all criteria, the judge is certified for senior service.

- Number of judges certified as of 4/18/2013:

|                    |                                  |
|--------------------|----------------------------------|
| Superior Court     | 5                                |
| Commonwealth Court | 4                                |
| Common Pleas       | 102 (from 42 different counties) |
| Philadelphia MC    | 3                                |
| MDJs               | 114 (from 44 different counties) |
| Traffic Court      | 1                                |

### **Assignment of Senior Judges**

- Once certified, a senior judge is eligible for service anywhere in the state, although judges most typically sit in the county in which they had previously served or in counties nearby.
- Senior judges are assigned at the request of the president judge of an appellate court or a judicial district.
- Requests are submitted electronically to the Court Administrator of Pennsylvania for review and if an out-of-county judge is requested, for obtaining a judge. Requests are then submitted to the Chief Justice for approval.
- The president judge is required to state the reason for the request - a vacancy, a need for additional judicial resources to alleviate caseload, or the need for an out-of-county judge for a particular case.
- Appointment is either for a designated period of time or, when an out-of-county judge has been requested, for the duration of that specific case.
- Senior judges must abide by all restrictions placed upon commissioned judges except that senior judges do not have to live in the district from which they were elected; they do have to remain residents of Pennsylvania. Senior MDJs must continue to fulfill the annual continuing education requirements.
- Counties are expected to provide adequate facilities and support for senior judges, the costs for which are offset by the Senior Judge Support Reimbursement Grant as appropriated annually by the General Assembly.

### **Compensation**

- Judges are paid the per diem rate as established by the General Assembly for each day of service.
- There is a statutory limit that a senior judge's per diems plus salary cannot exceed the salary of a commissioned judge of the same level.
- To ensure the prudent expenditure of the senior judge appropriation, we impose an administrative limit that a senior judge can only be paid for ten days per month. If a judge works more than ten days in a month, at the end of the fiscal year, if there are funds remaining in that appropriation, the money is distributed

pro rata for the unpaid days that the judges worked to at least give them a partial payment. In the 2011-12 fiscal year, common pleas judges worked a total of 962 days for which they received no compensation.

- Senior judges are also reimbursed for reasonable expenses - travel mileage, meals, and when necessary, overnight accommodations, subject to the approval of the AOPC.

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## Relevant Statutes and Rules

### **42 Pa.C.S.A. § 102. Definitions**

\* \* \* \*

**Senior magisterial district judge.** A former or retired magisterial district judge who retires or otherwise vacates office after January 1, 1970, who has served at least one complete six year elected term as a magisterial district judge, and who, with his consent, is assigned on temporary magisterial service pursuant to section 4122(b) (relating to assignment of senior magisterial district judges).

**Senior judge.** A former or retired judge who shall not have been defeated for reelection and shall have served as a judge (whether or not continuously or on the same court) by election or appointment for an aggregate of at least ten years and any duly elected judge having an aggregate of six years of service as a judge who is required to retire at age 70 and who, with his consent, is assigned on temporary judicial service pursuant to section 4121(b) (relating to assignment of judges).

### **42 Pa.C.S.A. § 1906. Senior judge operational support grants**

**(a) Program.**--The Court Administrator of Pennsylvania shall create a program to defray the costs imposed on counties by the rules of judicial administration for facilities and staff for senior judges assigned to the courts of common pleas.

**(b) Availability.**--Grants will be made available to counties based on the level of operational support provided by a county to:

(1) Senior judges formerly of the judicial district in which the county is situated who are regularly or periodically assigned in that county or who are assigned pursuant to section 4544 (relating to convening multicounty investigating grand jury).

(2) Visiting senior judges.

**(c) Purpose.**--Grants will be made available to counties to reimburse them for operational support provided by the county during the preceding calendar year. Grants will be calculated based on use of judicial chambers, utilization of the services of a law clerk and utilization of the services of a secretary, which chambers or services are deemed adequate and appropriate by the Administrative Office as follows:

(1) Use of judicial chambers will be reimbursed at the rate of \$60 per day, billable in one-half-day increments.

(2) Utilization of services of a law clerk will be reimbursed at \$20 per hour.

(3) Utilization of services of a secretary will be reimbursed at \$12 per hour.

**(d) Reimbursement.**--Counties will be reimbursed upon timely application by the board of commissioners or, in the absence of a board of commissioners, the executive authority of the county or, in the case of a county which is coterminous with a city of the first class, the

mayor of the city of the first class. The application shall be certified by the president judge of the judicial district in which the county is situated, shall include such documentation as may be required by the Administrative Office and shall be submitted as follows:

(1) Applications for reimbursement for operational support provided by counties during calendar year 2001 shall be submitted by April 1, 2002, and grants shall be paid by June 30, 2002.

(2) The due dates for applications for operational support provided during calendar years beginning January 1, 2002, and thereafter shall be established by the Court Administrator of Pennsylvania.

**(e) Minimum standards.**--The Administrative Office shall set forth minimum standards regarding adequacy, appropriateness and quality of judicial chambers and services required to qualify for reimbursement.

**(f) Reduction.**--In the event that the total reimbursement qualifying for payment for any calendar year exceeds the amount appropriated by the General Assembly for such purpose, the Court Administrator of Pennsylvania shall proportionally reduce the grant for each county so that the total of all grants does not exceed the amount appropriated.

**(g) Limit on grant amount.**--No county shall receive more than 20% of the amount appropriated for senior judge operational support grants in any fiscal year.

**(h) Report.**--Not later than 60 days following payment of grants for any year, the Court Administrator of Pennsylvania shall make a report to the Appropriations Committee of the Senate and the Appropriations Committee of the House of Representatives setting forth the payments made to counties and the services provided.

**(i) Expiration.**--This section shall expire on June 30, 2017, unless reenacted prior to that date.

#### **42 Pa.C.S.A. § 4121. Assignment of judges**

**(a) General rule.**--Subject to general rules any judge may be temporarily assigned to another court and may there hear and determine any matter with like effect as if duly commissioned to sit in such other court.

**(b) Senior judges.**--A senior judge may, with his consent, be assigned on temporary judicial service pursuant to subsection (a).

**(c) Exception.**--Only a judge who is a member of the bar of this Commonwealth shall be temporarily assigned to a court to which only members of the bar of this Commonwealth may be appointed or elected pursuant to section 3101 (relating to qualifications of judicial officers generally). A judge of the Pittsburgh Magistrates Court or the Traffic Court of Philadelphia may be temporarily assigned to a magisterial district with the same effect as an assignment pursuant to section 4122 (relating to assignment of magisterial district judges).

#### **42 Pa.C.S.A. § 4122. Assignment of magisterial district judges**

**(a) General rule.**--Subject to general rules any magisterial district judge may be temporarily assigned to any other magisterial district or the Pittsburgh Magistrates Court or the Traffic Court of Philadelphia, and may there hear and determine any matter with like effect as if duly commissioned to sit in such other district or in such court.

**(b) Senior magisterial district judges.**--A senior magisterial district judge who shall not have been defeated for reelection or been suspended or removed from office may, with the senior magisterial district judge's consent, be assigned on temporary magisterial service pursuant to subsection (a). A senior magisterial district judge shall be paid a per diem salary at the same annual rate as is applicable in the district where the senior magisterial district judge is temporarily assigned and shall receive expenses at the same per diem rate as other magisterial district judges temporarily assigned.

**(c) Additional compensation.**--A magisterial district judge, assigned by the president judge of the court of common pleas to perform additional duties for a district other than the one in which the magisterial district judge is elected, shall be entitled to receive additional compensation of \$20 per day when the magisterial district judge performs assigned duties, except that no additional compensation shall be allowed for routine duties scheduled by the president judge of the court of common pleas. Any assignment, compensable under this subsection, for which the per diem exceeds \$100 a calendar month shall be approved by the Court Administrator of Pennsylvania.

#### **42 Pa.C.S.A. § 4123. Assignment procedure**

The procedure for effecting temporary assignments of judges and magisterial district judges, the kind, amount and method of payment for travel, lodgings and subsistence, and all other matters related to such temporary assignments, shall be governed by general rules established by the Supreme Court except as otherwise specifically provided.

#### **42 Pa.C.S.A. § 4124. Assignment of senior Philadelphia Municipal Court judges**

A senior judge of the Philadelphia Municipal Court who has not been defeated for reelection or suspended or removed from office and who has served an aggregate of four years as an elected judge and who is required to retire at age 70 may, with his consent, be assigned on temporary judicial service to that court.

#### **Rule 701. Assignment of judges to courts.**

*(A) Conditions Applicable for the Certification of Senior Magisterial District Judges, Judges or Justices.*

(1) To be eligible for senior certification, a magisterial district justice, judge or justice:

(a) shall have served as a magisterial district justice, judge or justice, whether or not continuously or on the same court, by election or appointment for an aggregate period equaling a full term of office;

(b) shall not have been defeated for reelection or retention; and

(c) shall be at least sixty-five years of age on the date on which he or she begins senior service, or have a combination of years of judicial service plus age that totals at least eighty. However, this subsection (c) shall not apply to those serving in senior status as of the effective date of this rule.

(2) In addition to paragraph (1), any duly elected district justice, judge or justice, having an aggregate of five years of judicial service, who is required to retire at age seventy, shall be eligible for certification.

(3) Senior status shall end on the last day of the calendar year in which a magisterial district judge, judge or justice attains age seventy-eight; however, those serving in senior status as of the effective date of this rule who were previously excepted from the age seventy-five limitation pursuant to the amendment of January 1, 1999 may continue to serve until the last day of the calendar year in which they attain age eighty.

(4) For certification of senior status, a district justice, judge or justice shall verify such additional information as required by the application for certification forms authorized under paragraph (B) below.

(5) A magisterial district judge, judge or justice may only be certified for senior status for a maximum of ten years, absent extraordinary circumstances, as determined by the Chief Justice. However, those serving in senior status as of the effective date of this rule may continue to serve until subject to the age limit of paragraph (3) above.

*(B) Certification of Senior District Justices, Judges and Justices.* The Administrative Office shall promulgate application forms, as approved by the Supreme Court, for certification of senior district justices, judges and justices. A former or retired district justice, judge or justice who requests assignment to temporary judicial service shall file the application for certification form with the Administrative Office, and, upon approval, shall be eligible for judicial assignment. Failure to comply with the provisions contained in the application form may result in the immediate revocation of senior certification.

*(C) Request for the Assignment of Additional District Justices or Judges.*

*(1) Request for Assignment.* Whenever a president judge deems additional judicial assistance necessary for the prompt and proper disposition of court business, he or his proxy shall transmit a formal request for judicial assistance to the Administrative Office. The request may be made in writing or it may be transmitted electronically.



An electronic request for judicial assistance shall be accomplished through a secure program developed by the Administrative Office for this purpose.

*(2) Recommendation by the Court Administrator of Pennsylvania and Action by Chief Justice.* Upon the recommendation of the Court Administrator, the Chief Justice may, by order, assign any retired, former, or active district justice, judge or justice to temporary judicial service on any court to fulfill a request by a president judge, or to reduce case inventories, or to serve the interest of justice. The order entered by the Chief Justice may be electronically transmitted to the Administrative Office of Pennsylvania Courts for processing.

Orders entered pursuant to this chapter may be transmitted by the Administrative Office to the Supreme Court prothonotary in hard copy or electronically. Electronically transmitted orders shall be docketed by the Supreme Court prothonotary in the same manner as hard copy orders. Electronically transmitted orders need not be printed by the Supreme Court prothonotary unless a request for public review is made.

*(3) Duration of Assignment.* Unless otherwise provided in the order of assignment, the order shall continue in effect after its stated expiration date until unfinished business pending before the assigned judge is completed.

*(4) Certification of Service.* The president judge of a district to which a district justice or judge has been temporarily assigned under this rule shall certify to the Administrative Office, on a certificate completed and signed by the assigned district justice or judge, the number of days of temporary judicial service and the amount of any compensation to which the assigned judge is entitled.

*(5) Expenses of Assigned Judges.* All judges assigned to duties outside of their judicial districts may, in addition to any per diem payment authorized by law, be reimbursed with the approval of the Court Administrator for necessary expenses, including hotel accommodations and meals, incident to such duties.

*(6) Restrictions on Temporary Assignments.* No judge shall be assigned under this rule to any court while any judge thereof is assigned to another court under this rule, except when required to take the place of a judge who is recused or disqualified, or is otherwise unavailable, or under other appropriate circumstances.

*(7) Ceremonial Functions.* District justices, judges and justices on temporary assignments shall have authority to conduct ceremonial functions, including performing weddings and administering oaths.

*(D) Judicial Assignment Records.* The Administrative Office shall maintain records of certification applications and assignments to temporary judicial service.

*(E) Regional Administrative Units.*

(1) Judicial districts through their president judges may petition the Supreme Court for approval to combine with other districts to form regional administrative units that provide for the assignment of district justices and judges to any other judicial district in the unit. Upon annual approval by the Supreme Court, district justices and judges,

when so assigned, shall exercise the same power and authority as vested in a district justice or judge of that judicial district.

(2) In cases where a judge has disqualified him or herself for any of the reasons specified in Canon 3 C of the Code of Judicial Conduct, the assignment of another judge to the case shall be made through the Administrative Office. In other instances of recusal, the assignment may be made through the Regional Unit, but in no case shall a recusing judge select his or her replacement.

(3) Each regional unit shall file with the Administrative Office a quarterly report of all assignments that occurred within the unit for that period.

(F) *Suitable Facilities and Staffing for Senior Common Pleas Judges.* Suitable facilities and adequate staff are to be provided for senior judges, the parameters of which are to be determined and promulgated by the Administrative Office.

*Directive:* In accordance with Rule of Judicial Administration 701(F), the Administrative Office of Pennsylvania Courts promulgates this directive establishing minimum standards for suitable facilities and adequate staff for the senior judges of the courts of common pleas.

The president judge of a judicial district, in consultation with the Court Administrator of Pennsylvania as needs may require, shall provide from available resources for each senior judge formerly of the judicial district who is regularly or periodically assigned in that district and for each visiting senior judge the following facilities and staff for matters arising under the appointment:

(1) the use of judicial chambers which shall be of adequate size and appropriately furnished, afford a measure of privacy, and include office equipment and supplies as are necessary to conduct judicial business;

(2) services of a law clerk who shall provide customary assistance including legal research and drafting of legal documents; and

(3) services of a secretary who shall provide customary assistance including typing correspondence, orders and opinions, answering phone calls and taking messages, receiving and sending mail and deliveries.

#### **204 Pa. Code § 211.2. Judicial salaries effective January 1, 2013.**

The annual judicial salaries for calendar year beginning January 1, 2013 will be adjusted by a cost-of-living factor as follows:

\* \* \* \*

(h) *Senior judges.* The compensation of the senior judges pursuant to 42 Pa.C.S. § 4121 (relating to assignment of judges) shall be \$534 per day. In any calendar year the amount of compensation which a senior judge shall be permitted to earn as a senior judge shall not when added to retirement income paid by the Commonwealth for such senior judge exceed

the compensation payable by the Commonwealth to a judge then in regular active service on the court from which said senior judge retired. A senior judge who so elects may serve without being paid all or any portion of the compensation provided by this section.

