



ALAN WILSON
ATTORNEY GENERAL

April 26, 2022

The Honorable Katrina F. Shealy
Member
South Carolina Senate
Post Office Box 84783
Lexington, South Carolina 29073

Dear Senator Shealy:

We received your request for an opinion of this Office concerning South Carolina judges and the mandatory retirement age. In your letter, you state:

It is my understanding that judges in the unified judicial system have a mandatory requirement age of 72 years old. It is further my understanding that there is a judge currently on the bench that is older than 74. Under what circumstances may a judge in the unified judicial system serve beyond 72 years of age?

Law/Analysis

In our review of state law, it appears that the mandatory retirement provision you refer to is contained in section 9-8-60 of the South Carolina Code (2019) pertaining to the Retirement System for Judges and Solicitors. This provision states as follows:

(1) A member of the system may retire upon written application to the board setting forth at what time, not later than the end of the calendar year in which the member attains age seventy-two and not more than ninety days prior nor more than six months subsequent to the execution and filing thereof, the member desires to be retired, if the member at the time so specified for retirement is no longer in the service of the State, except as a member of the General Assembly or as allowed pursuant to subsection (7), and has completed ten years of earned service as a judge or eight years of earned service as a solicitor or circuit public defender or was in service as a judge or solicitor on July 1, 1984, and has either:

(a) attained the age of sixty-five and completed at least twenty years of credited service;

(b) attained age seventy and completed at least fifteen years of credited service; or

(c) completed at least twenty-five years of credited service in the system for a judge, or twenty-four years of credited service in the system for a solicitor or circuit public defender, regardless of age. A member may retire under this section if the member was a member of this system as of June 30, 2004; attained age sixty-five with at least four years' earned service in the position of judge, solicitor, or circuit public defender; and, as of June 30, 2004, had a total of twenty-five years of credited service with the State in the South Carolina Retirement System, the Police Officers Retirement System, or the Retirement System for Members of the General Assembly.

....

S.C. Code Ann. § 9-8-60(1). In previous opinions, we recognized this provision as mandating retirement of judges in the unified judicial system at age seventy-two. *See Ops. Att'y Gen.*, 2016 WL 4698869 (S.C.A.G. Aug. 29, 2016); 2004 WL 1297827 (S.C.A.G. Jun. 7, 2004); 1987 WL 342802 (S.C.A.G. Jan. 13, 1987).

However, section 14-1-215 of the South Carolina Code (2017) allows retired judges to preside in certain courts. This provision states:

A retired judge or justice from the Supreme Court, court of appeals, or circuit court of this State may be assigned by the Chief Justice of the Supreme Court to preside over any official proceeding in any circuit court of this State. A retired judge or justice from the Supreme Court or court of appeals of this State may be assigned by the Chief Justice of the Supreme Court to act as an associate justice or judge in any proceeding before the Supreme Court or court of appeals. A retired judge from the family court of this State may be assigned by the Chief Justice of the Supreme Court to preside over any official proceeding in any family court of this State.

In order to be eligible to be appointed by the Chief Justice to serve, any retired justice or judge of this State must have been reviewed in the manner provided in Section 2-19-10 et seq. and found by the commission to be qualified to serve in these situations within two years of the date of his appointment to serve, except that if a justice or judge retired before the expiration of his then current term, no further review of that justice or judge is required until that term would have expired.

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S.C. Code Ann. § 14-1-215.¹ Furthermore, section 9-8-120 of the South Carolina Code (2019) discusses how service by retired judges will be handled in regard to the Retirement System for Judges and Solicitors.


Subject to the limitations contained in Section 14-1-215, a retired justice or judge may be called upon and appointed by the Chief Justice of the Supreme Court to perform judicial duties in the Supreme Court, Court of Appeals, circuit courts, and family courts as he may be willing and able to undertake. A retired justice or judge serving as an acting associate justice or as a judge shall serve without pay except for his actual expenses while serving. If a retired justice or judge has performed for a period of three or more consecutive months full judicial duties as an acting associate justice or as a judge his retirement pay for each full month during this period must be increased by an amount equal to the difference between retirement payment and active pay. Upon certification by the Chief Justice setting forth the number of full months of the service the State Treasurer shall make payment accordingly.

S.C. Code Ann. § 9-8-120(3).


Conclusion

In keeping with prior opinions of this Office, we find section 9-8-60 of the South Carolina Code requires judges in the unified judicial system to retire at age seventy-two. However, section 14-1-215 of the South Carolina Code allows the Chief Justice of the Supreme Court to call upon and appoint retired judges to preside over judicial proceedings in certain courts and under specified conditions.

Sincerely,


Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Solicitor General

¹ We also recognize the general powers of the Chief Justice to administer the unified judicial system under the South Carolina Constitution. S.C. Const. Art. V, § 4 (2009).