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AB-740 Oaths and affirmations. (2017-2018)

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Assembly Bill No. 740

CHAPTER 82

An act to amend Section 2093 of the Code of Civil Procedure, relating to oaths and affirmations.

[Approved by Governor July 21, 2017. Filed with Secretary of State July 21, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 740, Reyes. Oaths and affirmations.

Under existing law, a judge or justice, among others, may administer oaths or affirmations. Existing law also authorizes a former judge or justice of a court of record in this state who retired or resigned from office to administer oaths and affirmations for a specified period of time if the former judge or justice requests and receives a certification from the Commission on Judicial Performance, and if a formal disciplinary proceeding was not pending at the time of his or her retirement or resignation. Existing law requires that an application for a certification include a medical certification establishing that he or she does not have a medical condition that could impair the applicant's ability to administer oaths and affirmations, as specified.

This bill would provide additional conditions under which the Commission on Judicial Performance would be required to issue a certification to administer oaths and affirmations to a former judge or justice, as specified. The bill would remove the requirement that an application for a certification be accompanied by a medical certification, and would instead authorize the commission to require an applicant to provide the medical certification if there is evidence in a disability application file or in a disciplinary investigation file of possible cognitive impairment affecting the judge or justice, or if the former judge or justice previously received a two-year certification to administer oaths and affirmations from the commission. The bill would also change the period of time that a former judge or justice may administer oaths and affirmations from 5 years to an indefinite period of time, except as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2093 of the Code of Civil Procedure is amended to read:

2093. (a) A court, judge or clerk of a court, justice, notary public, and officer or person authorized to take testimony in an action or proceeding, or to decide upon evidence, has the power to administer oaths and affirmations.

(b) (1) A shorthand reporter certified pursuant to Article 3 (commencing with Section 8020) of Chapter 13 of Division 3 of the Business and Professions Code has the power to administer oaths and affirmations and may perform the duties of the deposition officer pursuant to Chapter 9 (commencing with Section 2025.010) of Title 4. The certified shorthand reporter is entitled to receive fees for services rendered during a deposition, including fees for deposition services, as specified in subdivision (c) of Section 8211 of the Government Code.

(2) This subdivision also applies to depositions taken by telephone or other remote electronic means as specified in Chapter 2 (commencing with Section 2017.010) and Chapter 9 (commencing with Section 2025.010) of Title 4.

(c) (1) A former judge or justice of a court of record in the state who retired or resigned from office may administer oaths and affirmations, if the former judge or justice requests and receives a certification from the Commission on Judicial Performance pursuant to paragraph (2).

(2) The Commission on Judicial Performance shall issue a certification enabling a former judge or justice to administer oaths and affirmations if the following conditions are satisfied:

(A) The former judge or justice was not removed from office; was not censured and barred from receiving an assignment, appointment, or reference of work from any California state court; did not retire or resign from office with an agreement with the commission that the former judge or justice would not receive an assignment, appointment or reference of work from any California state court; and, at the time of the former judge or justice's retirement, resignation, or request for certification, a formal disciplinary proceeding was not pending or was resolved on the merits in the judge or justice's favor after his or her retirement or resignation and before the request for certification.

(B) A medical certification provided to the commission by the former judge or justice pursuant to paragraph (3) establishes one of the following:

(i) The former judge or justice does not have a medical condition that would impair his or her ability to administer oaths or affirmations.

(ii) The former judge or justice has a medical condition that may impair his or her ability to administer oaths and affirmations, but the condition does not impair his or her ability at the present time.

(3) The Commission on Judicial Performance may require an applicant to obtain a medical certification in order to receive or renew a certification to administer oaths and affirmations if, at the time of resignation or retirement, there is evidence in a disability application file or in a disciplinary investigation file of possible cognitive impairment affecting the judge or justice, or if the former judge or justice previously received a two-year certification to administer oaths and affirmations from the commission. The commission shall supply the required forms to an applicant upon request.

(4) If an applicant's medical certification indicates that the applicant has a medical condition that may impair his or her ability to administer oaths and affirmations, but the condition does not impair such ability at the time the medical certification is submitted with the application, the Commission on Judicial Performance shall issue a certification to administer oaths and affirmations pursuant to paragraph (2), but the certification is only valid for a period of two years from the date of issuance.

(5) Notwithstanding paragraph (1), a former judge or justice of a court of record who received a certification to administer oaths and affirmations from the Commission on Judicial Performance prior to January 1, 2018, may continue to administer oaths and affirmations until the expiration of the certification, at which time he or she may reapply for certification pursuant to paragraph (2).

(6) The Commission on Judicial Performance may charge a regulatory fee not to exceed fifteen dollars (\$15) for each certification application submitted pursuant to this subdivision to cover its costs, including costs to review a medical certification.

(d) A rule or regulation regarding the confidentiality of proceedings of the Commission on Judicial Performance does not prohibit the commission from issuing a certificate as provided for in this section.

(e) The administration of an oath or affirmation pursuant to this section without pay does not violate Section 75060.6 of the Government Code.