



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

March 21, 1989

Honorable Rene Guerra
Criminal District Attorney
Hidalgo County Courthouse
Edinburg, Texas 78539

LO-89-28

Dear Mr. Guerra:

You ask about the authority of a retired judge to issue an order waiving the required 72-hour waiting period between the issuance of a marriage license and the performance of a marriage ceremony.

Section 1.82 of the Family Code provides:

(a) On receiving an unexpired marriage license, any authorized person may conduct the marriage ceremony as provided by this section.

(b) [provision related to marriage by proxy].

(c) The marriage ceremony may not take place during a 72-hour period immediately following the issuance of the marriage license unless:

(1) an applicant is a member of the armed forces of the United States and is on active duty; or

(2) an applicant obtains an order of a district court as provided by Subsection (d) of this section.

(d) An applicant may request a district court for an order permitting the marriage ceremony to take place during a 72-hour period immediately following the issuance of the marriage license. The court may grant an early hearing on the request and shall grant

the order if the court finds that there is good cause for the marriage to take place during the 72-hour period.

The persons authorized to conduct marriage ceremonies in Texas include:

justices of the supreme court, judges of the court of criminal appeals, justices of the courts of appeals, judges of the district, county, and probate courts, judges of the county courts at law, courts of domestic relations and juvenile courts, retired justices and judges of such courts, justices of the peace, retired justices of the peace, and judges and magistrates of the federal courts of this state.

Fam. Code § 1.83(a)(4). See also Fam. Code § 1.83(b) (defining "retired judge or justice").

Your question is whether a retired district court judge has authority to waive the 72-hour waiting period. A retired district judge may be assigned to a district court pursuant to section 74.054 of the top Government Code. A retired district judge may exercise the powers and duties of the district court judge of the court to which he is assigned. Gov't Code § 74.059. If a retired district judge is assigned to a court, he would have the authority to issue an order waiving the 72-hour waiting period provided for in section 1.82 of the Family Code. The retired judge's authority to do so would stem from his assignment to a court, however, not from his authority to perform marriages. The retired judge's authority to perform marriages would not by itself authorize him to issue a court order waiving a statutory requirement any more than a federal judge's authority to perform marriages in Texas would give him authority to issue such an order.

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section
Opinion Committee

SW/lcd

Ref.: ID# 5830