WEST VIRGINIA CODE: §51-9-8

§51-9-8. Retirement upon disability.

(a) Whenever a judge of a court of record of this state, who is not disqualified from participation herein as provided in section five of this article, who shall have served for ten full years, or if over the age of sixty-five years, who shall have served at least six years as a judge of a court of record, shall become physically or mentally incapacitated to perform the duties of his or her office as judge during the remainder of his or her term and shall make a written application to the Governor for his or her retirement, setting forth the nature and extent of his or her disability and tendering his or her resignation as such judge upon condition that upon its acceptance he or she be retired with pay under the provisions of this article, the Governor shall make such investigation as the Governor shall deem advisable and, if the Governor shall determine that such disability exists and that the public service is suffering and will continue to suffer by reason of such disability, the Governor shall thereupon accept the resignation and, by written order filed in the office of the Secretary of State, direct the retirement of the judge for the unexpired portion of the term for which such judge was elected or appointed. The Secretary of State shall thereupon file a certified copy of such order with the State Auditor. When so accepted, said resignation shall create a vacancy in such office of judge, which shall be filled by appointment or election as provided by law. The retired judge shall thereupon be paid annual retirement pay during the remainder of his or her unexpired term in an amount equal to the annual salary he or she was receiving at the time of his or her disability retirement, which annual retirement pay, so long as it shall be paid to him or her, shall be in lieu of any and all retirement benefits such judge may otherwise have received under provisions of this article: Provided, That when the payment of such full salary as disability retirement pay shall have terminated with the close of his or her term of office, such judge, even though he or she shall not have arrived at the age of sixty-five years, shall, so long as the disability determined by the Governor continues to exist, be paid the retirement benefits for which provision is made in section six of this article: Provided, however, That in the event any such judge shall die during the continuation of his or her disability, then such judge's surviving spouse shall receive the benefits to which he or she would have been entitled pursuant to the provisions of section six-b of this article and subject to the limitations thereon: Provided further, That any judge becoming a new member of this retirement system on or after April 1, one thousand nine hundred eighty-seven, and retiring upon disability retirement subsequent to such date shall be paid upon the basis of seventy-five percent of highest annual salary, with allowable salary increase, as provided in section six of this article during all disability retirement receipt periods.

(b) Any other provision of this section to the contrary notwithstanding, no judge shall be eligible pursuant to this section unless such judge is also disabled to such an extent so as to preclude such judge from engaging in the practice of law during all of the period of such disability.