



Judicial Impact Statement

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House Bill 438 128th General Assembly

Sponsors

Representative Tom Letson

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Stautberg

Status

House Judiciary

Version

As Introduced

TITLE INFORMATION

To amend sections 2101.11 and 2151.13 of the Revised Code to eliminate personal liability for probate and juvenile judges for the default, malfeasance, or nonfeasance of any appointee or employee.

IMPACT SUMMARY

House Bill 438 will positively impact Ohio's courts by eliminating personal liability for probate and juvenile judges arising out of the acts or omissions of appointees and employees. This proposal, which is part of the Ohio Judicial Conference's 2009-2010 Legislative Platform, will create uniformity in the law, improve public confidence in the law and improve the administration of justice by ensuring that probate and juvenile judges are not held personally liable for the actions of their appointees and employees simply by virtue of their subject matter jurisdiction.

BACKGROUND

House Bill 438 is the result of a concerted effort between the Judicial Conference's Probate Law & Procedure Committee and Juvenile Law & Procedure Committee, the Ohio Association of Probate Judges, the Ohio Association of Juvenile Court Judges and the bill sponsors, to bring consistency and fairness to Ohio law.

The Supreme Court of Ohio Joint Task Force on Judicial Liability & Immunity

In 2004, the Supreme Court of Ohio and the Ohio Judicial Conference formed a joint task force to conduct a thorough review of issues associated with judicial liability and immunity.¹ The formation of the task force was prompted by the rising costs of procuring the judicial liability

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

¹ See Report of the Supreme Court of Ohio Joint Task Force on Judicial Liability & Immunity, 2 (2006).

insurance policy that the Supreme Court of Ohio has maintained on behalf of all Ohio judges for more than 20 years.² This policy, which insures against the potential award of damages arising from actions taken by the judge in his or her official capacity and provides for, among other things, the defense of civil actions in which a judge is named as a defendant for actions taken in his or her official capacity, has become increasingly expensive due to the uncertainty of the scope and extent of judicial immunity.³ It has also caused the Supreme Court of Ohio to adopt policy limitations in order to maintain the affordability of the insurance.⁴

One finding that the task force made was that “Ohio judges have absolute immunity for the performance of acts that are considered judicial in nature, so long as the judge is acting within the scope of his or her jurisdiction,” but have no immunity when engaged in non-adjudicatory functions that are nevertheless mandated by statute or other law.⁵ This means, for example, that a common pleas court judge cannot be held personally liable for imposing sentence on someone convicted of a crime, so long as he or she has both personal and subject matter jurisdiction, because sentencing a criminal offender is a judicial act that is intimately and historically associated with judicial power and discretion. A judge can, however, be held personally liable for his or her service on a state commission⁶ or, perhaps more importantly, for actions taken in his or her role as the clerk of court,⁷ despite the fact that the judge is acting pursuant to statutory or other legal designation, because these responsibilities and obligations go beyond the judge’s traditional adjudicative role.

Based on this finding, the task force recommended, among other things, that the Supreme Court and Ohio Judicial Conference pursue legislation that would provide judges with a qualified immunity for engaging in quasi-judicial functions that are nevertheless mandated by statute or other law.⁸

Probate and Juvenile Judges as Clerks of Court

Under current law, both probate and juvenile judges are statutorily authorized to serve as their own clerks of court, and in many instances are required to do so. Specifically, R.C. 2101.11, which governs the keeping of records of the probate court, states that the “probate judge is authorized to perform the duties of clerk of the judge’s court.” Similarly, R.C. 2151.12 states that a “juvenile judge shall be the clerk of the judge’s own court” unless “the juvenile judge...and the clerk of the court of common pleas agree...that...the clerks of courts of common pleas shall keep the records of [the juvenile] courts.”

Historically, there has been some disparity between juvenile judges and probate judges on the one hand and Justices of the Supreme Court and other Ohio judges on the other due to the fact that juvenile and probate judges do, in some instances, serve as their own clerks of court while Justices of the Supreme Court and other Ohio judges do not. One example of this disparity exists with regards to the giving of bonds for the honest and faithful performance of duties. Generally speaking, judges are

² See Report of the Supreme Court of Ohio Joint Task Force on Judicial Liability & Immunity, 2 (2006).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 4.

⁶ See, e.g. R.C. 2301.51; R.C. 3109.15; R.C. 121.37

⁷ See, e.g. R.C. 2101.11; R.C. 2151.12

⁸ See Report of the Supreme Court of Ohio Joint Task Force on Judicial Liability & Immunity, 4 (2006).

not required to give bonds for the honest and faithful performance of their duties.⁹ Sometimes, however, statutes require bonds to be given by judges of particular courts.¹⁰ In Ohio, juvenile and probate judges are required to execute a bond in order to ensure the honest and faithful performance of their duties due to the fact that they oftentimes serve as their own clerks of court and thereby perform certain ministerial acts.¹¹

While there is no case law on point, the disparity in personal liability between probate and juvenile judges, and other Ohio judges exists because of the same historical distinction.

CURRENT LAW

Personal Liability of Probate Judges

Current R.C. 2101.11(C), which governs the personal liability of a probate judge for the actions of his or her appointees, enumerates the duties of the judge of the probate court and provides authorization for the judge to appoint deputy clerks, stenographers, a bailiff, and any other employees necessary to the operation of the court. It also authorizes the judge to appoint investigators and assessors. Additionally, the statute authorizes the probate judge to require any appointee to give bond in the sum of not less than one thousand dollars in order to ensure the honest and faithful performance of the appointee's duties.

A probate judge may then be held personally liable for the default, malfeasance, or nonfeasance of any appointee in two ways. First, the judge may be held personally liable for the default, malfeasance, or nonfeasance of any appointee from whom a bond has been required to the extent that any loss exceeds the amount of any bond. Second, the judge may be held personally liable for the default, malfeasance, or nonfeasance of appointees from whom no bond has been required.

Personal Liability of Juvenile Judges

Similarly, current R.C. 2151.13, which governs the personal liability of a juvenile judge for the actions of his or her employees, authorizes the judge to appoint bailiffs, probation officers, and other employees as are necessary for the operation of the court. Here too, the judge is authorized to require any employee to give bond in the sum of not less than one thousand dollars in order to ensure the honest and faithful performance of the appointee's duties.

Unlike the statute governing the personal liability of probate judges, R.C. 2151.13 states that a juvenile judge shall not be held liable for the default, malfeasance, or nonfeasance of any employee from whom a bond has been required. A juvenile judge may, however, be held personally liable for the default, malfeasance, or nonfeasance of an employee from whom no bond has been required.

Personal Liability of Other Judges

Importantly, R.C. 2101.11(C) and R.C. 2151.13 are the only two sections of the Revised Code that expressly create the possibility of personal liability for judges based upon the actions or omissions of their appointees or employees. To the contrary, Justices of the Supreme Court of Ohio and judges of

⁹ *Hopkins v. INA Underwriters Ins.*, (1988), 44 Ohio App. 3d 186 at 7.

¹⁰ See, e.g., R.C. 2101.03; R.C. 2151.12

¹¹ *Hopkins* at 7.

the courts of appeals, courts of common pleas (including the domestic relations division), and municipal/county courts do not face personal liability for losses resulting from the default, malfeasance, or nonfeasance of appointees or employees.

Personal Liability of Other Public Servants

Many other public officers and employees enjoy immunity from personal liability for actions taken in the performance of their official duties. For example, Revised Code section 9.86 provides for the immunity of public officers and employees for actions taken in the performance of his or her duties. R.C. 2744.03 provides for the immunity of political subdivisions and employees of those subdivisions for actions or omissions that occur in connection with a governmental or proprietary function. This includes the actions of employees engaged in the performance of judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative functions.

Importantly, the aforementioned provisions are generally understood to apply to actions taken in the performance of official duties unless the acts or omissions were manifestly outside the scope of employment or official responsibilities, were undertaken with a malicious purpose, in bad faith, or in a wanton or reckless manner, or unless civil liability is *expressly* imposed by a separate section of the revised code.

PROPOSAL DESCRIPTION

House Bill 438 would amend R.C. 2101.11 and R.C. 2151.13 to eliminate the express potential for personal liability for probate and juvenile judges for the acts or omissions of their appointees and employees, regardless of whether or not a bond has been required from the appointee or employee.

JUDICIAL IMPACT

Uniformity of the Law: House Bill 438 will positively impact Ohio's courts by creating uniformity in the law. As noted above, the Justices of the Supreme Court of Ohio and judges of the courts of appeals, courts of common pleas (including the domestic relations division), and municipal/county courts are immune from personal liability for losses resulting from the default, malfeasance, or nonfeasance of appointees or employees. Only probate and juvenile court judges can be held liable in these circumstances. House Bill 438 will positively impact the courts by bringing statutory law regarding personal liability for probate and juvenile court judges in to line with statutory law regarding the personal liability of other Ohio judges, public officers, and employees.

Public Confidence in the Law: House Bill 438 will improve public confidence in the law by providing for the equal treatment of all Ohio judges for the actions or omissions of their appointees or employees. Equal treatment under the law is one of the most highly regarded principles in American democracy and any time the law is changed so that similarly situated persons are treated equally, public confidence in the law will improve. Moreover, by continuing to require probate and juvenile judges to post their own bond and to allow them to require appointees and employees to post a bond, the public will remain protected from any potential default of that employee or appointee. As such, House Bill 438 will safeguard the public interest without imposing unnecessary risk of personal liability on probate and juvenile court judges.

Administration of Justice: House Bill 438 will improve the administration of justice by helping to ensure the continued independence of the judiciary. Judges are often called upon to decide controversial, difficult, and emotionally charged cases, and should not have to fear that disgruntled litigants will hound them with litigation. In eliminating the express liability of probate and juvenile judges, House Bill 438 helps to ensure that judicial decision making in Ohio will not be colored by fear of personal liability and will thereby enable these judges to act in a more fair and impartial manner.

RECOMMENDATION

The Ohio Judicial Conference, the voice of Ohio's judges, encourages the passage of House Bill 438. The bill will create uniformity in the law, improve public confidence in the law, and improve the administration of justice by putting probate and juvenile court judges on equal footing with other judges in Ohio with regards to their personal liability for the actions and omissions of appointees and employees.