



Ohio Judicial Conference

The Voice of Ohio Judges

September 25, 2019

The Honorable Bob Cupp
Ohio House of Representatives
77 S. High Street, 13th Floor
Columbus, OH 43215

Re: Private Judging Reform Proposal

Dear Representative Cupp: *Bob*

The Court Administration Committee, Domestic Relations Law & Procedure Committee and Probate Law & Procedure Committee of the Ohio Judicial Conference have discussed the issue of private judging under R.C. 2701.10 and have drafted a legislative proposal to reform private judging. Our reform proposal is attached for your consideration. An explanation for the proposed changes follows.

Private Judging Issues

Current R.C. 2701.10, enacted in 1984 and never amended, allows parties to any civil action to choose to have the action referred for adjudication with a private judge of their choosing, provided the judge is a qualified retired judge and registered with the court. Upon notice that the parties have agreed and retained the services of a private judge, the elected judge before whom the action is pending is required to order the referral of the case to the private judge. The elected judge has no discretion over whether to order the referral, and once the case is so referred, the case is out of the elected judge's hands.

Judges in Ohio have encountered numerous problems as it relates to the use of private judges, particularly in domestic relations cases. Some examples of problems our judges have personally observed include:

1. Numerous dissolutions are filed with a Motion for Referral to a Private Judge that appear unfair and unjust. Take, as one example, the dissolution of a long-term marriage with children of a high-income party and a low-income party. The Separation Agreement stated no spousal support, no child support, and the high-income party received a much higher percentage of the marital property than the low-income party.
2. Private judges need not have experience in the relevant court division. In one particular dissolution, the sitting judge was hesitant to order the referral to a private judge who had no domestic-relations experience.

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3. There is no safeguard against potential conflicts of interest. In the same dissolution addressed in point number 2 above, the judge was further hesitant to order the referral because the private judge retained by the parties worked in the same law office as the petitioner-wife and the wife's attorney; the husband was not represented. Despite these concerns, the judge was required by law to order the referral.
4. Private judges can make serious errors, and the sitting judge has no oversight over the private judge's actions. In at least two cases in the last two years, one court discovered that the decree granting a dissolution had not been filed with the clerk of courts. In one case, the parties thought their marriage had been terminated for approximately five years. When the wife requested the decree from the clerk's office, she was told it had never been filed.
5. Domestic Relations judges report that the private judging statute is unclear about whether the elected judge or private judge should adjudicate post-decree actions and separate motions, such as motions for child support modification.
6. Probate judges have reported requests for private judging in adoption cases. This raises concerns about whether the standard legal process for adoptions, including thorough home studies and adoption hearings, will be strictly enforced by a private judge.

Reform Proposal

Because of these serious concerns with regard to the mandatory referral to private judges, the Ohio Judicial Conference's Executive Committee voted to add private judging reform to our Legislative Platform. We propose an amendment to R.C. 2701.10 that would give judges the discretion to order the referral of a case to a private judge, rather than mandate it upon request of the parties.

Our proposal would also require parties to a private judging action to address possible termination of the private judge in their agreement. We became aware of this issue with private judging when Representative Bill Roemer's Office contacted us with a constituent concern. Representative Roemer's constituent was an attorney who hired a private judge, but was unable to disengage from the private judge action despite the agreement of their former spouse. The constituent informed us that R.C. 2701.10 currently does not contemplate disengagement of the private judge. Since the agreement with the private judge is contractual in nature, our reform proposal would add a termination clause to the current agreement requirements in R.C. 2701.10(B)(1).

Lastly, our proposal clarifies that when the referred action is concluded, whether by resolution or termination, jurisdiction is returned to the referring judge so they can adjudicate any subsequent motions or modifications.

Additional Probate Issue

There is one other issue we want to bring to your attention. Your sponsorship of the recent "Probate Omnibus" bills, H.B. 432 of the 131st General Assembly and H.B. 595 of the 132nd General Assembly, has created an opportunity for all of Ohio's probate courts to create Guardianship Services Boards, similar to the successful pilot project created in Franklin County. We have heard that several counties will utilize their authority to create Guardianship Services Boards starting later this year and early 2020. We thank you, again, for your work in sponsoring legislation to enact R.C. 2111.52.

Even with the Guardianship Board option, probate judges are reporting insufficient guardianship funding as a growing problem statewide as the population ages and younger adults struggling with alcohol or drug addiction issues require guardians. At their September 2019 meeting, the Probate Law & Procedure Committee voted to seek funding for guardians. We wanted to make you aware of this issue and see if we could work together to come up with options to meet the needs of Ohio's wards.

If you have any questions, please do not hesitate to contact me or our Domestic Relations and Probate Law and Procedure Committees liaison Shawn Welch by phone at (614) 387-9765 or by email at shawn.welch@sc.ohio.gov. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Paul".

Paul E. Pfeifer
Executive Director

Enclosure

CC: Representative Bill Roemer

OJC Private Judging Reform Proposal

Sec. 2701.10 (A) Any voluntarily retired judge, or any judge who is retired under Section 6 of Article IV, Ohio Constitution, may register with the clerk of any court of common pleas, municipal court, or county court for the purpose of receiving referrals for adjudication of civil actions or proceedings, and submissions for determination of specific issues or questions of fact or law in any civil action or proceeding, pending in the court. There is no limitation upon the number, type, or location of courts with which a retired judge may register under this division. Upon registration with the clerk of any court under this division, the retired judge is eligible to receive referrals and submissions from that court, in accordance with this section. Each court of common pleas, municipal court, and county court shall maintain an index of all retired judges who have registered with the clerk of that court pursuant to this division and shall make the index available to any person, upon request.

(B) (1) The parties to any civil action or proceeding pending in any court of common pleas, municipal court, or county court unanimously may choose to have the action or proceeding in its entirety referred for adjudication, or to have any specific issue or question of fact or law in the action or proceeding submitted for determination, to a judge of their choosing who has registered with the clerk of that court in accordance with division (A) of this section.

If the parties unanimously do choose to have a referral or submission made to a retired judge pursuant to this section, all of the parties to the action or proceeding shall enter into a written agreement with the retired judge that does all of the following:

- (a) Designates the retired judge to whom the referral or submission is to be made;
- (b) If a submission is to be made, describes in detail the specific issue or question to be submitted;
- (c) Indicates either of the following:
 - (i) That the action or proceeding in its entirety is to be referred to, and is to be tried, determined, and adjudicated by that retired judge;
 - (ii) Indicates that the issue or question is to be submitted, and is to be tried and determined by that retired judge.
- (d) Indicates that the parties will assume the responsibility for providing facilities, equipment, and personnel reasonably needed by the retired judge during his consideration of the action or proceeding and will pay all costs arising out of the provision of the facilities, equipment, and personnel;
- (e) Identifies an amount of compensation to be paid by the parties to the retired judge for his services and the manner of payment of the compensation.
- (f) Indicates a procedure for terminating the agreement with the private judge. Upon conclusion of the referred action or proceeding, jurisdiction is returned to the referring judge.

(2) In any case described in division (B)(1) of this section, the agreement shall be filed with the clerk of the court or the judge before whom the action or proceeding is pending. Upon the filing of the agreement, the judge before whom the action or proceeding is pending, by journal entry, may, at its discretion shall order the referral or submission in accordance with the agreement. No referral or submission shall be made to a retired judge under this section, unless the parties to the action or proceeding unanimously choose to have the referral or submission made, enter into an agreement of the type described in division (B)(1) of this section with the retired judge, and file the agreement in accordance with this division.

(C) Upon the entry of an order of referral or submission in accordance with division (B)(2) of this section, the retired judge to whom the referral or submission is made, relative to the action or proceeding referred or the issue or question submitted, shall have all of the powers, duties, and authority of an active judge of the court in which the action or proceeding is pending. The court in which the action or proceeding is pending is not required to provide the retired judge with court or other facilities, equipment, or personnel during his consideration of the action, proceeding, issue, or question. The retired judge shall not receive any compensation, other than that agreed to by the parties and the retired judge, for his services during his consideration of the action, proceeding, issue, or question.

(D) A retired judge to whom a referral is made under this section shall try all of the issues in the action or proceeding, shall prepare relevant findings of fact and conclusions of law, and shall enter a judgment in the action or proceeding in the same manner as if he were an active judge of the court. A retired judge to whom a submission is made under this section shall try the specific issue or question submitted, shall prepare relevant findings of fact or conclusions of law, shall make a determination on the issue or question submitted, and shall file the findings, conclusions, and determination with the clerk of the court in which the action or proceeding is pending. Any judgment entered, and any finding of fact, conclusion of law, or determination of an issue or question made, by a retired judge in accordance with this section shall have the same force and effect as if it had been entered or made by an active judge of the court, and any appeal from the judgment, finding, conclusion, or determination shall be made as if the judgment had been entered, or the finding, conclusion, or determination had been made, by an active judge of the court.

(E) Any judge who registers with any court in accordance with division (A) of this section may have his name removed from the index of registered retired judges maintained by that court at any time after the registration. On and after the date of removal of the name of a retired judge from the index of a court, the retired judge is not eligible under this section to receive referrals or submissions from that court.

(F) This section does not affect, and shall not be construed as affecting, the provisions of section 141.16 of the Revised Code. This section does not apply to any action or proceeding pending in a small claims division of a municipal court or county court.