



Ohio Judicial Conference

The Voice of Ohio Judges

April 2, 2019

Mr. Todd Book, Esq.
Chief Policy Officer
Ohio State Bar Association
1700 Lake Shore Drive
Columbus, Ohio 43204

Re: R.C. 2701.10 and private judging

Dear Mr. Book:

The Court Administration Committee and the Domestic Relations Law and Procedure Committee of the Ohio Judicial Conference have been discussing the issue of private judging under R.C. 2701.10 and would like the input and feedback of the Ohio State Bar Association.

That statute 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 qualified and registered with the court. Upon notice that the parties have agreed and retained the services of a private judge, the judge before whom the action is pending is required to order the referral of the case to the private judge. The judge has no discretion over whether to order the referral, and once the case is so referred, the case is out of the judge's hands.

Judges in Ohio have encountered a plethora of 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.
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.

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Because of these serious concerns with regard to the mandatory referral to private judges, the Ohio Judicial Conference Executive Committee voted on March 15, 2019, to add to the Conference's Legislative Platform 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.

We would greatly appreciate the thoughts of the Bar Association on this suggested change, and would welcome any discussion on the topic. Please do not hesitate to contact me or Josh Williams, Deputy Legislative Counsel, at (614) 387-9767 or Joshua.Williams@sc.ohio.gov.

Sincerely,

A handwritten signature in black ink that reads "Paul". The signature is written in a cursive style with a large, prominent 'P'.

Paul E. Pfeifer
Executive Director