



# Judicial Impact Statement

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## JUDICIAL IMPACT STATEMENT: PERMISSIVE APPOINTMENT OF PRIVATE JUDGES

### Looking for sponsor

#### TITLE INFORMATION

To amend section 2701.10 of the Revised Code to allow permissive appointment of private judge.

#### IMPACT SUMMARY

This proposal will maintain the accountability of the judiciary to the electorate and increase public confidence in the judiciary.

#### BACKGROUND

Revised Code Section 2701.10 allows parties to hire a retired judge to hear their private action. If the parties agree to utilize this option, the common pleas, municipal or county court judge assigned to the case *must* refer the case to a “private judge” to adjudicate the matter (R.C. 2701.10(B)(2)). The private judge writes an order based upon the facts presented, and his/her order becomes final and appealable (R.C. 2701.10(D)).

R.C. 2701.10 has great value. Parties are able to handle their matters privately, and at a time that is convenient for their schedules (something especially convenient for those whose work schedules conflict with the operational hours of the court). Private judging also alleviates strain on busy dockets by taking away cases from a judge’s schedule.

However, because a judge must transfer the case when it is requested, the judge has no ability to control the quality of the adjudication of these cases. If, for example, a retired probate judge who only practiced in guardianship and estate law is hired to proceed over a divorce, the private judge will not have an intimate knowledge of the complexities of domestic relations law. The private judge may not know what to look for in preventing situations where an attorney could take advantage of an unrepresented party. The use of a private judge also presents the

#### 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.

opportunity for judge shopping, which erodes public confidence in the judicial system.

In this State, we grant great power over an individual to each member of the judiciary. As a check on this power, Ohio's judges answer to the electorate. If a judge does not perform his/her duties to the satisfaction of the people, voters have the ability to choose a new judge. Private judges answer only to the market by way of the reasonableness of the price they charge. Opinions authored by private judges are final and appealable, but appellate review can be costly and requires overcoming a high burden of proof. Because of this, an elected judge should have the ability to regulate which cases are appropriate for private judging if the judge believes there is a chance that a party to the underlying case will receive an unfair outcome.

**RECOMMENDATION:**

R.C. 2701.10 should be amended to allow a judge to deny the use of a private judge at the judge's discretion. This way, if the elected judge assigned to the matter has reason to believe that the use of a private judge will not be an effective or equitable method of adjudicating the action, the elected judge may refuse to transfer the case.

2701.10 REFERRALS FOR ADJUDICATION OF CIVIL ACTIONS OR PROCEEDINGS TO RETIRED JUDGES.

(B) (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, ~~shall~~ may 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.