



House Civil Justice Committee
John Kim
Proponent Testimony on House Bill 464

Chair Hambley, Vice Chair Patton, Ranking Member Brown, and members of the House Civil Justice Committee, I thank you for this opportunity to submit proponent testimony for House Bill 464 as a former private judge litigant. I am John Kim, Ohio Attorney, and President of Symphony Financial Services, Inc.

O.R.C. §2701.10 allows an unelected individual to make decisions binding on society as a whole. This delegation of authority undermines the fair and impartial role of our judicial system. The private judging system turns fair adjudication into a big business for retired judges to control their own salary at the expense of litigants. I submit my testimony to inform you that regulations in regard to private judges needs to change. If we are unable to abolish O.R.C. §2701.10, then we need a code of conduct specifically for private judges.

As it stands, private judges are able to double-dip and be paid their retirement benefits plus compensation for performing the same or similar job from which they retired. Furthermore, under 2701.10(A) there is no limitation upon the number, type, or location of courts with which a retired judge may register under this division. There is an ambiguity as to whether private judges are subject to any formal code of conduct, currently there is no quality control over the judges and they must be made accountable under the Judicial Codes of Conduct. With this ambiguity however, there is also the issue that their powers are not clear. These judges are chosen by private parties, and are not accountable to the public, yet they are able to make judgments that are treated the same as state court judgments.

Furthermore, private judging can create an overly informal atmosphere among judges and lawyers who frequently work together. Specifically, one sides repeated use of the same private judge may affect his or her impartiality or at least the appearance of impartiality. Since this is more of a business transaction, judges, being paid by the private parties, are seeking repeat business. They can modify their behavior to attract and keep business. For example, when they preside over a case involving a repeat customer and a first-timer, there is certainly temptation for bias. This Bias can be further exaggerated by the fact that a private judge makes between \$300 and \$500 per hour. Unlike an assigned retired judge, a private judge is neither required to submit delineated time-sheets to the Chief Justice nor the parties themselves. The lack of regulations to govern the behavior of private judges opens the door for them to self-serve by creating work for themselves and therefore driving their paycheck to paramount heights.

In my personal experience with the private judging system, I have become intimately familiar with all of these failures in our current system. In my experience, our private judge created her own order mandating escrowed funds inside an IOLTA account be raided to pay her accrued hourly fees **over the objection of counsel and the need to pay parties' Federal Income taxes** with no recourse or venue for either party to oppose.

I am specifically concerned with Ohio Trial Practice 2.13. Conduct and demeanor of judge. A judge should not preside in a case in which he or she is biased, prejudiced, or has a relationship with either one of the parties, or the subject matter and would be disposed to prejudge the matter. A judge who continues to preside over a case after a recusal order is subject to disciplinary action. If an assigned retired judge has the same powers as sitting judges, then they can be disqualified from a case, but this disqualification is hard to come by. The standard should be less than the standard for disqualifying a sitting judge because the parties are the ones that are paying for the judge's compensation and, therefore, should freely have the ability to terminate. A retired judge should not benefit from judicial immunity when she is paid by the parties, because this makes it closer to a contractual relationship. One side's repeated use of the same private judge may affect his or her impartiality or at least the appearance of impartiality.

Even under §2701.10(c) "The retired judge shall not receive any compensation, other than that agreed to by the parties and the retired judge, for his services during the consideration of the action, proceeding, issue, or question. As a private judge, there are no such restrictions. A private judge currently enjoys unfettered discretion to create billable work and a party has no recourse to object.

Finally, a private judge by its very nature creates inherent motives to modify their behavior to attract and keep business. For example, when they preside over a case involving a repeat customer and a first-timer, there is certainly temptation for bias to encourage ongoing referrals. When evident, there are no clear guidelines for parties to address their grievance. If so, they're still subject to the extreme and virtually non-existent recusal process of sitting judges.

If my assistance on this bill would be beneficial, I would be happy to participate in conversations or help in any way I can. I thank you for considering my testimony. I am available to answer any questions you may have.

Respectfully,

John Y. Kim