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The Use of a Private, Retired Judge to Move your Case Forward in the Wake of COVID-19

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Due to the COVID-19 pandemic, most civil trials were put on hold. Now, we are starting to slowly see courts are opening back up to the public. As a result, the courts' dockets are beginning to show a backlog with criminal cases and with civil cases that were scheduled for trial during the stay at home orders. One alternative method to resolving a case in a county courtroom with a busy docket is the use of a private, retired judge; a method that is often underutilized. This alert will provide the requirements for the use of a private, retired judge as well as the recent statutory changes.

Use of a Private Retired Judge is Statutorily Approved

Under Ohio Revised Code Section 2701.10, parties to any civil action or proceeding pending in any court of common pleas, municipal court, or county court may all agree to choose to have the action or proceeding in its entirety referred for adjudication to a retired judge, or to have any specific issue or question of fact or law in the action or proceeding submitted for determination from a retired judge.

The Statutory Requirements

The use of a private, retired judge is a viable option if the following requirements are met:

- there is a written agreement which both parties agree to use a retired judge;
- the agreement designates which retired judge to use;
- the agreement lays out if the case as a whole will be adjudicated or just a specific issue/fact;
- the agreement identifies the amount of compensation to be paid by the parties to the retired judge for his/her services; and
- both parties agree to cover the cost of the facility, equipment and personnel for the retired judge; and

- the trial judge then shall rule within 14 days and has discretion whether to refer the case to the retired judge.

Please note, there are two new requirements provided by this statute: (1) the agreement designates how the matter is returned to the docket and (2) the trial judge shall rule within 14 days and has discretion whether or not to refer the case to a private, retired judge.

The retired judge has full authority of the court and his/her decision is enforceable and appealable. At the conclusion of the case, the retired judge will enter a judgment in the action or proceeding in the same manner as if he/she were an active judge of the court. The matter is to then return to the regular docket of the trial judge.

An Important Tool for Faster Resolution

The proceedings with a retired judge will alleviate a congested docket, can be efficient, provide tailored expertise, and preserve appellate review. For example, litigants to a civil case awaiting a decision on a motion for summary judgement could all unanimously choose to have the motion decided by a retired judge to speed up the proceeding. Another example is when expensive experts are retained, a trial to a retired judge will not have all the interruptions and delay of a normal docket, and parties can control the timing of their witnesses.

At its essence, this statute is convenient and provides an additional option to the traditional and crowded court docket while still preserving a litigant's right to appeal. If you are a litigant, please contact your attorney to explore your options of using a retired judge in your civil case. If you are an attorney and have questions regarding the use of a retired judge for your proceeding, please contact Retired Cuyahoga County Court of Common Pleas Judge Jim McMonagle or former Franklin County Court of Common Pleas Judge and Retired Supreme Court of Ohio Justice Evelyn Lundberg Stratton.

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive COVID-19 Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.