

Frequently Asked Questions About Private Judging

What is a "private judge"? *A private judge is a retired judge who has registered with the Ohio Supreme Court that he or she is interested in serving as a "private judge" pursuant to Section 2701.10 of the Revised Code.*

What does Ohio Revised Code Section 2701.10 do? *It authorizes retired judges to serve as private judges in Ohio courts. It states that such judges "shall have all of the powers, duties, and authority of an active judge of the court in which the action or proceeding is pending." (See R.C. 2701.10 (C))*

How does a retired judge become a private judge? *The retired judge fills out a form and registers with the Ohio Supreme Court and also fills out a form and registers with the local clerk of courts for the court in which that retired judge wishes to serve as a "private judge."*

How does a case get referred to a private judge? *All the parties to a lawsuit file what R.C. 2701.10 refers to as a referral or submission.*

What are the requirements for such a referral or submission? *R.C. 2701.10 states that the parties must enter into an agreement with the retired judge who is to serve as a private judge in their case.*

Who pays for the private judge? *The agreement referred to above sets forth the payment that the private judge shall receive for his or her services.*

What else does the agreement do? *R.C. 2701.10 states that such an agreement must contain certain provisions. Those provisions are found in R.C. 2701.10 (B) (1).*

What are the mandatory provisions of R.C. 2801.10 (B) (1)? *R.C. 2701.10 (B) (1) contains the following language:*

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.

Once the agreement is filed, what does the judge on whose docket is pending do? R.C.

2701.10 (B) (2) reads as follows:

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 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.

Can the judge on whose docket the case is pending block or refuse to approve the transfer of the case to the private judge? Note the use of the words "shall order". It is a mandatory duty to order the referral or submission in accordance with the agreement.

Can a private judge perform jury trials? No. The Ohio Supreme Court has held that R.C. 2701.10 does not allow private judges to hear jury trials.

Can a party appeal a decision of a private judge? Yes. All decisions of a private judge are subject to appeal as they would be if made by the judge to whose docket the case was assigned. (See R.C. 2701.10 (D))

Does R.C. 2701.10 contain requirements for the private judge? R.C. 2701.10 (D) contains the following language:

(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.

What are the advantages of a private judge?

Certainty: *Private judges are retained to hear a specific case. This means that your case is not one of hundreds pending on that judge's docket. Your case will have priority and will not be continued because a criminal case has precedence. Your case will be tried at a date and time agreed to by the parties and the retired judge. Your case will not be "spun off" to a retired judge who is sitting by assignment in that court and with whom you have had little if any contact. The parties choose the judge to hear the case. This means that parties have assurance that their attorneys are comfortable with the skills and work ethic of the judge trying their case.*

Discretion: *Some litigants are reluctant to come to a county courthouse where their friends, neighbors, or relatives may see them. Private judges try the cases in the facilities agreed to by the parties which do not have to be in the county courthouse. The chances of a litigant being seen by friends, neighbors, or relatives are much less. For many litigants involved in litigation this brings peace of mind.*

Convenience: *Private judges are not required to try their cases in the county courthouse. In fact, they usually won't be trying them in the county courthouse. The case can be tried anywhere the parties agree. This means that if a case had witnesses who were all located in a county other than the county in which the case is pending, the case could be tried in that county. Or if the parties wanted to try the case near an airport to accommodate expert witnesses or have the private judge take testimony in a different city or even in a different state that could be arranged.*

Can only certain issues be referred or submitted to a private judge? *Yes. R.C. 2701.10, as seen by the sections quoted above, allows a private judge to hear just certain issues in a case. So, for example, if the parties wanted a private judge to preside over a deposition of expert witnesses, that could enter into a agreement with the private judge to refer the issue of the admissibility of the testimony of expert witnesses to the private judge.*

Is retired Judge James L. Kimbler registered as a private judge? *Yes. Judge James L. Kimbler registered with the Ohio Supreme Court to serve as a private judge. Judge Kimbler has also registered with the Clerks of Courts of Medina, Cuyahoga, Summit, Lorain, Wayne and Ashland counties.*

Can Judge Kimbler hear cases in other counties then the ones listed above? *Yes. R. C. 2701.10 states that there is no limitation on the number of counties in which a retired judge may serve as a private judge. If you are interested in retaining Judge Kimbler as a private judge in other counties, or if you have any questions about private judges, please contact him at 330-322-6737 or email him at judgekimbler@northcoastadrservices.com*