

By Senator Altman

24-00065A-10

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1 A bill to be entitled
2 An act relating to judicial proceedings in civil
3 cases; amending s. 25.073, F.S.; conforming provisions
4 to changes made by the act; providing for the chief
5 judge of a judicial circuit, subject to approval by
6 the Chief Justice of the Supreme Court, to establish a
7 program for retired justices or judges to preside over
8 civil cases and trials upon written request of one or
9 more parties; providing for compensation of such
10 justices or judges; providing for an additional court
11 cost and for deposit thereof; amending s. 44.104,
12 F.S.; providing for the procedures governing voluntary
13 trial resolution to include a jury trial if there is a
14 right to a jury trial and if at least one party has
15 requested a jury trial; providing an effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Subsection (3) of section 25.073, Florida
20 Statutes, is amended, and subsection (4) is added to that
21 section, to read:

22 25.073 Retired justices or judges assigned to temporary
23 duty; additional compensation; appropriation.—

24 (3) Payments required under subsection (2) ~~this section~~
25 shall be made from moneys to be appropriated for this purpose.

26 (4) In addition to subsections (1)-(3), the chief judge of
27 a judicial circuit may, subject to approval by the Chief
28 Justice, establish a program for the optional use of retired
29 justices or judges to preside over civil cases and trials

24-00065A-10

2010130

30 pursuant to this subsection. The program shall be developed and
31 operated so as to ensure that one or more parties to the lawsuit
32 shall pay the cost of the retired justice or judge. The use of
33 this program shall in no way diminish or otherwise affect the
34 power and authority of the Chief Justice to assign justices or
35 judges, including consenting retired justices or judges, to
36 temporary duty in any court for which the justice or judge is
37 qualified or to delegate to a chief judge of a judicial circuit
38 the power to assign justices or judges for duty in that circuit.
39 At a minimum, the program developed under this subsection shall
40 be operated as follows:

41 (a)1. Any party to the action may request a retired justice
42 or judge to hear one or more motions. The request must be in
43 writing and addressed to the chief judge of the circuit. The
44 party may seek appointment of a retired justice or judge to hear
45 more than one motion in that case or motions in multiple cases,
46 or a lawyer or law firm may seek appointment of a retired
47 justice or judge to hear motions in multiple cases. The chief
48 judge of the circuit shall not appoint a retired justice or
49 judge if the trial judge assigned to the case can accommodate
50 the hearing or hearings within the following 2 weeks.

51 2. All parties to an action may jointly request a retired
52 justice or judge to conduct the trial of the action, including a
53 trial by special setting. The chief judge of the circuit shall
54 not appoint a retired justice or judge unless all parties agree
55 to the request and sufficient court resources are available to
56 accommodate the request.

57 (b)1. A party or parties seeking to use a retired justice
58 or judge shall submit a written request to the chief judge,

24-00065A-10

2010130__

59 stating the reasons for the request.

60 2. Allowable grounds for use of a retired justice or judge
61 include the unavailability of hearing time, scheduling
62 difficulties, difficulties with the availability of witnesses,
63 or the need to expedite the case. A request shall not be granted
64 if it is apparent that a party is seeking an appointment only in
65 order to avoid the assigned trial judge.

66 3. The chief judge shall consider the reasons for the
67 request and shall grant or deny the request in writing within 5
68 days.

69 4. Only retired justices or judges who are on the list that
70 is approved by the Chief Justice are eligible for appointment in
71 this program. Assignment of such retired justices or judges
72 shall be made in accordance with current judge assignment
73 procedures in each judicial circuit. A party may not seek or
74 request that a particular retired justice or judge be appointed.

75 5. An appointment shall be for the hearing time requested.
76 However, the chief judge may appoint a retired justice or judge
77 to hear multiple hearings in 1 day involving related or
78 unrelated cases.

79 (c)1. Upon granting a request, the chief judge of the
80 applicable judicial circuit shall estimate the number of days
81 required of the retired justice or judge to complete the
82 hearings or trial and shall inform the requesting party or
83 parties of the cost.

84 2. The party or parties who requested the appointment of a
85 retired justice or judge shall prepay the per diem rate of the
86 retired justice or judge before the hearing or trial based on
87 the per diem rate then in effect. The minimum charge for

24-00065A-10

2010130

88 assignment of a retired justice or judge under this subsection
89 shall be the per diem rate for 1 day, and any required time over
90 1 day shall be charged in 1-day increments for any additional
91 days at the per diem rate. The chief judge shall set a payment
92 deadline sufficiently prior to the date of the hearing or trial
93 so that the appointment may be timely canceled if prepayment is
94 not received at least 1 business day before the scheduled
95 hearing or trial.

96 3. For purposes of this subsection, the term "per diem
97 rate" means the cost to the state of 1 day of service by a
98 retired justice or judge and shall be calculated by adding the
99 regular daily rate set by the Chief Justice for retired justices
100 or judges, plus the employer's share of required federal taxes,
101 and plus, if applicable, the justice's or judge's travel and
102 other costs reimbursable under s. 112.061.

103 4. Payments made by a party or parties under this program
104 shall be deposited into the Operating Trust Fund within the
105 state courts system under s. 25.3844.

106 5. Once a hearing or trial is scheduled, prepayment is made
107 as required under this subsection, and the state is required to
108 make payment to the retired justice or judge, there shall be no
109 refund. A refund is authorized only if the assigned retired
110 justice or judge becomes unavailable for reasons unrelated to
111 the conduct of the parties.

112 6. A person who has been relieved of the requirement to
113 prepay costs in an action may not be relieved of the requirement
114 under this subsection to prepay the costs of a retired justice
115 or judge prior to a request being granted.

116 (d)1. If a party seeks appointment of a retired justice or

24-00065A-10

2010130__

117 judge to hear one or more motions, the cost of the retired
118 justice or judge shall not be taxable against a nonprevailing
119 party.

120 2. If all parties sought the appointment of a retired
121 justice or judge to hear motions or conduct the trial, the
122 amounts paid for the retired justice or judge by a prevailing
123 party shall be taxable against a nonprevailing party, as
124 provided in chapter 57 and in the Florida Rules of Civil
125 Procedure.

126 Section 2. Present subsections (3) through (14) of section
127 44.104, Florida Statutes, are redesignated as subsections (4)
128 through (15), respectively, and a new subsection (3) is added to
129 that section, to read:

130 44.104 Voluntary binding arbitration and voluntary trial
131 resolution.-

132 (3) Voluntary trial resolution may include a jury trial if
133 there is a right to a jury trial in the civil dispute and if
134 there has been a request for a jury trial by at least one party.
135 The trial resolution judge shall preside over the jury trial.
136 The jury trial conducted as part of the voluntary trial
137 resolution shall be conducted according to the laws applicable
138 to civil jury trials.

139 Section 3. This act shall take effect upon becoming a law.