

By the Committee on Judiciary; and Senator Altman

590-02752-10

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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.

16
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

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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 circuit the power
38 to assign justices or judges for duty in that circuit. At a
39 minimum, the program developed under this subsection shall be
40 operated as follows:

41 (a)1. Any party to the action may request a retired justice
42 or judge to hear one or more nondispositive motions. The party
43 may seek appointment of a retired justice or judge to hear more
44 than one nondispositive motion in that case. The chief judge of
45 the circuit shall not appoint a retired justice or judge if the
46 trial judge assigned to the case can accommodate the hearing or
47 hearings within 2 weeks after the request for appointment of a
48 retired justice or judge.

49 2. All parties to an action may jointly request a retired
50 justice or judge to hear one or more dispositive motions or to
51 conduct the trial of the action, including a trial by special
52 setting. The chief judge of the circuit shall not appoint a
53 retired justice or judge unless all parties agree to the request
54 and sufficient court resources are available to accommodate the
55 request. A party in default shall be deemed to have consented to
56 the appointment of a retired justice or judge under this
57 subparagraph.

58 (b)1. A party or parties seeking to use a retired justice

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59 or judge shall submit a written request to the chief judge,
60 stating the reasons for the request.

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

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

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

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

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

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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. The per diem paid to a retired justice or judge under
104 this subsection for 1 day of service for all trials or hearings
105 conducted on that one day shall not exceed the standard per diem
106 rate for 1 day of service established by the chief justice.

107 5. Payments made by a party or parties under this program
108 shall be deposited into the Operating Trust Fund within the
109 state courts system under s. 25.3844.

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

116 7. A person who has been relieved of the requirement to

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117 prepay costs in an action may not be relieved of the requirement
118 under this subsection to prepay the costs of a retired justice
119 or judge prior to a request being granted.

120 (d)1. If a party seeks appointment of a retired justice or
121 judge to hear one or more motions, the cost of the retired
122 justice or judge shall not be taxable against a nonprevailing
123 party.

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

130 Section 2. Present subsections (3) through (14) of section
131 44.104, Florida Statutes, are redesignated as subsections (4)
132 through (15), respectively, and a new subsection (3) is added to
133 that section, to read:

134 44.104 Voluntary binding arbitration and voluntary trial
135 resolution.—

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

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