



Sub. H.B. 38*

125th General Assembly
(As Reported by S. Judiciary)

Reps. Willamowski, Hagan, McGregor, Seitz, Setzer, Schaffer, Buehrer, Widener, Latta, Book, Harwood, Mason, Core, Beatty, Callender, Blasdel, Cirelli, Daniels, DeBose, DeGeeter, Domenick, C. Evans, D. Evans, Faber, Flowers, Gilb, Hughes, Key, T. Patton, Schmidt, Skindell, G. Smith, S. Smith, J. Stewart

BILL SUMMARY

Unauthorized practice of law

- Specifically prohibits any person who is not licensed to practice law in Ohio from committing any act that is prohibited by the Supreme Court as being the unauthorized practice of law and provides that only the Supreme Court may make a determination that any person has committed the unauthorized practice of law in violation of that prohibition.
- If necessary to serve the public interest and consistent with the rules of the Supreme Court, authorizes any person who is authorized to bring a claim before the Supreme Court that alleges the unauthorized practice of law in violation of the prohibition described in the preceding dot point to make a motion to the Supreme Court to seek interim relief prior to the final resolution of the person's claim.
- Permits any person who is damaged by another person who commits a violation of the prohibition described in the second preceding dot point to commence a civil action to recover actual damages from the person who commits the violation, upon a finding by the Supreme Court that the other person has committed an act that is prohibited by the Supreme Court as being the unauthorized practice of law, and provides that the

* *This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

court is bound by the determination of the Supreme Court regarding the unauthorized practice of law.

- Requires a court in which the action for damages is brought to consider specified factors in awarding damages.
- Specifies that the sanctions described above regarding a violation of the new prohibition enacted in the bill that is described in the first dot point apply, and may be utilized, only regarding acts that are the unauthorized practice of law in violation of the new prohibition and that occur on or after the bill's effective date.

Napoleon Municipal Court

- Replaces the part-time judge of the Napoleon Municipal Court with a full-time judge to be elected in 2005.

Darke County Municipal Court

- Creates the Darke County Municipal Court on January 1, 2005, provides that the new court will be located in Greenville and will be a county operated municipal court, and gives the new court jurisdiction in all of Darke County except within the municipal corporation of Bradford.
- Establishes one full-time judgeship in the Darke County Municipal Court with the judge being initially elected in 2005 and provides that the part-time judge of the Darke County County Court whose term began on January 1, 2001, is to serve as the full-time judge of the new municipal court until December 31, 2005.

Darke County County Court

- Abolishes the Darke County County Court and the two part-time judges of the court and specifically provides that no judge is to be elected for the abolished court in 2004.

Nomination of judges of the Brown County and Morrow County Municipal Courts

- Provides for the nomination only by petition of the judges of the Brown County Municipal Court and the Morrow County Municipal Court.

Licking County Court of Common Pleas Domestic Relations Division

- Adds a judge to the Domestic Relations Division of the Licking County Court of Common Pleas to be elected in 2004 for a term to begin January 1, 2005.
- Provides that the administrative judge of the domestic relations division is responsible for the administrative duties of the division.

Franklin County Court of Common Pleas

- Adds a judge to the General Division of the Franklin County Court of Common Pleas to be elected in 2004 for a term to begin on July 1, 2005.

Jurisdiction and administration of Domestic Relations Divisions of the Richland County and Muskingum County Courts of Common Pleas

- Modifies the jurisdiction and administration of the Domestic Relations Division of the Richland County Court of Common Pleas and makes related changes regarding the Juvenile Division of that Court.
- Clarifies the jurisdiction and administration of the Domestic Relations Division of the Muskingum County Court of Common Pleas.

Emergency measure

- Declares an emergency.

TABLE OF CONTENTS

Unauthorized practice of law 4
Existing law..... 4
Operation of the bill 4
Napoleon Municipal Court 6
Existing law..... 6
Operation of the bill 6
Darke County Municipal Court (and Darke County County Court)..... 6
Existing law..... 6
Operation of the bill 6
Nomination of judges of Brown County and Morrow County Municipal Courts ... 8
Existing law..... 8
Operation of the bill 9
Additional judge for Licking County Court of Common Pleas 9



Existing law.....	9
Operation of the bill	10
Additional judge for Franklin County Court of Common Pleas	11
Existing law.....	11
Operation of the bill	11
Richland County Court of Common Pleas Domestic Division	11
Existing law.....	11
Operation of the bill	12
Muskingum County Court of Common Pleas Domestic Division.....	14
Existing law.....	14
Operation of the bill	14

CONTENT AND OPERATION

Unauthorized practice of law

Existing law

Current law prohibits any person who is not licensed to practice law in Ohio from holding himself or herself out in any manner as an attorney at law or representing himself or herself orally or in writing, directly or indirectly, as being authorized to practice law (see **COMMENT 1**) (R.C. 4705.07(A)(1) and (2)). A person who violates either prohibition is guilty of a misdemeanor of the first degree (R.C. 4705.99).

Operation of the bill

New prohibition against committing an act prohibited by the Supreme Court as being the unauthorized practice of law. The bill expands the existing provision to also specifically prohibit any person who is not licensed to practice law in Ohio from committing any act that is prohibited by the Supreme Court as being the unauthorized practice of law. The bill provides that only the Supreme Court may make a determination that any person has committed the unauthorized practice of law in violation of the new prohibition. (R.C. 4705.07(A)(3) and (B)(2).) (See **COMMENT 2**.) Under the bill, a violation of the new prohibition is not subject to the criminal penalty for a violation of either of the existing prohibitions described above in "Existing law" (R.C. 4705.99).

Remedies. The bill provides that, if necessary to serve the public interest and consistent with the rules of the Supreme Court, any person who is authorized to bring a claim before the Supreme Court that alleges the unauthorized practice of law in violation of the new prohibition against committing any act that is prohibited by the Supreme Court as being the unauthorized practice of law may

make a motion to the Supreme Court to seek interim relief prior to the final resolution of the person's claim (R.C. 4705.07(C)(1)).

The bill also authorizes any person who is damaged by another person who commits a violation of the new prohibition to commence a civil action to recover actual damages from the person who commits the violation, upon a finding by the Supreme Court that the "other person" has committed an act that is prohibited by the Supreme Court as being the unauthorized practice of law in violation of the prohibition. The court in which that action for damages is commenced is bound by the determination of the Supreme Court regarding the unauthorized practice of law and cannot make any additional determinations regarding the unauthorized practice of law. The court in which the action for damages is commenced must consider all of the following in awarding damages to a person under this provision (R.C. 4705.07(C)(2)):

(1) The extent to which the fee paid for the services that constitute the unauthorized practice of law in violation of the new prohibition exceeds the reasonable fees charged by licensed attorneys in the area in which the violation occurred;

(2) The costs incurred in paying for legal advice to correct any inadequacies in the services that constitute the unauthorized practice of law in violation of the new prohibition;

(3) Any other damages proximately caused by the failure of the person performing the services that constitute the unauthorized practice of law to have the license to practice law in Ohio that is required to perform the services;

(4) Any reasonable fees that are incurred in bringing the civil action under the first and second paragraphs, above.

The bill provides that the remedies described in this part of the analysis apply, and may be utilized, only regarding acts that are the unauthorized practice of law in violation of the new prohibition against the unauthorized practice of law enacted in the bill and that occur on or after the bill's effective date (R.C. 4705.07(C)(3)).

Effective date. The bill is an emergency measure, but it specifies that the above-described provisions take effect 90 days after its effective date (Sections 9 and 10).

Napoleon Municipal Court

Existing law

Existing law establishes a municipal court in Napoleon, which is known as the Napoleon Municipal Court. The Napoleon Municipal Court has jurisdiction within Henry County. The Court is served by one part-time judge, who most recently was elected in 1999. (R.C. 1901.01, 1901.02, and 1901.08.)

All municipal court judges are elected on a nonpartisan ballot for terms of six years. In one-judge courts, the judge's term commences on the first day of January in the year after the election. (R.C. 1901.07.)

Operation of the bill

The bill replaces the part-time judge of the Napoleon Municipal Court with a full-time judge to be elected in 2005. The full-time judge will serve a term of six years and begin the term on January 1, 2006. The bill specifies in uncodified law that the part-time judge of the Napoleon Municipal Court who was elected in 1999 will remain the part-time judge of the Napoleon Municipal Court until the end of the judge's term (i.e., December 31, 2005). The full-time judge of the Napoleon Municipal Court who is elected in 2005 will be the successor to the part-time judge of that court who was elected in 1999. (R.C. 1901.07 and 1901.08; Section 3.)

Darke County Municipal Court (and Darke County County Court)

Existing law

Existing law establishes a county court in Darke County. The Darke County County Court has exclusive original jurisdiction in civil actions for the recovery of sums not exceeding \$500 and original jurisdiction in civil actions for the recovery of sums not exceeding \$15,000. Generally, the Darke County County Court also has criminal jurisdiction over misdemeanor cases. (R.C. 1907.01, 1907.02, and 1907.03--not in the bill.) The Darke County County Court is served by two part-time judges, one most recently elected in 1998, and the other most recently elected in 2000 (R.C. 1907.11).

Operation of the bill

The bill establishes a municipal court in the municipal corporation of Greenville, that, beginning on January 1, 2005, will be styled and known as the "Darke County Municipal Court." Beginning on January 1, 2005, the Darke County Municipal Court will have jurisdiction within Darke County except within the municipal corporation of Bradford. (R.C. 1901.01(A) and 1901.02(A)(24) and

(B); under a portion of existing R.C. 1901.02(B) that is not changed by the bill, the municipal corporation of Bradford is within the jurisdiction of the Miami County Municipal Court.) By operation of law, upon the establishment of the Darke County Municipal Court with the specified jurisdiction, the current Darke County County Court will cease to exist (R.C. 1907.01--not in the bill; also see the second succeeding paragraph, below).

Under the bill, one full-time judge will be elected for the new Darke County Municipal Court in 2005. Beginning on January 1, 2005, the part-time judge of the Darke County County Court that existed prior to that date whose term began on January 1, 2001, will serve as the full-time judge of the Darke County Municipal Court until December 31, 2005 (R.C. 1901.08).

The bill provides that the Darke County Prosecuting Attorney is to prosecute in the Darke County Municipal Court all violations of state law arising in the county, except for violations of state law arising in the municipal corporation of Greenville and violations of state law arising in the village of Versailles. By operation of law, except as described in the preceding sentence, the village solicitor, city director of law, or similar chief legal officer for each municipal corporation within the territory of the Darke County Municipal Court will prosecute all cases brought before the Court for criminal offenses occurring within the municipal corporation that that person serves, and the village solicitor, city director of law, or similar chief legal officer of Greenville will prosecute all criminal cases brought before the Court arising in unincorporated areas within the Court's territory. However, the Darke County Prosecuting Attorney may enter into an agreement with any municipal corporation in the County pursuant to which the Prosecuting Attorney will prosecute all criminal cases brought before the Court for criminal offenses occurring within the municipal corporation. (R.C. 1901.34(A), (B), and (D).)

The bill repeals the provision regarding the election of the part-time judges of the Darke County County Court and provides in uncodified law that no judge of the Darke County County Court will be elected in 2004 and that, effective January 1, 2005, the Darke County County Court and the two part-time judgeships in the Darke County County Court, are abolished. All causes, judgments, executions, and other proceedings pending in the Darke County County Court at the close of business as of December 31, 2004, will be transferred to and proceed in the Darke County Municipal Court as if originally instituted in the Darke County Municipal Court. Parties to those causes, judgments, executions, and proceedings may make any amendments to their pleadings that are required to conform them to the rules of the Darke County Municipal Court. The Clerk of the Darke County County Court or other custodian must transfer to the Darke County Municipal Court all pleadings, orders, entries, dockets, bonds, papers, records, books, exhibits, files,

moneys, property, and persons that belong to, are in the possession of, or are subject to the jurisdiction of the Darke County Court, or any officer of that court, at the close of business on December 31, 2004, and that pertain to those causes, judgments, executions, and proceedings. (R.C. 1907.11; Sections 4 and 5.)

The bill also provides that the "Darke County Municipal Court" is a "county-operated municipal court" (R.C. 1901.03(F)). This designation as a county-operated court is significant in determining responsibility for funding the court and for paying the compensation of the court's judges and employees (existing R.C. 1901.024, 1901.026, 1901.10, 1901.11, 1901.111, 1901.121, 1901.14, 1901.26, 1901.261, 1901.262, 1901.311, 1901.312, 1901.32, 1901.33, and 1901.36--not in the bill).

The bill provides that one of the reasons the act is an emergency measure is because the creation of the Darke County Municipal Court is necessary for the efficient administration of justice in Darke County and the electors of Darke County need to be assured of the establishment of the Darke County Municipal Court before the last day is reached for filing nominating petitions for the part-time judge of the Darke County Court now scheduled to be elected in 2004 (Section 10).

Nomination of judges of Brown County and Morrow County Municipal Courts

Existing law

Existing law provides that, generally, all candidates for municipal judge may be nominated either by nominating petition or by primary election, except that if the jurisdiction of a municipal court extends only to the corporate limits of the municipal corporation in which the court is located and that municipal corporation operates under a charter, all candidates must be nominated in the same manner provided in the charter for the office of municipal judge, or if no specific provisions are made in the charter for the office of municipal judge, in the same manner as the charter prescribes for the nomination and election of the legislative authority of the municipal corporation.

If a municipal corporation that has a municipal court has a charter that specifies a primary date other than the date specified in R.C. 3501.01(E), and if the jurisdiction of the court extends beyond the corporate limits of the municipal corporation, all candidates for the office of municipal judge of that court must be nominated only by petition.

If no charter provisions apply, all candidates for party nomination to the office of municipal judge must file a declaration of candidacy and petition not later than 4 p.m. of the 75th day before the primary election, or if the primary

election is a presidential primary election, not later than 4 p.m. of the 60th day before the presidential primary election, in a specified form. If no valid declaration of candidacy is filed for nomination as a candidate of a political party for election to the office of municipal judge, or if the number of persons filing the declarations of candidacy for nominations as candidates of one political party for election to the office does not exceed the number of candidates that that party is entitled to nominate as its candidates for election to the office, no primary election is held for the purpose of nominating candidates of that party for election to the office, and the candidates must be issued certificates of nomination in the manner set forth in R.C. 3513.02.

If no charter provisions apply, nonpartisan candidates filing nominating petitions for the office of municipal judge must file them not later than 4 p.m. of the day before the day of the primary election, in a specified form. The nominating petition or declaration of candidacy for a municipal judge must contain a designation of the term for which the candidate seeks election.

Existing law provides special nomination and election procedures that apply to certain specified municipal courts, notwithstanding the above-described provisions. Special procedures are so provided for the Cleveland Municipal Court, the Toledo Municipal Court, the Akron Municipal Court, the Hamilton County Municipal Court, and the Franklin County Municipal Court. Also, existing law provides that, in the Auglaize, Clermont, Crawford, Hocking, Jackson, Lawrence, Madison, Miami, Portage, and Wayne County Municipal Courts, the judges must be nominated only by petition, and that the petitions must be signed by at least 250 electors of the territory of the court and must conform to the provisions of this section. (R.C. 1901.07.)

Operation of the bill

The bill provides special nomination procedures for judges of the Brown County Municipal Court and the Morrow County Municipal Court. It specifies that, in those two Courts, the judges must be nominated only by petition, and that the petitions must be signed by at least 250 electors of the territory of the court and must conform to the provisions of R.C. 1901.07. (R.C. 1901.07(C)(6).)

Additional judge for Licking County Court of Common Pleas

Existing law

The Licking County Court of Common Pleas currently has four judges: two judges of the general division, one judge of the Domestic Relations Division, and one judge of the probate and juvenile division (R.C. 2301.02(B) and 2301.03(S), and R.C. 2101.02--not in the bill).

Currently, the judge of the Domestic Relations Division is charged with administering the Division, assigning its work, and providing for its personnel (R.C. 2301.03(S)).

Operation of the bill

The bill adds a new judge to the Domestic Relations Division of the Licking County Court of Common Pleas. The new judge is to be elected initially in 2004 for a term to begin January 1, 2005. (R.C. 2301.02(B) and 2301.03(S).)

The bill provides that the administrative judge of the Division of Domestic Relations (see **COMMENT 3**) is charged with the assignment and division of the work of the Domestic Relations Division and with the employment and supervision of the personnel of the Division. The duties of the Division's personnel include handling, servicing, and investigating divorce, dissolution of marriage, legal separation, and annulment cases, and other specified cases, proceedings, and matters. That judge also must designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the Division and fix the duties of the personnel of the Division. (R.C. 2301.03(S).)

The bill also provides that, except as otherwise provided in R.C. 3513.08 (law regarding the declaration of candidacy for judge and candidate for any unexpired term) and R.C. 3513.257 (law regarding statements of candidacy and nominating petitions for independent candidates), the candidates for election in 2004 to the new judgeship in the Division of Domestic Relations of the Licking County Court of Common Pleas created by the bill must be nominated only by petition. The petition must be filed not later than 4 p.m. of the 75th day preceding the general election at which the judge is to be elected. Nominations for successors to the judge elected in 2004 must be made in accordance with the Revised Code. (Section 6(A).)

The bill provides that one of the reasons the act is an emergency measure is because the additional judgeship for the Licking County Court of Common Pleas, Domestic Relations Division, is necessary for the efficient administration of justice in Licking County and candidates for the judgeship need to be assured that they will have adequate time to obtain the necessary signatures for nominating petitions for the 2004 election (Section 10).

Additional judge for Franklin County Court of Common Pleas

Existing law

The Franklin County Court of Common Pleas currently has 23 judges: 17 judges of the general division, five judges of the Domestic Relations Division, and one probate judge (R.C. 2301.02(C) and 2301.03(A), and R.C. 2101.02--not in the bill).

Operation of the bill

The bill adds a new judge to the Franklin County Court of Common Pleas, to serve in the general division. The new judge is to be elected initially in 2004 for a term to begin July 1, 2005 (R.C. 2301.02(C)).

The bill provides that, except as provided in R.C. 3513.08 and 3513.257 of the Revised Code, candidates for election in 2004 to new judgeship in the Franklin County Court of Common Pleas created by the bill must be nominated only by petition. The petition must be filed not later than 4 p.m. on the 75th day preceding the general election at which the judge is to be elected. Nominations for successors to the judge elected in 2004 must be made in accordance with the Revised Code. (Section 6(B).)

The bill provides that one of the reasons the act is an emergency measure is because the additional judgeship for the Franklin County Court of Common Pleas is necessary for the efficient administration of justice in Franklin County and candidates for the judgeship need to be assured that they will have adequate time to obtain the necessary signatures for nominating petitions for the 2004 election (Section 10).

Richland County Court of Common Pleas Domestic Division

Existing law

The Richland County Court of Common Pleas currently has a Division of Domestic Relations. One judge (the judge of the Court whose term began on January 1, 1999) serves the division. That judge has the same qualifications, exercises the same powers and jurisdiction, and receives the same compensation as the other judges of the Richland County Court of Common Pleas and is elected and designated as judge of the Court of Common Pleas, Division of Domestic Relations. That judge has assigned to him or her and hears all divorce, dissolution of marriage, legal separation, and annulment cases that come before the Court. Except in cases that are subject to the exclusive original jurisdiction of the Richland County Juvenile Court (see below), the judge of the Domestic Relations Division has assigned to that judge and hears all cases pertaining to paternity,

custody, visitation, child support, or the allocation of parental rights and responsibilities for the care of children and all post-decree proceedings arising from any case pertaining to any of those matters. The judge of the Domestic Relations Division has assigned to that judge and hears all proceedings under the Uniform Interstate Family Support Act contained in R.C. Chapter 3115. (R.C. 2301.03(G)(1).)

The Richland County Court of Common Pleas also currently has a Juvenile Division. One judge (the judge of the Court whose term begins on January 3, 2005, and successors) serves the Division. That judge has the same qualifications, exercises the same powers and jurisdiction, and receives the same compensation as other judges of the Richland County Court of Common Pleas, is elected and designated as judge of the Court of Common Pleas, Juvenile Division, and is, and has the powers and jurisdiction of, the juvenile judge as provided in R.C. Chapters 2151. and 2152. Except in cases that are subject to the exclusive original jurisdiction of the Juvenile Court, the judge of the Juvenile Division does not have jurisdiction or the power to hear, and cannot be assigned, any case pertaining to paternity, custody, visitation, child support, or the allocation of parental rights and responsibilities for the care of children or any post-decree proceeding arising from any case pertaining to any of those matters. The judge of the Juvenile Division does not have jurisdiction or the power to hear, and cannot be assigned, any proceeding under the Uniform Interstate Family Support Act contained in R.C. Chapter 3115. The judge of the Juvenile Division: (1) is the administrator of the Juvenile Division and its subdivisions and departments, (2) has charge of the employment, assignment, and supervision of the Division's personnel who are engaged in handling, servicing, or investigating juvenile cases, including any magistrates whom the judge considers necessary for the discharge of the judge's various duties, and (3) must designate the title, compensation, expense allowances, hours, leaves of absence, and vacation of the personnel of the Division and fix their duties (the duties, in addition to other statutory duties, include the handling, servicing, and investigation of juvenile cases and providing any counseling, conciliation, and mediation services that the court makes available to persons, whether or not the persons are parties to an action pending in the court, who request the services). (R.C. 2301.03(G)(2).)

Operation of the bill

The bill modifies the jurisdiction and administration of the Richland County Court of Common Pleas Division of Domestic Relations. Under the bill, the judge of the Division still has the same qualifications, exercises the same powers and jurisdiction, and receives the same compensation as the other judges of the Richland County Court of Common Pleas and is elected and designated as

judge of the Court of Common Pleas, Division of Domestic Relations. But under the bill (R.C. 2301.03(G)(1)):

(1) The judge of the Division will have assigned to him or her and will hear all divorce, dissolution of marriage, legal separation, and annulment cases, all domestic violence cases arising under R.C. 3113.31, and all post-decree proceedings arising from any case pertaining to any of those matters.

(2) The Division will have concurrent jurisdiction with the Juvenile Division of the Court to determine the care, custody, or control of any child not a ward of another Ohio court, and to hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic violence, or an action for support brought under R.C. Chapter 3115.

(3) Except in cases that are subject to the exclusive original jurisdiction of the Richland County Juvenile Court, the judge of the Domestic Relations Division will have assigned and hear all cases pertaining to paternity or parentage, the care, custody, or control of children, parenting time or visitation, child support, or the allocation of parental rights and responsibilities for the care of children, all proceedings arising under R.C. Chapter 3111., all proceedings arising under the Uniform Interstate Family Support Act contained in R.C. Chapter 3115., and all post-decree proceedings arising from any case pertaining to any of those matters.

(4) In addition to the judge's regular duties, the judge of the Domestic Relations Division will be the administrator of the Division and its subdivisions and departments. The judge will have charge of the employment, assignment, and supervision of the Division's personnel, including any magistrates the judge considers necessary for the discharge of the judge's duties, and will designate the title, compensation, expense allowances, hours, leaves of absence, vacation, and other employment-related matters of the personnel of the Division and fix their duties.

Related to the changes described above that pertain to the Richland County Court of Common Pleas Division of Domestic Relations, the bill specifies that, except in cases that are subject to the exclusive original jurisdiction of the Juvenile Court, the judge of the Juvenile Division does not have the jurisdiction or the power to hear, and cannot be assigned, any case pertaining to paternity or parentage, the care, custody or control of children, parenting time or visitation, child support, or the allocation of parental rights and responsibilities for the care of children or any post-decree proceeding arising from any case pertaining to any of those matters. The bill includes a reference to these provisions as an exception to the existing provision that specifies the exclusive original jurisdiction, or original

jurisdiction, of juvenile courts. The bill also clarifies that the duties identified in the existing provisions that specify the administrative duties of the judge of the Juvenile Division are in addition to the judge's regular duties. (R.C. 2301.03(G)(2), and references in R.C. 2151.23(A)(2), (A)(11), (B), (D), and (E).)

Muskingum County Court of Common Pleas Domestic Division

Existing law

The Muskingum County Court of Common Pleas currently has a Division of Domestic Relations. One judge (the judge of the Court whose term began on January 2, 2003) serves the division. That judge has the same qualifications, exercises the same powers and jurisdiction, and receives the same compensation as the other judges of the Muskingum County Court of Common Pleas and is elected and designated as the judge of the Court of Common Pleas, Division of Domestic Relations. The judge is assigned and hears all divorce, dissolution of marriage, legal separation, and annulment cases and all proceedings under the Uniform Interstate Family Support Act contained in R.C. Chapter 3115. Except in cases that are subject to the exclusive original jurisdiction of the juvenile court, the judge is assigned and hears all cases pertaining to paternity, visitation, child support, the allocation of parental rights and responsibilities for the care of children, and the designation for the children of a place of residence and legal custodian, and all post-decree proceedings arising from any case pertaining to any of those matters. (R.C. 2301.03(AA).)

Operation of the bill

The bill modifies the jurisdiction and administration of the Muskingum County Court of Common Pleas Division of Domestic Relations. Under the bill, the judge of the Division still has the same qualifications, exercises the same powers and jurisdiction, and receives the same compensation as the other judges of the Muskingum County Court of Common Pleas and is elected and designated as judge of the Court of Common Pleas, Division of Domestic Relations. But under the bill (R.C. 2301.03(AA)):

(1) The judge of the Division will be assigned all divorce, dissolution of marriage, legal separation, and annulment cases, all cases arising under R.C. Chapter 3111., all proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation, and all post-decree proceedings and matters arising from those cases and proceedings, except in cases that for some special reason are assigned to another judge of the Court.

(2) The judge of the Division will be charged with the assignment and division of the work of the Division and with the employment and supervision of the Division's personnel.

(3) The judge of the Division will designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the Division's personnel and will fix the duties of the personnel of the division (the duties of those personnel, in addition to other statutory duties, will include the handling, servicing, and investigation of divorce, dissolution of marriage, legal separation, and annulment cases, cases arising under R.C. Chapter 3111., and proceedings involving child support, the allocation of parental rights and responsibilities for the care of children and the designation for the children of a place of residence and legal custodian, parenting time, and visitation and providing any counseling and conciliation services that the Division makes available to persons, whether or not the persons are parties to an action pending in the Division, who request the services.

The bill, in uncodified law, specifies that the General Assembly declares that its intent in making the amendments described above regarding the Muskingum County Court of Common Pleas Division of Domestic Relations is to clarify the jurisdiction and administration of that Division, that it does not believe that those amendments are substantive in nature, and that it believes that the provisions resulting from those amendments is substantively the same as the existing provisions regarding that Division that the bill changes that were in existence immediately prior to the bill's effective date (Section 7).

COMMENT

1. Existing law specifies that, regarding these existing prohibitions, the use of "lawyer," "attorney at law," "counselor at law," "law," "law office," or other equivalent words by any person who is not licensed to practice law, in connection with that person's own name, or any sign, advertisement, card, letterhead, circular, or other writing, document, or design, the evident purpose of which is to induce others to believe that person to be an attorney, constitutes holding out within the meaning of the prohibitions (R.C. 4705.07(B), unchanged by the bill except to specify that the provision applies only to the existing prohibition that relates to a person "holding himself or herself out" as an attorney).

2. Rule VII of the Supreme Court Rules for the Government of the Bar of Ohio governs the proceedings arising out of complaints of the *unauthorized practice of law*, which is defined as the rendering of legal services for another by any person not admitted to practice in Ohio under Rule I and not granted active status under Rule VI, or certified under Rule II, Rule IX, or Rule XI of the

Supreme Court Rules for the Government of the Bar of Ohio. The Board of Commissioners on the Unauthorized Practice of Law of the Supreme Court receives evidence, preserves the record, makes findings, and submits recommendations concerning complaints of unauthorized practice of law. The Board may refer to the unauthorized practice of law committee of the appropriate bar association or to the Disciplinary Counsel any matters coming to its attention for investigation under Rule VII. The Board must file with the Clerk of the Supreme Court its final report that finds a respondent's unauthorized practice of law. The Board may recommend and the Court may impose civil penalties in an amount up to \$10,000 per offense. Any such penalty must be based on specified factors. The Supreme Court conducts proceedings to review the Board's report and enters an order that the Court finds proper. (Rule VII, Sections 2(A) and (B), 3, 8(B) and (D), and 19.)

3. The Supreme Court has adopted Rules of Superintendence for the Courts of Ohio, which, except as otherwise provided, apply to all Ohio courts of appeals, courts of common pleas, municipal courts, and county courts. Superintendence Rule 4 provides for administrative judges. It specifies that:

(A) Selection and term. (1) In each court of appeals, each multi-judge municipal and county court, and each multi-judge division of the court of common pleas, the judges of the court or division, by a majority vote of the judges of the court or division, shall elect an administrative judge from the judges of the court or division. If the judges of a court or division are unable to elect an administrative judge, the judge of the court or division having the longest total service on the court or division shall serve as administrative judge for one term. If two or more judges have equal periods of service on the court or division, the administrative judge shall be determined by lot from the judges with equal periods of service. In the event of a continued failure to elect an administrative judge, the judges of the court or division shall rotate the position based on the order of seniority as determined by the total length of service on the court or division.

(2) The term of the administrative judge shall be one year beginning on the first day of January. An administrative judge may be elected to consecutive terms and also may serve as presiding judge pursuant to Sup. R. 3. The administrative judge shall notify the

administrative director of the Supreme Court of his or her election by the fifteenth day of January.

(3) In courts or divisions consisting of one judge, the judge shall be the **administrative** judge.

(B) Powers and duties. The administrative judge shall have full responsibility and control over the administration, docket, and calendar of the court or division and shall be responsible to the Chief Justice of the Supreme Court in the discharge of his or her duties, for the observance of these rules, and for the termination of all cases in the court or division without undue delay and in accordance with the time guidelines set forth in Sup. R. 39. The actions of the administrative judge may be modified or vacated by a majority of the judges of the court or division. The administrative judge shall do all of the following:

(1) Pursuant to Sup. R. 36, assign cases to individual judges of the court or division or to panels of judges of the court in the court of appeals;

(2) In municipal and county courts, assign cases to particular sessions pursuant to Sup. R. 36;

(3) Require timely and accurate reports from each judge of the court or division concerning the status of individually assigned cases and from judges and court personnel concerning cases assigned to particular sessions;

(4) Timely file all administrative judge reports required by the Court Statistical Reporting Section;

(5) Develop accounting and auditing systems within the court or division and the office of the clerk of the court that ensure the accuracy and completeness of all reports required by these rules;

(6) Request, as necessary, the assignment of judges to the court or division by the Chief Justice of the Supreme Court or the presiding judge of the court;

(7) Administer personnel policies established by the court or division;

(8) Perform other duties as required by the Revised Code, the Rules of Superintendence, local rules of the court or division, or the Chief Justice of the Supreme Court;

(9) Perform any other duties in furtherance of the responsibilities of the administrative judge.

(C) Relief from case or trial duties. By local rule of the court or division, the administrative judge may be relieved of a portion of his or her case or trial duties to manage the calendar and docket of the court or division.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-03-03	p. 86
Reported, H. Civil and Commercial Law	01-07-04	p. 1387
Passed House (93-2)	01-20-04	pp. 1497-1498
Reported, S. Judiciary	---	---

h0038-rs-125.doc/kl