

Specially Appointed Judges

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The Colorado General Assembly enacted in 1981 a statute providing for specially appointed judges. This statute has remained in effect up to the present time but has been rarely used within the state. In effect, specially appointed judges are "private judges" who take over the administration and resolution of a case, but with the full powers of the judge who was originally assigned to the matter.

The use of specially appointed judges is sanctioned through the provisions of *C.R.S. §13-3-111*. The statute reads as follows:

(1) Upon agreement of all appearing parties to a civil action that a specific retired or resigned justice of the supreme court or a retired or resigned judge of any other court be assigned to hear the action and upon agreement that one or more of the parties shall pay the agreed upon salary of the selected justice or judge, together with all other salaries and expenses incurred, the chief justice may assign any retired or resigned justice or retired or resigned intermediate appellate, district, county, probate, or juvenile court judge who consents temporarily to perform judicial duties for such action.

(2) The decision as to whether a retired or resigned justice or judge shall be assigned to judicial duties, pursuant to subsection (1) of this section, shall be entirely within the discretion of the chief justice. The chief justice may require such undertakings as in his or her opinion may be necessary to ensure that proceedings held pursuant to this section shall be without expense to the state.

(3) Such appointment may be made at any time after the action is at issue.

(4) Orders, decrees, verdicts, and judgments resulting from hearings or trials presided over by a judge appointed pursuant to this section shall have the same force and effect as orders, decrees, verdicts, or judgments resulting from a hearing or trial presided over by a regularly serving judge.

(5) Orders, decrees, verdicts, and judgments resulting from hearings or trials presided over by a judge appointed pursuant to this section may be enforced or appealed in the same manner as orders, decrees, verdicts, or judgments resulting from a hearing or trial presided over by a regularly sitting judge.

(6) The salaries and expenses paid to judges appointed pursuant to this section shall be at the rate agreed upon by the parties and the judge.

(7) The supreme court may promulgate such rules as may be necessary to implement this section.

The statute provides that a retired or resigned Colorado state judge may be selected by the parties to a civil case to be the judge. The agreement of the parties must be at their expenses and must be approved by the Chief Justice.

The Colorado General Assembly provided in *C.R.S. §13-3-111(7)* that the Colorado Supreme Court could promulgate rules to implement the law. On July 1, 2005, *C.R.C.P. 122* was promulgated by the Colorado Supreme Court. That rule is included at the end of this section.

Rule 122 provides that a retired or resigned judge may be appointed by the parties to a civil case if that judge had six years of judicial experience before leaving the bench. A former state judge who became a federal judge will be eligible if that judge has a total of six or more years of judicial experience.

The decision whether to appoint a former Colorado state judge to be a specially appointed judge rests with the Chief Justice. Her decision is final and not subject to appeal to the full Colorado Supreme Court. The Chief Justice further may provide

certain requirements to ensure that the proceeding will be at no expense to the State of Colorado.

All compensation and expenses must be paid by one or more of the parties. Use of existing court facilities is authorized by Rule 122 and does not constitute an expense to the state. The rule provides for jury trials to be presided over the specially appointed judge, but none have occurred to date. A record must be kept of the proceedings.

The specially appointed judge has all of the powers of the originally assigned judge. The rulings of the specially appointed judge may be appealed to the Colorado Court of Appeals and Colorado Supreme Court.

The duration of appointment of the specially appointed judge shall be as agreed upon by the parties or until the case is concluded.

Colorado Rule Of Civil Procedure 122

(a) Appointed Judges.

(1) At any time after a civil action, excluding juvenile delinquency proceedings, is filed in a trial court of record, upon agreement of all parties that a specific retired or resigned justice of the Supreme Court, or a retired or resigned judge of any other court of record within the state of Colorado be appointed to hear the action and upon agreement that one or more of the parties shall pay the agreed upon compensation of the selected justice or judge, together with all other compensation and expenses incurred, the Chief Justice may appoint such justice or judge who consents to perform judicial duties for such action.

(2) The decision as to whether such justice or judge shall be appointed to judicial duties, pursuant to subsection (1) of this section, shall be entirely within the discretion of the Chief Justice. The Chief Justice has the authority to reject or approve any deviations from these rules agreed to by the parties. The Chief Justice may require such undertakings as in his or her opinion may be necessary to ensure that proceedings held pursuant to this section shall be without expense to the state of Colorado.

(3) The compensation and expenses paid to an Appointed Judge shall be at the rate agreed upon by the parties and the Appointed Judge and rate of compensation must be approved by the Chief Justice at the time of making the appointment.

(4) The Appointed Judge shall have the same authority as a full-time sitting judge. Orders, decrees, verdicts and judgments entered by an Appointed Judge shall have the same force and effect and may be enforced or appealed in the same manner as any other order, decree, verdict, or judgment.

(b) Qualifications. To be eligible to serve as an Appointed Judge, a person must be a Senior Judge, a retired or resigned justice of the Supreme Court, or a retired or resigned judge of the court of appeals, a district court, probate court, juvenile court or county court, who has served as a judge in one or more of said courts for a total of at least six years. If a judge has served in the Colorado State Court System and as a judge in the Federal Court System, those years of service may be combined for the purpose of meeting the six year requirement. Such person must be currently licensed to practice law in Colorado.

(c) Motion for Appointment. A request for the appointment of an Appointed Judge shall be made by a joint motion filed by all parties to a case and shall be signed as approved by the Appointed Judge. The original of such motion shall be filed with the Supreme Court with a copy filed in the originating court--the court of record in which the case was originally filed. Such motion shall include:

(1) The name of the Appointed Judge;

(2) The rate of compensation agreed to be paid to the Appointed Judge;

(3) The Appointed Judge's agreement to be bound by Canon 9 of the Colorado Code of Judicial Conduct and the Appointed Judge's agreement that the Chief Justice may ask the Office of Attorney Regulation Counsel and the Colorado Commission on Judicial Discipline for any record of his or her imposed discipline, or pending disciplinary proceeding, if any;

(4) A realistic estimate of all compensation and expenses for the Appointed Judge, any needed personnel, rental of an appropriate facility outside the courthouse, if needed, in which to hold the proceedings, payment for any requested jury, and all other anticipated compensation and expenses, including travel, lodging and meals, and provisions assuring that all such compensation and expenses will be paid by the parties; and

(5) An agreement as to who is responsible for initial payment of the compensation and expenses of the action, and who is responsible for payment of the compensation and expenses upon final judgment;

(6) The agreement of the parties and the Appointed Judge that none of the compensation and expenses shall be paid by the state of Colorado;

(7) A copy signed by the Appointed Judge of the following oath: "I, (name of Appointed Judge), do solemnly swear or affirm by the ever living God, that I will support the Constitution of the United States and of the State of Colorado, and faithfully perform the duties of the office upon which I am about to enter."

(8) Any other matters the parties desire to be considered by the Chief Justice in exercising his or her discretion.

(9) A form order approving the appointment.

(10) A statement acknowledging that the Chief Justice may approve or reject the order or, upon the agreement of all the parties and of the Appointed Judge, may change any of the provisions of the order.

The parties shall file the Chief Justice's ruling on the motion in the case file in the originating court.

(d) Duration of Appointment. The appointment shall last for so long as the parties specify in the motion and order of appointment. In the absence of such specification, the appointment shall last until entry of a final, appealable judgment, order or decree or, in dissolution actions, until the entry of Permanent Orders.

(e) Compensation and Expenses. Upon the appointment of an Appointed Judge by the Chief Justice, the parties shall forthwith deposit in an agreed escrow or trust account to be administered by the Appointed Judge or some other person acceptable to the parties and the Appointed Judge, sufficient funds to pay the estimated compensation and expenses of the case for the duration of the appointment. If, at any time, the Appointed Judge determines that the funds on deposit are insufficient to cover all further compensation and expenses, the Appointed Judge may order the parties promptly to deposit sufficient additional funds to cover such amount. An Appointed Judge may withdraw from the appointment after reasonable notice and with permission of the Chief Justice if this order is not complied with, and the case proceedings shall revert to the originating court. Within a reasonable time after the conclusion of the Appointed Judge's duties on the case, the parties shall file in the record of the case in the originating court a report of the total compensation paid for the Appointed Judge's services and the total expenses paid by the parties in the case.

(f) Rules Applicable to Proceedings. Proceedings before an Appointed Judge shall be conducted pursuant to Rules applicable to the originating court. All filings shall be open records available for public review and inspection unless sealed upon motion and order, and all proceedings shall be open to the public in the same manner and pursuant to the same law applicable to the originating court.

(g) Record.

(1) The original of each filing in all proceedings before an Appointed Judge shall be filed with the clerk of the originating court and a copy shall be provided to the Appointed Judge.

(2) The parties and the Appointed Judge shall comply with all applicable rules and Chief Justice Directives relating to reporting, filing and maintaining the record.

(3) The originals of any reporter's notes or recording medium, along with any exhibits tendered, shall be filed with the clerk of the originating court pursuant to C.R.C.P. 80(d). The parties shall pay the costs of a court reporter or for any recording equipment that is acceptable to all parties.

(h) Location of Proceedings.

(1) Unless consented to by the parties and ordered by the Appointed Judge for good cause, the location of evidentiary proceedings and trial of a matter subject to this rule shall be pursuant to C.R.C.P. 98.

(2) The parties and the Appointed Judge shall arrange for an appropriate facility in which proceedings shall be held. If available, a room in the courthouse may be used for one or more proceedings in the case. Use of available court rooms, equipment or facilities within the courthouse shall not be considered an expense to the state that the parties are required to bear or reimburse;

(3) Whenever proceedings are scheduled in advance, the Appointed Judge shall timely file a Notice of Hearing with the clerk of the originating court giving notice of the date, time, nature and location of the proceedings.

(4) Except when proceedings are taking place in a courthouse, the parties shall arrange for or assure that there is sufficient premises liability insurance to assure that any injury to a party, other participant or spectator at the proceedings is covered without expense to the state of Colorado. Such insurance shall name the state of Colorado as an additional insured.

(l) Jury Trials.

(1) The Colorado Uniform Jury Selection and Service Act applies to jury trials conducted pursuant to this rule.

(2) When a trial by jury has been properly demanded, before setting the case for trial the Appointed Judge shall coordinate the start of the trial with the jury commissioner and the district administrator for the originating court so that jurors are selected and voir dire is held in the courthouse to which the prospective jurors are summoned.

(3) If the trial is held outside the courthouse, the parties shall be responsible for offering transportation from the courthouse to the location of the trial for the duration of the trial. Such transportation shall be at no cost to the jurors or the state of Colorado. The parties shall arrange for or assure that there is sufficient liability insurance to assure that any injury to a juror related to such transportation is covered without expense to the state of Colorado. Such insurance shall name the state of Colorado as an additional insured.

(4) Not later than 3 days following the conclusion of their service as jurors, the parties shall pay the jurors at the statutory rate pursuant to the Colorado Uniform Jury Selection and Service Act. The parties also shall pay all related expenses such as meals for the jurors and the costs of a bailiff. Payments made pursuant to this section should not be made through the court.

(5) If the trial is held outside the courthouse, jurors shall be instructed to the effect that such fact does not affect their responsibility and the importance of their service.

(6) In the event the jury is cancelled, postponed or a jury is waived, the Appointed Judge shall notify the jury commissioner as soon as possible.

(j) Removal. An Appointed Judge shall preside over all matters throughout the duration of the appointment unless the Appointed Judge recuses, is removed pursuant to C.R.C.P. 97, dies or becomes incapacitated. In any such circumstance, the case proceedings shall immediately revert to the originating court.

(k) Immunity. An Appointed Judge shall have immunity in the same manner and to the same extent as any other judge in the state of Colorado.