

Financial Stimulus Package

Accountability re: Visiting Judge Program

Proposed by: The Watchdawg

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Preliminary Statement

Although the Court has not made any rule change proposals to any of the following subject matters, I feel compelled to address said matters in an effort to improve the public's overall perception of the judiciary. These proposals are also made with the intent of assisting the State in eliminating waste and/or abuse and thereby reducing the overall budget deficit. With that said, I will address each subject under separate headings below.

A. Compensation of Retired Visiting Judges

As to the per diem compensation of retired visiting judges, I will address several subjects below under separate headings to assure that there is no misunderstanding as to the proposals I am hereby submitting to the Court, Legislature and the Governor.

1. Per Diem Compensation + Pension Benefits

The following facts are provided to establish that Ohio's system of paying retired judges is not in conformity with the vast majority of states. In fact, it would be fair to say that in Ohio, the mantra for retired judges is "Earn all you can earn," which is somewhat analogous to the Army's line of "Be all you can be."

Presently, retired visiting judges assigned to Common Pleas Court or Appeals Court are paid \$61 and \$66 an hour or \$485 and \$528 per day respectively, which represents the hourly and daily wages of a sitting judge. The table below contains examples of assigned visiting judge income plus pension payments on a daily basis and the differential between what a sitting judges are paid.

Name	Venue	VJ wages	Pension Estimate	Daily Earnings	Differential
Sweeney, Francis	Cleveland	\$111,289	\$98,000	\$837	+ \$352
Jackson, Joyce	Akron	\$89,946	\$75,000	\$660	+ \$175
Crush, Thomas	Cincinnati	\$88,830	\$75,000	\$655	+ \$175
Walters, Sumner	Lima	\$87,906	\$80,000	\$671	+ \$186
Winkler, Ralph	Cincinnati	\$84,448	\$80,000	\$658	+ \$173

States such as Massachusetts, Michigan, Montana, Nebraska, Rhode Island and Washington reduce the daily per diem paid to retired judges by the amount received daily in pension benefits. In other words, if the daily pension benefit is \$350 and the per diem rate is \$470, the judge would be entitled to a maximum of \$120 for a full days work. In the Wolverine state (Michigan) if the differential is less than \$100, the minimum daily rate would be \$100 or \$12.50 an hour. The following states also limit per diem wages in regards to pension benefits.

- Illinois – retirement pay replaced by compensation of assigned position
- Nevada – retirement pay forfeited for duration of employment as retired judge
- Oregon – retirement pay stops when judge works over 1039 hours in one year

Under the Oregon plan, the following Ohio retired judges earning over \$63,400 in 2006 and 2007 would not be eligible to receive pension benefits.

- Yarbrough, Stephen, Toledo – 2006 = \$117,692 + 2007 = \$110,856
- Sweeney, Francis, Cleveland – 2006 = \$112,198 + 2007 = \$111,289
- Curran, Thomas, Cleveland – 2006 = \$107,626 + 2007 = \$103,587
- Hanna, Harry, Cleveland – 2006 = \$101,792 + 2007 = \$99,294
- Ramsey, Donald, Fremont – 2006 = \$97,347 + 2007 = 96,684
- George, Joyce, Akron – 2006 = \$88,324 + 2007 = \$89,946
- Crush, Thomas, Cincinnati – 2006 = \$82,139 + 2007 = 88,830
- Galvin, June – Toledo – 2006 = \$75,632 + 2007 = \$73,541

2. **Pension + Per Diem not to Exceed Salary of Sitting Judge**

Arizona, Delaware, Idaho, Maryland, Michigan, Mississippi, Montana, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Washington, District of Columbia and the Virgin Islands prohibit a retired visiting judge from earning more in one year when his/her wages are added to pension benefits than a sitting judge earns. If Ohio implemented the same prohibition, then someone like ex-justice Francis Sweeney would have been limited to earning \$118,050 in 2007 instead of the nearly \$200,000 he earned.

In Virginia senior retired judges sitting on appellate courts receive 25% of the salary of a sitting judge which would be \$147 per day.

I would conservatively estimate that if Ohio reduced the daily/hourly stipend to the limits imposed by the aforementioned states that, the taxpayers would realize annual savings of at least \$1 million.

3. **Limits on Retired Judge Per Diem in Other States**

Below are examples of reasonable limits placed on compensation of retired and/or senior judges called into service after retirement from various states.

- Alaska - \$225 maximum at all court levels
- Arkansas – 50% of sitting judge’s salary (\$252.00)
- Colorado – 20% of sitting judge’s salary for 60 day employment contract = \$91 per day, 30% for 90 day contract = \$135 per day
- Connecticut - \$200 a day
- Delaware - \$250 a day
- Florida - \$300 a day
- Indiana - \$50 per day for first 30 days; \$75 per day for 31-100 days and zero for any days in excess of 100 in a year
- Kansas – retired judge - \$78.75 per day + \$86 per diem for expenses + senior judge to work 40% of year for 25% of sitting judges salary
- Missouri – 50% of sitting judge salary = \$216
- Tennessee – 50% of sitting judge salary = \$280
- Virginia - \$200 per day for retired judges

One would like to think that the judiciary in Ohio would feel compelled and/or duty bound to give something back to Ohioans in return for the generous salaries and retirement benefits they have funded. Unfortunately, this is not the case! What happened to the meaning of “Public Service” in regards to giving something back to the public one espoused to serve?

There are many retired judges that also earn tens of thousands each year in (a) Social Security benefits, (b) fees as rent-a-judges, (c) deferred retirement compensation from Ohio's treasury, and/or (d) annuities. In some instances, retired judges are earning in excess of \$400,000 a year.

4. **Per Diem Wages for Travel Time**

Under current Supreme Court rules/guidelines, retired judges are paid an hourly per diem for travel time as follows:

- From home to out-of-county resident court
- To and from hotel while serving in out-of county resident court
- To and from court while serving in resident county court

It cannot be disputed that the Court allows retired judges to bill the state and counties hourly wages (\$61 in 2008) for travel time. In fact, in the case of now deceased Judge William Kraft of Cincinnati he specifically stated on his monthly compensation reports that he was including one (1) hour of travel time to commute to and from the Hamilton County Court of Common Pleas, which was the Court he retired from. Judge Kraft went on to state in his monthly reports "if this travel time is not compensable, then deduct it." Kraft's compensation reports prove the Court paid him for such travel time.

The worst abuser of billing for travel time is retired Judge Stephen Yarbrough of Toledo. Since at least 2003 Yarbrough has billed for tens of thousands of dollars for time spent traveling from his home in Lucas County to the Lucas County Courthouse, and traveling from hotels in Columbus, Youngstown, Hamilton and Dayton to court and back to the hotel. During this period of time Yarbrough collected \$18,890 for 439 roundtrips from his home in Sylvania (Lucas County) to the Lucas County Courthouse.

5. **Per Diem for Working Weekends and Holidays**

The Court continues to allow retired judges to bill for work the judge claims to have performed on Saturdays, Sundays and/or Holidays. This type of billing is not permitted in some states. Again, the worst abuser in this category is Judge Stephen Yarbrough of Toledo. Yarbrough billed and was paid for weekends as follows:

- \$5,461.20 from Jan to Oct 2008
- \$5,340.60 for 2007
- \$5,282.55 for 2006
- \$5,409.60 for 2005
- \$8,747.18 for 2004
- \$2,956.26 for 2003
- \$8,549.10 for 2002
- \$23,184 from July 2000 to June 2001
- 🌀 **Total of above = \$64,930.49**

There are documented instances of retired judges billing 8.0 hours for working on Christmas (Richard B. McQuade, Jr.); Memorial Day (Stephen Yarbrough) and New Years Day, the 4th of July and numerous other holidays. These types of repeated claims raise serious questions about a judge's honesty.

6. Per Diem for Working at Home

Many states limit retired judge compensation for time actually spent working at the courthouse. In these states, the only time a judge is allowed to bill for time working at home is when he/she is preparing for an upcoming trial that is taking place the following day. In Ohio, there is no prohibition of any kind in regards to a retired judge billing for time he/she alleges to have worked at home.

And again the biggest abuser in this category is Judge Stephen Yarbrough of Toledo as shown below.

- ➔ \$37,257 from Jan to October 2008
- ➔ \$43,363 for 2007
- ➔ \$52,722 for 2006
- ➔ \$50,715 for 2005
- ➔ \$43,395 for 2004
- ➔ \$31,906 from March to Dec 2003
- 🌟 **Total for above = \$259,358.00**

Of course there is no way to verify whether the claims of Yarbrough or any other retired judge are legitimate.

7. Retired Judges Acting as Rent-a-Judges

In July 2002, California Chief Justice Ronald George announced a policy wherein retired assigned judges would be prohibited from acting as private rent-a-judges while serving in the California Court system. This policy went into effect in Jan. 2003. Justice George opined that this dual employment constituted a conflict of interest. "This mixing of money and public service causes a problem," Justice George said. (*Metropolitan News* – July 11, 2002)

Justice George went on to say, "I have heard complaints from litigants and lawyers about assigned judges revolving back and forth, having to make arrangements for the next day's ADR [Alternate Dispute Resolution] assignment while on the bench." Justice George was also concerned about retired judges promoting their rent-a-judge business in courthouse chambers and/or the courthouse.

Supreme Court rules in Ohio do not prohibit such conduct despite the obvious conflicts involved. Several years ago I wrote to Chief Justice Moyer and asked that he follow the lead of Chief Justice Ronald George in prohibiting this conduct. Unfortunately, the Chief Justice never responded to said request nor has he ever taken any affirmative steps to prevent these types of ongoing abuses.

Annual Financial Disclosure statements that I've obtained over the years show that several retired judges were earning tens of thousands each year as rent-a-judges while also receiving \$50,000 to \$100,000 a year in retired judge income.

In the case of Judge Stephen Yarbrough of Toledo, the overall biggest earner among retired judges since 1997, he also earned as much as \$31,000 a year running a rent-a-judge business out of his home. Of course this is the same home that he claims to have worked many, many weekends and/or holidays.

In the past, reliable sources advised me that they personally witnessed Yarbrough handing out business cards at the courthouse promoting his rent-a-judge business and did so while acting as a retired visiting judge.

The highest earners as rent-a-judges over the years have been Richard B. McQuade, Jr. of Swanton (\$140,000 in one year), Charles Abood of Toledo (\$171,000 in one year), and Richard Markus of Cleveland (\$54,000 in one year).

In his Annual Financial Statements, Yarbrough stated he earned income as a rent-a-judge in Dayton and Columbus. Interestingly enough these are two venues wherein Yarbrough has earned tens of thousands as an assigned retired judge. Given Yarbrough's track record of billing for hours he never worked and for travel expenses he never incurred, it wouldn't surprise me if he's actually receiving travel expense money from counties while running his rent-a-judge business.

8. **Defining Work Performed as "Other"**

Beginning in March 2002, and only after wide spread media coverage of abuses involving the compensation of retired judges, which included payments for 2 day's work on the same day and/or 8.0 hours pay for working 30 minutes or less, the Court issued compensation reports that required the judge to specifically define the work performed and hours worked regarding each assignment.

Sometime in mid-2005, the Supreme Court provided retired visiting judges with a new "compensation report," which did away with requiring a written definition of the "work performed." The new form had several columns to be checked with the last one defined as "other."

The columns in the form defining work performed stated (a) hearing, (b) trial, (c) travel, (d) writing, (e) research, (f) conference and (g) docket. Other than the work defined in columns a through g, I cannot think of any other work a judge would be doing, can you?

From July 2005 through July 2008 Yarbrough's compensation reports contained 1,557 entries for compensation. Of the 1,561 entries, Yarbrough placed a check mark for "other" 1,557 times. In other words, Yarbrough would have us believe that on each and every occasion that he claimed he worked that he was involved in performing a judicial function defined as "other." To be fair to Yarbrough, he is not alone in so acting.

If any other government employee and/or an outside contractor paid by the hour submitted a compensation report claiming tens of thousands of dollars in wages for performing "other" I'm confident he/she would not be paid. The column "other" is nothing more than an invitation for a judge so inclined to perpetrate a fraud on the state and affected counties, which I maintain is exactly what has and continues to take place.

9. **Standby Judges**

In reviewing thousands of pages of retired judge compensation reports I discovered that some judges such as Richard Markus of Cleveland and Tommy Thompson of Columbus repeatedly billed 8.0 hours for performing absolutely no judicial services of any kind. They merely wrote on their compensation reports "Standby."

This so-called "standby" definition comes about when a retired judge is assigned to be available just in case the Court has a need for a retired judge on a given day, a given week or even a given month. This is can only be described as judicial welfare!

B. Watchdawg's Recommendations re: Retired Judge Compensation

In the near future I will be filing a detailed report and complaints with appropriate state and/or county authorities setting forth the conduct of several retired judges who have bilked the public by billing for hours never worked. This filing will also expose retired judges who have billed for travel expenses never incurred and/or for travel expenses they were not statutorily entitled to.

Clearly it is rather disheartening to say the least that we have judges who find it acceptable to engage in outright fraud in order to unjustly enrich themselves at public expense. I'm certainly not suggesting that all of the 115 judges working the retired circuit so act; however, even finding one who is engaged in fraud is quite troubling.

10. Retired Judge Compensation

I would proffer the following proposals:

- Daily/hourly compensation reduced by per diem amount of retirement benefit
- Yearly income as VJ + pension not to exceed sitting judge salary
- No compensation for travel time
- No compensation for working at home unless preparing for upcoming trial
- No compensation for working weekends or government recognized holidays

11. Verification of Work Actually Performed

I would propose the following procedures to assure that retired judges are not billing the public for services they did not render.

- Upon arrival at assigned court, judge should be required to appear at court administrator's office wherein time of arrival and departure is recorded (copies provided on a monthly basis to Supreme Court Fiscal Office)
- Requirement that all county auditor's/court administrators retain copies of all time-stamped parking receipts for submission to Supreme Court upon request

12. Random Audits

I would further propose that the Court conduct random audits of retired judges and especially those that are consistently earning in excess of \$80,000 a year. This would be in keeping with the procedures set forth by the California Judicial Council.

In the near future I will submit the methodology that I have successfully utilized over the years in discovering which retired judges have been naughty and which ones have been nice.

13. Composition of Compensation Reports

Future compensation reports should be constructed as follows:

- A column wherein the judge is required to specifically detail the judicial work performed
- A column wherein the judge states the time he/she began to perform such judicial work and the time said work was completed

- A column stating the Case Number that the work was performed on
- A column defining work performed at home and the reason justifying same

14. **Applying for Retired Judge Status**

At the present time all that is required by the Court is for a retired judge to either forward a letter to the Chief Justice and/or telephone him for appointment to active status. Unlike California which requires a retired judge to send in a written application and undergo review by judges on the court that he/she retired from, Ohio takes absolutely no affirmative action to determine whether or not a retired judge is fit to be appointed to active status.

Therefore, I would propose the following requirements be met or adhered to when a retired judge applies for appointment to active status.

- Filing of an application similar to the one required in California
- Posting of the judicial applicant's name on the Court's web site and inviting comment from the public as to his/her qualifications over a 90-day period
- Request to judges sitting on same court to submit confidential assessments of the retired judge's qualifications for appointment

To have absolutely no documented process in place in appointing retired judges to active status is quite troubling. This so-called process would be akin to Intel or Proctor & Gamble having a process wherein prospective employees are merely required to call a hotline and leave their name only prior to being accepted for managerial positions. This might be acceptable if you're calling a 900 number but it certainly cannot be condoned when appointing judges to active status.

Even more disturbing is the fact that no paper trail of any kind exists to assure the public that a retired judge was properly vetted before appointment to active status. Put simply, there must be some sort of accountability in this process!

15. **Prior Judicial Experience**

Ohio Court rules do not mandate that prior to appointment as a visiting retired judge that the candidate must have a defined amount of prior judicial experience. In Florida a retired judges must have ten (10) years of prior experience on the bench before he/she can be appointed as a visiting retired/senior judge. This requirement seems to be a reasonable approach to assure that neophytes with no prior judicial experience are not foisted upon an unsuspecting public.

An egregious example of an unqualified retired judge being appointed to active status by Chief Justice Moyer is retired Cuyahoga County Juvenile Court Judge William Chinnock. Prior to being appointed to the Cuyahoga County bench by ex. Gov. Bob Taft, Chinnock had no prior judicial experience of any kind.

After sitting on the Cuyahoga bench for less than one-year and knowing that the voters in Cleveland weren't about to elect him, Chinnock resigned with the knowledge that had he been defeated at the polls, which was a forgone conclusion, he would have been prohibited from being appointed as a visiting retired judge.

Despite his lack of any real judicial experience to speak of and his record of numerous ethical lapses (DUI, guilty of election violations) Chief Justice Moyer accepted Chinnock's application for appointment to active status.

Of interest should be the fact that the Administrative Judge for the Cuyahoga County Juvenile Court never and I mean never requested that Chinnock be assigned to sit on said court during his tenure as a visiting retired judge. It is painfully clear that the Administrative Judge in Cleveland was well aware of Chinnock's lack of judicial expertise in refusing to request that he be assigned to his court.

Immediately upon being assigned as a visiting judge, Chinnock became one of the highest paid judges in the State of Ohio. This title was only relinquished on occasion due to the stiff competition of Judge Stephen Yarbrough.

During his reign as a retired visiting judge, Chinnock cheerfully victimized numerous litigants in the Franklin County Domestic Court. His charades were dutifully published by the media nationwide.

16. **Credible Vetting Process re: Appointment of Retired Judges**

Had there been a credible vetting process in place prior to Chief Justice Moyer's appointment of retired Judges Chinnock and Yarbrough to the bench, many and I mean many victims of their tyrannical conduct on the bench would have been spared.

If Yarbrough and Chinnock and those of their ilk that have or now sit as visiting retired judges been subjected to a vetting process and if the public would have had the opportunity to comment on their reappointments each year, I can assure you that the Chief Justice would have had much to answer for to the citizens of Ohio had he continued to reappoint them to active status on a yearly basis.

I am by no means suggesting that every retired visiting judge is burdened with the ethical disabilities that Yarbrough and Chinnock have put on display in numerous counties throughout Ohio over the past 15 or more years. However, to suggest that a retired judge should be arbitrarily reappointed year after year after year without the public that underwrites such largess is lamentable to say the least.

Over the past 12 or more years, Chinnock and Yarbrough collectively have earned in excess of \$1.5 million as retired visiting judges despite the fact that neither of them possessed the necessary qualifications to sit in judgment of my fellow Ohioans.

I could if necessary, author a 25-50 page treatise setting forth in great detail the unconscionable conduct engaged in by Yarbrough and Chinnock as they set out cheerfully victimizing the vast majority of litigants that were unfortunately made to appear before them.

It is beyond my comprehension as to how anyone could sit idly by and allow Yarbrough to continue to dispense his so-called version of justice on unsuspecting victims. This is especially true of the litigants that he has cheerfully and repeatedly victimized in Franklin, Mahoning, Hamilton, Lucas and Butler Counties, just to mention a few, over the past 12 or more years.

When and if Yarbrough is ever made to answer for the egregious misconduct that he has engaged in over the past 12 or more years by billing for hours he never worked and/or for travel expenses he never incurred, then and only then will the hapless victims of his tyrannical rule cease to increase.

I can only hope and pray for future and present victims that Yarbrough's reign of terror, and those similarly disposed to so act will mercifully come to and in the not too distant future. Enough is enough!!!

17. **Conclusion**

In the near future and after I have obtained relevant copies of public records, I will be submitting to your attention, the Chief Justice and the appropriate authorities irrefutable evidence of serial frauds engaged in by Judge Stephen Yarbrough over the past 10 or more years.

In addition, I will at the same time, if time permits, also submit evidence of other retired judges who are also engaged in billing for hours never worked and/or for travel expenses never incurred.
