

Are You Ready for Private Judging?

By Judge R.A. "Sonny" Ferguson Jr., Christian & Small

In a continuing effort to look at ways to overcome large court dockets, delayed trials and funding issues in our state court system, other options have been explored. One of those options was arbitration in Domestic Relations Court and another was the use of a Private Judge in all Courts an investigation of the two options revealed the advantages of Private Judges.

There are several states that now have statutes that provide for Private Judges: California, Indiana and Ohio just to name a few. The concept of a Private Judge is not used to replace our public elected or appointed judges, but is one to help support our judicial system and to provide one more option to parties in dealing with their legal issues.

In March, 2011, Steven Benefield and Former Judge R. A. Ferguson, both of Christian & Small, LLP, had ongoing discussions on alternatives for our judicial system and this is where the private judging concept originated. As a result, Chief Justice Sue Bell Cobb was contacted and a small committee was formed which consisted of: Judge Ferguson of Birmingham, Law Professor Noah Funderburq of Tuscaloosa, Attorney Wendy Crew of Birmingham, Judge Jimmy Sandlin of Florence and Attorney William O'Rear of Montgomery. The Committee's work produced a proposed bill which was presented to Senator Cam Ward of Shelby County who became its sponsor and presented said bill (SB138) which was passed on April 24, 2012, submitted to Governor Bentley and signed into law on April 30, 2012, and went into effect on July 1, 2012. It is known as Act. 2012-266, and codified at § 12-11a-1 et seq.

As the name implies, Private Judges are, by statute, hired by the parties to preside over their case. The appointment of the Private Judge comes about by way of a motion to the Presiding Judge of the Circuit in which a case is filed or is currently pending. With the appointment, the Private Judge assumes the position of the Judge over all issues of the case. The same rules of evidence, procedure and appeal are in play to the conclusion of the case. The Private Judge's orders are just as binding and enforceable as any Circuit or District Judge's.

The state will maintain a roster of retired or former judges with a listing of their qualifications and experience. The parties and their attorneys will agree on a particular judge and then submit that name for the appointment. The Private Judge is compensated by the parties by a separate employment agreement just as a mediator or arbitrator. Once the appointment is made, the Private Judge manages the case which should result in saving cost and time. This process becomes more efficient because the Private Judge will ensure and oversee the flow of information and prevent trial delays as this will be the only case that judge has before him or her.

The bill presented to Governor Bentley would apply to non-jury cases founded exclusively on domestic relations, contract, tort, or a combination of contract and tort. A utility cannot be a party nor can the State of Alabama be a party. There will be a \$100 filing fee paid to the Clerk of the Court in which the case is filed or pending. The Sheriff and Clerk shall perform the same duties relating to their offices as are required for the Circuit Court of the county in which the case is filed.

Private judging may not be the answer or an option to every filed or pending case. It is just one more tool that parties and lawyers have to help to resolve or move their case forward. Private Judging is designed to save cost, resolve issues in a more timely manner, relieve trial docket backlogs and bring closure to legal issues in a much shorter time frame. Private Judging is a win/win proposition for the parties and the State Judicial System.

About Christian & Small LLP

[Christian & Small LLP](#) represents a diverse clientele throughout Alabama, the Southeast and the nation with clients ranging from individuals and closely held businesses to Fortune 500 corporations. By matching [highly experienced lawyers](#) with specific client needs, Christian & Small develops innovative, effective and efficient solutions for clients. Christian & Small focuses on the [areas of litigation and business](#). The firm is a member of the [International Society of Primerus Law Firms](#) and the only Alabama member firm in the [Leadership Council on Legal Diversity](#). Please visit www.csattorneys.com for more information.