

Private Judging in Alabama: The New Kid on the Block

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Private Judging; what does that mean? Like mediation and arbitration that were promoted in the early 90's, Private Judging is another vehicle for Alternative Dispute Resolutions. Private Judging has been in place since the 90s, primarily available in California and several other states.

Recently, our Legislature passed its own version of a law known as the Private Judging Act. Basically, it would allow a former or retired judge with experience in a certain area, to be hired by the parties to hear their case to a conclusion. This article will try to answer questions that might arise concerning this Legislation, how it will work and what it might mean to the parties and lawyers involved.

1. What is a Private Judge and what are the qualifications?

- A. A Private Judge is a person qualified to act as a judge of a case.
- B. Qualifications are:
 - (1) Have been but not currently serving as judge of a District or Circuit Court
 - (2) A former judge for at least six (6) consecutive years
 - (3) Be admitted to practice law in Alabama
 - (4) Be an active member in good standing of the Alabama State Bar Association
 - (5) Be a resident of Alabama.

2. What type of cases can be heard by a Private Judge?

- A. All Domestic Relations cases
- B. Contract cases
- C. Tort cases
- D. Combination of contract and tort cases
- E. No utilities cases or cases in which the State of Alabama is a party
- F. A. through D. are non-jury cases.

3. How do you select a Private Judge?

- A. A Private Judge who has met the qualifications must register with the Director of the Alabama Center for Alternative Dispute Resolution
- B. A roster of qualified judges will be published and made available to the public and all actively serving judges in the State

- C. The parties shall select a judge from the roster, with that Judge's consent, and submit a motion for appointment with the Circuit Clerk in which said case is pending and the Presiding Judge shall enter the Order of Appointment
- 4. What is the Private Judge's authority and power?**
- A. The Private Judge has the same powers as the judge of a Circuit Court, as follows:
 - (1) Court procedure
 - (2) Deciding the outcome of the case
 - (3) Attendance of witnesses
 - (4) Punishment of contempt
 - (5) Enforcement of orders
 - (6) Administering oaths
 - (7) Giving necessary certificates for the authentication of the Records and proceedings
 - (8) Vested with judicial immunity
 - (9) All proceedings shall be of record and filed with the Clerk of the Circuit Court
 - (10) All records shall be public in the same manner as Circuit Court records (unless otherwise ordered)
- 5. Is the Private Judge's Order binding and for how long?**
- A. The Rules of Civil Procedure shall apply for all actions before the Private Judge
 - B. The Judge shall maintain jurisdiction over all matters brought before him or her until the order is deemed final and appealable
 - C. An appeal from an action or a judgment of a Private Judge may be taken in the same manner as an appeal from the Circuit Court
- 6. Court cost and who pays the Private Judge.**
- A. There is a filing fee of \$100 that is paid to the Court Clerk at the time the motion to appoint the Private Judge is filed.
 - B. The Private Judge's compensation is determinate by a contract for services between the judge and the parties which shall also include compensation of all personnel, the cost of all facilities and materials that are used in relation to the case not otherwise covered.
- 7. Does the same law apply to Private Judges as at Court?**
- A. Yes, the Private Judge stands in the same shoes as the Circuit Judge and must uphold the laws of the State of Alabama and its Constitution.

- 8. If one party wants a Private Judge and the other party does not, can a Private Judge be forced upon them?**
- A. No, both parties must agree to the Private Judge before the appointment is made.
- 9. What happens if after the appointment of a Private Judge, one side does not like the rulings; can they elect to opt out?**
- A. No. As any other Circuit Judge, one does not have that right. This is known as Judge/forum shopping and is not allowed.
- B. The rules on this are very specific; adverse rulings alone are not sufficient to remove a properly appointed public or private judge.
- 10. What are the real advantages of having a Private Judge?**
- A. The specialized expertise of the Judge
- B. Expediency/matters are heard promptly
- C. Cost effectiveness
- D. Timeliness/less delays
- E. This is the only case the Private Judge is presiding over at the time
- F. Timeliness of final orders
- 11. Does the Private Judge have a courtroom?**
- A. No assigned courtroom
- B. Cases can be tried at any place in Alabama which may include a county courtroom if available and approved by the Presiding Judge
- 12. When will the Private Judge set my case for trial?**
- A. Anytime; all cases are set by the Private Judge or by agreement of the Judge and attorneys for the parties

Alabama's Private Judge Act [Senate Bill 138] was submitted by the Legislator to the Governor on April 24, 2012. Upon its signing, it shall become effective on the first day of the third month following its passage and approval by the Governor.

The Governor signed this bill on April 30, 2012 and it became effective July 1, 2012. Act No. 2012-266, and codified at § 12-11a-1 et seq.

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