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OHIO CONSTITUTIONAL MODERNIZATION COMMISSION

JUDICIAL BRANCH AND ADMINISTRATION OF JUSTICE COMMITTEE AGENDA

DATE: Thursday, September 11, 2014

TIME: 10:15 am

ROOM: Statehouse Room 311

- Call to Order
- Roll Call
- Approval of July 10, 2014 Minutes
- Article IV, Section 19 (Courts of Conciliation) and Article IV, Section 22 (Supreme Court Commission)

  Presenters:
  Jo Ellen Cline, Government Relations Counsel
  Supreme Court of Ohio

  William Weisenberg, Policy Advisor and Consultant
  Ohio State Bar Association
- Judicial Selection
- Adjourn

The Supreme Court of Ohio

Presentation before the

Ohio Constitutional Modernization Commission

Judicial Branch & Administration of Justice Committee

Jo Ellen Cline, Government Relations Counsel

Chair Abaray and Vice-Chair Fischer,

Thank you for inviting me to address the Committee regarding two sections, Sections 19 and 22, of Article IV of the Ohio Constitution. These sections, which allow the establishment of a Supreme Court Commission and courts of conciliation, have been a part of the Ohio Constitution since the mid-1800s. Section 19, regarding courts of conciliation, has, to my knowledge, never been invoked by the Ohio General Assembly. Section 22, allowing for the establishment of a Supreme Court Commission, has been used twice, once from 1876-1879 and again from 1883-1885. The two sections are obsolete and should be removed from the Ohio Constitution.

Section 19 of Article IV, which allows the General Assembly to establish "courts of conciliation", was adopted into the 1851 Constitution. The purpose was to try and alleviate a significant backlog of cases in the Ohio judicial system, which by most accounts, operated fairly inefficiently in early Ohio history. Prior to this amendment, disputes were either settled privately or by suit. This created a large number of cases in the court system and the processing of those cases took significant time. The General Assembly, however, has never created a court of conciliation. Alternatively, the General Assembly has passed laws that allow for arbitration proceedings and private judges. In recent years, mediation as an alternative dispute resolution method has also assisted in docket management for courts.

It should also be remembered that in 1851 when this amendment was adopted, the Supreme Court did not have any superintendent authority over courts in Ohio. Under Article IV, Section 5 of the Ohio Constitution, adopted in 1968, the Court now has the ability to assist local courts in determining if there is a docket management issue for that court and how best to fix it. It seems unlikely, given the current structure of the judicial branch, that courts of conciliation would be necessary in Ohio.

Section 22 of Article IV allows the Governor, with the advice and consent of the Senate, to establish a Supreme Court Commission to dispose of cases on the Supreme Court's docket. This section, adopted in 1875, was again intended to relieve a serious

backlog in cases pending before the Supreme Court. In practice, the section essentially allows for two Supreme Courts to be operating simultaneously.

Under Ohio's 1802 Constitution, the Supreme Court operated as an appellate court and as a court of original jurisdiction in a wide variety of cases. In addition, justices were required to ride the circuit and hold court in each county annually. Such a requirement in 1803 was not onerous – Ohio had only 9 counties; however, by 1850, Ohio had 87 counties. In addition, rapid population growth resulted in greater caseloads.

The 1851 Constitution attempted to alleviate some of this pressure on the judicial branch. Under amendments adopted, the Supreme Court essentially became a court of last resort with original jurisdiction only in habeas and special writs. Also established were nine district courts which acted as intermediate courts of appeal. Unfortunately, the district courts were not effective. They were comprised of one Supreme Court judge and all the common pleas judges of the district but there was no mandate that the Supreme Court judge had to sit on the panel so they would often not participate, focusing instead on the Supreme Court's cases. Common Pleas judges had busy dockets of their own, and people lost faith in the district court process. The result was that these courts became a mere layover for cases before moving on to the Supreme Court.

By the time Section 22 was adopted after the Constitutional Convention of 1873-1874, the Supreme Court was four years behind in its caseload. The first Commission was enacted in 1876, immediately following the amendment's adoption, and existed for three years. Another Commission was established in 1883 for two years. Since that time, no Supreme Court Commission has been established by the Governor. As noted earlier, the need for such a drastic docket management tool no longer exists. In 2013, 2,055 new cases were filed, a .9 percent decrease from the number filed in 2012. That was the fifth consecutive year in which the Court saw a decline from the previous year in the number of new cases filed. The Court's case clearance rate was 99 percent in 2013.

Thank you again for the opportunity to provide the Committee with information regarding these two sections. Both provisions are anachronistic and should be removed from the Ohio Constitution. I'm happy to answer any questions the Committee may have.

Ohio Constitutional Modernization Commission
Judicial Branch and Administration of Justice Committee
September 11, 2014

Statement of William K. Weisenberg

A few months ago, I had the occasion to discuss with State Senator Larry Obhof two sections of the Ohio Constitution that would be coming before the Judicial Branch and Administration of Justice Committee of the Ohio Constitutional Modernization Commission, specifically Sections 19 and 22 of Article IV. Section 19 of the Ohio Constitution addresses the authority of the General Assembly to establish court of conciliation, while Section 22 authorizes the Governor, with the advice and consent of the Senate, to establish a Supreme Court Commission to dispose of cases on the Supreme Court docket that by arrangement between the commission and the Court may be transferred for disposition by the commission.

Let me begin by saying that I am not by any means an expert with regard to these provisions and quite frankly was not familiar with them until they were included as part of State Issue I in 2011, that primarily addressed extending the age at which a person may be elected or appointed to a judgeship. As you will remember, the issue was rejected by the voters.

My limited knowledge with regard to "courts of conciliation" is that their objective was to reduce a backlog of cases in the judicial system at a time when the judicial system was in its formative years. To the best of my knowledge, courts of conciliation have not been created by the General Assembly. Over the past forty years that I have been involved with the General Assembly, significant measures have been enacted by the General Assembly addressing arbitration, mediation and private judging. Recognition of alternative forms of dispute resolution has been a collaborative effort of the legislative and judicial branches and has enhanced efficiencies in our judicial system benefiting Ohioans. It is my personal opinion that Section 19 of the Ohio Constitution is not required or needed and simply a remnant of history. Processes of conciliation are prevalent today in the form of alternative dispute resolution noted above. The Commission would be prudent in considering a recommendation to repeal this provision.

With regard to Section 22 of Article 4 providing for a "Supreme Court Commission" to dispose of cases on the Supreme Court docket, I concur with Jo Ellen Cline's analysis as set forth in a paper Ms. Cline is presenting to you. Once again, I am not personally familiar with this provision but do know that such a commission has not been established by a governor for well over a century, evidencing that whatever need may have presented itself in the early years of statehood is not present today. Therefore, I recommend to you and your colleagues' consideration of its repeal as no longer being necessary for the efficient operation of Ohio's judicial system,

There is much work ahead for this Commission as it addresses great issues of importance for the citizens of Ohio. Please do not hesitate and to contact me as I will make myself available to assist you and the Commission.

Finally, please note that the views and opinions expressed herein are mine alone and do not reflect the position of the Ohio State Bar Association. As you are aware, I retired from my full-time at the Ohio State Bar Association on June 30, 2014, but continue in a consultant role as senior policy advisor.

Respectfully,

William K. Weisenberg