

**OPINION NO. 76-031****Syllabus:**

1. Employees within the Court of Common Pleas, Division of Domestic Relations, are unclassified civil service employees.

2. Employees within the Probation Department of the Common Pleas Court are classified civil service employees, pursuant to R.C. 2301.27.

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**To: Stephen M. Gabalac, Summit County Pros. Atty., Akron, Ohio**  
**By: William J. Brown, Attorney General, May 6, 1976**

I have before me your request for my opinion which reads in part as follows:

1. Since the county has no civil service commission, are employees hired by the Court of Common Pleas, Division of Domestic Relations, in the classified or unclassified service? The types of employees in question are: referees, court reporters, divorce investigators, investigators, assignment commissioners, secretaries, general secretaries, bailiffs.

2. The Common Pleas Court has a Proba-

tion Department which was established prior to R.C. 2301.27, since the enactment of R.C. 2301.27 are the employees who work within this department civil service employees or serve at the pleasure of the court.

In answer to your first question, R.C. 124.11 generally pertains to unclassified and classified civil service employees, stating:

"The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts thereof shall be divided into the unclassified service and the classified service.

"(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter.

". . . .

"(10) Bailiffs, constables, official stenographers, and commissioners of court records, and such officers and employees of courts of record as the commission finds it impracticable to determine their fitness by competitive examination."

Pursuant to telephone discussion between this office and yours it is apparent that no competitive examination has been given for those positions in question. Without additional facts being available it does, then, appear that such examinations are impracticable.

Pursuant to this provision employees of the court with which you are concerned clearly appear to come under the class of positions included in the unclassified civil service.

A further specification as to employee classification is found in R.C. 2301.03(I) which states that:

"(I) In Summit county, the judges of the court of common pleas whose terms begin on January 1, 1955, and January 4, 1967, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as other judges of the court of common pleas of Summit county, and shall be elected and designated as judges of the court of common pleas, division of domestic relations. All the powers provided in sections 2151.01 to 2151.61 and section 2151.99 of the Revised Code, relating to juvenile courts shall be exercised by them, and there shall be assigned to them all juvenile court work.

"The judge of the division of domestic relations, junior in point of service, shall have

charge of the employment and supervision of the personnel of the division engaged in handling, servicing, or investigating divorce, alimony, and annulment cases, including any necessary referees." (Emphasis added.)

Since the Domestic Relations judges are within the same standard as Juvenile Court judges, as found in R.C. 2301.03(I) then R.C. 2151.13 must also be examined. R.C. 2151.13 supports the conclusion that the employees of Domestic Relations Court are unclassified, stating:

"The juvenile judge may appoint such bailiffs, probation officers, and other employees as are necessary and may designate their titles and fix their duties, compensation, and expense allowances. The juvenile court may by entry on its journal authorize any deputy clerk to administer oaths when necessary in the discharge of his duties. Such employees shall serve during the pleasure of the judge. (Emphasis added.)

The Court in State, ex rel. Haskins v. Tyroler, 63 Ohio App. 88 (1939) aff'd. 137 Ohio St. 24 (1940) indicated that a judge of the Domestic Relations Court can dismiss an employee, thus also supporting the conclusion that such employees serve at the pleasure of the judge and are therefore unclassified. See also 1937 Op. Att'y Gen. No. 1190.

Your second question deals with R.C. 2301.27 which provides in part:

The court of common pleas may establish a county department of probation. The establishment of such department shall be entered upon the journal of said court and the clerk of the court of common pleas shall thereupon certify a copy of such order to each elective officer and board of the county. Such department shall consist of a chief probation officer, and such number of other probation officers and employees, clerks, and stenographers, as are fixed from time to time by the court. The court shall make such appointments, fix the salaries of appointees, and supervise the work of appointees. No person shall be appointed as probation officer who does not possess such training, experience, and other qualifications as prescribed by the adult parole authority created by section 5149.02 of the Revised Code. All positions within such department of probation shall be in the classified service of the county. (Emphasis added.)

R.C. 2301.27 specifies that persons employed in the Department of Probation are classified. It would be contrary to the clearly expressed intent of the legislature to have some employees classified and other unclassified. Therefore, based on the above statute, all persons employed by the Department of Probation are within the classified service, including those employed before the enactment of the statute.

Based upon the foregoing it is my opinion and you are so advised that:

1. Employees within the Court of Common Pleas, Division of Domestic Relations are unclassified civil service employees;

2. All employees within the Probation Department of the Common Pleas Court pursuant to R.C. 2301.27, are in the classified civil service.