

OPINION NO. 92-009**Syllabus:**

In the Franklin County Court of Common Pleas, division of domestic relations, a judge's status as senior in point of service or as administrative judge of the division confers no authority upon the judge to act unilaterally with respect to the employment of personnel for the division.

To: Michael Miller, Franklin County Prosecuting Attorney, Columbus, Ohio

By: Lee Fisher, Attorney General, March 31, 1992

You have requested an opinion concerning the authority of the judge who is senior in point of service in the domestic relations division of the Franklin County Court of Common Pleas with regard to the employment of certain court personnel. You specifically ask:

1. Is a Franklin County Domestic Relations Court judge, who is senior in point of service and is serving as the elected administrative judge, authorized by law to unilaterally terminate unclassified employees, and specifically the Court Director, without notice or hearing?
2. May such a judge unilaterally and without notice or hearing transfer an unclassified employee, such as the Court Director, to another position within the domestic relations or juvenile court:
 - a. To a position of equal pay?
 - b. To a position of lower pay?

For the reasons set forth below, I conclude that in the Franklin County Court of Common Pleas, division of domestic relations, a judge's status as senior in point of service or as administrative judge of the division confers no authority upon the judge to act unilaterally with respect to the employment of personnel for the division.

Courts of Common Pleas – General Authority to Employ Personnel

In answering your questions it is first necessary to discuss the statutory provisions relating to the appointment of employees by the courts of common pleas generally. The General Assembly has enacted several statutes empowering the courts of common pleas to appoint court personnel. *See, e.g.*, R.C. 2301.12 (empowering "[t]he court of common pleas of a county" to appoint, among others, a court interpreter, a criminal bailiff, and, in certain instances, a chief court constable); R.C. 2301.18 (stating in part: "[t]he court of common pleas shall appoint a stenographic reporter as official shorthand reporter of such court"); R.C. 2301.19 (authorizing "[t]he court of common pleas" to appoint assistant shorthand reporters, "as the business of the court requires"); R.C. 2701.07 (stating in part: "[w]hen, in the opinion of the court, the business thereof so requires, *each court of common pleas*, court of appeals, and in counties having...more than seventy thousand inhabitants, the probate court, may appoint one or more constables to preserve order...and discharge such other duties as *the court* requires" (emphasis added)).

A common pleas court's authority to hire has also been found to exist by necessary implication from the duties imposed by statute upon the court. In one instance, the Clinton County Court of Appeals found that a court of common pleas possesses the implied authority to hire an investigator to perform the statutory duty imposed upon the court to perform investigations in certain divorce and alimony cases. *Smith v. Smith*, 93 Ohio App. 294, 114 N.E.2d 480 (Clinton County 1952). In reaching its conclusion, the *Smith* court reasoned as follows:

While the statute commands an investigation and report thereof, it includes no direction to the court in the selection of an investigator, nor does it make any provision for payment of any expense or compensation which would appear to be a necessary incident thereto and which one must assume was within the contemplation of the Legislature.

Under the language of the statute it, therefore, becomes the judicial prerogative and duty of the Common Pleas Court to exercise its sound discretion in the selection of an investigator and to direct and control any and all expenditures necessary thereto, including the mode and manner of payment.

93 Ohio App. at 295-96, 114 N.E.2d at 480-81. *See* 1953 Op. Att'y Gen. No. 3135, p. 517 (discussing the authority of a court of common pleas to appoint an investigator in divorce cases, based upon *Smith v. Smith, supra*). *See also* 1989 Op. Att'y Gen. No. 89-029 at 2-123 (concluding that the statutory authority of a juvenile judge to hire necessary personnel, is in addition to the court of common pleas' "inherent power...to hire such personnel as the proper and efficient administration of justice requires").

In addition to the statutes empowering the various courts of common pleas to employ personnel, separate provision is made for the appointment of certain court employees by specific judges within these courts. For example, pursuant to R.C.

325.17, the probate judge,¹ among other county officers, is expressly authorized to appoint and employ necessary deputies, assistants, clerks, bookkeepers, or other employees. *See also* R.C. 2151.13 (stating in part: "[t]he juvenile judge may appoint such bailiffs, probation officers, and other employees as are necessary....Such employees shall serve during the pleasure of the judge"); R.C. 2301.03(I)(2) (in Summit County, "[t]he juvenile judge shall be the administrator of the juvenile division and its subdivisions and departments, and shall have charge of the employment, assignment, and supervision of the personnel of the juvenile division, including any necessary referees, who are engaged in handling, servicing, or investigating juvenile cases").

Moreover, in R.C. 2301.03, the General Assembly has expressly provided for the appointment of personnel for domestic relations divisions in several counties. *See, e.g.*, R.C. 2301.03(B)(2) (in Hamilton County, the "administrative judge," as provided for therein, "shall have charge of the employment, assignment, and supervision of the personnel of the division engaged in handling, servicing, or investigating divorce, dissolution, legal separation, and annulment cases, including any referees considered necessary by the judges in the discharge of their various duties"); R.C. 2301.03(D)(1) (in Lucas County, "[t]he judge of the division of domestic relations, senior in point of service, shall be considered as the presiding judge of the court of common pleas, division of domestic relations, and shall be charged exclusively with the...employment and supervision of all other personnel of the domestic relations division"); R.C. 2301.03(H) (in Stark County, the judge "junior in point of service" and the judge "senior in point of service" in the domestic relations division are each empowered to hire specific court personnel); R.C. 2301.03(M)(1) (expressly empowering the sole judge of the domestic relations division in Lake County to employ personnel for the division).

Authority Conferred Upon the "Administrator" of the Franklin County Court of Common Pleas, Division of Domestic Relations, By R.C. 2301.03.

There are no express provisions within R.C. 2301.03 providing for the appointment of personnel for the domestic relations division of the Franklin County Court of Common Pleas. R.C. 2301.03(A), which creates the domestic relations division of the Franklin County Court of Common Pleas, states:

In Franklin county, the judges of the court of common pleas whose terms begin on January 1, 1953, January 2, 1953, January 5, 1969, and January 5, 1977, 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 Franklin county, and shall be elected and designated as judges of the court of common pleas, division of domestic relations. They shall have all the powers relating to juvenile courts, and all cases under Chapter 2151. of the Revised Code, all parentage proceedings under Chapter 3111. of the Revised Code over which the juvenile court has jurisdiction, and all divorce, dissolution, legal separation, and annulment cases shall be assigned to them. *In addition to his regular duties, the judge who is senior in point of service shall serve on the children services board, the county advisory board, and shall be the administrator of the domestic relations court, its subdivisions and departments.* (Emphasis added.)

Thus, within the Franklin County Court of Common Pleas, the judge who is senior in point of service in the domestic relations division is assigned the position of "administrator" of the domestic relations court.

¹ R.C. 2101.01 establishes a probate division in each court of common pleas, and states in part: "As used in the Revised Code, 'probate court' means the probate division of the court of common pleas, and 'probate judge' means the judge of the court of common pleas who is judge of the probate division."

The power and duties of an "administrator," as that term is used in R.C. 2301.03(A), are not statutorily defined. Examination of the remaining portions of R.C. 2301.03 that address the common pleas courts in various other counties reveals that the "administrator" of a domestic relations division is not, solely by virtue of that designation, granted specific powers concerning the employment of the division's personnel. For example, in Hamilton County Common Pleas Court, the administrative judge of the domestic relations division, as provided for therein, "shall be the *administrator* of the domestic relations court...and shall have charge of the employment, assignment, and supervision" of certain court personnel. R.C. 2301.03(B)(2) (emphasis added). Further, such administrative judge is also expressly authorized and directed by statute to "designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division, and...[to] fix the duties of its personnel." *Id.* Although the Mahoning County domestic relations division judge is expressly designated as the division's "administrator" by R.C. 2301.03(E)(1), the same statutory provision also separately provides that the judge "shall have charge of the employment, assignment, and supervision of the personnel of the division" engaged in handling the specified matters, as well as being further empowered to "designate the title, compensation, expense allowances, hours, leaves of absence, and vacations of the personnel of the division, and...[to] fix the duties of the personnel of the division."

In certain other counties, the applicable statutory provisions provide that authority to employ division personnel is vested in a judge who is not also designated as the court's administrator. For example, in Montgomery County, the duties concerning the assignment and division of work, the employment and supervision of certain court personnel, and the fixing of duties of court employees are assigned to the "judge of the division of domestic relations, senior in point of service," without further designation of such judge as "administrator" of the court. R.C. 2301.03(F)(1). In Lucas County, pursuant to R.C. 2301.03(D)(1), "the judge of the division of domestic relations, senior in point of service" is referred to as "the presiding judge of the division" and is also assigned various duties, including "the assignment and division of the work of the division, and the employment and supervision of all other personnel of the domestic relations division."

It appears, therefore, that the General Assembly neither has expressly limited the powers of, nor has conferred specific duties upon, the judge of the Franklin County Court of Common Pleas, division of domestic relations, who is senior in point of service, and who is, therefore, designated the administrator of that division, with regard to the employment of personnel for that division. However, as noted above, such authority relating to employment matters is expressly granted with respect to certain judges designated "administrators" in other counties pursuant to the same statute (*i.e.*, R.C. 2301.03). Had the General Assembly intended that the designation of a judge as "administrator" of the division carried with it the implied power to employ personnel for the division, it would not have been necessary to provide express statutory authorization for any "administrator" to employ the division's personnel. *See generally* R.C. 1.47 ("[i]n enacting a statute, it is presumed that...(B) the entire statute is intended to be effective"); *Carter v. City of Youngstown*, 146 Ohio St. 203, 65 N.E.2d 63 (1946) (it is necessary to give effect to all portions of a statute and not to discard phrases as serving no purpose). I, therefore, conclude that the administrator of the division of domestic relations of the Franklin County Court of Common Pleas does not have direct statutory authority over the employment of personnel of that division. Because the General Assembly has made no specific provision governing the employment of personnel for the Franklin County Court of Common Pleas, division of domestic relations, as it has done for other domestic relations divisions, it also follows that the authority to hire personnel for the Franklin County Court of Common Pleas, division of domestic relations, arises under those statutes referenced above that empower "the court of common pleas," as an entity, to hire court personnel (*see, e.g.*, R.C. 2301.12; R.C. 2301.18; R.C. 2301.19; R.C. 2701.07), and not under R.C. 2301.03.

It is well established that the statutory provisions from which a court derives its authority to employ may also impose limitations on the court's exercise of that power. *See, e.g., In re Etter*, 2 Ohio App. 165 (Holmes County 1913) (finding that the court of common pleas may not vary the term fixed by statute for the court's official stenographer); 1984 Op. Att'y Gen. No. 84-008 at 2-23 (stating "courts of common pleas have only limited authority to appoint deputy sheriffs"); 1957 Op.

Att'y Gen. No. 188, p. 54 (syllabus) ("R.C. 2301.12] provides for the compensation and appointment by the common pleas court of only one regular criminal bailiff, and such court is without authority under that section to appoint two such bailiffs and to divide such compensation between them"); 1942 Op. Att'y Gen. No. 5183, p. 379 (syllabus) (G.C. 1546 and 1547 (currently R.C. 2301.18 and 2301.19), "which provide for the appointment of shorthand reporters for courts of common pleas, authorize the appointment of only one official shorthand reporter in counties having one common pleas judge and, consequently, the appointment of additional shorthand reporters in such counties on either full or part-time basis is unauthorized by law"). As discussed above, the General Assembly has not imposed statutory limitations upon the manner of appointing or hiring personnel to work within the Franklin County Court of Common Pleas, division of domestic relations, or otherwise specified a particular procedure by which that authority shall be exercised, and, therefore, the Franklin County Court of Common Pleas may exercise its statutory powers to appoint and hire personnel for the division of domestic relations in any reasonable manner. See *Jewett v. Valley Railway Co.*, 34 Ohio St. 601, 608 (1878) ("[w]here authority is given to do a specified thing, but the precise mode of performing it is not prescribed, the presumption is that the legislature intended the party might perform it in a reasonable manner").

Information provided with your request indicates that in Franklin County, the division of domestic relations, rather than the Court of Common Pleas as a whole, appoints and hires personnel for the division. For the purpose of this opinion, I shall assume that the division of domestic relations is currently exercising the power of employment of division personnel in accordance with appropriate and continuing authorization by or acquiescence of the Franklin County Court of Common Pleas.²

² The documents included with your letter also indicate that the four judges serving in the domestic relations division as of January 1, 1990, adopted a personnel handbook for the division's employees, stating that all division personnel "serve at the pleasure of the Administrative Judge pursuant to the Ohio Revised Code Section 2151.13 and 2301.03(A)." However, these statutory provisions cited do not provide authority with respect to such matters. As discussed above, R.C. 2301.03(A) does not invest the administrative judge of the Franklin County Court of Common Pleas, division of domestic relations, with any authority concerning the employment of personnel of that division.

Nor am I able to read R.C. 2151.13 as providing authority to the administrative judge of the Franklin County Court of Common Pleas, division of domestic relations, to hire personnel for the domestic relations division. R.C. 2151.13, states in part: "[t]he 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." R.C. 2151.011(A)(2) defines a "[j]uvenile judge" as, "a judge of a court having jurisdiction under this chapter." Pursuant to R.C. 2301.03(A), in the Franklin County Court of Common Pleas, the judges of the domestic relations division "shall have all the powers relating to juvenile courts, and all cases under [R.C. Chapter 2151]...." Thus, each judge of the domestic relations division is a juvenile judge, as defined in R.C. 2151.011(A)(2). By its terms, however, R.C. 2151.13 limits the hiring authority of the juvenile judge to such employees "as are necessary" to carry out the judge's duties under R.C. Chapter 2151, *i.e.*, with respect to juvenile courts. Given this limitation, I am unable to read R.C. 2151.13 as providing a judge of the domestic relations division of the Franklin County Court of Common Pleas the requisite statutory authority to appoint or hire employees who perform duties beyond those specifically related to the juvenile jurisdiction conferred upon the domestic relations division by R.C. 2301.03(A).

Thus, I must conclude that the statutes listed in the personnel handbook as empowering the administrative judge of the Franklin County Court of Common Pleas, division of domestic relations, to hire division personnel do not provide such authority. See *Abbott v. Stepanik*, 64 Ohio App. 3d 719, ___ N.E.2d ___ (Cuyahoga County 1990) (concluding, in part, that

Authority Conferred Upon The Administrative Judge of a Court of Common Pleas, Division of Domestic Relations, By The Rules of Superintendence for Courts of Common Pleas.

Part of your concern is whether the judge who is serving as the "administrative judge" of the Franklin County Court of Common Pleas, division of domestic relations, has been granted any authority, by virtue of that designation, with respect to the employment of the division's personnel. Since no judge within the Franklin County Court of Common Pleas, division of domestic relations, is designated by statute to serve as "administrative judge," *cf.* R.C. 2301.03(B)(2) (providing for an administrative judge in Hamilton County), I will assume that the position of administrative judge is that referred to in the Rules of Superintendence for Courts of Common Pleas, as promulgated by the Ohio Supreme Court pursuant to Ohio Const. art. IV, §5(A)(1). Specifically, C. P. Sup. R. 3 reads, in part as follows:

(A) Selection and term; notifications. The judges of each multi-judge division of the court of common pleas shall, by majority vote of all judges of the division, select one of their number to act as administrative judge....

....
(B) Powers. The administrative judge shall be the presiding officer of the division and shall have full responsibility for and control over the administration, docket, and calendar of the division which the judge serves. The administrative judge shall cause cases to be assigned to the judges within the division and shall require such reports from each judge concerning the status of assigned cases as may be required to assist the judge in discharging the overall responsibility for the observance of these superintendence rules and for the termination of cases in the division without undue delay.

....
The administrative judge shall formulate such accounting and audit procedures within the division and the office of the clerk of court as will ensure the accuracy of and consistency with all reports required by these Rules.

Thus, pursuant to C.P. Sup. R. 3, the "administrative judge" of a multi-judge division of a court of common pleas is generally selected by majority vote of all judges of the division.

statutes governing the employment of juvenile court personnel and juvenile detention home employees govern the termination of full-time juvenile court employees, notwithstanding a contrary policy set forth in court personnel manual).

In any event, it should be noted that, to the extent authority over employment matters is being appropriately exercised by the domestic relations division, such authority would be lodged in the division collectively, and could not be exercised by an individual judge designated by the division acting solely without the agreement, express or implied, of the other judges of that division. See 1938 Op. Att'y Gen. No. 2308, vol. II, p. 821 (syllabus, paragraph one) ("[t]he authority to appoint court constables is lodged in the court of common pleas and not in the individual judges of such court. In a county having four common pleas judges, all four of the judges comprise the court of common pleas of such county and all four of such judges must join in the appointment of court constables, as provided by [G.C. 1692 (now R.C. 2701.07)]"). To the extent that the personnel handbook is indicative of informal procedures utilized by the division on a day-to-day basis with respect to employment matters, such procedures would remain at all times subject to withdrawal or revision by the judges of the division acting collectively, as, for example, they did in their Memorandum, dated September 16, 1991, to employees of the Franklin County Court of Domestic Relations and Juvenile Branch.

Concerning the effect of the Rules of Superintendence generally, the court in *Krupansky v. Pascual*, 27 Ohio App. 3d 90, 92, 499 N.E.2d 899, 901 (Lorain County 1985) stated:

The Rules of Superintendence of the Supreme Court are purely internal housekeeping rules which do not have a force equivalent to a statute. The Superintendence Rules are applicable only so long as they are not in conflict with statute or other governing Supreme Court rules. Similarly, while the courts of common pleas have the inherent power to make reasonable rules regulating practice and procedure in those courts, these rules must not be in conflict with the statutes. (Citations omitted.)

See also *Berger v. Berger*, 3 Ohio App. 3d 125, 128, 443 N.E.2d 1375, 1379 (Cuyahoga County 1981) ("[t]he Superintendence Rules are binding on the courts so long as they are consistent with statutes and other governing court rules"), *cert. denied mem.*, 459 U.S. 834 (1982); *State v. Smith*, 47 Ohio App. 2d 317, 328, 354 N.E.2d 699, 707 (Cuyahoga County 1976) ("the Rules of Superintendence were promulgated under the authority of Section 5(A)(1), Article IV, and not under Section 5(B), Article IV of the Ohio Constitution. Thus, the language contained in Section 5(B), Article IV of the Ohio Constitution, which provides that '[a]ll laws in conflict with such rules shall be of no further force or effect after such rules have taken effect,' applies only to rules of practice and procedure proposed by the Supreme Court of Ohio and approved by the General Assembly"); *State v. Lacy*, 46 Ohio App. 2d 215, 217, 348 N.E.2d 381, 383 (Belmont County 1975) ("the Ohio Supreme Court Rules of Superintendence do not invalidate any existing statute"). Thus, if there were a conflict between R.C. 2301.03(A) and C.P. Sup. R. 3, the rule would not invalidate any provision of the statute.

In *Rosenberg v. Gattarello*, 49 Ohio App. 2d 87, 93, 359 N.E.2d 467, 471 (Cuyahoga County 1976), the court described the authority of an administrative judge under C.P. Sup. R. 3, as follows:

Sup. R. 3 gives the administrative judge full responsibility for and control over the administration, docket and calendar of the division which he serves....

The administrative judge merely has authority and responsibility for and control over the administration, docket and calendar of the division. He does not have authority and responsibility for determining issues and proceedings in cases. (Emphasis added.)

Thus, the court characterized the scope of that authority as encompassing the administration, docket, and calendar of the division.

The authority of an administrative judge, as appointed under the Rules of Superintendence, with regard to the employment of municipal court personnel was addressed in *State ex rel. Heeter v. Mullenhour*, 51 Ohio St. 2d 145, 364 N.E.2d 1382 (1977). The court's analysis, although discussing the interaction of the Municipal Court Rules of Superintendence and statutory provisions concerning the employment of court personnel, provides some guidance as to the intent of the Ohio Supreme Court in promulgating the Rules of Superintendence for the various courts. In *Mullenhour* the court analyzed which of the two municipal court judges was empowered to set the salary of deputy bailiffs, where the statute merely provided that it was "the court" which set the bailiff's salary. In discussing the duties of the municipal court judges as set by statute and by the Rules of Superintendence, the court stated:

R.C. 1901.15 provides, in part, that "[i]n addition to the exercise of all powers of a municipal judge, the presiding municipal judge has the general supervision of the business of the court***."

The phrase "general supervision," although not specifically defined by the General Assembly, clearly includes such functions as setting the salary levels of court personnel where permitted by statute. Thus, the presiding judge has the authority to establish salary levels for court personnel such as the deputy bailiffs.

M.C. Sup. R. 2(B) provides, in part, that "[t]he administrative judge shall have full control over the administration, docket, and

calendar of the court. He shall exercise the powers conferred upon him by these rules and the powers vested by statute in the presiding judge." In providing that the administrative judge exercises those powers vested by statute in the presiding judge, this rule does not take away from the presiding judge his authority to set salary levels for court personnel, nor does it grant the administrative judge a share in this authority.

The powers provided the administrative judge are based on the Rules of Superintendence for Municipal Courts and County Courts. These rules chiefly involve directives concerning matters affecting case control and case disposition in the municipal and county courts of Ohio, and do not involve matters concerning the fiscal duties and responsibilities of those courts. Because these rules, from which the administrative judge derives authority, are so limited in purpose and effect, it follows that the extent of the powers provided the administrative judge under M.C. Sup. R. 2(B) are also so limited. Thus, we hold that in the present situation, where the administrative judge shares the bench with one other judge who serves as the presiding judge, only the presiding judge has the authority to set salary levels for the deputy bailiffs.

51 Ohio St. 2d at 147-48, 364 N.E.2d at 1384.

Absent any judicial interpretations of the scope of C.P. Sup. R. 3(B), I believe that the *Mullenhour* court's interpretation of M.C. Sup. R. 2(B) is sufficiently analogous to support a similarly narrow interpretation of the authority vested by C.P. Sup. R. 3(B) in the administrative judge of the domestic relations division of a court of common pleas. Since the employment of personnel for a court of common pleas, division of domestic relations, is not encompassed within "matters affecting case control and case disposition," I conclude that C.P. Sup. R. 3(B) does not empower the administrative judge of the Franklin County Court of Common Pleas, division of domestic relations, to determine unilaterally those matters concerning the employment of personnel within that division.

Having concluded that a judge in the circumstances you describe has no authority to act unilaterally concerning employment of the division's personnel, I find it unnecessary to address the remaining portion of your first question and your second question, concerning the methods used in effecting such a unilateral decision.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that in the Franklin County Court of Common Pleas, division of domestic relations, a judge's status as senior in point of service or as administrative judge of the division confers no authority upon the judge to act unilaterally with respect to the employment of personnel for the division.