Ohio Judicial Conference

The Voice of Ohio Judges

Ohio House of Representatives
House Health and Aging
House Bill 307 – Interested Party Testimony
January 15, 2014

The Honorable Judge Kenneth J. Spicer – Delaware County Probate/Juvenile Court Judge

Thank you Chairman Wachtmann, Vice-Chair Gonzales, Ranking Member Antonio and members of the House Health and Aging Committee for the opportunity to testify today as an interested party on House Bill 307. I am Judge Kenneth Spicer, President of the Ohio Association of Probate Judges, member of the Ohio Judicial Conference's Probate Law and Procedure Committee and judge of the Delaware County Probate and Juvenile Court. I am here to offer the perspective of the probate judges on this bill.

I can speak for the entire Judicial Conference in saying that we truly appreciate Representative Buchy's willingness to work along side of the state's probate judges while bringing forth this bill. Several of the provisions dealing with notice to putative fathers inside the sub-bill that will be considered today were added at the request of the judges. There are, however, two provisions of the bill that give us concern.

The first is a potential constitutional problem. One of the operative sections of the bill provides that a birth mother *may* provide what is called "pre-birth notice" of her intent to place the child up for adoption to anyone whom she believes could be the father of the child. This is not required of the mother, nor should it be. Such a requirement could have dangerous implications in certain, very probable situations. However, this provision could create a constitutional issue. After this pre-birth notice is given to the putative father, he is given 30 days to add his name to the Ohio Putative Father Registry in order to preserve the right to consent to or contest an adoption. It does not matter when in the pregnancy he receives notice, he is given 30 days. If the mother opts not to notify the father of these rights, under current law the putative father must register 30 days after the child's birth. This bill would reduce the timeframe for putative fathers who do not receive pre-birth notice to 7 days.

This reduction in the time requirement creates two classes of putative fathers; those that are given pre-birth notice and those that are not. If a father is informed of the mother's intent to give the child up for adoption the day before its birth, he would have 22 more days to register with the putative father registry than a father who was not notified. These two classes of putative fathers are similarly situated, but are treated differently under the law. This could give rise to an equal protection action. Any putative father bringing the action would have a large hurdle to overcome, but this potential litigation could be avoided by leaving the current 30 day timeframe in place.

The second issue identified by the probate judges deals with the reduction of the timeline for questioning an adoption decree from one year to 60 days. This provision may cause confusion among attorneys and courts when taking into consideration the Ohio Rules of Civil Procedure. Rule 60(B) governs the timing for a motion for relief from a final judgment. The rule specifies that a motion must be made within a reasonable time and expresses this as within one year for specified circumstances. The change from one year to 60 days provided for in this bill would create a conflict between the Rules and the Code. This provision of the bill attempts to modify court procedure. This is an area that the Ohio Constitution grants to the Supreme Court, which would be a more proper venue for this kind of change.

I would like to conclude by again thanking Representative Buchy for working with the probate judges on this issue. Adoption is an area of the law that is near and dear to me as well as the other probate judges of this state who all wish to do what is best for Ohio's children. Thank you very much for the opportunity to present this testimony, and am happy to answer any questions you have.