

ORIGINAL

In the  
SUPREME COURT OF OHIO

GERRY E. GRIFFITH, JR.,	:	Supreme Court Case No. 09-1363
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Franklin County
v.	:	Court of Appeals,
	:	Tenth Appellate District
STATE OF OHIO,	:	
	:	Court of Appeals Case
Defendant-Appellant.	:	No. 08AP-964

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PLAINTIFF-APPELLEE GERRY E. GRIFFITH'S RESPONSE BRIEF

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## INTRODUCTION

The Ohio General Assembly has recognized that wrongfully imprisoned individuals have a claim for damages against the State of Ohio. Subsection (A) of Ohio Revised Code 2743.48 lists five (5) criteria which must each be met in order for a potential claimant to qualify as a “wrongfully imprisoned individual.” If all five (5) of these criteria are met, the individual may then file his claim in the Ohio Court of Claims.

The five criteria that must be met in order for a person to be considered a wrongfully imprisoned individual are as follows: 1) The individual was charged with a violation of a section of the Revised Code by an indictment or information prior to, or on or after, September 24, 1986, and the violation charged was an aggravated felony or felony; (2) The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony or felony; (3) The individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty; (4) The individual’s conviction was vacated or was dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation against the individual for any act associated with that conviction; *and (5) subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual’s release, or it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser-included offenses, either*

*was not committed by the individual or was not committed by any person.* R.C. 2743.48.  
*emphasis added.*

Assuming that an individual meets the first four criteria, he could fall into one of the two categories of individuals created by subsection (A)(5). Section (A)(5) states that a wrongfully imprisoned individual is someone who was released due to a procedural error *or* he is someone who has obtained a determination by a court of common pleas that he did not commit the offense of which he was convicted (or that no one committed it). Much of the remainder of the statute expounds upon the specific procedures that must be followed in cases where the individual falls into the second category of wrongfully imprisoned individuals - those whose claims are based on innocence or non-occurrence.

The issue in the instant case is one of statutory construction and interpretation. The Appellant State of Ohio contends that R.C. 2743.48 creates a two step process for *all* wrongful imprisonment claims: first, the individual must obtain a determination from a court of common pleas stating that he is a wrongfully imprisoned individual; and, second, he must then and only then file his claim for damages in the Court of Claims. The Tenth District Court of Appeals reached a different conclusion.

Appellee submits that the Tenth District correctly held that the plain language of the statute mandates a different interpretation, and that because the statute is definite and unambiguous, any inquiry of construction must end there with the language of the statute. Where the language of the statute is clear, a reviewing court must assume that the legislature meant what it said. *Kocisko v. Charles Shutrump & Sons Co. (1986)*, 21 Ohio St. 3d 98, 100.

Appellant further contends that allowing the statute to operate as written will lead to procedural hardships in practice. Appellant relies heavily on the assertion that allowing the Court of Claims to hear cases premised on procedural error will require too much of an in depth criminal law analysis by a court which hears civil matters exclusively. Appellee submits that R.C. 2743.48 requires the Court of Claims to make certain determinations of criminal law regardless, even if every claimant were to first receive a determination from a court of common pleas.

Section (A)(5) requires that claimants who meet criteria (1) through (4) either have a claim based on procedural error, or obtain a determination from a common pleas court. However, the determination required from a common pleas court is not a finite determination that the individual is “a wrongfully imprisoned individual.” The determination required by the statute is a statement that the individual “*did not commit the offense*” (or no one committed it). Even with this statement from a court of common pleas, the Court of Claims must still determine that all five criteria are met in some fashion.

Finally, Appellant suggests that R.C. 2305.02, which provides a certain grant of jurisdiction to courts of common pleas, prohibits the Court of Claims from exercising original jurisdiction over wrongful imprisonment cases where the claimant is filing under the procedural error category created in 2743.48(A)(5). Appellee submits that the Tenth District was again correct in recognizing that subsection (A)(5) exempts procedural error claimants from having to obtain that judgment from a common pleas court which other wrongful imprisonment claimants must first obtain. R.C. 2305.02 simply does not apply to procedural error claimants. Logically, then, those procedural error cases can and must originate in the Court of Claims.

For these and other reasons, the Court should affirm the decision below.

### STATEMENT OF THE CASE

This case reaches the Ohio Supreme Court on appeal from the Tenth District Court of Appeals of Ohio. The procedural posture is as follows:

On August 24, 2006, the Sixth Circuit Court of Appeals reversed a decision rendered by the United States District Court for the Southern District of Ohio, which had previously denied a Motion to Suppress filed by then [Defendant], Gerry Griffith (Plaintiff/Appellee). The Sixth Circuit held that the denial of that Suppression Motion was in error, and remanded the case accordingly. *United States v. Griffith* (6th Cir. Aug. 24, 2006), No. 05-3640, 193 Fed. Appx. 538, 543. Once remanded, the charges brought in the District Court were dismissed with prejudice, and Gerry Griffith was released from custody in January, 2007. Trial Record, ¶ 12 (herein after, “T.R., ¶ \_\_\_\_).

On August 1, 2008, Plaintiff-Appellee filed a second amended Complaint in the Court of Claims of Ohio, alleging wrongful imprisonment resulting from his detention in the above-described case in the United States District Court. *Griffith v. State*, 2009 Ohio 2854, ¶ 5. On September 29, 2008, the Court of Claims dismissed the Complaint and pendant case, asserting that it lacked jurisdiction over the matter until Griffith obtained a determination from the Court of Common Pleas finding him to be a wrongfully imprisoned individual. *Id.* at ¶ 6.

On December 3, 2008, Plaintiff-Appellee filed an appeal of this dismissal with the Tenth District Court of Appeals. The Tenth District rendered a decision in the matter on June 16, 2009. The Tenth District held that the Court of Claims *did* have jurisdiction to hear this matter since the wrongful imprisonment action was premised on procedural error, and therefore did not require

Mr. Griffith to obtain a determination from a Common Pleas Court prior to commencing his action in the Court of Claims. *Griffith v. State*, 2009 Ohio 2854, ¶ 16. Accordingly, the Tenth District reversed the Court of Claim's dismissal of the matter, and remanded. *Id.* at ¶ 17.

The State of Ohio filed a timely Notice of Appeal, and this case was accepted on Appeal from the Tenth District by Decision filed November 18, 2009. On December 28, 2009, Appellant filed its Merit Brief with this Honorable Court, asking that the decision of the Tenth Circuit be reversed, thereby holding that the Court of Claims correctly dismissed Plaintiff-Appellee's original Complaint for lack of jurisdiction. Plaintiff-Appellee now submits his own Brief, respectfully requesting the Tenth Circuit decision be upheld.

#### STATEMENT OF THE FACTS

At issue in the instant case a question of procedure for prosecuting wrongful imprisonment claims in the state of Ohio. The case turns not on the individual facts of Plaintiff-Appellee's underlying criminal case, but on the construction and interpretation of the statutory provisions outlined below.

Ohio Revised Code Section 2743.48 is a statutory provision which creates a cause of action against the State of Ohio by an individual who asserts that he or she has been wrongfully imprisoned and is thereby entitled to damages. This provision was originally enacted in 1986, and was amended in 2003.

Prior to the amendment in 2003, R.C. 2743.48 provided that an individual seeking redress for wrongful imprisonment must meet each of five separate requirements. The first four requirements were: 1) that the individual was convicted of a felony or aggravated felony under state law; 2) that the individual was found guilty; 3) that he served his sentence i a state facility,

and 4) that his conviction was vacated, dismissed, or otherwise overturned, and that further action by a prosecutor on the same matter cannot or will not be taken. R.C. 2743.48(A)(1)-(4). (The substance of these first four requirements did not change with the 2003 amendments.) Prior to the 2003 amendment, the fifth requirement was that sometime during or after his imprisonment, a court of common pleas determined either that he did not commit the offense or any lesser included offenses, or that no one committed that offense. *Id.* at (A)(5) (effective 10/6/94).

In 2003, the Ohio General Assembly revised R.C. 2743.48, amending the statute in several ways, only one of which is relevant to the instant case. See Sub. S.B. No. 149, 124th General Assembly. At this time, the General Assembly added a new category of individuals who may seek recovery in the Court of Claims for wrongful imprisonment under the statute. These individuals, listed in R.C. 2743.48 (A)(5) are those who were released due to a procedural error. The General Assembly amended that provision to read:

*Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release, or it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser- included offenses, either was not committed by the individual or was not committed by any person. R.C. 2743.48(A)(5) emphasis added.*

Prior to this amendment, the statute required that any individual seeking damages for wrongful imprisonment first obtain a determination from a court of common pleas stating either that he did not commit the offense, or that no one committed it. After the 2003 amendment, the statute still requires that individuals whose claims are based on actual innocence obtain from a court of common pleas a determination stating they did not commit the offense. However, the statute does not require the same of individuals whose claims are based on procedural error.

At the time that R.C. 2743.48 was originally enacted, the General Assembly also enacted a companion statute, R.C. 2305.02, which states that:

A court of common pleas has exclusive, original jurisdiction to hear and determine an action or proceeding that is commenced by an individual who satisfies divisions (A)(1) to (4) of section 2743.48 of the Revised Code *and that seeks a determination by the court that the offense of which he was found guilty, including all lesser-included offenses, either was not committed by him or was not committed by any person.* If the court enters the requested determination, it shall comply with division (B) of that section. R.C. 2305.02. *emphasis added.*

This provision was not amended when R.C. 2743.48 was amended in 2003 to add the new category of wrongfully imprisoned individuals (those with cases premised on procedural error), as R.C. 2305.02 only pertains to individuals seeking redress on separate grounds of actual innocence or non-occurrence.

At issue in this case is solely the statutory construction of R.C. 2743.48, after the amendments of 2003, and the effects, if any, of the companion jurisdictional provision, R.C. 2305.02.

## ARGUMENT

### **Appellee Gerry E. Griffith's Proposition of Law No. 1:**

*An Ohio Claimant seeking damages for wrongful imprisonment must obtain a determination from a court of common pleas only if his case is premised upon actual innocence or non-occurrence; otherwise, he may file his complaint directly in the Ohio Court of Claims.*

As amended, R.C. 2743.48 creates two distinct categories of complainants in wrongful imprisonment cases: those whose cases are premised on actual innocence, and those whose cases are premised on procedural error. The statute directs the former to seek a determination from a court of common pleas prior to filing in the Court of Claims. The statute does not require the

same of the latter category, individuals whose cases are premised on procedural error. Appellee falls into the latter category.

The Tenth District Court of Appeals recognized that the dismissal of Appellee's complaint in the Court of Claims was in error because the statute allows for him to file there directly. The Tenth District's interpretation and construction of R.C. 2743.48 was correct for two reasons. First, the plain language of the statute clearly and unambiguously exempts claims based on procedural error from being taken first to a court of common pleas. Second, by distinguishing claims based on procedural error from those based on actual innocence, the General Assembly vested the Court of Claims with jurisdiction over the entirety of the suit when those actions are premised on procedural error.

- A. **The plain language of R.C. 2743.48 provides that a Plaintiff who is seeking redress for wrongful imprisonment is permitted to file directly with the Ohio Court of Claims so long as his claim is premised upon procedural error.**

Assuming arguendo that the individual meets the first four requirements listed in R.C. 2743.48(A), the statute (as amended in 2003) provides that an individual *is* a wrongfully imprisoned individual if:

*Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release, or it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser- included offenses, either was not committed by the individual or was not committed by any person. R.C. 2743.48(A)(5) emphasis added.*

This provision splits all potential claimants who have met the criteria in R.C. 2743.48(A)(1)-(4) into two separate and distinct categories. The first category is an individual who was released

after sentencing and during or after imprisonment due to an “error in procedure”<sup>1</sup> The second category is an individual who has obtained from a court of common pleas a determination that the offense for which the individual was found guilty was not committed by him, or was not committed by any one. These two categories of individuals are divided in the plain text of the statute by the article, “or.”

Pursuant to R.C. Section 1.42, addressing rules of statutory construction, “words and phrases shall be read in context and construed according to the rules of grammar and common usage.” This Court has continuously held that while the primary goal in statutory interpretation is to give effect to the intent of the legislature, the Court must look first to the plain language of the statute. See *Christe v. GMS Mgt. Co., Inc.*, (2000) 88 Ohio St. 3d 376, 377; *Provident Bank v. Wood*, (1973) 36 Ohio St. 2d 101, 105. In considering the statutory language, it is the duty of the court to give effect to the words used in a statute, not to delete words used or to insert words not used. See *Baily v. Republic Engineered Steels, Inc.* (2001), 91 Ohio St. 3d 38, 40 (quoting *Cleveland Elec. Illum. Co. v. Cleveland* (1988), 37 Ohio St. 3d 50, 524 N.E.2d 441, paragraph three of the syllabus). If the meaning of the statute is unambiguous and definite, it must be applied as written. *State ex rel. Savarese v. Buckeye Local School Dist. Bd. of Edn.* (1996), 74 Ohio St. 3d 543, 545, 660 N.E.2d 463, 465.

The fifth requirement of R.C. 2743.48(A) is separated into two categories. These categories are split by the term, “or.” “Or” is a function word indicating an alternative

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<sup>1</sup> The legislature has not clarified the meaning of “error in procedure” as used in this statutory provision. However, whether or not a set of facts surrounding a particular release constitutes “procedural error” is of no consequence in the case at hand. Until this term is further clarified by legislature or judiciary, an individual must only aver in his complaint that he is filing under the premise of procedural error to make his case ripe for decision on the jurisdictional issue at hand.

between different or unlike things.” *Griffith v. State of Ohio*, 2009 Ohio 2854, ¶10 (quoting *Pizza v. Sunset Firework Co., Inc.* (1986), 25 Ohio St. 3d 1, 4-5). When the General Assembly stated in R.C. 2743.48(A)(5) that a person who satisfies the requirements of provisions (A)(1) through (A)(4) has a claim for wrongful imprisonment if that person was either released due to an error in procedure, *or* if a court of common pleas determined that the individual did not commit the offense, the legislature was indicating an alternative between these two things. Logically, then, a claimant may satisfy the fifth requirement of subsection (A) in two ways: He may have a claim based on procedural error, which alone satisfies the fifth requirement. If he does not have a claim based on procedural error, then he may have obtained a determination from a court of common pleas that he did not commit the given offense (or that no one did).

The State of Ohio would have this Court ignore the plain and unambiguous language of R.C. 2743.49(A)(5) based on the fact that the statute in its entirety goes on to explain the procedures that must be followed in cases where a determination by a court of common pleas *is* required. This approach is directly repugnant to this Courts past rulings on how a statute is to be interpreted. The Court cannot ignore, overlook, or delete words or phrases in an attempt to read into the statute a certain meaning not supported by its plain language.

The General assembly revisited and amended R.C. 2743.48 in 2003 and deliberately distinguished cases premised on procedural error from other types of wrongful imprisonment claims. It is undisputed that claims not based on procedural error

must originate in a court of common pleas. Naturally, then, a large portion of the text of R.C. 2743.48 is devoted to an explanation of the procedure which must be followed to obtain from a court of common pleas a determination that an individual is wrongfully imprisoned. However, the explanation of this procedure does not negate the fact that the statute clearly exempts from that procedure claims based upon procedural error.

The State of Ohio's argument also depends heavily on the assertion that the legislative history of R.C. 2743.48 indicates an intent to require a two-step process for *all* wrongful imprisonment claims, not just those based on actual innocence. While the Court has recognized the guiding value of legislative history in some cases, the Court has also explicitly and repeatedly held that the reviewing court must look first to the language of the statute. If that language is clear, then the interpretive inquiry is at an end, and the statute must be applied accordingly. *Provident Bank v. Wood*, 36 Ohio St. 2d 101, 105. See also *Katz v. Department of Liquor Control* (1957), 166 Ohio St. 229. In the instant case, the language of the statute is clear. It is unambiguous. Therefore, the Court need look no further than the text itself to interpret the statute. Furthermore, even if the Court were to determine that some latent ambiguity left a question as to how R.C. 2743.48 should be applied, the legislative history reveals no explanation of intent which mandates a reading of the statute which requires the Court to ignore its plain meaning. See Sub. S.B. No. 149, 124th General Assembly. Conversely, the legislative history merely expands upon procedural issues in those cases where a determination by a court of common pleas is required.

**B. By distinguishing claims based on procedural error from those based on actual innocence, the General Assembly vested the Court of Claims with jurisdiction over the entirety of the suit when those actions are premised on procedural error.**

It is undisputed that the Ohio Court of Claims is a court of limited jurisdiction. As Appellant pointed out in its brief to the Court, “As a court of limited jurisdiction, the Court of Claims enjoys only that jurisdiction specifically conferred upon it by the General Assembly.”

*Steward v. Ohio Dep’t of Natural Res.* (1983), 8 Ohio App. 3d 297.

The Appellant, State of Ohio, argues that 2743.48 does not specifically confer upon the Court of Claims jurisdiction to hear wrongful imprisonment cases (specifically, those premised on procedural error as outlined in 2743.48(A)(5)). However, Appellant ignores R.C. 2743.03 in which the the General Assembly *specifically conferred* upon the Court of Claims “*original jurisdiction of all civil actions against the state.*” R.C. 2743.03(A)(1) *emphasis added.*

The General Assembly, through R.C. 2743.03, created a vast grant of jurisdiction to the Court of Claims over all civil actions against the state. R.C. 2743.48 merely goes one step beyond this grant of jurisdiction to explain that there is a certain instance that qualifies as one such civil action against the State - when an individual has been wrongfully imprisoned.

R.C. 2743.48(D) states, “A wrongfully imprisoned individual has and may file a civil action against the state, in the court of claims.....[T]he court of claims shall have exclusive, original jurisdiction over such a civil action.” Appellant argues that this section does not “vest the Court of Claims with jurisdiction over “*both actions*” that must be filed to recover on wrongful imprisonment claims based on procedural error.” (See Appellant’s Merit Brief, p. 17) This argument fails because the General Assembly, in R.C. 2743.48(A)(5), has plainly stated that claims based on procedural error do not require two separate “actions”. The statute establishes

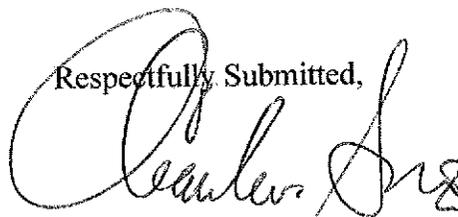
that a person who meets the criteria in (A)(1) through (A)(4), and who was released based on procedural error is a “wrongfully imprisoned individual.” The statute further establishes in subsection (D) that a wrongfully imprisoned individual has a civil claim against the State of Ohio which is to be filed in the Court of Claims.

Because R.C. 2743.03 vests the Court of Claims with original jurisdiction over all civil actions against the state, and because R.C. 2743.48(A) states that a wrongfully imprisoned person can be a person released due to procedural error (without a determination from a court of common pleas), it is clear that the General Assembly has specifically conferred upon the Court of Claims jurisdiction over wrongful imprisonment claims which fall into this category of procedural error.

#### CONCLUSION

For the foregoing reasons, Appellee, Gerry E. Griffith, respectfully requests that this Honorable Court affirm the decision of the Tenth District Court of Appeals.

Respectfully Submitted,



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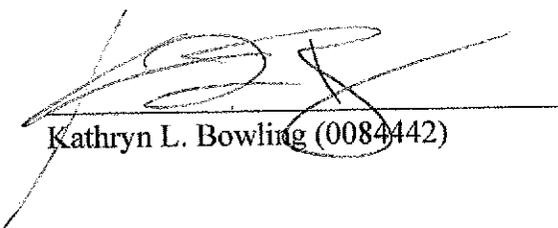
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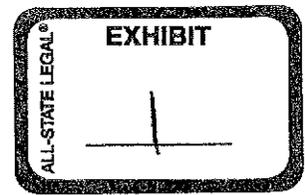
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\*\*\* CURRENT THROUGH LEGISLATION PASSED BY THE 128TH OHIO  
GENERAL ASSEMBLY AND  
FILED WITH THE SECRETARY OF STATE THROUGH JANUARY 6, 2010 \*\*\*  
\*\*\* ANNOTATIONS CURRENT THROUGH OCTOBER 1, 2009 \*\*\*  
\*\*\* OPINIONS OF ATTORNEY GENERAL CURRENT THROUGH OCTOBER 28,  
2009 \*\*\*

TITLE 27. COURTS -- GENERAL PROVISIONS -- SPECIAL REMEDIES  
CHAPTER 2743. COURT OF CLAIMS  
STATE LIABILITY

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ORC Ann. 2743.03 (2010)

§ 2743.03. Court of claims created

(A) (1) There is hereby created a court of claims. The court of claims is a court of record and has exclusive, original jurisdiction of all civil actions against the state permitted by the waiver of immunity contained in section 2743.02 of the Revised Code, exclusive jurisdiction of the causes of action of all parties in civil actions that are removed to the court of claims, and jurisdiction to hear appeals from the decisions of the court of claims commissioners. The court shall have full equity powers in all actions within its jurisdiction and may entertain and determine all counterclaims, cross-claims, and third-party claims.

(2) If the claimant in a civil action as described in division (A)(1) of this section also files a claim for a declaratory judgment, injunctive relief, or other equitable relief against the state that arises out of the same circumstances that gave rise to the civil action described in division (A)(1) of this section, the court of claims has exclusive, original jurisdiction to hear and determine that claim in that civil action. This division does not affect, and shall not be construed as affecting, the original jurisdiction of another court of

this state to hear and determine a civil action in which the sole relief that the claimant seeks against the state is a declaratory judgment, injunctive relief, or other equitable relief.

(3) In addition to its exclusive, original jurisdiction as conferred by divisions (A)(1) and (2) of this section, the court of claims has exclusive, original jurisdiction as described in division (F) of section 2743.02, division (B) of section 3335.03, and division (C) of section 5903.02 of the Revised Code.

(B) The court of claims shall sit in Franklin county, its hearings shall be public, and it shall consist of incumbent justices or judges of the supreme court, courts of appeals, or courts of common pleas, or retired justices or judges eligible for active duty pursuant to division (C) of Section 6 of Article IV, Ohio Constitution, sitting by temporary assignment of the chief justice of the supreme court. The chief justice may direct the court to sit in any county for cases on removal upon a showing of substantial hardship and whenever justice dictates.

(C) (1) A civil action against the state shall be heard and determined by a single judge. Upon application by the claimant or the state, the chief justice of the supreme court may assign a panel of three judges to hear and determine a civil action presenting novel or complex issues of law or fact. Concurrence of two members of the panel is necessary for any judgment or order.

(2) Whenever the chief justice of the supreme court believes an equitable resolution of a case will be expedited, the chief justice may appoint referees in accordance with Civil Rule 53 to hear the case.

(3) When any dispute under division (B) of section 153.12 of the Revised Code is brought to the court of claims, upon request of either party to the dispute, the chief justice of the supreme court shall appoint a single referee or a panel of three referees. The referees need not be attorneys, but shall be persons knowledgeable about construction contract law, a member of the construction industry panel of the American arbitration association, or an individual or individuals deemed qualified by the chief justice to serve. No person shall serve as a referee if that person has been employed by an affected state agency or a contractor or subcontractor involved in the dispute at any time in the preceding five years. Proceedings governing referees shall be in accordance with Civil Rule 53, except as modified by this division. The referee or panel of referees shall submit its report, which shall include a recommendation and finding of fact, to the judge assigned to the case by the chief justice, within thirty days of the conclusion of the hearings. Referees appointed pursuant to this division shall be compensated on a per diem

basis at the same rate as is paid to judges of the court and also shall be paid their expenses. If a single referee is appointed or a panel of three referees is appointed, then, with respect to one referee of the panel, the compensation and expenses of the referee shall not be taxed as part of the costs in the case but shall be included in the budget of the court. If a panel of three referees is appointed, the compensation and expenses of the two remaining referees shall be taxed as costs of the case.

All costs of a case shall be apportioned among the parties. The court may not require that any party deposit with the court cash, bonds, or other security in excess of two hundred dollars to guarantee payment of costs without the prior approval in each case of the chief justice.

(4) An appeal from a decision of the court of claims commissioners shall be heard and determined by one judge of the court of claims.

(D) The Rules of Civil Procedure shall govern practice and procedure in all actions in the court of claims, except insofar as inconsistent with this chapter. The supreme court may promulgate rules governing practice and procedure in actions in the court as provided in Section 5 of Article IV, Ohio Constitution.

(E) (1) A party who files a counterclaim against the state or makes the state a third-party defendant in an action commenced in any court, other than the court of claims, shall file a petition for removal in the court of claims. The petition shall state the basis for removal, be accompanied by a copy of all process, pleadings, and other papers served upon the petitioner, and shall be signed in accordance with Civil Rule 11. A petition for removal based on a counterclaim shall be filed within twenty-eight days after service of the counterclaim of the petitioner. A petition for removal based on third-party practice shall be filed within twenty-eight days after the filing of the third-party complaint of the petitioner.

(2) Within seven days after filing a petition for removal, the petitioner shall give written notice to the parties, and shall file a copy of the petition with the clerk of the court in which the action was brought originally. The filing effects the removal of the action to the court of claims, and the clerk of the court where the action was brought shall forward all papers in the case to the court of claims. The court of claims shall adjudicate all civil actions removed. The court may remand a civil action to the court in which it originated upon a finding that the removal petition does not justify removal, or upon a finding that the state is no longer a party.

(3) Bonds, undertakings, or security and injunctions, attachments, sequestrations, or other orders issued prior to removal remain in effect until dissolved or modified by the court of claims.

 **History:**

135 v H 800 (Eff 1-1-75); 136 v H 82 (Eff 9-29-76); 137 v H 149 (Eff 2-7-78); 139 v H 694 (Eff 11-15-81); 139 v H 264 (Eff 3-3-82); 139 v H 119 (Eff 3-30-83); 140 v H 37 (Eff 6-22-84); 142 v H 267 (Eff 10-20-87); 142 v S 344. Eff 9-26-88; 152 v S 289, § 1, eff. 8-22-08.