

2019 -- S 0236

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - COURTS - COMMISSION ON
JUDICIAL TENURE AND DISCIPLINE

Introduced By: Senators Metts, Quezada, Crowley, Goodwin, and Cano

Date Introduced: January 31, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 8-16-4, 8-16-4.2, 8-16-7, 8-16-8, 8-16-10 and 8-16-13 of the
2 General Laws in Chapter 8-16 entitled "Commission on Judicial Tenure and Discipline" are
3 hereby amended to read as follows:

4 **8-16-4. Employment of personnel -- Investigation of unfitness.**

5 (a) The commission is empowered hereby to engage the services of legal, secretarial,
6 clerical, and investigative employees and to make such other expenditures as are necessary for the
7 effective performance of its functions.

8 (b) The commission, upon receiving from any person a verified statement, not unfounded
9 or frivolous, alleging facts indicating that a justice of the supreme court, the superior court, the
10 family court, the district court, the workers' compensation court, or the traffic tribunal, or a
11 probate judge in any city or town in the state is guilty of a violation of the canons of judicial
12 ethics, or of willful or persistent failure to perform his or her duties, disabling addiction to
13 alcoholic beverages, drugs, or narcotics, or conduct that brings the judicial office into serious
14 disrepute, or that such a judge has a physical or mental disability that seriously interferes and will
15 continue to interfere with the performance of his or her duties, shall make a preliminary
16 investigation to determine whether formal proceedings shall be instituted and a hearing held. The
17 commission may, on its initiative, make a preliminary investigation, without receiving a verified
18 statement, to determine whether formal proceedings shall be instituted and a public hearing held.

1 (c) If the preliminary investigation discloses that a charge of judicial unfitness of the kind
2 mentioned in this section is supported by substantial evidence, it shall direct that a public hearing
3 thereon be held, and the judge shall be notified of the investigation, the nature of the charge, and
4 the time and place set for a hearing thereon. The judge shall have the right to counsel and to
5 confront witnesses against him or her and shall be afforded a reasonable opportunity to present
6 such matters in defense as he or she may choose. The notice shall be given by prepaid registered
7 or certified mail addressed to the judge at his or her chambers or his or her last known place of
8 residence. The judge shall file a written answer to the charges within twenty (20) days after the
9 notice has been served upon him or her. Allegations contained in the notice that are not denied in
10 the answer shall be deemed admitted. The notice and the answer shall be public documents. The
11 judge shall attend the public hearing without the necessity of a subpoena being served upon him
12 or her; and, if he or she is called as a witness by the commission at the public hearing, he or she
13 shall take the witness stand and shall testify in the same manner as if under subpoena. In any
14 preliminary investigation that results in a public hearing, the commission shall obtain written
15 statements from witnesses whose testimony it intends to use. Only evidence that would be
16 admissible in a superior court jury trial shall be admitted in the public hearing.

17 (d) If the preliminary investigation discloses that there exists a violation of the canons of
18 judicial ethics and that violation is not one of a serious nature, the commission may in its
19 discretion issue a private reprimand to the judge. The private reprimand shall caution the judge
20 that the conduct complained of, if continued, may be the cause for discipline. The private
21 reprimand shall include a statement of the facts found by the commission, as a result of the
22 preliminary investigation, and may issue confidential suggestions and recommendations with
23 respect to the judge. Any judge issued a private reprimand shall have the right to appeal the
24 private reprimand within ten (10) days and request a hearing before the commission with the
25 same rights accorded by this section; provided, however, that the hearing shall not be open to the
26 public, and all evidence and proceedings relating to the private reprimand shall be kept
27 confidential.

28 (e) Upon completion of the hearings, the commission may dismiss the case on the ground
29 of insufficiency of proof or may recommend to the supreme court the censure, suspension,
30 immediate temporary suspension, reprimand, retirement, or removal from office of the judge
31 under investigation; provided, however, that the recommendation for the removal of a ~~justice of~~
32 ~~the supreme court shall be subject to the provisions of § 8-16-7(b)~~ judge shall be made pursuant
33 to article XI of the constitution of the state of Rhode Island providing for the impeachment of
34 judicial officers. For the purposes of this chapter, wherever the word "judge" appears, it shall be

1 construed to include probate judges in the cities and towns of this state.

2 (f) The commission shall have the same authority to temporarily exclude all spectators
3 from the public hearing as is possessed by justices of the superior court in criminal cases.

4 (g) After the issuance of a notice pursuant to § 8-16-4(c), any new charges against the
5 judge shall be brought in accordance with the procedures contained in §§ 8-16-4(a) through 8-16-
6 4(d) and not by amendments to the notice.

7 **8-16-4.2. Discovery.**

8 After the commission institutes formal proceedings and schedules a public hearing, the
9 commission and the judge shall be entitled to conduct discovery in the same manner as litigants in
10 civil cases in the superior court, and the superior court rules of civil procedure shall govern all
11 such discovery. The commission shall respond to interrogatories, requests for production and
12 requests for admissions, unless a valid and timely objection is made and upheld by the presiding
13 justice of the superior court. Except as provided in § 8-16-13, all discovery proceedings and all
14 materials obtained by either side through discovery shall be kept confidential. Any disputes
15 concerning discovery shall be heard on motion before the presiding justice of the superior court;
16 provided, however, that if the presiding justice is the subject of the commission proceeding in
17 question, then such motions shall be heard before the senior associate justice of the superior
18 court. All papers filed with and proceedings before the superior court pursuant to this section
19 shall be confidential.

20 **8-16-7. Power of the supreme court to discipline, suspend, or remove judges.**

21 (a) Whenever the commission shall have recommended reprimand, censure, suspension,
22 immediate temporary suspension, removal, or retirement of a judge from office and filed its
23 findings and recommendations with the chief justice of the supreme court, and those
24 recommendations have been affirmed or modified, after compliance has been had with the
25 provisions of § 8-16-6 providing for a review of the recommendations by the supreme court, that
26 court shall and hereby is empowered to take such action and to issue such process as may be
27 required to give effect to the recommendations of the commission as affirmed or modified.
28 Orders entered by the supreme court pursuant to this subsection shall be public and shall be
29 published in the same manner as other orders of the supreme court.

30 (b) Whenever the commission shall recommend the removal of a ~~justice of the supreme~~
31 ~~court~~ judge from office and the recommendation has been approved after compliance has been
32 had with the provisions of § 8-16-6 providing for a review of the recommendations by the
33 supreme court, that court shall thereupon transmit its findings and recommendation to the speaker
34 of the house of representatives recommending therein the initiation of proceedings for the

1 removal of the ~~justice of the supreme court~~ [judge](#) pursuant to the provisions of ~~article X, § 4, and~~
2 article XI of the constitution of this state, providing for the impeachment ~~or removal of justices of~~
3 ~~the supreme court~~ [of judicial officers](#).

4 (c) Whenever the supreme court shall, upon review, reject a recommendation of the
5 commission, it shall set forth its reasons therefor in a written decision which shall be public and
6 shall be published in the same manner as other decisions of the supreme court.

7 **8-16-8. Discipline of judges upon indictment or conviction for a crime.**

8 (a) The supreme court on its own motion shall suspend, pending the prosecution of an
9 appeal, any judge of any court when it is shown by the certified record of a court of competent
10 jurisdiction that he or she either pleaded guilty or no contest or was found guilty of a crime
11 punishable as a felony under the laws of this state, any other state, or the United States, or of any
12 other crime that involves moral turpitude. The suspension shall be without compensation, except
13 where the judge involved is a justice of the supreme court. Whenever, upon appeal, the conviction
14 is reversed, the suspension shall terminate and the judge involved shall be paid the salary that
15 would have been paid him or her during the period of suspension.

16 (b) Where, after an appeal, a conviction has become final, the judge involved shall be
17 removed from office ~~either by the supreme court in appropriate cases or, in the case of a justice of~~
18 ~~the supreme court~~, by action pursuant to the provisions of § 8-16-7(b).

19 (c) A judge is hereby disqualified and prohibited from performing his or her judicial
20 duties while there is pending against him or her an indictment charging him or her with the
21 commission of a crime punishable as a felony under the laws of this state, any other state, or the
22 United States. The suspension shall be without loss of compensation.

23 **8-16-10. Disqualification from acting as a commissioner.**

24 (a) No judge who is a member of the commission or of the supreme court shall participate
25 as a member of the commission or the supreme court in any proceeding regarding his or her
26 removal, suspension, immediate temporary suspension, reprimand, retirement, or censure.

27 (b) No member of the commission or of the supreme court shall participate in any
28 decisions of the commission or the supreme court involving the removal, suspension, immediate
29 temporary suspension, reprimand, retirement, or censure of a judge who is related to him or her
30 within the second degree of consanguinity or affinity or where the one complaining of the actions
31 of a judge against whom proceedings are being taken is related to the member of the commission.

32 [\(c\) A member of the commission shall recuse themselves in any matter in which recusal](#)
33 [would be required of a judicial officer under the code of judicial conduct.](#)

34 [\(d\) Members of the commission shall not engage in ex parte communications or](#)

1 [interviews with witnesses regarding a case.](#)

2 **8-16-13. Closed meetings of the commission -- Public hearings -- Evidence to remain**
3 **confidential until made public at hearing.**

4 The commission is hereby expressly authorized and permitted to conduct closed meetings
5 for the conduct of all of its business other than public hearings held pursuant to § 8-16-4(c). All
6 evidence obtained by the commission, and all evidence that the judge obtains from the
7 commission through discovery or otherwise, shall remain confidential until it becomes the subject
8 of testimony at the public hearing or is introduced into evidence at the public hearing.
9 [Notwithstanding the provisions of this section, a respondent judge may waive confidentiality in](#)
10 [writing at any time. Upon waiving confidentiality, any hearings and related evidence shall be](#)
11 [public.](#)

12 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - COURTS - COMMISSION ON
JUDICIAL TENURE AND DISCIPLINE

- 1 This act would amend several provisions relative to how the commission on judicial
- 2 tenure and discipline provide discipline, hearings and discovery.
- 3 This act would take effect upon passage.

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