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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - DISTRICT COURT

Introduced By: Senators Archambault, Lombardi, McCaffrey, and Jabour

Date Introduced: February 09, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 8-8-8.1 and 8-8-16.2 of the General Laws in Chapter 8-8 entitled
2 "District Court" are hereby amended to read as follows:

3 **8-8-8.1. Administrator/clerk -- Magistrate.** -- (a) Administrator/clerk. - There shall be a
4 district court administrator/clerk who shall be appointed by the chief judge in his or her capacity
5 as administrative head of the court, and who shall hold office at the pleasure of the administrative
6 judge. The administrator/clerk shall perform such duties and attend to such matters as may be
7 assigned to the administrator/clerk by the administrative judge, other than those duties assigned to
8 the chief clerk in section 8-8-19. Said duties may be assigned by the chief judge.

9 (b) Magistrate. - Any person holding the position of district court administrator/clerk
10 who is a member of the bar of Rhode Island may be appointed district court magistrate by the
11 chief judge in his or her capacity as administrative head of the court, subject to the advice and
12 consent of the senate. The district court magistrate shall hold said office for a term of ten (10)
13 years and until a successor is appointed and qualified; and the magistrate shall retain whatever
14 right he or she may have to the position of district court administrator/clerk pursuant to this
15 section. Nothing herein shall be construed to prohibit the appointment of the magistrate for more
16 than one term, subject to the advice and consent of the senate. Any person holding office of
17 district court magistrate on July 1, 1999 may continue in full authority in said position until such
18 time as an appointment is made and the nominee qualified pursuant to this subsection.

19 (c) The district court magistrate shall have the power to hear and determine such matters

1 as may be assigned to the district court magistrate by the chief judge all to the same effect as if
2 done by a judge of the district court, including but not limited to:

3 (1) Matters relating to the determination of, monitoring, collection, and payment of
4 restitution and court ordered fines, fees, and costs or the ordering of community service in lieu of
5 or in addition to the payment of restitution, fines, fees, and costs, consistent with other provisions
6 of the general laws;

7 (2) Arraignments and pretrial motions in misdemeanor, petty misdemeanor, violation,
8 and ordinance cases and initial appearances and probable cause hearings in felony cases;

9 (3) Bail hearings pursuant to R.I. Const., Art. I, Sec. IX and all other bail matters
10 pursuant to chapter 13 of title 12 and the rules of criminal procedure, including but not limited to
11 motions to modify bail, bail revocation hearings, bail forfeiture hearings, and bail source
12 hearings;

13 (4) All matters relating to fugitives from justice pursuant to chapter 9 of title 12;

14 (5) Probation revocation hearings;

15 (6) All matters relating to small claims and consumer claims pursuant to chapter 16 of
16 title 10, including any pretrial motions including motions relating to the special service of
17 process, the entry of defaults and default judgments, the trial of such cases and the entry of
18 judgment after such trials, and all matters relating to the enforcement of such judgments,
19 including but not limited to the ordering of installment payments and trustee process; and

20 (7) Complaints for judicial review of the decision of an administrative agency pursuant
21 to chapter 35 of title 42 by making proposed findings of fact and recommendations for the
22 disposition of the complaints to a judge of the court. Any party may object to any portion of the
23 magistrate's proposed findings and recommendations within ten (10) days after receipt of a copy
24 thereof. That party shall file with the clerk of the sixth division of the district court and serve on
25 all parties written objections which shall specifically identify the portions of the proposed
26 findings and recommendations to which objection is made and the basis for the objection. A
27 judge shall make a de novo determination of those portions to which objection is made and may
28 accept, reject, or modify, in whole or in part, the findings or recommendations made by the
29 magistrate. Absent a timely objection filed in accordance with this subdivision, the proposed
30 prevailing party shall, upon expiration of the ten (10) days following the service of the
31 magistrate's proposed findings and recommendations, submit a proposed order for signature of
32 the judge to whom the case has been assigned.

33 (d) The magistrate may be authorized:

34 (1) To regulate all proceedings before him or her;

- 1 (2) To do all acts necessary or proper for the efficient performance of his or her duties;
- 2 (3) To require the production before him or her of books, papers, vouchers, documents,
3 and writings;
- 4 (4) To rule upon the admissibility of evidence;
- 5 (5) To issue subpoenas for the appearance of witnesses, to put witnesses on oath, to
6 examine them, and to call parties to the proceeding and examine them upon oath;
- 7 (6) To adjudicate a person in contempt and to order him or her fined or to order him or
8 her imprisoned for not more than seventy-two (72) hours, pending review by a judge of the court,
9 for failure to appear in response to a summons or for refusal to answer questions or produce
10 evidence or for behavior disrupting a proceeding or other contempt of his or her authority;
- 11 (7) To adjudicate a person in contempt and to order him or her fined or to order him or
12 her imprisoned for not more than seventy-two (72) hours, pending review by a judge of the court,
13 for failure to comply with a pending order to provide payment or to perform any other act;
- 14 (8) To issue a *capias* and/or body attachment for the failure of a party or witness to
15 appear after having been properly served or given notice by the court and, should the court not be
16 in session, the person apprehended may be detained at the adult correctional institution, if an
17 adult, or at the Rhode Island training school for youth, if a child, until the next session of the
18 court;
- 19 (9) To issue writs of habeas corpus to bring before him or her or a judge of the court any
20 person in jail or in prison to be examined as a witness in a suit or proceeding, civil or criminal,
21 pending before the court, or whose presence is necessary as a party or otherwise necessary so that
22 the ends of justice may be attained, and for no other purpose; and
- 23 (10) To issue warrants of arrest and search warrants to the same extent as an associate
24 judge of the court.
- 25 (e) Except as otherwise indicated, a party aggrieved by an order entered by the district
26 court magistrate shall be entitled to a review of the order, whether by appeal or otherwise, by a
27 judge of the court. The court shall, by rules of procedure, establish procedures for review of
28 contempt and adjudications of the magistrate.
- 29 (f) The magistrate shall be:
- 30 (1) Governed by the commission on judicial tenure and discipline, chapter 16 of this
31 title, in the same manner as justices and judges;
- 32 (2) Subject to all provisions of the canons of judicial ethics;
- 33 (3) Subject to all criminal laws relative to judges by virtue of §§ 11-7-1 and 11-7-2.
- 34 [\(g\) Any district court magistrate who has been engaged for a period of twenty \(20\) years](#)

1 and has reached the age of sixty (60) years, may upon retirement, at their own request and at the
2 direction of the chief justice of the supreme court, subject to the retiree's physical and mental
3 competence, be assigned to perform such services as a magistrate of the district court as the chief
4 judge of the district court shall prescribe. When so assigned, and while performing such service,
5 the district court clerk/magistrate shall have all the powers and authority of a magistrate of the
6 district court, but at all other times shall not have the powers and authority of a magistrate of the
7 district court. A retired district court magistrate acting under the authority of this subsection shall
8 not be counted in the number of magistrates provided by law for the district court.

9 ~~(g)~~(h) The provisions of this section shall be afforded liberal construction.

10 **8-8-16.2. District court clerk/magistrate.** -- (a) Any person who is a member of the bar
11 of Rhode Island may be appointed district court clerk/magistrate by the chief judge in his or her
12 capacity as administrative head of the court, subject to the advice and consent of the senate. The
13 district court clerk/magistrate shall hold that office for a term of ten (10) years and until a
14 successor is appointed and qualified. Nothing herein shall be construed to prohibit the assignment
15 of the district court clerk/magistrate to more than one such term, subject to the advice and consent
16 of the senate. The district court clerk/magistrate shall have the power to hear and determine any
17 matters that may be assigned to the district court clerk/magistrate by the chief judge all to the
18 same effect as if done by a judge of the district court, including, but not limited to, matters
19 relating to the determination of, monitoring, collection and payment of restitution and court
20 ordered fines, fees and costs or the ordering of community service in lieu of or in addition to the
21 payment of restitution, fines, fees and costs, consistent with other provisions of the general laws.

22 (b) The clerk/magistrate may be authorized:

23 (1) To regulate all proceedings before him or her;

24 (2) To do all acts necessary or proper for the efficient performance of his or her duties;

25 (3) To require the production before him or her of books, papers, vouchers, documents
26 and writings;

27 (4) To rule upon the admissibility of evidence;

28 (5) To issue subpoenas for the appearance of witnesses, to put witnesses on oath, to
29 examine them and to call parties to the proceeding and examine them upon oath;

30 (6) To adjudicate a person in contempt and to order him or her fined or to order him or
31 her imprisoned for not more than seventy-two (72) hours, for failure to appear in response to a
32 summons or for refusal to answer questions or produce evidence or for behavior disrupting a
33 proceeding or other contempt of his or her authority; provided; however, that no such
34 imprisonment shall occur prior to review by a judge of the court.

1 (7) To adjudicate a person in contempt and to order him or her fined or to order him or
2 her imprisoned for not more than seventy-two (72) hours, for failure to comply with a pending
3 order to provide payment or to perform any other act; provided, however, that no such
4 imprisonment shall occur prior to review by a judge of the court.

5 (8) To issue a capias and/or body attachment for the failure of a party or witness to
6 appear after having been properly served or given notice by the court and, should the court not be
7 in session, the person apprehended may be detained at the adult correctional institutions, if an
8 adult, or at the Rhode Island training school for youth, if a child, until the next session of the
9 court;

10 (9) To issue writs of habeas corpus to bring before him or her or a judge of the court any
11 person in jail or in prison to be examined as a witness in a suit or proceeding, civil or criminal,
12 pending before the court, or whose presence is necessary as a party or otherwise necessary so that
13 the ends of justice may be attained, and for no other purpose; and

14 (10) To issue warrants of arrest and search warrants to the same extent as an associate
15 judge of the court.

16 (c) Except as otherwise indicated, a party aggrieved by an order entered by the district
17 court clerk/magistrate shall be entitled to a review of the order, whether by appeal or otherwise,
18 by a judge of the court. The court shall, by rules of procedure, establish procedures for review of
19 contempt and adjudications of the clerk/magistrate.

20 (d) The district court clerk/magistrate shall:

21 (1) Be governed by the commission on judicial tenure and discipline, pursuant to chapter
22 16 of this title, in the same manner as justices and judges;

23 (2) Be subject to all provisions of the canons of judicial ethics;

24 (3) Be subject to all criminal laws relative to judges by virtue of §§ 11-7-1 and 11-7-2.

25 (4) Receive any salary that may be established by the state court administrator pursuant
26 to § 8-15-4. The provisions of this section shall be afforded liberal construction.

27 (e) Any district court clerk/magistrate who has been engaged for a period of twenty (20)
28 years and has reached the age of sixty (60) years, may upon retirement, at their own request and
29 at the direction of the chief justice of the supreme court, subject to the retiree's physical and
30 mental competence, be assigned to perform such services as a magistrate of the district court as
31 the chief judge of the district court shall prescribe. When so assigned, and while performing such
32 service, the district court clerk/magistrate shall have all the powers and authority of a magistrate
33 of the district court, but at all other times shall not have the powers and authority of a magistrate
34 of the district court. A retired district court clerk/magistrate acting under the authority of this

1 [subsection shall not be counted in the number of magistrates provided by law for the district](#)
2 [court.](#)

3 SECTION 2. Section 36-10-36 of the General Laws in Chapter 36-10 entitled
4 "Retirement System-Contributions and Benefits" is hereby amended to read as follows:

5 **36-10-36. Post retirement employment.** -- (a) On and after July 7, 1994, no member
6 who has retired under the provisions of titles 16, 36, or 45 may be employed or reemployed by
7 any state agency or department unless any and all retirement benefits to which he or she may be
8 entitled by virtue of the provisions of titles 16, 36, or 45 are suspended for the duration of any
9 employment or reemployment. No additional service credits shall be granted for any post-
10 retirement employment or reemployment and no deductions shall be taken from an individual's
11 salary for retirement contribution. Notice of any such post-retirement employment or
12 reemployment shall be sent monthly to the retirement board by the employing agency or
13 department and by the retired member.

14 (b) Any member who has retired under the provisions of titles 16, 36, or 45 may be
15 employed or reemployed by any municipality within the state that has accepted the provisions of
16 chapter 21 of title 45 and participates in the municipal employees' retirement system for a period
17 of not more than seventy-five (75) working days or one hundred fifty (150) half days with half-
18 day pay in any one calendar year without any forfeiture or reduction of any retirement benefits
19 and allowances the member is receiving, or may receive, as a retired member. Pension payments
20 shall be suspended whenever this period is exceeded. No additional contributions shall be taken,
21 and no additional service credits shall be granted, for this service. Notice of this employment or
22 re-employment shall be sent monthly to the retirement board by the employer and by the retired
23 member.

24 (c) Any member who has retired under the provisions of title 16, 36, or 45 may be
25 employed or re-employed by any municipality within the state that has not accepted the
26 provisions of chapter 21 of title 45 and that does not participate in the municipal employees'
27 retirement system.

28 (d) Notwithstanding the provisions of this section:

29 (1) Any retired member of the system shall be permitted to serve as an elected mayor,
30 the town administrator, the city administrator, the town manager, the city manager, the chief
31 administrative officer, or the chief executive officer of any city or town, city or town council
32 member, school committee member, or unpaid member of any part-time state board or
33 commission or member of any part-time municipal board or commission, and shall continue to be
34 eligible for, and receive, the retirement allowance for service other than that as a mayor,

1 administrator, council member, school committee member, or member of any state board or
2 commission or member of any part-time municipal board or commission; provided, however, that
3 no additional service credits shall be granted for any service under this subsection;

4 (2) Any retired member, who retired from service at any state college, university, state
5 school, or who retired from service as a teacher under the provisions of title 16, or who retired
6 from service under title 36 or title 45, may be employed or reemployed, on a part-time basis, by
7 any state college, university, or state school for the purpose of providing classroom instruction,
8 academic advising of students, and/or coaching. Compensation shall be provided at a level not to
9 exceed the salary provided to other faculty members employed under a collective bargaining
10 agreement at the institution. In no event shall "part-time" mean gross pay of more than fifteen
11 thousand dollars (\$15,000) in any one calendar year. Any retired member who provides such
12 instruction or service shall do so without forfeiture or reduction of any retirement benefit or
13 allowance; provided, however, that no additional service credits shall be granted for any service
14 under this subsection;

15 (3) Any retired member who retired from service as a teacher under the provisions of
16 title 16, or as a state employee who, while an active state employee, was certified to teach driver
17 education by the department of elementary and secondary education or by the board of governors
18 for higher education, may be employed or reemployed, on a part-time basis, by the department of
19 elementary and secondary education or by the board of governors of higher education for the
20 purpose of providing classroom instruction in driver education courses in accordance with § 31-
21 10-19 and/or motorcycle driver education courses in accordance with § 31-10.1-1.1. In no event
22 shall "part-time" mean gross pay of more than fifteen thousand dollars (\$15,000) in any one
23 calendar year. Any retired teacher who provides that instruction shall do so without forfeiture or
24 reduction of any retirement benefit or allowance the retired teacher is receiving as a retired
25 teacher; provided, however, that no additional service credits shall be granted for any service
26 under this subsection;

27 (4) Any retired member who retired from service as a registered nurse may be employed
28 or reemployed, on a per-diem basis, for the purpose of providing professional nursing care and/or
29 services at a state-operated facility in Rhode Island. In no event shall "part-time" mean gross pay
30 of more than fifteen thousand dollars (\$15,000) in any one calendar year. Any retired nurse who
31 provides such care and/or services shall do so without forfeiture or reduction of any retirement
32 benefit or allowance the retired nurse is receiving as a retired nurse; provided, however, that no
33 additional service credits shall be granted for any service under this subsection; and

34 (5) Any retired member who, at the time of passage of this section, serves as a general

1 magistrate within the family court and thereafter retires from judicial service, may be employed
2 or reemployed by the family court to perform such services as a general magistrate of the family
3 court as the chief judge of the family court shall prescribe without any forfeiture or reduction of
4 any retirement benefits and allowances that he or she is receiving or may receive. For any such
5 services or assignments performed after retirement, the general magistrate shall receive no
6 compensation whatsoever, either monetary or in kind. No additional contributions shall be taken
7 and no additional service credits shall be granted for this service; ~~and~~

8 (6) Any retired district court clerk/magistrate or magistrate of the district court who shall
9 subsequently be assigned to perform service in accordance with §§8-8-8.1(g) or 8-8-16.2(e), may
10 be employed or reemployed by the district court to perform such services as a magistrate (as the
11 chief judge of the district court shall prescribe) without any forfeiture or reduction of any
12 retirement benefits and allowance that they are receiving or may receive. For any such services or
13 assignment performed after retirement, the district court clerk/magistrate or magistrate shall
14 receive, in addition to their retirement pension, the difference in pay and fringe benefits between
15 their retirement pension, and that of a sitting magistrate of the district court with comparable state
16 service time. No additional contributions shall be taken and no additional service credits shall be
17 granted for this service; and

18 ~~(6)~~(7) Any retired member of the system shall be permitted to serve as a municipal
19 employee without any forfeiture or reduction of any retirement benefits and allowances that he or
20 she is receiving or may receive; provided, that said member shall be appointed by and serves at
21 the pleasure of the highest elected chief executive officer, as defined in § 45-9-2, in any city or
22 town subject to the provisions of chapter 9 of title 45 entitled "Budget Commissions" relating to
23 the appointment of a fiscal overseer, budget commission, receiver, and/or financial advisor.
24 Provided further, that no additional service credits shall be granted for any service under this
25 subsection.

26 SECTION 3. 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 - DISTRICT COURT

1 This act would permit a retired district court clerk/magistrate or a magistrate of the
2 district court who has reached age sixty (60) and has served for more than twenty (20) years to be
3 recalled for service and to be compensated for such service.

4 This act would take effect upon passage.

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