

2016 -- S 2759

=====
LC004837
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE - COURTS

Introduced By: Senators Walaska, and Lombardo

Date Introduced: March 10, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 8 of the General Laws entitled "COURTS AND CIVIL
2 PROCEDURE-COURTS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 20

4 OFFICE OF ADMINISTRATIVE HEARINGS

5 **8-20-1. Exceptions. --** (a) This chapter does not apply to:

6 (1) The governor;

7 (2) The judicial branch, or any part thereof;

8 (3) The general assembly, or any part thereof;

9 (4) The general treasurer;

10 (5) The parole board, and parole officers;

11 (6) Unemployment insurance benefit determinations and employer obligation
12 determinations in the department of labor and training, and appeals from those determinations.

13 (b) Except as provided in subsection (a) of this section, and notwithstanding any other
14 general law, rule or regulation to the contrary, the office of administrative hearings (sometimes
15 referred to as the "office") shall hear initial appeals of agency decisions. This chapter shall apply
16 to each agency that employs or engages one or more hearing officers to adjudicate contested
17 cases unless the agency has been exempted by the governor under subsection (c) of this section.

18 (c) The governor may temporarily exempt an agency from this chapter.

19 **8-20-2. Office of administrative hearings. --** The office of administrative hearings is

1 created as an independent unit in the executive branch of state government.

2 **8-20-3. Chief administrative law judge.** -- (a) The office shall be headed by a chief
3 administrative law judge appointed by the governor with the advice and consent of the senate.

4 (b) The chief administrative law judge shall:

5 (1) Be appointed for a term of six (6) years;

6 (2) Devote full time to the duties of the office; and

7 (3) Be eligible for reappointment.

8 (c) The chief administrative law judge shall:

9 (1) Receive a salary as provided in the state budget;

10 (2) Be admitted to practice law in the state; and

11 (3) Have the powers and duties specified in this chapter.

12 (d) The chief administrative law judge may employ a staff in accordance with the state
13 budget.

14 **8-20-4. Powers and duties of chief administrative law judge.** -- (a) The chief
15 administrative law judge shall:

16 (1) Supervise the office of administrative hearings;

17 (2) Establish qualifications for administrative law judges;

18 (3) Appoint and remove administrative law judges in accordance with this chapter;

19 (4) Assign administrative law judges to conduct hearings in contested cases;

20 (5) If necessary, establish classifications for case assignment on the basis of subject
21 matter, expertise, and case complexity;

22 (6) Establish and implement standard and specialized training programs and provide
23 materials for administrative law judges;

24 (7) Provide and coordinate continuing education programs and services for administrative
25 law judges, including research, technical assistance, technical and professional publications,
26 compiling and disseminating information, and advise of changes in the law relative to their
27 duties;

28 (8) Develop model rules of procedure and other guidelines for administrative hearings;

29 (9) Develop a code of professional responsibility for administrative law judges; and

30 (10) Monitor the quality of state administrative hearings.

31 (b)(1) The chief administrative law judge may:

32 (i) Serve as an administrative law judge in a contested case;

33 (ii) Furnish administrative law judges on a contractual basis to other governmental
34 entities;

1 (iii) Accept and expend funds and grants and accept services from any public or private
2 source;

3 (iv) Enter into agreements and contracts with any public or private agencies or
4 educational institutions;

5 (v) Adopt rules and regulations to implement this chapter; and

6 (vi) Assess fees to cover administrative expenses as follows:

7 (A) To file an appeal, a fee not exceeding fifty dollars (\$50.00).

8 (B) To process a subpoena, a fee not exceeding twenty-five dollars (\$25.00).

9 (2) Fees charged under subsection (b)(1)(vi) of this section for administrative expenses
10 may not be charged to:

11 (i) State agencies; or

12 (ii) Petitioners who are determined by the office of administrative hearings to be unable
13 to pay the fees.

14 (3) A fee charged under subsection (b)(1)(vi) of this section for filing an appeal shall be
15 refunded to a party who initiates the appeal if the party receives a favorable decision from the
16 administrative law judge.

17 (c)(1) The chief administrative law judge shall submit an annual report, on or before
18 December 31 of each calendar year, on the activities of the office to the governor and to the
19 general assembly.

20 (2) This report may be prepared in conjunction with the annual report required under this
21 chapter.

22 (d) The chief administrative law judge shall meet and confer regularly with the advisory
23 council on administrative hearings.

24 **8-20-5. Powers of administrative law judges. -- (a) An administrative law judge:**

25 (1) May be removed, suspended, or demoted by the chief administrative law judge for
26 cause, after notice and an opportunity to be heard:

27 (2) Shall receive the compensation provided in the state budget; and

28 (3) May not perform duties inconsistent with the duties and responsibilities of an
29 administrative law judge.

30 (b) An administrative law judge may not be responsible to or subject to the supervision or
31 direction of an officer, employee, or agent engaged in the performance of investigative,
32 prosecuting, or advisory functions for a state agency.

33 (c) In any contested case conducted by an administrative law judge, the administrative
34 law judge may:

- 1 (1) Authorize the issuance of subpoenas for witnesses;
2 (2) Administer oaths;
3 (3) Examine an individual under oath; and
4 (4) Compel the production of documents or other tangible things.

5 (d)(1) Without good cause, a person may not refuse an order by any administrative law
6 judge to:

- 7 (i) Appear for a hearing;
8 (ii) Testify under oath; or
9 (iii) Produce any relevant evidence, including documents or other tangible things.

10 (2)(i) An administrative law judge may apply, upon affidavit, to any judge of the superior
11 court for an order, returnable in not less than two (2) nor more than five (5) days, to show cause
12 why a person should not be committed to jail for refusal to comply with an order issued under
13 subsection (c)(1) of this section.

14 (ii) On the return of an order issued under subsection (d)(2)(i) of this section, if the judge
15 hearing the matter determines that the person is guilty of refusal to comply with the order of the
16 administrative law judge, the judge may commit the offender to jail as in cases of civil contempt.

17 **8-20-6. Interaction with other agencies. --** (a) All agencies and departments of state
18 government shall cooperate with the chief administrative law judge in the discharge of their
19 duties.

20 (b) The office shall be subject to audit and examination by the bureau of audits.

21 (c) Except as provided in this chapter or in any rules or regulations adopted under this
22 chapter, an agency may not select or reject a particular administrative law judge for a particular
23 proceeding.

24 **8-20-7. Designation as administrative law judge. --** If the office is unable to assign an
25 administrative law judge in response to an agency request, the chief administrative law judge
26 shall designate in writing an individual to serve as an administrative law judge in a proceeding
27 before the agency if:

28 (1) The individual meets the qualifications for an administrative law judge established by
29 the office under this chapter; and

30 (2) The agency that employs the individual consents to the assignment.

31 **8-20-8. Legal representation by unlicensed party. --** (a) An individual who is not
32 licensed to practice law in this state may represent a party in a proceeding before the office if:

33 (1) Authorized by law;

34 (2) The individual is representing;

1 (i) A recipient of or applicant for benefits that are based on the recipient's or applicant's
2 income and resources;

3 (3) The individual is a designee of a corporation while appearing on its behalf in an
4 administrative proceeding held under title 27 (insurance):

5 (4) The individual is an officer of a corporation, an employee designated by an officer of
6 a corporation, a general partner in a business operated as a partnership or an employee designated
7 by a general partner, or an employee designated by the owner of a business operated as a sole
8 proprietorship while the officer, partner, or employee is appearing on behalf of the corporation,
9 partnership, or business in an administrative hearing;

10 (5) In the case of an insurer, the individual is a designee of the insurer who:

11 (i) Is employed by the insurer in claims, underwriting, or as otherwise provided by the
12 insurance commissioner; and

13 (ii) Has been given the authority by the insurer to resolve all issues involved in the
14 proceeding; or

15 (6) The individual is representing an agency or department of state government, at the
16 direction of the agency or department of state government.

17 (b)(1) An employee designated by a business entity under this section:

18 (i) Shall provide the office a power of attorney sworn to by the employer that certifies
19 that the designated employee is an authorized agent of the business entity and may bind the
20 business entity on matters pending before the office; and

21 (ii) May not be a disbarred or suspended lawyer in any state.

22 (2) A business entity may not contract, hire, or employ another business entity, other than
23 an attorney, to provide appearance services under this section.

24 (3) An employee designated by a business entity under this section may not be assigned
25 on a full-time basis to appear in administrative hearings before the office on behalf of the
26 business entity.

27 (c) This section may not be interpreted to limit the right of an individual to appear on the
28 individual's own behalf.

29 **8-20-9. Regulations governing proceedings.** -- (a) Subject to subsection (b) of this
30 section, rules and regulations adopted in furtherance of this chapter shall apply to a proceeding
31 before the office, regardless of whether the proceeding is subject to chapter 35 of title 42
32 (administrative procedures act).

33 (b) Unless a federal or state law or regulation requires that a federal or state procedure
34 shall be observed, the regulations specified in subsection (a) of this section shall take precedence

1 in the event of a conflict.

2 **8-20-10. State advisory council on administrative hearings.** -- (a) There is a state
3 advisory council on administrative hearings ("council").

4 (b) The council shall consist of ten (10) members.

5 (c) Of the ten (10) council members:

6 (1) One shall be a member of the house of representatives, appointed by the speaker of
7 the house;

8 (2) One shall be a member of the senate, appointed by the president of the senate;

9 (3) One shall be the attorney general or the attorney general's designee;

10 (4) One shall be a nongovernmental attorney who practices before the office of
11 administrative hearings;

12 (5) Two (2) shall be secretaries or designees from departments involved in the
13 adjudication of contested cases;

14 (6) Two (2) shall represent the Rhode Island Bar Association; and

15 (7) Two (2) shall be from the general public.

16 (d) The governor shall appoint the members specified in subsections (c)(4) through (7) of
17 this section.

18 (e) Of the members appointed, not more than five (5) shall be attorneys who practice
19 before the office of administrative hearings.

20 **8-20-11. Membership of council.** -- (a)(1) The term of a member of the council is four
21 (4) years.

22 (2) A member is eligible to serve more than one term.

23 (b) A member of the council may not receive compensation.

24 (c) The council shall designate a chairperson from among its members.

25 **8-20-12. Powers and duties of council.** -- (a) The council shall:

26 (1) Advise the chief administrative law judge in carrying out their duties;

27 (2) Identify issues of importance to administrative law judges that should be addressed by
28 the chief administrative law judge;

29 (3) Review issues and problems relating to administrative hearings and the administrative
30 process;

31 (4) Review and comment upon policies and regulations proposed by the chief
32 administrative law judge;

33 (5) Advise the governor as to those agencies for which a continuing exemption may exist
34 under this chapter should be maintained as consistent with the purposes of this chapter: and

1 (6) Submit an annual report, which may be prepared in conjunction with the report
2 required under this chapter, to the general assembly, including a list of the agencies that are
3 exempted from this chapter and the reasons for the exemptions.

4 (b) The council shall meet at a regular time and place to be determined by the council.

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

=====
LC004837
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO COURTS AND CIVIL PROCEDURE - COURTS

1 This act would establish the office of administrative hearings to adjudicate contested state
2 agency cases.

3 This act would take effect upon passage.

=====
LC004837
=====