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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 -- JUDICIAL
NOMINATING COMMISSION

Introduced By: Representatives Williams, Cassar, Caldwell, Almeida, and Hull

Date Introduced: February 14, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 8-16.1-2, 8-16.1-4 and 8-16.1-6 of the General Laws in Chapter 8-
2 16.1 entitled "Judicial Selection" are hereby amended to read as follows:

3 **8-16.1-2. Judicial nominating commission.**

4 (a) There is hereby established an independent nonpartisan judicial nominating
5 commission which shall consist of nine (9) members, all of whom shall be residents of the state of
6 Rhode Island, and who shall be appointed as follows:

7 (1) Within seven (7) days after June 2, 1994:

8 (i) The speaker of the house of representatives shall submit to the governor a list of at
9 least three (3) attorneys;

10 (ii) The president of the senate shall submit to the governor a list of at least three (3)
11 persons who may be attorneys and/or members of the public;

12 (iii) The speaker of the house of representatives and the president of the senate shall
13 jointly submit to the governor a list of four (4) members of the public;

14 (iv) The minority leader of the house of representatives shall submit to the governor a list
15 of at least three (3) members of the public; and

16 (v) The minority leader of the senate shall submit to the governor a list of at least three
17 (3) members of the public.

18 (2) Within fourteen (14) days after June 2, 1994, the governor shall appoint to the

1 commission:

2 (i) One person from each of the lists submitted in accordance with subsection (a)(1) of
3 this section;

4 (ii) Three (3) attorneys, without regard to any of the lists; and

5 (iii) One member of the public, without regard to any of the lists.

6 (3) The governor and the nominating authorities hereunder shall ~~exercise reasonable~~
7 ~~efforts to encourage racial, ethnic, and gender diversity within the commission~~ ensure that the
8 membership of the commission reflects the racial, ethnic, and gender diversity of the state's
9 population.

10 (b) Members of the commission shall serve for terms of four (4) years, except that, of the
11 members first appointed:

12 (1) The individual appointed from the list submitted by the minority leader of the house
13 of representatives and one of the attorneys appointed by the governor without regard to any of the
14 lists shall serve for one year;

15 (2) The individual appointed from the list submitted by the minority leader of the senate
16 and one of the attorneys appointed by the governor without regard to any of the lists shall serve
17 for two (2) years;

18 (3) The individual appointed from the list submitted jointly by the speaker of the house of
19 representatives and by the president of the senate and the member of the public appointed by the
20 governor without regard to any of the lists shall serve for three (3) years; and

21 (4) The individuals appointed from the lists submitted by the president of the senate and
22 by the speaker of the house of representatives and one of the attorneys appointed by the governor
23 without regard to any of the lists shall serve for four (4) years.

24 (c) No person shall be appointed at any time to serve more than one term as a member of
25 the commission; provided, however, that a person initially appointed to serve twelve (12) months
26 or less of a full four (4) year term may, upon expiration of that term, be reappointed to serve one
27 full term; and provided further, however, that each member shall continue to serve until his or her
28 successor is appointed and qualified. No commission member shall be a legislator, judge, or
29 elected official, or be a candidate for any public office, or hold any compensated federal, state, or
30 municipal public office or elected office in a political party during his or her tenure or for a period
31 of one year prior to appointment. No member of the commission may hold any other public office
32 (except that of notary public) under the laws of the United States, of this state, or of any other
33 governmental entity for which monetary compensation is received. No members shall be eligible
34 for appointment to a state judicial office during the period of time he or she is a commission

1 member and for a period of one year thereafter. No two (2) or more members of the commission
2 shall be members or employees of the same law firm, or employees of the same profit or
3 nonprofit corporation. Vacancies other than those arising through the expiration of a term shall be
4 filled for the unexpired portion of the term in the same manner as vacancies due to the expiration
5 of a term.

6 (d) A quorum consisting of five (5) members shall be necessary in order for the
7 commission to conduct any business. All names submitted to the governor by the commission
8 shall be approved by at least five (5) members of the commission voting in favor of each
9 selection.

10 (e) The commission shall have the power to adopt rules and procedures which aid in its
11 selection of the most highly qualified nominees for judicial office. The governor shall designate a
12 member of the commission to serve as chairperson, who shall serve in that capacity for the
13 duration of his or her tenure. All meetings of the commission shall be subject to the open
14 meetings law as defined in chapter 46 of title 42.

15 (f) The commission is hereby authorized and empowered to investigate the personal
16 background of each nominee as it relates to a determination of judicial fitness through the Rhode
17 Island state police and the attorney general's office, and to require full financial disclosure under
18 the provisions of chapter 14 of title 36.

19 (g) The commission shall direct the performance of such administrative duties as may be
20 required for the effective discharge of the obligations granted to the commission, and is hereby
21 empowered to engage the services of legal, secretarial, clerical, and investigative employees and
22 to make such other expenditures as are necessary for the effective performance of its functions.
23 Expenses for office space, staffing, and necessary monetary outlays shall be provided by the
24 department of administration as a separate line item in the state budget under the term "judicial
25 nominating commission."

26 (h) Each person appointed to the commission shall, prior to exercising any authority or
27 assuming any duties as a member of the commission, take an engagement of office in accordance
28 with § 36-1-2. The governor may remove a commission member from office for neglect of duty,
29 malfeasance in office, or conviction of a criminal offense. After a commission member is notified
30 of any allegations against her or him in writing, the commission member shall be entitled to one
31 public hearing prior to removal by the governor.

32 **8-16.1-4. Criteria for selection of best qualified nominees.**

33 [\(a\) A diverse judiciary ensures that a broad array of perspectives and experiences are](#)
34 [brought to the bench, reinforces public trust and confidence in the fairness of the judicial system](#)

1 [and the administration of justice and ultimately enhances the delivery of justice and the](#)
2 [judiciary's credibility and moral authority.](#)

3 ~~(a)~~(b) The commission shall consider, but is not limited to, the following factors in
4 selecting the best qualified nominees: intellect, ability, temperament, impartiality, diligence,
5 experience, maturity, education, publications, and record of public, community, and government
6 service. Every person shall, at the time of consideration by the commission, be an attorney and
7 licensed to practice law in the state of Rhode Island and be a current member of the Rhode Island
8 bar association in good standing.

9 ~~(b)~~(c) The commission shall exercise reasonable efforts to encourage racial, ethnic, and
10 gender diversity within the judiciary of this state. To further this goal, on an annual basis, the
11 commission shall report to the general assembly and to the governor on (i) the statistics regarding
12 the race, ethnicity and gender of applicants considered by the commission in the previous year
13 and (ii) efforts made by the commission during the previous year to ~~encourage~~ [promote](#) racial,
14 ethnic and gender diversity within the judiciary of this state. The form of the report and the means
15 by which the commission shall request the necessary information from applicants shall be
16 determined by the commission pursuant to its rule-making authority, except that no applicant
17 shall be required to provide the information as a prerequisite to consideration, and the identifying
18 information with respect to race, ethnicity and gender shall be collected anonymously from
19 applicants. The report shall be made available to the public. The commission shall also consider
20 the candidate's sensitivity to historically disadvantaged classes, and may disqualify any candidate
21 with a demonstrated history of bias towards any of these classes.

22 **8-16.1-6. Nomination and appointment of judges.**

23 (a) The governor shall immediately notify the commission of any vacancy or prospective
24 vacancy of a judge of any state court other than the Rhode Island supreme court. The commission
25 shall advertise for each vacancy and solicit prospective candidates and shall consider names
26 submitted from any source. Within ninety (90) days of any vacancy, the commission shall
27 publicly submit [a list of](#) the names of not less than three (3), and not more than five (5), highly
28 qualified persons for each vacancy to the governor [which shall include a person of color](#). The
29 governor shall fill any vacancy of any judge of the Rhode Island superior court, family court,
30 district court, workers' compensation court, or any other state court that the general assembly
31 may, from time to time, establish, by nominating one of the three (3) to five (5) highly qualified
32 persons forwarded to him or her by the commission for the court where the vacancy occurs.

33 (b) The governor shall fill any vacancy within twenty-one (21) days of the public
34 submission by the commission.

1 (c) Each nomination shall be forwarded forthwith to the senate, and by and with the
2 advice and consent of the senate, each nominee shall be appointed by the governor to serve
3 subject to the general laws. The senate shall, after seven (7) calendar days of receipt of the
4 nomination consider the nomination, but if the senate fails within ninety (90) days after the
5 submission to confirm the nominee, or if the senate does not, by a majority vote of its members,
6 extend the deliberation an additional seven (7) calendar days, the governor shall appoint some
7 other person to fill the vacancy and shall submit his or her appointment to the senate for
8 confirmation in like manner until the senate shall confirm the nomination. If the nominee is
9 rejected by the senate, the commission shall submit a new list of three (3) to five (5) candidates to
10 the governor for the purpose of nomination in accordance with this chapter. Any new list may
11 include, but need not be limited to, the names of any candidates who were previously submitted
12 to the governor by the commission but who were not forwarded to the senate for its advice and
13 consent.

14 (d) During the time for consideration of the nominees by the senate, the senate judiciary
15 committee shall conduct an investigation and public hearing on the question of the qualifications
16 of the nominee or nominees. At the public hearing, the testimony of every witness shall be taken
17 under oath and stenographic records shall be taken and maintained. Further, the senate judiciary
18 committee shall, during the course of its investigation and hearing, have the power upon majority
19 vote of the committee members present to issue witness subpoenas, subpoenas duces tecum, and
20 orders for the production of books, accounts, papers, records, and documents that shall be signed
21 and issued by the chairperson of the committee, or the person serving in his or her capacity. All
22 such subpoenas and orders shall be served as subpoenas in civil cases in the superior court are
23 served, and witnesses so subpoenaed shall be entitled to the same fees for attendance and travel as
24 provided for witnesses in civil cases in the superior court. If the person subpoenaed to attend
25 before the committee fails to obey the command of the subpoena without reasonable cause; refuse
26 to be sworn; or to be examined; or to answer a legal and pertinent question; or if any person shall
27 refuse to produce books, accounts, papers, records, and documents material to the issue, set forth
28 in an order duly served on him or her; the committee by majority vote of the committee members
29 present may apply to any justice of the superior court, for any county, upon proof by affidavit of
30 the fact, for a rule or order returnable in not less than two (2), nor more than five (5), days,
31 directing the person to show cause before the justice who made the order or any other justice of
32 the superior court, why he or she should not be adjudged in contempt. Upon the return of the
33 order, the justice before whom the matter is brought on for hearing shall examine under oath the
34 person, and the person shall be given an opportunity to be heard, and if the justice shall determine

1 that the person has refused without reasonable cause or legal excuse to be examined, or to answer
2 a legal and pertinent question, or to produce books, accounts, papers, records, and documents
3 material to the issue that he or she was ordered to bring or produce, he or she may forthwith
4 commit the offender to the adult correctional institutions, there to remain until the person submits
5 to do the act which he or she was so required to do, or is discharged according to law.

6 (e) The committee shall, for the purpose of investigating the qualifications of the nominee
7 or nominees, be furnished with a report compiled by the state police in conjunction with the
8 attorney general's office indicating the determinations and findings of the state police and
9 attorney general's office investigations concerning the background of the nominee or nominees,
10 and the report shall include, but not be limited to, the following:

11 (1) Whether the nominee has ever been convicted of, or pleaded guilty to, a misdemeanor
12 or felony in this or any other state or foreign country;

13 (2) Whether the nominee has ever filed a personal bankruptcy petition or an assignment
14 for the benefit of creditors in this or any other state or foreign country; and whether the nominee
15 has ever been a partner in, held ten percent (10%) or more of stock in, or held office in any sole
16 proprietorship, partnership, or corporation that has been involved in bankruptcy or receivership
17 actions as a debtor or because of insolvency at the time the nominee was a partner in, held ten
18 percent (10%) or more stock in, or held office in any such sole proprietorship, partnership, or
19 corporation;

20 (3) Whether the nominee has ever had a civil judgment rendered against him or her
21 arising out of an allegation of fraud, misrepresentation, libel, slander, professional negligence, or
22 any intentional tort in this state or any other state or foreign country;

23 (4) The state police, in conjunction with the attorney general's department, shall provide
24 in their report the names and addresses of each and every source of their information.

25 (f) The reports set forth in this section shall be delivered to the chairperson and members
26 of the senate judiciary committee in addition to the nominee or nominees only prior to the
27 commencement of the public hearing. Provided, however, that if the nominee or nominees
28 withdraw or decline the appointment prior to the public hearing, then the report or reports shall be
29 returned to the chairperson of the judiciary committee and destroyed.

30 (g) The committee shall also require a financial statement to be submitted by each
31 nominee, prior to the public hearing, to the chairperson of the senate judiciary committee, to
32 investigate each nominee to determine his or her compliance with the provisions of chapter 14 of
33 title 36.

34 (h) Any associate justice of any state court who is appointed to serve as the chief or

1 presiding justice of that court on an interim basis shall retain his or her status as an associate
2 justice until the appointment to chief or presiding justice is made permanent.

3 (i) In case a vacancy shall occur when the senate is not in session, the governor shall
4 appoint some person from a list of three (3) to five (5) persons submitted to the governor by the
5 commission to fill the vacancy until the senate shall next convene, when the governor shall make
6 an appointment as provided in this section.

7 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 -- JUDICIAL
NOMINATING COMMISSION

1 This act would promote more diversity in the composition of the judicial nominating
2 commission and would require that each list of qualified judicial candidates it submits to the
3 governor for nomination include a person of color.

4 This act would take effect upon passage.

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