

TITLE 8
Courts and Civil Procedure - Courts

CHAPTER 16
Commission on Judicial Tenure and Discipline

8-16-1. Composition – Appointment. (a) There is hereby created a commission to be known as the commission on judicial tenure and discipline, hereinafter referred to as the commission. The commission shall consist of sixteen (16) members: three (3) of whom shall be appointed by the governor with the advice and consent of the senate, none of whom need be attorneys; three (3) of whom shall be appointed by the governor from a list of attorneys provided by the Rhode Island bar association with the advice and consent of the senate, that list of attorneys to include five (5) names for each member to be appointed by the governor; one attorney or public member to be appointed by the speaker of the house of representatives, one attorney or public member who shall be appointed by the house minority leader, one attorney or public member to be appointed by the president of the senate; and one attorney or public member to be appointed by the senate minority leader; six (6) members of the judiciary appointed by the supreme court, one each from the superior, family, district, workers' compensation courts, traffic tribunal and one at large member from any of the aforementioned courts shall be chairperson.

(b) No member of the commission, except the appointed members of the judiciary, shall, while serving as a member thereof, hold any public office, or be in the employ of the state of Rhode Island.

(c) The chairperson of the commission shall direct the performance of such administrative duties as may be required for the effective discharge of the obligations herein made incumbent upon the commission.

§ 8-16-2. Terms of the commissioners. Except as otherwise provided, the members of the commission shall serve for terms of three (3) years; provided, however, that the initial appointments shall be so staggered that one of each class of members so appointed shall serve for a term of one year, one for two (2) years, and one for three (3) years. The appointment by the supreme court of the member of the judiciary at large shall be for a term of three (3) years. No member shall be eligible for reappointment to another term if he or she has served more than six (6) consecutive years. Vacancies other than those arising through the expiration of a term shall be filled for the unexpired portion of the term in the same manner as vacancies due to the expiration of the term.

§ 8-16-3. Meetings of the commission - Compensation. (a) The commission shall meet at such times and places as are necessary to discharge the duties made incumbent upon it under the provisions of this chapter. It shall meet at least once a year in the month of May and shall make an annual report of expenditures to the governor. Nine (9) members shall constitute a quorum of the commission and determinations shall be made by a majority vote of those present, except that recommendations to the supreme court shall be made by an affirmative vote of at least nine (9) members of the commission.

(b) All commissioners shall serve without compensation; provided, however, that while away from their homes or regular places of employment and engaged in carrying out their duties as

members of the commission, they shall be allowed travel expenses, including meals and lodging, that are authorized by law for persons in the service of this state.

§ 8-16-4. Employment of personnel - Investigation of unfitness. (a) The commission is empowered hereby to engage the services of legal, secretarial, clerical, and investigative employees and to make such other expenditures as are necessary for the effective performance of its functions.

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

(c) If the preliminary investigation discloses that a charge of judicial unfitness of the kind mentioned in this section is supported by substantial evidence, it shall direct that a public hearing thereon be held, and the judge shall be notified of the investigation, the nature of the charge, and the time and place set for a hearing thereon. The judge shall have the right to counsel and to confront witnesses against him or her and shall be afforded a reasonable opportunity to present such matters in defense as he or she may choose. The notice shall be given by prepaid registered or certified mail addressed to the judge at his or her chambers or his or her last known place of residence. The judge shall file a written answer to the charges within twenty (20) days after the notice has been served upon him or her. Allegations contained in the notice that are not denied in the answer shall be deemed admitted. The notice and the answer shall be public documents. The judge shall attend the public hearing without the necessity of a subpoena being served upon him or her; and, if he or she is called as a witness by the commission at the public hearing, he or she shall take the witness stand and shall testify in the same manner as if under subpoena.

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

(e) Upon completion of the hearings, the commission may dismiss the case on the ground of insufficiency of proof or may recommend to the supreme court the censure, suspension, immediate temporary suspension, reprimand, retirement, or removal from office of the judge under investigation; provided, however, that the recommendation for the removal of a justice of the supreme court shall be subject to the provisions of § 8-16-7(b). For the purposes of this chapter,

wherever the word “judge” appears, it shall be construed to include probate judges in the cities and towns of this state.

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

§ 8-16-4.1. Subpoena powers of commission. The members of the commission are hereby severally authorized and empowered to administer oaths; and the commission, in all cases of every nature pending before it, is hereby authorized and empowered to summon and examine witnesses and to compel the production and examination of papers, books, accounts, documents, records, certificates, and other legal evidence that may be necessary or proper for the determination and decision of any question before or the discharge of any duty required by law of the commission. All subpoenas and subpoenas duces tecum shall be signed by the chairperson or, in the absence or disqualification of the chairperson, by any other member thereof, shall be served as subpoenas are now served in civil cases in the superior court; and witnesses so subpoenaed shall be entitled to the same fees for attendance and travel as are now provided for witnesses in civil cases in the superior court. If any person fails to obey the command of any such subpoena without reasonable cause, or if a person in attendance before the commission shall, without reasonable cause, refuse to be sworn, or to be examined, or to answer a legal and pertinent question, the commission may apply to any justice of the superior court, upon proof by affidavit of the fact, for a rule or order, returnable in not less than two (2) or more than five (5) days, directing the person to show cause why he or she should not be adjudged in contempt. Upon the return of the order, the justice before whom the matter is brought for a hearing shall examine under oath the person and such person shall be given an opportunity to be heard, and if the justice shall determine that the person has refused without reasonable cause or legal excuse to be examined, or to answer a legal and pertinent question, or to produce books, accounts, papers, records, and documents material to the issue which he or she was ordered to bring or produce, he or she may forthwith commit the person to the adult correctional institutions, there to remain until he or she submits to do the act which he or she was so required to do, or is discharged according to law. If an application for contempt pursuant to this section relates to the actions of a witness at a public hearing, then the papers filed with and proceedings before the court shall be open to the public; otherwise, such papers and proceedings shall be confidential.

§ 8-16-4.2. Discovery. After the commission institutes formal proceedings and schedules a public hearing, the commission and the judge shall be entitled to conduct discovery in the same manner as litigants in civil cases in the superior court, and the superior court rules of civil procedure shall govern all such discovery. Except as provided in § 8-16-13, all discovery proceedings and all materials obtained by either side through discovery shall be kept confidential. Any disputes concerning discovery shall be heard on motion before the presiding justice of the superior court; provided, however, that if the presiding justice is the subject of the commission proceeding in question, then such motions shall be heard before the senior associate justice of the superior court. All papers filed with and proceedings before the superior court pursuant to this section shall be confidential.

§ 8-16-4.3. Compelling evidence in commission proceedings – Immunity. Whenever a witness refuses, on the basis of his or her privilege against self-incrimination, to answer a question or to produce other evidence of any kind during a preliminary investigation or at a deposition or at a public hearing, the chairperson may, upon a majority vote of a quorum of the commission, submit a written request to the presiding justice of the superior court to order the witness to answer the question or produce the evidence; provided, however, that if the presiding justice is the

subject of the commission proceeding in question, then the request shall be made to the senior associate justice of the superior court. The court, in its discretion, after notice to the witness, may order the witness to answer the question or produce the evidence. The witness may not refuse to comply with the order on the basis of his or her privilege against self-incrimination, but the witness shall not be prosecuted or subjected to penalty or forfeiture for, or on account of, any transaction or matter regarding which, in accordance with the order, he or she gave answer or produced evidence; and no testimony or other evidence compelled under the order, or any information directly or indirectly derived from the testimony or other evidence, shall be used against the witness in any criminal case, except he or she may be prosecuted or subjected to penalty or forfeiture for any perjury, false swearing, or contempt committed in answering or failing to answer, or in producing or failing to produce evidence, in accordance with the order. If a request for an order pursuant to this section relates to the refusal of a witness at a public hearing to answer a question or to produce evidence, then the papers filed with and proceedings before the court shall be open to the public; otherwise, such papers and proceedings shall be confidential. No order entered pursuant to this section shall operate to vacate, modify, or otherwise prevent the enforcement of any conviction, judgment, or sentence entered by any court against the witness prior to the grant of immunity, unless the order entered pursuant to this section expressly so provides.

§ 8-16-5. Certification of recommendations to supreme court. Whenever the commission shall make a determination recommending the reprimand, censure, suspension, immediate temporary suspension, removal, or retirement of a member of the judiciary, it shall file forthwith a copy of the recommendation, certified by the chairperson, together with the transcript and the findings and conclusions, with the chief justice of the supreme court, and the commission shall forthwith give the member of the judiciary written notice of the filing, together with a copy of its findings and recommendations. The notice shall be mailed to the chambers of the judge or to his or her last known place of residence or may be personally delivered to him or her by a member of the commission. The transcript and the findings, conclusions, and recommendation of the commission shall be public documents, except when they relate to a hearing concerning a private reprimand pursuant to § 8-16-4(d), in which case they shall be kept confidential.

§ 8-16-6. Review of commission's recommendations by supreme court. (a) The supreme court may on its own motion and shall upon petition of a judge who has been adversely affected by a recommendation of the commission review the record of the commission's proceedings on the law and on the facts and may, for the purposes of the review, permit the introduction of additional evidence and shall have the power to subpoena witnesses and administer oaths. The supreme court may, upon review of a recommendation of censure, suspension, immediate temporary suspension, reprimand, retirement, or removal, affirm, modify, or reject the recommendation of the commission.

(b) A petition to the supreme court to modify or reject the recommendation of the commission for reprimand, censure, suspension, immediate temporary suspension, removal, or retirement of a judge shall be filed with the chief justice of the supreme court and the chairperson of the commission within twenty (20) days after the filing of a certified copy of the recommendation of the commission. The petition shall be verified, shall specify the grounds relied upon, and shall be accompanied by a brief. Within twenty (20) days of the filing of the petition, the commission may file a respondent's brief with the chief justice of the supreme court and the petitioner within ten (10) days after service of respondent's brief, the petitioner may file a reply brief, of which one copy shall be served on the commission. Petitions and briefs filed pursuant to this section shall be public documents.

(c) The supreme court may hold such hearings as it deems necessary when reviewing rec-

ommendations of the commission, and where the review is conducted pursuant to a petition therefor, its decision shall be rendered not later than ninety (90) days after the filing of that petition. Hearings before the supreme court pursuant to this section shall be open to the public, and the court's decision shall be public and shall be published in the same manner as other decisions of the supreme court.

§ 8-16-6.1. Suspension of judge pending review. Whenever the supreme court reviews a commission recommendation for the suspension, immediate temporary suspension, removal, or retirement of a judge other than a justice of the supreme court, the commission may, in its discretion, order the suspension of the judge pending the completion of the review. The suspension shall be without loss of compensation.

§ 8-16-7. Power of the supreme court to discipline, suspend, or remove judges. (a) Whenever the commission shall have recommended reprimand, censure, suspension, immediate temporary suspension, removal, or retirement of a judge from office and filed its findings and recommendations with the chief justice of the supreme court, and those recommendations have been affirmed or modified, after compliance has been had with the provisions of § 8-16-6 providing for a review of the recommendations by the supreme court, that court shall and hereby is empowered to take such action and to issue such process as may be required to give effect to the recommendations of the commission as affirmed or modified. Orders entered by the supreme court pursuant to this subsection shall be public and shall be published in the same manner as other orders of the supreme court.

(b) Whenever the commission shall recommend the removal of a justice of the supreme court from office and the recommendation has been approved after compliance has been had with the provisions of § 8-16-6 providing for a review of the recommendations by the supreme court, that court shall thereupon transmit its findings and recommendation to the speaker of the house of representatives recommending therein the initiation of proceedings for the removal of the justice of the supreme court pursuant to the provisions of article X, section 4, and article XI of the constitution of this state, providing for the impeachment or removal of justices of the supreme court.

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

§ 8-16-7.1. Confidentiality of supreme court review of recommendation of private reprimand. Notwithstanding the provisions of §§ 8-16-6 and 8-16-7, all papers filed with, proceedings before, and decisions of the supreme court on review of a commission recommendation of a private reprimand pursuant to § 8-16-4(d) shall be kept confidential.

§ 8-16-8. Discipline of judges upon indictment or conviction for a crime. (a) The supreme court on its own motion shall suspend, pending the prosecution of an appeal, any judge of any court when it is shown by the certified record of a court of competent jurisdiction that he or she either pleaded guilty or no contest or was found guilty of a crime punishable as a felony under the laws of this state, any other state, or the United States, or of any other crime that involves moral turpitude. The suspension shall be without compensation, except where the judge involved is a justice of the supreme court. Whenever, upon appeal, the conviction is reversed, the suspension shall terminate and the judge involved shall be paid the salary that would have been paid him or her during the period of suspension.

(b) Where, after an appeal, a conviction has become final, the judge involved shall be re-

moved from office either by the supreme court in appropriate cases or, in the case of a justice of the supreme court, by action pursuant to the provisions of § 8-16-7(b).

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

§ 8-16-9. Retirement of judges for incapacity or disability. (a) Whenever the commission shall, after investigation and hearing, determine that a judge has a physical or mental disability that seriously interfered and will continue to interfere with the performance of his or her duties, it may recommend to the supreme court the retirement of the judge, saving to the judge all retirement benefits that have accrued to him or her, if any. The investigation, hearing, and recommendation shall be confidential. A justice of the supreme court may not be retired under this section without his or her consent, and where consent to the retirement is withheld, a further recommendation shall be made to the speaker of the house of representatives to initiate proceedings for the removal of the judge pursuant to the provisions of article X, section 4 of the constitution.

(b) Whenever any judge has served in judicial office without having reached the prescribed age that would entitle him or her to retirement benefits, the commission, proceeding pursuant to subsection (a) of this section, may recommend to the supreme court that the judge be retired and that his or her pension rights be accelerated to become effective as of the date of his or her retirement. The supreme court may endorse the recommendation and may forward the recommendation to the general assembly for appropriate legislative action in order that his or her pension rights be so accelerated. Judges retired under this section shall be deemed to have retired voluntarily. Any judge shall be disqualified and prohibited from acting in his or her judicial capacity while any recommendation for his or her retirement, based upon physical or mental disability, is pending before the supreme court; provided, however, that the disqualification shall be without loss of compensation.

§ 8-16-10. Disqualification from acting as a commissioner. (a) No judge who is a member of the commission or of the supreme court shall participate as a member of the commission or the supreme court in any proceeding regarding his or her removal, suspension, immediate temporary suspension, reprimand, retirement, or censure.

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

§ 8-16-11. Papers and testimony privileged. The filing of papers with or the giving of testimony before the commission or supreme court shall be privileged in any action for defamation. No other publication of such papers or proceedings shall be so privileged, except any record, pleading, or brief filed by the commission in the supreme court continues to be privileged.

§ 8-16-12. Rules of practice and procedure - Confidentiality of proceedings. The supreme court shall make and promulgate rules governing the practice and procedure under this chapter before the commission, and the supreme court shall insure the confidentiality of all pro-

ceedings involving complaints against a member of the judiciary, except for those proceedings that are expressly made public by this chapter.

§ 8-16-13. Closed meetings of the commission - Public hearings - Evidence to remain confidential until made public at hearing. The commission is hereby expressly authorized and permitted to conduct closed meetings for the conduct of all of its business other than public hearings held pursuant to § 8-16-4(c). All evidence obtained by the commission, and all evidence that the judge obtains from the commission through discovery or otherwise, shall remain confidential until it becomes the subject of testimony at the public hearing or is introduced into evidence at the public hearing.

§ 8-16-13.1. Related judicial proceedings - Confidentiality. Judicial proceedings in aid of or ancillary to a public hearing of the commission shall be open to the public, and all papers filed in connection with such judicial proceedings shall be public documents. All other judicial proceedings in aid of or ancillary to a commission proceeding, and all papers filed in connection with such judicial proceedings, shall be confidential.

§ 8-16-14. Reasonable counsel fees. Any judge who has been complained against under the provisions of this chapter and who has engaged the services of counsel to respond to the complaint, and where the complaint has been dismissed by the commission, shall be entitled to have his or her reasonable counsel fees paid by the state for those legal services rendered after October 1, 1983.