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HOUSE BILL NO. 556
Offered January 10, 2024
Prefiled January 9, 2024

A BILL to amend and reenact §§ 17.1-901, 17.1-903, and 17.1-913 of the Code of Virginia, relating to Judicial Inquiry and Review Commission; membership; training requirements; Commission staff; Joint Legislative Audit and Review Commission study; report.

Patron—Hope

Referred to Committee on Studies Subcommittee

Be it enacted by the General Assembly of Virginia:

1. That §§ 17.1-901, 17.1-903, and 17.1-913 of the Code of Virginia are amended and reenacted as follows:

§ 17.1-901. Commission created; membership and terms of office; training required.

There is created a Judicial Inquiry and Review Commission in the judiciary branch of government, composed of ~~seven~~ nine persons who shall be citizens and residents of the Commonwealth. The members of the Commission shall be chosen by the vote of a majority of the members elected to each house of the General Assembly. The Commission shall elect a chairman and vice-chairman annually from its membership.

The Commission shall consist of (i) three judicial members, who shall be ~~(i)~~ (a) one active judge of a circuit court, ~~(ii)~~ (b) one active judge of a general district court, and ~~(iii)~~ (c) one active judge of a juvenile and domestic relations district court; ~~two~~ (ii) four lawyer members, who all shall be active members of the Virginia State Bar who are not judges and who have practiced law in the Commonwealth for ~~15~~ 10 or more years immediately preceding their appointment, provided that (a) two such lawyer members are selected for recommendation by the Virginia State Bar, (b) one such lawyer is selected for recommendation by the Virginia Association of Commonwealth's Attorneys, and (c) one such lawyer is selected for recommendation by the Executive Director of the Indigent Defense Commission; and (iii) two public members who shall not be active or retired judges and shall never have been licensed lawyers.

After the initial appointments, the term of office of each member shall be four years commencing on July ~~1~~. Beginning July 1, 2024, each member shall be appointed for terms of four years each, except that the initial appointments shall be for such terms of less than four years as may be necessary to stagger the expiration of terms. No member of the Commission shall be eligible to serve more than two consecutive terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

Commission membership terminates whenever a member resigns or ceases to possess the qualifications that made him eligible for appointment. During any vacancy, which may exist while the General Assembly is not in session, the Governor may appoint a successor to serve until 30 days after the commencement of the next session of the General Assembly. Upon election of a successor by the General Assembly, the new member of the Commission shall serve for the remainder of the term of office of his predecessor.

Any member of the Commission who is the subject of an investigation or hearing by it or is otherwise personally involved therein shall be disqualified by the Commission from acting in such proceedings. In such a case the Governor shall appoint a person possessing the original qualifications of such member as prescribed by this section to serve temporarily as a substitute member of the Commission in such proceedings.

Any member appointed on or after July 1, 2024, shall participate in at least 36 hours of training on judicial misconduct, of which at least two of such hours shall be on recognizing and correcting implicit bias. Each member shall participate in at least six hours of such training in each subsequent year serving on the Commission, of which at least one of such hours shall be on recognizing and correcting implicit bias.

§ 17.1-903. Officers and employees; experts and reporters; witnesses; legal counsel.

The Commission may (i) employ such officers, assistants, and other employees it deems necessary for the performance of its duties; (ii) arrange for and compensate medical and other experts and reporters; (iii) arrange for attendance of witnesses, including witnesses not subject to subpoena; and (iv) pay from funds available to it all expenses reasonably necessary for effectuating the purposes of Article VI, Section 10 of the Constitution of Virginia and the provisions of this chapter, whether or not specifically enumerated herein. The Commission may employ three attorneys, at least one of whom has at least five years of experience, respectively, as (a) a civil practitioner, (b) a criminal defense practitioner, and (c) a prosecutor. The Attorney General shall, if requested by the Commission, act as its counsel generally or in any particular investigation or proceeding.

The Commission may employ general counsel, notwithstanding the provisions of § 2.2-510.

59 *No attorney or general counsel employed by the Commission shall have held political office within the 15*
60 *years prior to his employment.*

61 **§ 17.1-913. Confidentiality of papers and proceedings; exception.**

62 A. Except as provided in subsection C, all papers filed with and proceedings before the Commission, and
63 under §§ 17.1-909 and 17.1-910, including the identification of the subject judge as well as all testimony and
64 other evidence and any transcript thereof made by a reporter, shall be confidential and shall not be divulged,
65 other than to the Commission, by any person who (i) either files a complaint with the Commission, or
66 receives such complaint in an official capacity; (ii) investigates such complaint; (iii) is interviewed
67 concerning such complaint by a member, employee or agent of the Commission; or (iv) participates in any
68 proceeding of the Commission or in the official recording or transcription thereof, except that the record of
69 any proceeding filed with the Supreme Court shall lose its confidential character. However, if the
70 Commission finds cause to believe that any witness under oath has willfully and intentionally testified
71 falsely, the Commission may direct the chairman or one of its members to report such finding and the details
72 leading thereto including any transcript thereof to the attorney for the Commonwealth of the city or county
73 where such act occurred for such disposition as to a charge of perjury as the Commonwealth may be advised.
74 In any subsequent prosecution for perjury based thereon, the proceedings before the Commission relevant
75 thereto shall lose their confidential character. *Notwithstanding the provisions of this subsection, a*
76 *complainant may discuss with non-Commission members the fact that a complaint has been filed and the*
77 *circumstances leading to the filing of such complaint.*

78 All records of proceedings before the Commission which are not filed with the Supreme Court in
79 connection with a formal complaint filed with that tribunal, shall be kept in the confidential files of the
80 Commission.

81 However, a judge who is under investigation by the Commission, or any person authorized by him, may
82 divulge information pertaining to a complaint filed against such judge as may be necessary for the judge to
83 investigate the allegations in the complaint in preparation for the proceedings before the Commission.

84 B. Advice on judicial ethics given by an attorney employed by the Commission to a judge and the records
85 of such advice shall be confidential and not be divulged except as permitted in subsection A. However, the
86 Commission may share such advice, but not the identity of the judge to whom the advice was given, with a
87 committee established by the Supreme Court for the development of formal judicial ethics advisory opinions.
88 Any such shared information shall remain confidential within such committee.

89 C. *In any instance in which a complaint has been found to violate a Canon of Judicial Conduct,*
90 *reasonable efforts shall be made to contact and interview witnesses to the conduct specified by the*
91 *complainant in his complaint. In any such instance, a complainant shall be given an opportunity to respond*
92 *to any evidence submitted or testimony given in defense of the judge subject to the complaint.*

93 D. The Commission shall notify a complainant of the final decision made or action taken in regards to his
94 filed complaint within 30 days of such decision or action. Such notice shall include the *specific* decision
95 made or *disciplinary* action taken by the Commission. The confidentiality provisions of subsection A shall
96 not apply to notifications made by the Commission under this subsection.

97 **2. That the Joint Legislative Audit and Review Commission (JLARC) shall study the Judicial Inquiry**
98 **and Review Commission. All records, transcripts, papers, investigatory notes, files, and other**
99 **documents shall be made available by the Judicial Inquiry and Review Commission to the staff of**
100 **JLARC. In conducting its study, JLARC shall (i) review (a) procedures for reviewing and adjudicating**
101 **complaints, (b) processes for determining whether to conduct informal or formal hearings, and (c) any**
102 **informal or established rules used to determine disciplinary action imposed on a judge or justice and**
103 **provide recommendations as to the codification and publication of any such procedures, processes, or**
104 **rules; (ii) research sanctions not currently used in the Commonwealth, including suspension without**
105 **pay, mandatory recusal from certain cases, and payment of costs and fees associated with**
106 **investigations and whether such sanctions are used in other states and their efficacy; (iii) provide**
107 **recommendations on establishing a conflict of interest policy and code of conduct for the Commission**
108 **and its staff; and (iv) study the potential benefits of combining the Judicial Performance Evaluation**
109 **program with the tasks of the Commission. Technical assistance shall be provided to JLARC by the**
110 **Judicial Inquiry and Review Commission and the Supreme Court of Virginia. All agencies of the**
111 **Commonwealth shall provide assistance to JLARC for this study, upon request. JLARC shall complete**
112 **its meetings for the first year by November 30, 2024, and for the second year by November 30, 2025,**
113 **and shall submit to the Governor and the General Assembly an executive summary and report of its**
114 **findings and recommendations for publication as a House or Senate document for each year. The**
115 **executive summaries and reports shall be submitted as provided in the procedures of the Division of**
116 **Legislative Automated Systems for the processing of legislative documents and reports no later than**
117 **the first day of the next Regular Session of the General Assembly and shall be posted on the General**
118 **Assembly's website.**