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HOUSE BILL NO. 1865

Offered January 14, 2009

Prefiled January 12, 2009

A *BILL to amend and reenact §§ 16.1-69.22:1, 16.1-69.35, 17.1-105, 17.1-106, and 17.1-107 of the Code of Virginia, relating to duties of chief judges.*

Patron—Janis

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-69.22:1, 16.1-69.35, 17.1-105, 17.1-106, and 17.1-107 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-69.22:1. Temporary recall of retired district court judges.

A. The ~~Chief Justice of the Supreme Court~~ *chief district court judge* may call upon and authorize any judge of a district court who is retired under the Judicial Retirement System (§ 51.1-300 et seq.) to perform, for a period not to exceed ninety days at any one time, such judicial duties in any district court as the ~~Chief Justice of the Supreme Court~~ *he* shall deem in the public interest for the expeditious disposition of the business of such courts *within the chief judge's district*.

B. It shall be the obligation of any retired judge who is recalled to temporary service under this section and who has not attained age seventy to accept the recall and perform the duties assigned. It shall be within the discretion of any judge who has attained age seventy to accept such recall.

C. Any judge recalled to duty under this section shall have all the powers, duties, and privileges attendant on the position he is recalled to serve.

§ 16.1-69.35. Administrative duties of chief district judge.

The chief judge of each district shall have the following administrative duties and authority with respect to his district:

1. When any district court judge is under any disability or for any other cause is unable to hold court and the chief judge determines that assistance is needed:

a. The chief district judge shall designate a judge within the district or a judge of another district court within the Commonwealth, if one is reasonably available, to hear and dispose of any action or actions properly coming before such district court for disposition;

b. If unable to designate a judge as provided in subdivision 1 a, the chief district judge may designate a retired district judge for such hearing and disposition if such judge consents; or

c. If unable to assign a retired district court judge, the chief district judge may designate a retired circuit court judge if such judge consents ~~or the chief district judge may request that the Chief Justice of the Supreme Court designate a circuit judge if such judge consents.~~

If no judges are available under subdivision a, b or c, then a substitute judge shall be designated pursuant to § 16.1-69.21.

While acting, any judge so designated shall have all the authority and power of the judge of the court, and his order or judgment shall, to all intents and purposes, be the judgment of the court. A general district court judge designated pursuant to subdivision 1 a, may, with his consent, substitute for or replace a juvenile and domestic relations district court judge, and vice versa. The names of the judges designated under subdivisions b and c shall be selected from a list provided by the ~~Executive Secretary~~ *and approved by the Chief Justice of the Supreme Court* *chief judge of the circuit court*.

2. The chief general district court judge of a district may designate any juvenile and domestic relations district court judge of the district, with the judge's consent, for an individual case or to sit and hear cases for a period of not more than one year, in any of the general district courts within the district. The chief juvenile and domestic relations district court judge of a district may designate any general district court judge of the district, with the judge's consent, for an individual case or to sit and hear cases for a period of not more than one year, in any of the juvenile and domestic relations district courts within the district. Every judge so designated shall have the same powers and jurisdiction and be authorized to perform the same duties as any judge of the district for which he is designated to assist, and, while so acting, his order or judgment shall be, for all purposes, the judgment of the court to which he is assigned.

3. If on account of congestion in the work of any district court ~~or when in his opinion the administration of justice so requires,~~ the Chief Justice of the Supreme Court *chief judge of the circuit court* may, ~~upon his own initiative or~~ upon written application of the chief district court judge desiring assistance, designate a judge from another district or any circuit court judge, if such circuit court judge

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59 consents, or a retired judge to provide judicial assistance to such district. Every judge so designated
60 shall have the same powers and jurisdiction and be authorized to perform the same duties as any judge
61 of the district for which he is designated to assist and while so acting his order or judgment shall be, to
62 all intents and purposes, the judgment of the court to which he is assigned.

63 4. Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge may establish
64 special divisions of any general district court when the work of the court may be more efficiently
65 handled thereby such as through the establishment of special civil, criminal or traffic divisions, and he
66 may assign the judges of the general district court with respect to serving such special divisions. In the
67 City of Richmond the general district court shall, in addition to any specialized divisions, maintain a
68 separate division of such court in that part of Richmond south of the James River with concurrent
69 jurisdiction in civil matters whenever one or more of the defendants reside or the cause of action or any
70 part thereof arises in that part of the city, concurrent jurisdiction over all traffic matters arising in that
71 part of the city and exclusive jurisdiction over all other criminal matters arising in that part of the city.

72 5. Subject to such rules as may be established pursuant to § 16.1-69.32, the chief judge shall
73 determine when the district courts or divisions of such courts shall be open for the transaction of
74 business. The chief judge or presiding judge of any district court may authorize the clerk's office to
75 close on any date when the chief judge or presiding judge determines that operation of the clerk's office,
76 under prevailing conditions, would constitute a threat to the health or safety of the clerk's office
77 personnel or the general public. Closing of the clerk's office pursuant to this subsection shall have the
78 same effect as provided in subsection B of § 1-210. In determining whether to close because of a threat
79 to the health or safety of the general public, the chief judge or the presiding judge of the district court
80 shall coordinate with the chief judge or presiding judge of the circuit court so that, where possible and
81 appropriate, both the circuit and district courts take the same action. He shall determine the times each
82 such court shall be held for the trial of civil, criminal or traffic matters and cases. He shall determine
83 whether, in the case of district courts in counties, court shall be held at any place or places in addition
84 to the county seat. He shall determine the office hours and arrange a vacation schedule of the judges
85 within his district, in order to ensure the availability of a judge or judges to the public at normal times
86 of business. A schedule of the times and places at which court is held shall be filed with the Executive
87 Secretary of the Supreme Court and kept posted at the courthouse, and in any county also at any such
88 other place or places where court may be held, and the clerk shall make such schedules available to the
89 public upon request. Any matter may, in the discretion of the judge, or by direction of the chief district
90 judge, be removed from any one of such designated places to another, or to or from the county seat, in
91 order to serve the convenience of the parties or to expedite the administration of justice; however, any
92 town having a population of over 15,000 as of July 1, 1972, having court facilities and a court with
93 both general criminal and civil jurisdiction prior to July 1, 1972, shall be designated by the chief judge
94 as a place to hold court.

95 6. Subject to the provisions of § 16.1-69.38, the chief judge of a general district court or the chief
96 judge of a juvenile and domestic relations district court may establish a voluntary civil mediation
97 program for the alternate resolution of disputes. The costs of the program shall be paid by the local
98 governing bodies within the district or by the parties who voluntarily participate in the program.

99 § 17.1-105. Designation of judges to hold courts and assist other judges.

100 A. If a judge of any court of record is absent, sick or disabled or for any other reason unable to hold
101 any regular or special term of the court, or any part thereof, or to perform or discharge any official duty
102 or function authorized or required by law, a judge or retired judge of any court of record may be
103 obtained by personal request of the disabled judge, or another judge of the circuit to hold the court for
104 the whole or any part of such regular or special term and to discharge during vacation such duty or
105 function, or, if the circumstances require, to perform all the duties and exercise all the powers and
106 jurisdiction as judges of such circuit until the judge is again able to attend his duties. The designation of
107 such judge shall be entered in the civil order book of the court, and a copy thereof sent to the ~~Chief~~
108 ~~Justice of the Executive Secretary of the Supreme Court.~~ The ~~Chief Justice~~ *Executive Secretary* shall be
109 notified forthwith at the time any disabled judge is able to return to his duties.

110 B. If all the judges of any court of record are so situated in respect to any case, civil or criminal,
111 pending in their court as to render it improper, in their opinion, for them to preside at the trial, unless
112 the cause or proceeding is removed, as provided by law, they shall enter the fact of record and the clerk
113 of the court shall at once certify the same to the ~~Chief Justice of the Executive Secretary of the Supreme~~
114 ~~Court,~~ who shall designate a judge of some other court of record or a retired judge of any such court to
115 preside at the trial of such case.

116 C. If a vacancy occurs in the office of a judge of a court of record that fact shall be immediately
117 certified by the clerk of such court to the Governor, who may, instead of appointing a successor at once,
118 request the ~~Chief Justice~~ *chief judge of such court* to designate a judge of some other court of record or
119 a retired judge of any such court to carry out the duties of the office, if there are insufficient judges in
120 the circuit to carry out the work of the court, until the office has been filled in the mode prescribed by

law. If any judge so designated shall be prevented by the duties of his court, or by sickness, from performing the duties required, he shall so inform the ~~Chief Justice~~ *chief judge of such court*, who may designate another judge in his place.

D. Due to congestion in the work of any court of record or when in ~~his~~ *its* opinion the administration of justice so requires, the ~~Chief Justice~~ *chief judge of such court* may, ~~upon his own initiative or upon~~ application of the judge desiring assistance, designate a judge or retired judge of any court of record to assist the judge in the performance of his duties and every judge so designated shall have the same powers and jurisdiction and be authorized to perform the same duties as the judge whom he is designated to assist.

E. Any judge or retired judge sitting under any provision of this section or sitting by designation on any three-judge court shall receive from the state treasury actual expenses for the time he is actually engaged in holding court, except in those cases where the payment of such expenses is otherwise specifically provided by law.

F. The powers and duties herein conferred and imposed upon the Chief Justice may be exercised and performed by any justice, or any committee of justices, of the Court, designated by the Chief Justice for such purpose.

G. If the chief judge of any circuit is unable to perform the duties required by law, he shall notify the ~~Chief Justice~~ *remaining judges of his court*, who shall designate another judge of the same circuit to perform such duties.

H.G. If any judge refuses unreasonably to serve as requested under the provisions of this section, the chief judge may report his refusal to the Judicial Inquiry and Review Commission.

§ 17.1-106. Temporary recall of retired judges.

A. The Chief Justice of the Supreme Court, ~~the chief judge of the Court of Appeals, and the chief judges of the various circuit courts~~ may call upon and authorize any justice or judge of a court of record who is retired under the Judicial Retirement System (§ 51.1-300 et seq.) or who is retired under the Virginia Retirement System following transfer from the Judicial Retirement System under the provisions of subsection C of § 51.1-303 either to (i) hear a specific case or cases pursuant to the provisions of § 17.1-105 such designation to continue in effect for the duration of the case or cases or (ii) perform for a period of time not to exceed ninety days at any one time, such judicial duties in ~~any~~ *that* court of record as the Chief Justice ~~or chief judge~~ shall deem in the public interest for the expeditious disposition of the business of the courts of record.

B. It shall be the obligation of any retired judge or justice who is recalled to temporary service under this section and who has not attained age seventy to accept the recall and perform the duties assigned. It shall be within the discretion of any justice or judge who has attained age seventy to accept such recall.

C. Any justice or judge recalled to duty under this section shall have all the powers, duties, and privileges attendant on the position he is recalled to serve.

D. A retired justice of the Supreme Court or judge of the Court of Appeals recalled to active service shall be furnished an office, office supplies, and stenographer while performing such active service.

§ 17.1-107. Designation of judge to assist regular judge holding case under advisement for unreasonable length of time.

A. A judge of a circuit court in a civil case shall report, in writing, to the parties or their counsel on any cause held under advisement for more than 90 days after final submission stating an expected time of a decision. In any civil case in which a judge holds any cause under advisement for more than 90 days after final submission, fails to report as required by this section, or fails to render a decision within the expected time stated in the report, any party or their counsel may notify the Chief Justice of the Supreme Court. Whenever the ~~Chief Justice~~ of the Supreme Court, ~~or any justice designated by him,~~ has reasonable cause to believe that any judge of a court of record may be holding one or more civil cases under advisement for an unreasonable length of time, ~~he~~ *the Court* shall inquire into the cause of such delay, and if ~~he finds it~~ *found* necessary in order to expedite the administration of justice, ~~he~~ *the Court* shall designate a judge or retired judge of a court of record to assist the regular judge in the performance of his duties.

B. Complaints made hereunder shall be absolutely privileged and the name of the complainant shall not be disclosed without his consent.