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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

**COMMITTEE SUBSTITUTE
FOR**

House Bill No. 4123

(By Delegates Schadler and Amores)
(Originating in the Committee on Finance)



Passed March 12, 2004

In Effect Ninety Days from Passage

~~ENROLLED~~

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COMMITTEE SUBSTITUTE

FOR

H. B. 4123

(BY DELEGATES SCHADLER AND AMORES)

[Passed March 12, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §50-1-3, §50-1-8 and §50-1-9 of the code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §50-1-9b, all relating to magistrate courts; modifying the criteria upon which magistrate, magistrate court clerk, and magistrate assistant salaries are based; authorizing the supreme court of appeals to create a panel of senior magistrate court clerks; granting authority to senior magistrate court clerks to fill certain vacancies; authorizing the supreme court of appeals to promulgate rules for senior magistrate court clerks; providing for reasonable compensation to senior clerks; providing for reimbursement of certain expenses incurred by senior clerks.

Be it enacted by the Legislature of West Virginia:

That §50-1-3, §50-1-8 and §50-1-9 of the code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §50-1-9b, all to read as follows:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-3. Salaries of magistrates.

1 (a) The Legislature finds and declares that:

2 (1) The West Virginia supreme court of appeals has held
3 that a salary system for magistrates which is based upon the
4 population that each magistrate serves does not violate the
5 equal protection clause of the constitution of the United States;

6 (2) The West Virginia supreme court of appeals has held
7 that a salary system for magistrates which is based upon the
8 population that each magistrate serves does not violate section
9 thirty-nine, article VI of the constitution of West Virginia;

10 (3) The utilization of a two-tiered salary schedule for
11 magistrates is an equitable and rational manner by which
12 magistrates should be compensated for work performed;

13 (4) Organizing the two tiers of the salary schedule into one
14 tier for magistrates serving less than eight thousand four
15 hundred in population and the second tier for magistrates
16 serving eight thousand four hundred or more in population is
17 rational and equitable given current statistical information
18 relating to population and caseload; and

19 (5) That all magistrates who fall under the same tier should
20 be compensated equally.

21 (b) The salary of each magistrate shall be paid by the state.
22 Magistrates who serve fewer than eight thousand four hundred
23 in population shall be paid annual salaries of thirty thousand six

24 hundred twenty-five dollars and magistrates who serve eight
25 thousand four hundred or more in population shall be paid
26 annual salaries of thirty-seven thousand dollars: *Provided*, That
27 on and after the first day of July, two thousand three, magis-
28 trates who serve fewer than eight thousand four hundred in
29 population shall be paid annual salaries of thirty-three thousand
30 six hundred twenty-five dollars and magistrates who serve eight
31 thousand four hundred or more in population shall be paid
32 annual salaries of forty thousand dollars.

33 (c) For the purpose of determining the population served by
34 each magistrate, the number of magistrates authorized for each
35 county shall be divided into the population of each county. For
36 the purpose of this article, the population of each county is the
37 population as determined by the last preceding decennial census
38 taken under the authority of the United States government.

**§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit
clerk.**

1 (a) In each county having three or more magistrates the
2 judge of the circuit court or the chief judge of the circuit court,
3 if there is more than one judge of the circuit court, shall appoint
4 a magistrate court clerk. In all other counties the judge may
5 appoint a magistrate court clerk or may by rule require the
6 duties of the magistrate court clerk to be performed by the clerk
7 of the circuit court, in which event the circuit court clerk is
8 entitled to additional compensation in the amount of two
9 thousand five hundred dollars per year. The magistrate court
10 clerk serves at the will and pleasure of the circuit judge.

11 (b) Magistrate court clerks shall be paid a monthly salary
12 by the state. Magistrate court clerks serving magistrates who
13 serve less than eight thousand four hundred in population shall
14 be paid up to one thousand seven hundred forty-eight dollars
15 per month and magistrate court clerks serving magistrates who

16 serve eight thousand four hundred or more in population shall
17 be paid up to two thousand one hundred fifty-seven dollars per
18 month: *Provided*, That on and after the first day of January, two
19 thousand two, magistrate court clerks serving magistrates who
20 serve less than eight thousand four hundred in population shall
21 be paid up to one thousand nine hundred ninety-eight dollars
22 per month and magistrate court clerks serving magistrates who
23 serve eight thousand four hundred or more in population shall
24 be paid up to two thousand four hundred seven dollars per
25 month: *Provided, however*, That after the effective date of this
26 section, any general salary increase granted to all state employ-
27 ees, whose salaries are not set by statute, expressed as a
28 percentage increase or an “across-the-board” increase, may also
29 be granted to magistrate court clerks. For the purpose of
30 determining the population served by each magistrate, the
31 number of magistrates authorized for each county shall be
32 divided into the population of each county. The salary of the
33 magistrate court clerk shall be established by the judge of the
34 circuit court, or the chief judge of the circuit court if there is
35 more than one judge of the circuit court, within the limits set
36 forth in this section.

37 (c) In addition to other duties that may be imposed by the
38 provisions of this chapter or by the rules of the supreme court
39 of appeals or the judge of the circuit court or the chief judge of
40 the circuit court if there is more than one judge of the circuit
41 court, it is the duty of the magistrate court clerk to establish and
42 maintain appropriate dockets and records in a centralized
43 system for the magistrate court, to assist in the preparation of
44 the reports required of the court and to carry out on behalf of
45 the magistrates or chief magistrate if a chief magistrate is
46 appointed, the administrative duties of the court.

47 (d) The magistrate court clerk, or if there is no magistrate
48 court clerk in the county, the clerk of the circuit court, may

49 issue all manner of civil process and require the enforcement of
50 subpoenas and subpoenas duces tecum in magistrate court.

§50-1-9. Magistrate assistants; salary; duties.

1 (a) In each county there shall be one magistrate assistant for
2 each magistrate. Each magistrate assistant shall be appointed by
3 the magistrate under whose authority and supervision and at
4 whose will and pleasure he or she shall serve. The assistant
5 shall not be a member of the immediate family of any magis-
6 trate and shall not have been convicted of a felony or any
7 misdemeanor involving moral turpitude and shall reside in the
8 state of West Virginia. For the purpose of this section, “imme-
9 diate family” means the relationships of mother, father, sister,
10 brother, child or spouse.

11 (b) A magistrate assistant shall have the duties, clerical or
12 otherwise, assigned by the magistrate and prescribed by the
13 rules of the supreme court of appeals or the judge of the circuit
14 court or the chief judge of the circuit court if there is more than
15 one judge of the circuit court. In addition to these duties,
16 magistrate assistants shall perform and are accountable to the
17 magistrate court clerks with respect to the following duties:

18 (1) The preparation of summons in civil actions;

19 (2) The assignment of civil actions to the various magis-
20 trates;

21 (3) The collection of all costs, fees, fines, forfeitures and
22 penalties which are payable to the court;

23 (4) The submission of moneys, along with an accounting of
24 the moneys, to appropriate authorities as provided by law;

25 (5) The daily disposition of closed files which are to be
26 located in the magistrate clerk’s office;

27 (6) All duties related to the gathering of information and
28 documents necessary for the preparation of administrative
29 reports and documents required by the rules of the supreme
30 court of appeals or the judge of the circuit court or the chief
31 judge of the circuit court if there is more than one judge of the
32 circuit court;

33 (7) All duties relating to the notification, certification and
34 payment of jurors serving pursuant to the terms of this chapter;

35 (8) All other duties or responsibilities whereby the magis-
36 trate assistant is accountable to the magistrate court clerk as
37 determined by the magistrate.

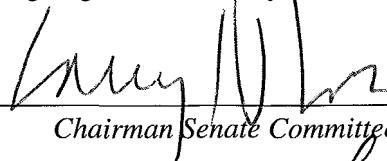
38 (c) Magistrate assistants shall be paid a monthly salary by
39 the state. Magistrate assistants serving magistrates who serve
40 less than eight thousand four hundred in population shall be
41 paid up to one thousand four hundred seventy-four dollars per
42 month and magistrate assistants serving magistrates who serve
43 eight thousand four hundred or more in population shall be paid
44 up to one thousand seven hundred thirty-two dollars per month:
45 *Provided*, That on and after the first day of January, two
46 thousand two, magistrate assistants serving magistrates who
47 serve less than eight thousand four hundred in population shall
48 be paid up to one thousand seven hundred twenty-four dollars
49 per month and magistrate assistants serving magistrates who
50 serve eight thousand four hundred or more in population shall
51 be paid up to one thousand nine hundred eighty-two dollars per
52 month: *Provided, however*, That after the effective date of this
53 section, any general salary increase granted to all state employ-
54 ees, whose salaries are not set by statute, expressed as a
55 percentage increase or an “across-the-board” increase, may also
56 be granted to magistrate assistants. For the purpose of determin-
57 ing the population served by each magistrate, the number of
58 magistrates authorized for each county shall be divided into the
59 population of each county. The salary of the magistrate assistant

60 shall be established by the magistrate within the limits set forth
61 in this section.

§50-1-9b. Appointment of senior magistrate court clerks.

1 The West Virginia supreme court of appeals is authorized
2 to create a panel of senior magistrate court clerks to utilize the
3 talent and experience of former magistrate court clerks of this
4 state. The supreme court of appeals shall promulgate rules
5 providing for senior magistrate court clerks to be assigned
6 duties as needed to serve: (1) In the place of magistrate court
7 clerks who are on authorized leave or are otherwise unavail-
8 able; or (2) while there is a vacancy in a magistrate court
9 clerk's office. The supreme court of appeals shall further
10 promulgate rules to provide for: (1) Reimbursement of travel
11 and other necessary expenses actually incurred while the senior
12 clerk is serving outside the county of his or her residence; and
13 (2) reasonable compensation on a per diem basis: *Provided,*
14 That the per diem and retirement compensation of a senior
15 magistrate court clerk may not exceed the salary of the magis-
16 trate court clerk in whose place the senior clerk is serving.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



Chairman House Committee

Originating in the House.

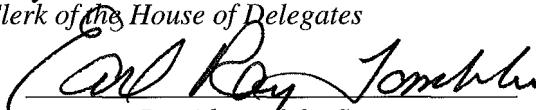
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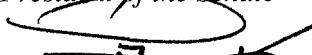
Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is APPROVED this the 5th
day of April, 2004.



Bob McDonnell
Governor

PRESENTED TO THE
GOVERNOR

Date 4/2/04

Time 2:15 pm