

ORIGINAL

In the
Supreme Court of Ohio

STATE OF OHIO, ex rel.,
ANTHONY J. MAROON,

Appellant-Relator,

v.

OHIO STATE HIGHWAY PATROL
RETIREMENT SYSTEM,

Appellee-Respondent.

: Case No. 11-1355

:
:
:
: On Appeal from the
: Franklin County
: Court of Appeals,
: Tenth Appellate District
:
: Court of Appeals
: Case No. 10-APD-07-665

**MERIT BRIEF OF APPELLEE-RESPONDENT
OHIO STATE HIGHWAY PATROL RETIREMENT SYSTEM**

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INTRODUCTION

There is a single matter before the court – whether a former member of the Ohio State Highway Patrol (“Patrol”) can apply for disability after he is terminated from the Patrol and no longer a member of the Ohio State Highway Patrol Retirement System (“HPRS”). Anthony J. Maroon (“Maroon”) was employed as an Ohio State Highway Patrol Trooper from February 2, 1997 until September 8, 2008. Almost a year after the Patrol terminated Maroon, he sought to apply for disability retirement benefits from HPRS. HPRS’ governing statutes state that only a member may apply for disability benefits, and those same statutes define a member as a current, not former, employee of the Patrol; therefore, Maroon’s request for an application was denied.

Maroon asked the Tenth District Court of Appeals to issue a writ of mandamus compelling HPRS to issue an application. Both the magistrate and the court of appeals agreed that Maroon was no longer a member and therefore not eligible to apply for disability. On appeal, Maroon asserts that he is a current member of the HPRS and will be a member for a five-year period commencing from the termination of his employment with the Patrol. This argument was specifically addressed by the magistrate and was rejected. Maroon failed to object to this finding, which was ultimately adopted by the court of appeals. Therefore, he waived his right to raise the issue before this court.

Even if this court were to consider Maroon’s assignment of error, he cannot prevail as HPRS membership is defined by statute and Maroon did not meet, and does not currently meet, those requirements when he first sought to apply for disability retirement benefits. The HPRS board respectfully asks this court to affirm the appellate court’s decision and deny Maroon’s request.

STATEMENT OF THE FACTS AND OF THE CASE

Maroon was employed as a trooper by the Patrol between February 2, 1997 and September 8, 2008. (Certified Record "CR" 3, 24). Maroon became a member of HPRS by virtue of his employment with the Patrol. R.C. 5505.01(A); R.C. 5505.01(J); R.C. 5505.02. Maroon alleges that on January 20, 2004 he was rendered totally and permanently incapacitated for duty with the Patrol. Maroon did not file an application for disability retirement benefits with HPRS following his alleged injuries in 2004.

On September 8, 2008, the Patrol terminated Maroon from his post following an investigation conducted by the Office of the Inspector General. (CR 23-24). Nearly a year later, Maroon contacted HPRS through his attorney to request a disability retirement application. (CR 25). After researching Maroon's request, the HPRS benefits director wrote to Maroon's attorney explaining:

After speaking with you, I assessed Mr. Maroon's account and found that he is no longer a member of the Highway Patrol and is not eligible for disability retirement. This is in accordance with Chapter 5505.01 and 5505.18 of the Ohio Revised Code. Mr. Maroon's last day of service was September 8, 2008 and a person must be employed at the time he applies for disability retirement. His only option is a withdrawal of his contributions. An application for refund of accumulated contributions is enclosed for his convenience. (CR 26).

Maroon did not file an application for disability retirement benefits, even after the application was available online. At no time has Maroon actually filed an application for disability retirement benefits with HPRS. Additionally, his membership with HPRS has not been restored.

On July 13, 2010, Maroon filed his complaint in mandamus as an original action in the Tenth District Court of Appeals. The magistrate rendered a decision on February 24, 2011 recommending that the court deny Maroon's request. No objections were filed to the

magistrate's decision. On June 30, 2011 the court adopted the magistrate's findings of fact and conclusions of law in their entirety. Maroon then filed this appeal.

LAW AND ARGUMENT

A. Standard of Review in Mandamus

Mandamus is the appropriate remedy for Maroon to seek when there is no statutory right to appeal available to correct an abuse of discretion in administrative proceedings. *State ex rel. Pipoly v. State Teachers Retirement Sys.*, 95 Ohio St.3d 327, 2002-Ohio-2219, 767 N.E.2d 719, ¶ 14. When reviewing a decision of a public retirement system, a court must give due deference to the retirement system's interpretation of its own rules and statutes. *State ex rel. Gill v. School Emp. Retirement Sys. of Ohio*, 121 Ohio St.3d 567, 2009-Ohio-1358, 906 N.E.2d 415, ¶¶ 28-29.

It is well settled that a writ of mandamus may only be issued when: (1) the relator has a clear legal right to the relief requested; (2) the respondent has a clear legal duty to perform the requested relief; and (3) there is no adequate remedy at law. *State ex rel. Pressley v. Industrial Comm.*, 11 Ohio St.2d 141, 228 N.E.2d 631 (1969). Where the relief requested to be performed by a respondent in a mandamus action is a matter of discretion, the courts have refused to overturn the administrative decision of these public officials. See *State ex rel. Bd. of Education v. State Dept. of Education*, 67 Ohio St.2d 126, 423 N.E.2d 174 (1981); *State ex rel. Democratic Executive Comm. v. Brown*, 39 Ohio St.2d 157, 161, 314 N.E.2d 376 (1974); *State ex rel. Shafer v. Ohio Turnpike Comm.*, 159 Ohio St. 581, 113 N.E.2d 14 (1953). The only exception recognized by the courts is upon a showing of an abuse of discretion.

Abuse of discretion connotes a board decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983).

“When there is some evidence to support the decision, the retirement system has not abused its discretion.” *State ex rel. Marchiano v. School Emp. Retirement Sys.*, 121 Ohio St.3d 139, 2009-Ohio-307, 902 N.E.2d 953, ¶ 21; see also, *Kinsey v. Bd. of Trustees of Police & Firemen’s Disability & Pension Fund of Ohio*, 49 Ohio St.3d 224, 226-227, 551 N.E.2d 989 (1991). As Maroon did not demonstrate that he has a clear legal right to apply for disability retirement benefits and HPRS did not abuse its discretion in making that determination, this court should affirm the decision of the appellate court and deny the requested writ.

B. Maroon has waived his right to appeal and further has failed to show that he is entitled to a writ of mandamus because he was not a member of HPRS when he sought to apply for disability retirement benefits.

Proposition of Law No. 1:

Maroon has waived his right to appeal the lower court’s decision pursuant to Civ.R. 53(D)(3)(b)(iv).

The magistrate recommended denial of Maroon’s requested writ of mandamus, finding that Maroon could not establish that he was entitled to a writ of mandamus to compel the HPRS Board to consider an application for disability retirement benefits filed by him. Maroon did not file any objections to the magistrate’s decision. Under Civ.R. 53(D)(3)(b)(i) and Loc.R. 12(M)(3) of the Tenth Appellate Judicial District, a party may file written objections within fourteen days of the filing of a magistrate’s decision. The Civil Rules of Procedure clearly mandate that a party must object to a finding or the party waives its right to appeal:

Except for a claim of plain error, a party shall not assign as error on appeal the court’s adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b). Civ.R. 53(D)(3)(b)(iv).

This notice was provided to the parties along with the magistrate's decision. (Appendix to Merit Brief of Appellant ("Appellant's Appendix") at A-16). The court issued its memorandum decision on June 30, 2011 and found that "only members of the Ohio State Highway Patrol Retirement System can be considered for disability benefits." (Appellant's Appendix at A-5). Because Maroon was not a member of the Ohio State Highway Patrol Retirement System at the time he sought those benefits, he was therefore not eligible to receive those benefits. (Appellant's Appendix at A-5). The court adopted the magistrate's decision as its own, including the findings of fact and conclusions of law, and denied Maroon's request for a writ of mandamus.

The court did not deviate from the magistrate's findings and recommendation in its own decision. Maroon has waived his right to appeal those matters because he failed to object to those very findings of fact and conclusions of law at the appellate court. *State ex rel. Johnson v. Ryan*, 127 Ohio St.3d 267, 2010-Ohio-5676, 939 N.E.2d 146 (per curiam); *State ex rel. Findlay Industries v. Indus. Comm.*, 121 Ohio St.3d 517, 2009-Ohio-1674, 905 N.E.2d 1202 (per curiam); *State ex rel. Wilson v. Indus. Comm.*, 100 Ohio St.3d 23, 2003-Ohio-4832, 795 N.E.2d 662 (per curiam); *State ex rel. Booher v. Honda of Am. Mfg., Inc.*, 88 Ohio St.3d 52, 723 N.E.2d 571 (2000). Additionally, the plain error doctrine does not apply here because this case does not involve "exceptional circumstances where error seriously affects the basic fairness, integrity, or public reputation of the judicial process itself." *Brown v. Zurich US*, 150 Ohio App.3d 105, 2002-Ohio-6099, 779 N.E.2d 822, ¶27 (citing *Goldfuss v. Davidson*, 79 Ohio St.3d 116, syllabus).

Maroon failed to file any objections; therefore, he cannot now assert errors below to this court. The decision of the appellate court should be summarily affirmed.

Proposition of Law No. 2:

Membership in the Highway Patrol Retirement System is governed by Chapter 5505 of the Ohio Revised Code and Maroon no longer meets the statutory definition of Member.

1. Membership as defined in Chapter 5505 of the Ohio Revised Code.

If this court does reach the merits of Maroon's appeal, his argument fails as he was not a member of HPRS. The provisions of Chapter 5505 set forth the statutory framework for determining who is an HPRS member. "Member" is defined as any employee included in the membership of the retirement system, whether or not rendering contributing service.¹ Employee is defined in R.C. 5505.01(A) as:

"Employee" means any qualified employee in the uniform division of the state highway patrol* * * [i]n all cases of doubt, the state highway patrol retirement board shall determine whether any person is an employee as defined in this division, and the decision of the board is final.

While Ohio State Highway Patrol employees are employed by the Patrol, they are members of HPRS as defined by R.C. 5505.01(J) and 5505.02. Specifically, section 5505.02 provides that "[m]embership in the retirement system includes all state highway patrol employees, as defined in section 5505.01 of the Revised Code." Just as Chapter 5505 provides the definition of an HPRS "member" it also provides for the circumstances under which one ceases to be a member. As provide by R.C. 5505.20:

Should a member of the state highway patrol retirement system *cease to be an employee* of the state highway patrol, for any reason, except his retirement or death, he shall thereupon *cease to be a member* of the retirement system and he shall forfeit his total service credit at that time.

¹ R.C. 5505.18 excludes employees who are Ohio State Highway Patrol cadets attending training schools pursuant to section 5503.05 of the Revised Code.

When Maroon was terminated from the Patrol on September 8, 2008, he ceased to be an employee and therefore ceased to be a member of HPRS. The determination that Maroon was no longer a member of HPRS after his termination was reasonable and must be upheld.

2. R.C. 5505.19 does not define “member” for purposes of disability benefits.

Maroon argues that despite the definitions of “member” found in R.C. 5505.01 and 5505.02, the language of R.C. 5505.19 and language found in former Ohio Adm. Code 5505-7-07 permits individuals to continue be considered “members” after they cease to be employees of the Patrol. (Appellant’s Brief pp. 3-4). R.C. 5505.19 deals specifically with cessation of membership in the Patrol and is unrelated to the disability application process. Further, nothing in that statute even suggests that it modifies the definition of member in R.C. 5505.01 or R.C. 5505.02. Therefore, even if a conflict exists between the general definitions in R.C. 5505.01 and R.C. 5505.02 and the language in R.C. 5505.19, R.C. 5505.19 does not modify “member” under R.C. 5505.18.

The appellate court rejected Maroon’s argument. Under Maroon’s logic, he would actually remain a “member” of HPRS for the entire time that HPRS held his accumulated employee contributions. Further, under Maroon’s interpretation, anyone who left the Patrol, even for another job, would remain a member and be eligible to apply for disability benefits so long as HPRS held the funds. HPRS has a fiduciary obligation to protect the funds contributed by employees and these contributions are not forfeited upon termination. R.C. 5505.19 simply details in what account these amounts will be held and creates a mechanism for distribution. It does not modify the definitions of member in R.C. 5505.01 and R.C. 5505.02. While HPRS does have an obligation to safeguard the accumulated employee contributions upon cessation of

membership, it does not have an obligation to provide disability retirement benefits after cessation of membership under Chapter 5505. R.C. 5505.01; R.C. 5505.18.

The General Assembly sought to limit membership by defining who qualifies for HPRS membership and Maroon's interpretation ignores these definitions. R.C. 5505.20 clearly provides a membership exception for those individuals who cease to be employees as a result of retirement or death, those individuals are still considered members of HPRS. Individuals who cease to be employees of the Patrol by choice or by involuntary termination are not given an exception under R.C. 5505.20. They are simply not members of HPRS. Additionally, even if there were any ambiguity in the definition of "member," a court must give due deference to the retirement system's interpretation of its own rules and statutes. *State ex rel. Gill v. School Emp. Retirement Sys. of Ohio*, 121 Ohio St.3d 567, 2009-Ohio-1358, 906 N.E.2d 415, ¶¶28-29; *State ex rel. Schaengold v. Ohio Pub. Emp. Retirement Sys.*, 114 Ohio St.3d 147, 2007-Ohio-3760, 870 N.E.2d 719, ¶ 23; *Northwestern Ohio Bldg. & Constr. Trades Council v. Conrad*, 92 Ohio St.3d 282, 287, 750 N.E.2d 130 (2001). The determination that Maroon was no longer a "member" of HPRS for purposes of disability retirement benefits in accordance with Chapter 5505 must be given due deference and this court must deny Maroon's request.

Proposition of Law No. 3:

When Maroon ceased being a member of HPRS he was not entitled to apply for disability retirement benefits because only HPRS members may apply for disability retirement benefits pursuant to R.C. 5505.18.

As stated above, when Maroon sought to apply for disability retirement benefits, he was no longer a member of HPRS under R.C. 5505.01 and R.C. 5505.02. R.C. 5505.18 governs the granting of HPRS disability retirements and requires that the application must be for an

individual who is a “member” at the time of filing the application. R.C. 5505.18 reads, in pertinent part, as follows:

As used in this section, ‘*member*’ does not include state highway patrol cadets attending training schools pursuant to section 5503.05 of the Revised Code.

(A) Upon the application of a *member* of the state highway patrol retirement system, ... a *member* who becomes totally and permanently incapacitated for duty in the employ of the state highway patrol may be retired by the board.

The medical or psychological examination of a *member who has applied for disability retirement* shall be conducted by a competent health-care professional or professionals appointed by the board. ...

The board shall determine whether the member qualifies for disability retirement and its decision shall be final... (R.C. 5505.18(A))(emphasis added).

In addition, Ohio Adm. Code 5505-3-02, entitled “Disability retirement application and hearing process” provides that: “(A) A disability application provided by the retirement system may be filed by a member, a person acting on behalf of a member, or the superintendent of the state highway patrol.”

The definition of member found in R.C. 5505.01(J) specifically references the disability statute, R.C. 5505.18. This reference indicates that these sections are to be read together. Therefore, even if there is a conflict between R.C. 5505.01(J) and R.C. 5505.19, R.C. 5505.18 makes clear that the definitions found in R.C. 5505.01 should apply.

In *State ex rel. Moss v. HPRS, et al.*, this court found that the “pertinent portion of R.C. 5505.18(A) expressly states that the examination is of the ‘member who has applied for disability retirement,’ which requires only that the applicant be a member of the retirement system *at the time of applying for disability retirement.*” 97 Ohio St.3d 198, 2002-Ohio-5806, 777 N.E.2d 259, ¶¶ 19-20 (emphasis added). Maroon relies on *Moss* to the extent that the court

did not expressly hold that “a member forfeits any rights to disability retirement” under R.C. 5505.20. (Appellant’s Brief p. 5). However, Maroon is overlooking this court’s finding that R.C. 5505.18 “requires only that the application be a member of the retirement system at the time of *applying* for disability retirement.” *Moss* at ¶ 19. This court has already held that, “the court of appeals did not err in holding that under R.C. 5505.18 and 5505.20, an employee of the State Highway Patrol *who is a member* of the retirement system is eligible for disability retirement benefits *if the employee* applies for these benefits before being terminated.” *Moss* at ¶ 24 (emphasis added). Under Chapter 5505 Maroon has not been a member of HPRS since September 8, 2008 and therefore is not eligible to apply for disability retirement benefits.

Maroon relies on *Gutierrez v. Police and Fireman’s Disability Pension Fund of Ohio* as support for his position. (Appellant’s Brief p. 6). This reliance is misplaced as the statutes at issue in that case were specific to Ohio Police & Fire Pension Fund (“OP&F”), not HPRS. See *Gutierrez v. Police and Fireman’s Disability Pension Fund of Ohio*, 70 Ohio St.3d 362, 639 N.E.2d 39 (1994).

Maroon compares his situation to that in *State ex rel. Gutierrez v. OP&F*, and alleges that both he and Gutierrez were injured during the performance of official duties. *Gutierrez* at 363; (Appellant’s Brief p. 6). However, *Gutierrez* is distinguishable because when Gutierrez applied for disability benefits from OP&F, former R.C. 742.37(C)(2) only required that an applicant for disability benefits be a member *at the time of injury*. *Gutierrez* at 363. Additionally, OP&F has a statutory provision that, in part, defines member, as a “person, other than an other system retirant, who is contributing a percentage of the person’s annual salary to the fund and is dismissed, resigns, or is granted a leave of absence from a police or fire department shall be considered a ‘member of the fund’ *for a period of twelve months* after the first day of the

dismissal, resignation, or leave of absence, provided the sum deducted from the person's salary and credited to the person's account in the fund remains on deposit in the fund." R.C. 742.01(E) (emphasis added).

HPRS has no such provision in its statutes. While there are general principles that may apply to all of the state pension funds, Maroon cannot rely on statutory provisions from a pension fund to which he never belonged. (Appellant's Brief p. 6). Chapter 742 governs the OP&F and Chapter 5505 governs HPRS. These chapters are different and the state pension funds can only do what is permitted by statute. *Hansford v. Pub. Emp. Ret. Sys.*, 170 Ohio App.3d 603, 2007-Ohio-1242, 868 N.E.2d 708 606, ¶ 9 (internal citations omitted).

HPRS and the Board have no authority beyond what is found in their governing statutes. *Id.* HPRS cannot consider a disability retirement application submitted by anyone except a member. As Maroon was no longer a member of HPRS when he sought to apply for disability benefits, he is not entitled to the application. HPRS did not abuse its discretion when determining that Relator was not a member and not eligible for a disability application. The decision of the appellate court must be upheld.

CONCLUSION

Maroon failed to file objections to the magistrate's decision and therefore waived his right to appeal. Therefore this court should affirm the appellate court's decision and deny Maroon's requested writ. If this court reaches the merits of Maroon's appeal, this court must still affirm the appellate court's decision. Chapter 5505 defines who is a member of HPRS and who can apply for disability retirement benefits from HPRS. HPRS correctly determined that under Chapter 5505 Maroon was no longer a member, by virtue of his termination of employment with

the Patrol at the time he sought to apply for disability retirement benefits. Accordingly, the appellate court's decision must be affirmed and Maroon's requested writ must be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Merit Brief was sent by regular U.S. mail on March 15, 2012 to the following:

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OHIO STATE HIGHWAY PATROL RETIREMENT SYSTEM'S**

APPENDIX

1 of 32 DOCUMENTS

Page's Ohio Revised Code Annotated:
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Current through Legislation passed by the 129th Ohio General Assembly
and filed with the Secretary of State through files 1-69 and 71.

*** Annotations current through January 9, 2012 ***

TITLE 7. MUNICIPAL CORPORATIONS
CHAPTER 742. POLICE AND FIRE PENSION FUND

Go to the Ohio Code Archive Directory

ORC Ann. 742.01 (2012)

§ 742.01. Definitions

As used in this chapter:

(A) (1) "Police department" means the police department of a municipal corporation.

(2) "Member of a police department" means any of the following:

(a) Any person who receives an original appointment as a full-time regular police officer in a police department from a duly established civil service eligible list or pursuant to *section 124.411 [124.41.1] of the Revised Code*, or who is described in *section 742.511 [742.51.1] of the Revised Code*, or who transfers from the public employees retirement system to the Ohio police and fire pension fund pursuant to *section 742.513 [742.51.3] of the Revised Code*, or who is appointed pursuant to *section 737.15 or 737.16 of the Revised Code* as a full-time regular police officer and is paid solely out of public funds of the employing municipal corporation;

(b) Any person who, on October 1, 1965, was contributing four per cent of the person's annual salary to a police relief and pension fund established under former *section 741.32 of the Revised Code*;

(c) Any person who commences employment on or after September 16, 1998, as a full-time police officer with a police department in a position in which the person is required to satisfactorily complete a peace officer training course in compliance with *section 109.77 of the Revised Code*.

(B) (1) "Fire department" means a fire department of the state or an instrumentality of the state or of a municipal corporation, township, joint fire district, or other political subdivision.

(2) "Member of a fire department" means all of the following:

(a) Any person who commences employment after November 8, 1990, as a full-time firefighter with a fire department, in a position in which the person is required to satisfactorily complete or have satisfactorily completed a firefighter training course approved under former *section 3303.07 or section 4765.55 or conducted under section 3737.33 of the Revised Code*;

(b) Any person who has elected under *section 742.515 [742.51.5] of the Revised Code* to be transferred from

the public employees retirement system to the Ohio police and fire pension fund;

(c) Any full-time firefighter who, on November 8, 1990, is a member of the Ohio police and fire pension fund.

(C) "Employee" means any person who is a member of a police department or a member of a fire department.

(D) "Employer" means the government entity by which an employee is employed and paid.

(E) "Member of the fund" means any person, except an other system retirant as defined in *section 742.26 of the Revised Code*, who is contributing a percentage of the person's annual salary to the Ohio police and fire pension fund or who is receiving a disability benefit or pension from the fund as a result of service in a police or fire department. A person, other than an other system retirant, who is contributing a percentage of the person's annual salary to the fund and is dismissed, resigns, or is granted a leave of absence from a police or fire department shall be considered a "member of the fund" for a period of twelve months after the first day of the dismissal, resignation, or leave of absence, provided the sum deducted from the person's salary and credited to the person's account in the fund remains on deposit in the fund.

(F) "Year," for the purpose of determining benefits, means any twelve consecutive calendar months of active service as a member of the fund, or, in the case of a member whose salary is paid weekly or biweekly, fifty-two consecutive weeks of active service as a member.

(G) "Average annual salary" means the highest average annual salary of a member of the fund during any three years of contributions determined by dividing the member's total salary as an employee during the years by three.

(H) "Normal service pension benefit" means the pension benefit payable to a member of the fund under division (C)(1) of *section 742.37 of the Revised Code* upon attaining age forty-eight.

(I) "Retirement allowance" means the total pension benefit or disability benefit to which a member of the fund may be entitled under division (C) of *section 742.37* or *section 742.39 of the Revised Code*.

(J) "Fiduciary" means a person who does any of the following:

(1) Exercises any discretionary authority or control with respect to the management of the system, or with respect to the management or disposition of its assets;

(2) Renders investment advice for a fee, direct or indirect, with respect to money or property of the system;

(3) Has any discretionary authority or responsibility in the administration of the system.

(K) "Terminal pay" means the following payments made by an employer to an employee on termination of employment:

(1) Payments for accrued but unused leave, including sick leave, vacation, personal leave, and compensatory time;

(2) Payments deferred more than one year compensating the employee for holidays worked or for longevity;

(3) Payments for overtime worked that are not included either in the payroll for the period in which the overtime is worked or for the next subsequent payroll period;

(4) Other payments that are not compensation for services rendered in the last pay period in which services were rendered and are designated as terminal pay by rule of the board of trustees of the Ohio police and fire pension

fund. The board shall not designate as terminal pay payments deferred one year or less compensating an employee for holidays worked or for longevity.

(L) (1) Except as otherwise provided in this division, "salary" means all compensation, wages, and other earnings paid to an employee by reason of employment, but without regard to whether compensation, wages, or other earnings are treated as deferred income for federal income tax purposes. "Salary" includes payments for overtime that are made not later than the payroll following the payroll period in which the overtime is worked.

(2) "Salary" does not include any of the following:

- (a) Compensation for services outside the scope of an employee's regular employment;
- (b) Reimbursement of expenses;
- (c) Terminal pay;
- (d) Payments for accrued but unused sick leave or personal leave, or vacation pay covering periods for which salary, compensation, or benefits are paid;
- (e) Payments made under division (B), (C), or (E) of *section 5923.05 of the Revised Code*, Section 4 of Substitute Senate Bill No. 3 of the 119th general assembly, Section 3 of Amended Substitute Senate Bill No. 164 of the 124th general assembly, or Amended Substitute House Bill No. 405 of the 124th general assembly;
- (f) Payments made to or on behalf of an employee that are in excess of the annual compensation that may be taken into account by the fund under division (a)(17) of section 401 of the "Internal Revenue Code of 1986," *100 Stat. 2085, 26 U.S.C.A. 401(a)(17)*, as amended.

(3) The board shall determine by rule whether any compensation, wages, or earnings not enumerated in this division is salary, and its decision shall be final.

(M) "Actuary" means an individual who satisfies all of the following requirements:

- (1) Is a member of the American academy of actuaries;
- (2) Is an associate or fellow of the society of actuaries;
- (3) Has a minimum of five years' experience in providing actuarial services to public retirement plans.

HISTORY:

131 v 286 (Eff 11-5-56); 133 v H 141 (Eff 11-6-69); 134 v H 665 (Eff 3-22-72); 134 v S 137 (Eff 6-28-72); 135 v S 48 (Eff 1-1-74); 135 v H 288 (Eff 11-20-73); 136 v H 268 (Eff 8-20-76); 138 v H 182 (Eff 2-28-80); 139 v H 113 (Eff 11-5-81); 140 v S 164 (Eff 12-1-83); 141 v H 201 (Eff 7-1-85); 141 v H 721 (Eff 7-24-86); 142 v H 243 (Eff 6-14-88); 143 v S 240 (Eff 7-1-90); 143 v H 789 (Eff 11-8-90); 144 v S 3 (Eff 4-17-91); 144 v H 382 (Eff 6-30-91); 144 v H 383 (Eff 5-4-92); 144 v S 98 (Eff 11-12-92); 146 v S 82 (Eff 3-7-97); 147 v H 648 (Eff 9-16-98); 148 v H 222 (Eff 11-2-99); 149 v S 164 (Eff 11-20-2001); 149 v H 405. Eff 12-13-2001.

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Current through Legislation passed by the 129th Ohio General Assembly
and filed with the Secretary of State through files 1-69 and 71.
*** Annotations current through January 9, 2012 ***

TITLE 7. MUNICIPAL CORPORATIONS
CHAPTER 742. POLICE AND FIRE PENSION FUND

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ORC Ann. 742.37 (2012)

§ 742.37. Benefit and pension payments

The board of trustees of the Ohio police and fire pension fund shall adopt rules for the management of the fund and for the disbursement of benefits and pensions as set forth in this section and *section 742.39 of the Revised Code*. Any payment of a benefit or pension under this section is subject to the provisions of *section 742.461 [742.46.1] of the Revised Code*. Notwithstanding any other provision of this section, no pension or benefit paid or determined under division (B) or (C) of this section or *section 742.39 of the Revised Code* shall exceed the limit established by section 415 of the "Internal Revenue Code of 1986," *100 Stat. 2085, 26 U.S.C.A. 415*, as amended.

(A) Persons who were receiving benefit or pension payments from a police relief and pension fund established under former *section 741.32 of the Revised Code*, or from a firemen's relief and pension fund established under former *section 521.02 or 741.02 of the Revised Code*, at the time the assets of the fund were transferred to the Ohio police and fire pension fund, known at that time as the police and firemen's disability and pension fund, shall receive benefit and pension payments from the Ohio police and fire pension fund in the same amount and subject to the same conditions as such payments were being made from the former fund on the date of the transfer.

(B) A member of the fund who, pursuant to law, elected to receive benefits and pensions from a police relief and pension fund established under former *section 741.32 of the Revised Code*, or from a firemen's relief and pension fund established under former *section 741.02 of the Revised Code*, in accordance with the rules of the fund governing the granting of benefits or pensions therefrom in force on April 1, 1947, shall receive benefits and pensions from the Ohio police and fire pension fund in accordance with such rules; provided, that any member of the fund who is not receiving a benefit or pension from the fund on August 12, 1975, may, upon application for a benefit or pension to be received on or after August 12, 1975, elect to receive a benefit or pension in accordance with division (C) of this section.

(C) Members of the fund who have not elected to receive benefits and pensions from a police relief and pension fund or a firemen's relief and pension fund in accordance with the rules of the fund in force on April 1, 1947, shall receive pensions and benefits in accordance with the following provisions:

(1) A member of the fund who has completed twenty-five years of active service in a police or fire department and has attained forty-eight years of age may, at the member's election, retire from the police or fire department. Upon notifying the board in writing of the election, the member shall receive an annual pension, payable in twelve monthly installments, in an amount equal to a percentage of the member's average annual salary. The percentage shall be the sum of two and one-half per cent for each of the first twenty years the member was in the active service of the department,

plus two per cent for each of the twenty-first to twenty-fifth years the member was in the active service of the department, plus one and one-half per cent for each year in excess of twenty-five years the member was in the active service of the department. The annual pension shall not exceed seventy-two per cent of the member's average annual salary.

A member who completed twenty-five years of active service, has resigned or been discharged, and has left the sum deducted from the member's salary on deposit in the pension fund shall, upon attaining forty-eight years of age, be entitled to receive a normal service pension benefit computed and paid under division (C)(1) of this section.

While participating in the deferred retirement option plan established under *section 742.43 of the Revised Code*, a member shall not be considered to have elected retirement under division (C)(1) of this section. On notifying the board under division (B)(1) of *section 742.444 [742.44.4] of the Revised Code* of the member's election to terminate active service, a member described in division (B) of that section shall receive an annual pension under division (C)(1) of this section calculated in accordance with *section 742.442 [742.44.2] of the Revised Code* and rules that shall be adopted by the board of trustees of the Ohio police and fire pension fund.

(2) A member of the fund who has served fifteen or more years as an active member of a police or fire department and who voluntarily resigns or is discharged from the department for any reason other than dishonesty, cowardice, intemperate habits, or conviction of a felony, shall receive an annual pension, payable in twelve monthly installments, in an amount equal to one and one-half per cent of the member's average annual salary multiplied by the number of full years the member was in the active service of the department. The pension payments shall not commence until the member has attained the age of forty-eight years and until twenty-five years have elapsed from the date on which the member became a full-time regular police officer or firefighter in the department.

(3) A member of the fund who has completed fifteen or more years of active service in a police or fire department and who has attained sixty-two years of age, may retire from the department and, upon notifying the board in writing of the election to retire, shall receive an annual pension, payable in twelve monthly installments, in an amount equal to a percentage of the member's average annual salary. The percentage shall be the sum of two and one-half per cent for each of the first twenty years the member was in the active service of the department, plus two per cent for each of the twenty-first to twenty-fifth years the member was in the active service of the department, plus one and one-half per cent for each year in excess of twenty-five years the member was in the active service of the department. The annual pension shall not exceed seventy-two per cent of the member's average annual salary.

(4) With the exception of those persons who may make application for benefits as provided in *section 742.26 of the Revised Code*, no person receiving a pension or other benefit under division (C) of this section on or after July 24, 1986, shall be entitled to apply for any new, changed, or different benefit.

If a member covered by division (C) of this section or *section 742.38 of the Revised Code* dies prior to the time the member has received a payment and leaves a surviving spouse or dependent child, the surviving spouse or dependent child shall receive a pension under division (D) or (E) of this section.

(D) (1) Except as provided in division (D)(2) of this section, a surviving spouse of a deceased member of the fund or a surviving spouse described in division (D)(4) of this section shall receive a monthly pension as follows:

- (a) For the period beginning July 1, 1999, and ending June 30, 2000, five hundred fifty dollars;
- (b) For the period beginning July 1, 2000, and ending June 30, 2002, five hundred fifty dollars plus an amount determined by multiplying five hundred fifty dollars by the average percentage change in the consumer price index, not exceeding three per cent, as determined by the board under former *section 742.3716 [742.37.16] of the Revised Code*;
- (c) For the period beginning July 1, 2002, and the period beginning the first day of July of each year thereafter and continuing for the following twelve months, an amount equal to the monthly amount paid during the prior

twelve-month period plus sixteen dollars and fifty cents.

(2) A surviving spouse of a deceased member of the fund shall receive a monthly pension of four hundred ten dollars if the surviving spouse is eligible for a benefit under division (B) or (D) of *section 742.63 of the Revised Code*. If the surviving spouse ceases to be eligible for a benefit under division (B) or (D) of *section 742.63 of the Revised Code*, the pension shall be increased, effective the first day of the first month following the day on which the surviving spouse ceases to be eligible for the benefit, to the amount it would be under division (D)(1) of this section had the spouse never been eligible for a benefit under division (B) or (D) of *section 742.63 of the Revised Code*.

(3) A pension paid under this division shall continue during the natural life of the surviving spouse. Benefits to a deceased member's surviving spouse that were terminated under a former version of this section that required termination due to remarriage and were not resumed prior to September 16, 1998, shall resume on the first day of the month immediately following receipt by the board of an application on a form provided by the board.

(4) A surviving spouse of a deceased member of or contributor to a fund established under former Chapter 521. or 741. of the Revised Code whose benefit or pension was terminated or not paid due to remarriage shall receive a monthly pension under division (D)(1) of this section.

The pension shall commence on the first day of the month immediately following receipt by the board of a completed application on a form provided by the board and evidence acceptable to the board that at the time of death the deceased spouse was a member of or contributor to a police or firemen's relief and pension fund established under former Chapter 521. or 741. of the Revised Code and that the surviving spouse's benefits were terminated or not granted due to remarriage.

(E) (1) Each surviving child of a deceased member of the fund shall receive a monthly pension until the child attains the age of eighteen years, or marries, whichever event occurs first. A pension under this division, however, shall continue to be payable to a child under age twenty-two who is a student in and attending an institution of learning or training pursuant to a program designed to complete in each school year the equivalent of at least two-thirds of the full-time curriculum requirements of the institution, as determined by the board. If any surviving child, regardless of age at the time of the member's death, because of physical or mental disability, is totally dependent upon the deceased member for support at the time of death, the child shall receive a monthly pension under this division during the child's natural life or until the child has recovered from the disability.

(2) An eligible surviving child shall receive a monthly pension as follows:

(a) For the period beginning July 1, 2001, and ending June 30, 2002, a monthly pension of one hundred fifty dollars plus the cost of living increase provided for in former *section 742.3720 [742.37.20] of the Revised Code*;

(b) For the period beginning July 1, 2002, and ending June 30, 2003, one hundred sixty-three dollars and fifty cents;

(c) For the period beginning July 1, 2003, and the period beginning the first day of each July thereafter and continuing for the following twelve months, an amount equal to the monthly amount paid during the prior twelve-month period plus four dollars and fifty cents.

(F) (1) If a deceased member of the fund leaves no surviving spouse or surviving children, but leaves one or two parents dependent upon the deceased member for support, each parent shall be paid a monthly pension. The pensions provided for in this division shall be paid during the natural life of the surviving parents, or until dependency ceases, or until remarriage, whichever event occurs first.

(2) Each eligible surviving parent shall be paid a monthly pension as follows:

(a) For the period ending June 30, 2002, one hundred six dollars for each parent or two hundred twelve dollars for a sole dependent parent;

(b) For the period beginning July 1, 2002, and ending June 30, 2003, one hundred nine dollars for each parent or two hundred eighteen dollars for a sole dependent parent;

(c) For the period beginning July 1, 2003, and the first day of each July thereafter and continuing for the following twelve months, an amount equal to the monthly amount paid during the prior twelve-month period plus three dollars for each parent or six dollars for a sole dependent parent.

(G) (1) Subject to the provisions of *section 742.461 [742.46.1] of the Revised Code*, a member of the fund who voluntarily resigns or is removed from active service in a police or fire department is entitled to receive an amount equal to the sums deducted from the member's salary and credited to the member's account in the fund, except that a member receiving a disability benefit or service pension is not entitled to receive any return of contributions to the fund.

(2) A member described in division (G)(1) of this section who is married at the time of application for payment and would be eligible for age and service retirement under this section or *section 742.39 of the Revised Code* but for a forfeiture ordered under division (A) or (B) of *section 2929.192 [2929.19.2] of the Revised Code* shall submit with the application a written statement by the member's spouse attesting that the spouse consents to the payment of the member's accumulated contributions. Consent shall be valid only if it is signed and witnessed by a notary public. The board may waive the requirement of consent if the spouse is incapacitated or cannot be located, or for any other reason specified by the board. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

(H) On and after January 1, 1970, all pensions shall be increased in accordance with the following provisions:

(1) A member of the fund who retired prior to January 1, 1967, has attained age sixty-five on January 1, 1970, and was receiving a pension on December 31, 1969, pursuant to division (B) or (C)(1) of this section or former division (C)(2), (3), (4), or (5) of this section, shall have the pension increased by ten per cent.

(2) The monthly pension payable to eligible surviving spouses under division (D) of this section shall be increased by forty dollars for each surviving spouse receiving a pension on December 31, 1969.

(3) The monthly pension payable to each eligible child under division (E) of this section shall be increased by ten dollars for each child receiving a pension on December 31, 1969.

(4) The monthly pension payable to each eligible dependent parent under division (F) of this section shall be increased by thirty dollars for each parent receiving a pension on December 31, 1969.

(5) A member of the fund, including a survivor of a member, who is receiving a pension in accordance with the rules governing the granting of pensions and benefits in force on April 1, 1947, that provide an increase in the original pension from time to time pursuant to changes in the salaries of active members, shall not be eligible for the benefits provided in this division.

(I) On and after January 1, 1977, a member of the fund who was receiving a pension or benefit on December 31, 1973, under division (A), (B), (C)(1), or former division (C)(2) or (7) of this section shall have the pension or benefit increased as follows:

(1) If the member's annual pension or benefit is less than two thousand seven hundred dollars, it shall be increased to three thousand dollars.

(2) If the member's annual pension or benefit is two thousand seven hundred dollars or more, it shall be

increased by three hundred dollars.

The following shall not be eligible to receive increased pensions or benefits as provided in this division:

(a) A member of the fund who is receiving a pension or benefit in accordance with the rules in force on April 1, 1947, governing the granting of pensions and benefits, which provide an increase in the original pension or benefit from time to time pursuant to changes in the salaries of active members;

(b) A member of the fund who is receiving a pension or benefit under division (A) or (B) of this section, based on funded volunteer or funded part-time service, or off-duty disability, or partial on-duty disability, or early vested service;

(c) A member of the fund who is receiving a pension under division (C)(1) of this section, based on funded volunteer or funded part-time service.

(J) On and after July 1, 1977, a member of the fund who was receiving an annual pension or benefit on December 31, 1973, pursuant to division (B) of this section, based upon partial disability, off-duty disability, or early vested service, or pursuant to former division (C)(3), (5), or (6) of this section, shall have such annual pension or benefit increased by three hundred dollars.

The following are not eligible to receive the increase provided by this division:

(1) A member of the fund who is receiving a pension or benefit in accordance with the rules in force on April 1, 1947, governing the granting of pensions and benefits, which provide an increase in the original pension or benefit from time to time pursuant to changes in the salaries of active members;

(2) A member of the fund who is receiving a pension or benefit under division (B) or (C)(2) of this section or former division (C)(3), (5), or (6) of this section based on volunteer or part-time service.

(K) (1) Except as otherwise provided in this division, every person who on July 24, 1986, is receiving an age and service or disability pension, allowance, or benefit pursuant to this chapter in an amount less than thirteen thousand dollars a year that is based upon an award made effective prior to February 28, 1984, shall receive an increase of six hundred dollars a year or the amount necessary to increase the pension or benefit to four thousand two hundred dollars after all adjustments required by this section, whichever is greater.

(2) Division (K)(1) of this section does not apply to the following:

(a) A member of the fund who is receiving a pension or benefit in accordance with rules in force on April 1, 1947, that govern the granting of pensions and benefits and that provide an increase in the original pension or benefit from time to time pursuant to changes in the salaries of active members;

(b) A member of the fund who is receiving a pension or benefit based on funded volunteer or funded part-time service.

(L) On and after July 24, 1986:

(1) The pension of each person receiving a pension under division (D) of this section on July 24, 1986, shall be increased to three hundred ten dollars per month.

(2) The pension of each person receiving a pension under division (E) of this section on July 24, 1986, shall be increased to ninety-three dollars per month.

HISTORY:

131 v 309 (Eff 11-5-65); 133 v H 215 (Eff 1-1-70); 134 v S 137 (Eff 6-28-72); 134 v S 545 (Eff 10-16-72); 135 v S 48 (Eff 1-1-74); 136 v H 83 (Eff 8-12-75); 136 v H 268 (Eff 7-1-76); 136 v H 1010 (Eff 8-27-76); 137 v H 270 (Eff 10-21-77); 137 v H 1 (Eff 8-26-77); 137 v H 586 (Eff 8-26-77); 138 v H 1 (Eff 5-16-79); 138 v H 204 (Eff 7-30-79); 138 v H 182 (Eff 2-28-80); 138 v H 974 (Eff 4-9-81); 139 v H 552 (Eff 11-24-81); 139 v S 348 (Eff 3-15-83); 140 v H 265 (Eff 9-20-84); 141 v H 201 (Eff 7-1-85); 141 v S 112 (Eff 7-24-86); 141 v H 721 (Eff 7-24-86); 141 v H 428 (Eff 12-23-86); 142 v H 389 (Eff 9-9-88); 143 v S 240 (Eff 7-1-90); 144 v H 382 (Eff 6-30-91); 144 v H 383 (Eff 5-4-92); 146 v H 226 (Eff 8-25-95); 146 v H 365 (Eff 9-27-96); 147 v H 648 (Eff 9-16-98); 147 v H 194 (Eff 7-1-99); 148 v H 222 (Eff 11-2-99); 148 v H 275 (Eff 3-17-2000); 149 v H 157 (Eff 2-1-2002); 149 v S 134 (Eff 7-23-2002); 149 v S 247 (Eff 10-1-2002); 149 v H 373. Eff 3-24-2003; 152 v S 3, § 1, eff. 5-15-08.

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Current through Legislation passed by the 129th Ohio General Assembly
and filed with the Secretary of State through files 1-69 and 71.

*** Annotations current through January 9, 2012 ***

TITLE 55. ROADS -- HIGHWAYS -- BRIDGES
CHAPTER 5505. HIGHWAY PATROL RETIREMENT SYSTEM

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ORC Ann. 5505.01 (2012)

§ 5505.01. Definitions

As used in this chapter:

(A) "Employee" means any qualified employee in the uniform division of the state highway patrol, any qualified employee in the radio division hired prior to November 2, 1989, and any state highway patrol cadet attending training school pursuant to *section 5503.05 of the Revised Code* whose attendance at the school begins on or after June 30, 1991. "Employee" includes the superintendent of the state highway patrol. In all cases of doubt, the state highway patrol retirement board shall determine whether any person is an employee as defined in this division, and the decision of the board is final.

(B) "Prior service" means all service rendered as an employee of the state highway patrol prior to September 5, 1941, to the extent credited by the board, provided that in no case shall prior service include service rendered prior to November 15, 1933.

(C) "Total service" means all service rendered by an employee to the extent credited by the board. Total service includes all of the following:

(1) Contributing service rendered by the employee since last becoming a member of the state highway patrol retirement system;

(2) All prior service credit;

(3) Restored service credit as provided in this chapter;

(4) Military service credit purchased under division (D) of *section 5505.16* or *section 5505.25 of the Revised Code*;

(5) Credit granted under division (C) of *section 5505.17* or *section 5505.201 [5505.20.1], 5505.40, or 5505.402 [5505.40.2] of the Revised Code*;

(6) Credit for any period, not to exceed three years, during which the member was out of service and receiving benefits under Chapters 4121. and 4123. of the Revised Code.

(D) "Beneficiary" means any person, except a retirant, who is in receipt of a pension or other benefit payable from funds of the retirement system.

(E) "Regular interest" means interest compounded at rates designated from time to time by the retirement board.

(F) "Plan" means the provisions of this chapter.

(G) "Retirement system" or "system" means the state highway patrol retirement system created and established in the plan.

(H) "Contributing service" means all service rendered by a member since September 4, 1941, for which deductions were made from the member's salary under the plan.

(I) "Retirement board" or "board" means the state highway patrol retirement board provided for in the plan.

(J) Except as provided in *section 5505.18 of the Revised Code*, "member" means any employee included in the membership of the retirement system, whether or not rendering contributing service.

(K) "Retirant" means any member who retires with a pension payable from the retirement system.

(L) "Accumulated contributions" means the sum of the following credited to a member's individual account in the employees' savings fund:

(1) All amounts deducted from the salary of the member;

(2) All amounts paid by the member to purchase state highway patrol retirement system service credit pursuant to this chapter or other state law.

(M) (1) Except as provided in division (M)(2) of this section, "final average salary" means the average of the highest salary paid a member during any three consecutive or nonconsecutive years.

If a member has less than three years of contributing service, the member's final average salary shall be the average of the annual rates of salary paid to the member during the member's total years of contributing service.

(2) If a member is credited with service under division (C)(6) of this section or division (D) of *section 5505.16 of the Revised Code*, the member's final average salary shall be the average of the highest salary that was paid to the member or would have been paid to the member, had the member been rendering contributing service, during any three consecutive or nonconsecutive years. If that member has less than three years of total service, the member's final average salary shall be the average of the annual rates of salary that were paid to the member or would have been paid to the member during the member's years of total service.

(N) "Pension" means an annual amount payable by the retirement system throughout the life of a person or as otherwise provided in the plan.

(O) "Pension reserve" means the present value of any pension, or benefit in lieu of any pension, computed upon the basis of mortality and other tables of experience and interest the board shall from time to time adopt.

(P) "Deferred pension" means a pension for which an eligible member of the system has made application and which is payable as provided in division (A) or (B) of *section 5505.16 of the Revised Code*.

(Q) "Retirement" means termination as an employee of the state highway patrol, with application having been made to the system for a pension or a deferred pension.

(R) "Fiduciary" means any of the following:

(1) A person who exercises any discretionary authority or control with respect to the management of the system, or with respect to the management or disposition of its assets;

(2) A person who renders investment advice for a fee, direct or indirect, with respect to money or property of the system;

(3) A person who has any discretionary authority or responsibility in the administration of the system.

(S) (1) Except as otherwise provided in this division, "salary" means all compensation, wages, and other earnings paid to a member by reason of employment but without regard to whether any of the compensation, wages, or other earnings are treated as deferred income for federal income tax purposes. Salary includes all of the following:

(a) Payments for shift differential, hazard duty, professional achievement, and longevity;

(b) Payments for occupational injury leave, personal leave, sick leave, bereavement leave, administrative leave, and vacation leave used by the member;

(c) Payments made under a disability leave program sponsored by the state for which the state is required by *section 5505.151 [5505.15.1] of the Revised Code* to make periodic employer and employee contributions to the retirement system.

(2) "Salary" does not include any of the following:

(a) Payments resulting from the conversion of accrued but unused sick leave, personal leave, compensatory time, and vacation leave;

(b) Payments made by the state to provide life insurance, sickness, accident, endowment, health, medical, hospital, dental, or surgical coverage, or other insurance for the member or the member's family, or amounts paid by the state to the member in lieu of providing that insurance;

(c) Payments for overtime work;

(d) Incidental benefits, including lodging, food, laundry, parking, or services furnished by the state, use of property or equipment of the state, and reimbursement for job-related expenses authorized by the state including moving and travel expenses and expenses related to professional development;

(e) Payments made to or on behalf of a member that are in excess of the annual compensation that may be taken into account by the retirement system under division (a)(17) of section 401 of the "Internal Revenue Code of 1986," *100 Stat. 2085, 26 U.S.C.A. 401 (a)(17)*, as amended;

(f) Payments made under division (B), (C), or (E) of *section 5923.05 of the Revised Code*, Section 4 of Substitute Senate Bill No. 3 of the 119th general assembly, Section 3 of Amended Substitute Senate Bill No. 164 of the 124th general assembly, or Amended Substitute House Bill No. 405 of the 124th general assembly.

(3) The retirement board shall determine by rule whether any compensation, wages, or earnings not enumerated in this division are salary, and its decision shall be final.

(T) "Actuary" means an individual who satisfies all of the following requirements:

(1) Is a member of the American academy of actuaries;

(2) Is an associate or fellow of the society of actuaries;

(3) Has a minimum of five years' experience in providing actuarial services to public retirement plans.

HISTORY:

GC § 1185; 121 v 455 (523); Bureau of Code Revision, 10-1-53; 131 v 1264 (Eff 1-1-66); 134 v H 910 (Eff 3-23-72); 135 v H 1050 (Eff 9-30-74); 139 v H 113 (Eff 11-5-81); 139 v S 133 (Eff 11-18-81); 140 v H 37 (Eff 6-22-84); 143 v H 340 (Eff 11-2-89); 143 v S 240 (Eff 7-1-90); 144 v S 3 (Eff 4-17-91); 144 v H 382 (Eff 6-30-91); 146 v S 82 (Eff 3-7-97); 148 v H 535 (Eff 4-1-2001); 149 v S 164 (Eff 11-20-2001); 149 v H 405 (Eff 12-13-2001); 149 v H 373. Eff 3-24-2003.

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*** Annotations current through January 9, 2012 ***

TITLE 55. ROADS -- HIGHWAYS -- BRIDGES
CHAPTER 5505. HIGHWAY PATROL RETIREMENT SYSTEM

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ORC Ann. 5505.02 (2012)

§ 5505.02. State highway patrol pension fund established; membership mandatory

The state highway patrol retirement system is hereby established for the state highway patrol employees, as defined in division (A) of *section 5505.01 of the Revised Code*.

Membership in the retirement system includes all state highway patrol employees, as defined in *section 5505.01 of the Revised Code*, and such membership is mandatory for such employees.

HISTORY:

GC § 1175-1; 121 v 445 (524); Bureau of Code Revision, 10-1-53; 131 v 1265 (Eff 1-1-66); 132 v H 1. Eff 2-21-67.

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TITLE 55. ROADS -- HIGHWAYS -- BRIDGES
CHAPTER 5505. HIGHWAY PATROL RETIREMENT SYSTEM

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ORC Ann. 5505.18 (2012)

§ 5505.18. Disability retirement

As used in this section, "member" does not include state highway patrol cadets attending training schools pursuant to *section 5503.05 of the Revised Code*.

(A) Upon the application of a member of the state highway patrol retirement system, a person acting on behalf of a member, or the superintendent of the state highway patrol on behalf of a member, a member who becomes totally and permanently incapacitated for duty in the employ of the state highway patrol may be retired by the board.

The medical or psychological examination of a member who has applied for disability retirement shall be conducted by a competent health-care professional or professionals appointed by the board. The health-care professional or professionals shall file a written report with the board containing the following information:

- (1) Whether the member is totally incapacitated for duty in the employ of the patrol;
- (2) Whether the incapacity is expected to be permanent;
- (3) The cause of the member's incapacity.

The board shall determine whether the member qualifies for disability retirement and its decision shall be final. The board shall consider the written medical or psychological report, opinions, statements, and other competent evidence in making its determination. If the incapacity is a result of heart disease or any cardiovascular disease of a chronic nature, which disease or any evidence of which was not revealed by the physical examination passed by the member on entry into the patrol, the member is presumed to have incurred the disease in the line of duty as a member of the patrol, unless the contrary is shown by competent evidence.

(B) (1) Except as provided under division (A) of *section 5505.58 of the Revised Code*, a member whose retirement on account of disability incurred in the line of duty shall receive the applicable pension provided for in *section 5505.17 of the Revised Code*, except that if the member has less than twenty-five years of contributing service, the member's service credit shall be deemed to be twenty-five years for the purpose of this provision. In no case shall the member's disability pension be less than sixty-one and one-quarter per cent or exceed the lesser of seventy-nine and one-quarter per cent of the member's final average salary or the limit established by section 415 of the "Internal Revenue Code of 1986," *100 Stat. 2085, 26 U.S.C.A. 415*, as amended.

(2) Except as provided under division (B) of *section 5505.58 of the Revised Code*, a member whose retirement on account of disability incurred not in the line of duty shall receive the applicable pension provided for in *section 5505.17 of the Revised Code*, except that if the member has less than twenty years of contributing service, the member's service credit shall be deemed to be twenty years for the purpose of this provision. In no case shall the member's disability pension exceed the lesser of seventy-nine and one-quarter per cent of the member's final average salary or the limit established by section 415 of the "Internal Revenue Code of 1986," *100 Stat. 2085, 26 U.S.C.A. 415*, as amended.

(C) The state highway patrol retirement board shall adopt rules requiring a disability pension recipient, as a condition of continuing to receive a disability pension, to agree in writing to obtain any medical or psychological treatment recommended by the board's health-care professional and submit medical or psychological reports regarding the treatment. If the board determines that a disability pension recipient is not obtaining the medical or psychological treatment or the board does not receive a required medical or psychological report, the disability pension shall be suspended until the treatment is obtained, the report is received by the board, or the board's health-care professional certifies that the treatment is no longer helpful or advisable. Should the recipient's failure to obtain treatment or submit a medical or psychological report continue for one year, the recipient's right to the disability benefit shall be terminated as of the effective date of the original suspension.

(D) A member placed on a disability pension who has not attained the age of sixty years shall be subject to an annual medical or psychological re-examination by health-care professionals appointed by the board, except that the board may waive the re-examination if the board's health-care professionals certify that the member's disability is ongoing. If any member placed on a disability pension refuses to submit to a medical or psychological re-examination, the member's disability pension shall be suspended until the member withdraws the refusal. If the refusal continues for one year, all the member's rights under and to the disability pension shall be terminated as of the effective date of the original suspension.

(E) Each recipient of a disability pension who has not attained the age of sixty years shall file with the board an annual statement of earnings, current medical or psychological information on the recipient's condition, and any other information required in rules adopted by the board. The board may waive the requirement that a disability benefit recipient file an annual statement of earnings or current medical or psychological information if the board's health-care professional certifies that the recipient's disability is ongoing.

The board shall annually examine the information submitted by the recipient. If a recipient refuses to file the statement or information, the disability pension shall be suspended until the statement and information are filed. If the refusal continues for one year, the right to the pension shall be terminated as of the effective date of the original suspension.

(F) (1) Except as provided in division (F)(2) of this section, a retirant who has been on disability pension, and who has been physically or psychologically examined and found no longer incapable of performing the retirant's duties, shall be restored to the rank the retirant held at the time the retirant was pensioned and all previous rights shall be restored, including the retirant's civil service status, and the disability pension shall terminate. Upon return to employment in the patrol, the retirant shall again become a contributing member of the retirement system, the total service at the time of the retirant's retirement shall be restored to the retirant's credit, and the retirant shall be given service credit for the period the retirant was in receipt of a disability pension. The provisions of division (F)(1) of this section shall be retroactive to September 5, 1941.

(2) The state highway patrol is not required to take action under division (F)(1) of this section if the retirant was dismissed or resigned in lieu of dismissal for dishonesty, misfeasance, malfeasance, or conviction of a felony.

(G) The board may adopt rules to carry out this section, including rules that specify the types of health-care professionals the board may appoint for the purpose of this section.

HISTORY:

GC § 1185-18; 121 v 455 (529); 123 v 523; Bureau of Code Revision, 10-1-53; 131 v 1278 (Eff 1-1-66); 139 v S 133 (Eff 11-18-81); 143 v H 340 (Eff 11-2-89); 143 v H 377 (Eff 11-2-89); 143 v S 240 (Eff 7-1-90); 144 v H 382 (Eff 6-30-91); 146 v S 82 (Eff 3-7-97); 147 v H 648 (Eff 9-16-98); 148 v S 189 (Eff 6-30-2000); 149 v H 373. Eff 3-24-2003; 151 v S 206, § 1, eff. 6-15-06.

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*** Annotations current through January 9, 2012 ***

TITLE 55. ROADS -- HIGHWAYS -- BRIDGES
CHAPTER 5505. HIGHWAY PATROL RETIREMENT SYSTEM

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ORC Ann. 5505.19 (2012)

§ 5505.19. Cessation of membership; disposition of accumulations

Subject to *section 5505.26 of the Revised Code*, a member of the state highway patrol retirement system who ceases to be an employee of the state highway patrol for any cause except death, disability, or retirement, upon application filed in writing with the state highway patrol retirement board, shall be paid the accumulated contributions, less interest, standing to the credit of the member's individual account in the employees' savings fund. Except as otherwise provided in this chapter, five years after a member ceases to be an employee of the patrol any balance of accumulated contributions standing to the member's credit in the employees' savings fund shall be transferred to the income fund and after that shall be paid from that fund to the member, or in the case of a deceased member or retirant who dies leaving no surviving spouse or dependent children or parents, shall be paid from that fund to the estate of the deceased member or retirant, upon application to the board.

A member described in this section who is married at the time of application for payment and would be eligible for age and service retirement under *section 5505.16 or 5505.17 of the Revised Code* but for a forfeiture ordered under division (A) or (B) of *section 2929.192 [2929.19.2] of the Revised Code* shall submit with the application a written statement by the member's spouse attesting that the spouse consents to the payment of the member's accumulated contributions. Consent shall be valid only if it is signed and witnessed by a notary public. The board may waive the requirement of consent if the spouse is incapacitated or cannot be located, or for any other reason specified by the board. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

HISTORY:

GC § 1185-20; 121 v 455 (529); 123 v 523; 124 v 556; Bureau of Code Revision, 10-1-53; 131 v 1279 (Eff 1-1-66); 140 v H 265 (Eff 9-20-84); 144 v H 638 (Eff 4-16-93); 146 v H 308. Eff 6-5-96; 152 v S 3, § 1, eff. 5-15-08.

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*** Annotations current through January 9, 2012 ***

TITLE 55. ROADS – HIGHWAYS – BRIDGES
CHAPTER 5505. HIGHWAY PATROL RETIREMENT SYSTEM

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ORC Ann. 5505.20 (2012)

§ 5505.20. Restoration of membership

Should a member of the state highway patrol retirement system cease to be an employee of the state highway patrol, for any reason, except his retirement or death, he shall thereupon cease to be a member of the retirement system and he shall forfeit his total service credit at that time. Should he return to the employ of the state highway patrol, he shall again become a member. When said re-employment occurs the total service credit last forfeited by him shall be restored to his credit, provided he pays into the employees' savings fund the amount, if any, he withdrew therefrom, together with such compound interest as the board may require from the date of withdrawal to the date of repayment. The member may choose to purchase only part of such credit in any one payment, subject to board rules. The return of accumulated contributions shall be made according to such rules as the board shall from time to time adopt.

HISTORY:

GC § 1185-15; 121 v 455 (529); 123 v 523; 124 v 556; Bureau of Code Revision, 10-1-53; 131 v 1280 (Eff 1-1-66); 136 v H 268 (Eff 8-20-76); 137 v H 163. Eff 7-13-77.

OHIO ADMINISTRATIVE CODE
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5505 State Highway Patrol Retirement System
Chapter 5505-3 Retirement

OAC Ann. 5505-3-02 (2012)

5505-3-02. Disability retirement application and hearing process.

(A) A disability application provided by the retirement system may be filed by a member, a person acting on behalf of a member, or the superintendent of the state highway patrol.

(1) As used in this rule, "member" does not include state highway patrol cadets attending training schools pursuant to *section 5503.05 of the Revised Code*.

(2) A terminated employee, whether the termination from the state highway patrol is voluntary or involuntary, ceases to be a member of the retirement system.

(B) With the application, the applicant will submit all medical reports that relate to the alleged disabling condition.

(C) Upon receipt of the application and any medical reports, the board will -

(1) identify the member's duties and responsibilities effective on the day preceding the disabling condition; and

(2) appoint one or more health care professionals with expertise in the disabling condition to examine the applicant at the expense of the retirement system to determine fitness for duty.

(D) After examining the applicant and reviewing the application, any medical reports submitted by the applicant, and the results of any additional medical testing, the health care professional or professionals will file a written report with the board with the following information:

(1) whether the member is totally incapacitated for duty in the employ of the patrol,

(2) whether the incapacity is expected to be permanent, and

(3) the cause of the member's incapacity.

(E) The board will forward a copy of the written report of the health care professional or professionals to the disability committee, which will schedule a hearing date.

(F) No less than ten days prior to the hearing, the applicant will be notified by certified mail or another method that is acknowledged in writing by the applicant of -

(1) the hearing date and time, and

(2) the right to appear at the hearing, with or without counsel, to present evidence and testimony.

(G) The disability committee hearing will be held in executive session. An audio recording of testimony on behalf of the applicant will be made to provide the disability committee and board with a record for further review, notwithstanding Rule 5505-9-07. The disability committee will consider the application, any medical reports submitted by the applicant, the results of any additional medical testing, the written report of the health care professional or professionals, and other relevant information.

The disability committee may recommend one or more of the following:

- (1) approval or denial of the application,
- (2) a finding on whether or not the disability occurred in the line of duty,
- (3) a finding that disability retirement be contingent on compliance with a treatment plan,
- (4) further investigation,
- (5) additional examination of the applicant.

(H) No less than ten days after the hearing, the applicant will be notified by certified mail or another method that is acknowledged in writing by the applicant of -

- (1) the disability committee's recommendations,
- (2) if applicable, a reasonable explanation for denial, and
- (3) the right to request reconsideration of the disability committee's decision.

(I) Within ten days of receiving notification of the disability committee's recommendations, the applicant may file a written request for reconsideration. The request will be considered at the next regularly scheduled meeting of the disability committee and must be accompanied by new medical evidence.

(J) At the next regularly scheduled meeting of the board, the disability committee's recommendations on a disability application may be adopted or rejected, in whole or in part, or remanded to the disability committee for further consideration.

(K) No less than ten days after the board meets, the applicant will be notified by certified mail or another method that is acknowledged in writing by the applicant of -

- (1) the board's decision, and
- (2) if applicable, the effective date of the disability retirement.

History:Replaces: 5505-3-02.

Effective: 12/16/2011.

R.C. 119.032 review dates: 12/16/2016.

Promulgated Under: 111.15.

Statutory Authority: 5505.04.

Rule Amplifies: 5505.18.

Prior Effective Dates: 3/25/2004.

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5505 State Highway Patrol Retirement System
Chapter 5505-7 Benefits

OAC Ann. 5505-7-07 (2012)

5505-7-07. Refund of contributions.

Upon request of a former member on a prescribed form, and in lieu of the payment of a retirement benefit, the retirement system shall refund the former member's accumulated employee contributions.

History:Effective: 04/26/2011.

R.C. 119.032 review dates: 11/30/2010 and 04/26/2016.

Promulgated Under: 111.15.

Statutory Authority: 5505.07.

Rule Amplifies: 5505.19.

Prior Effective Dates: 1/1/86, 2/2/92, 10/21/05.

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OHIO RULES OF COURT SERVICE
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*** Rules current through rule amendments received through January 9, 2012 ***
*** Annotations current through November 7, 2011 ***

Ohio Rules Of Civil Procedure
Title VI Trials

Ohio Civ. R. 53 (2012)

Review Court Orders which may amend this Rule.

Rule 53. Magistrates

(A) Appointment.

A court of record may appoint one or more magistrates who shall have been engaged in the practice of law for at least four years and be in good standing with the Supreme Court of Ohio at the time of appointment. A magistrate appointed under this rule may also serve as a magistrate under *Crim. R. 19* or as a traffic magistrate.

(B) Compensation.

The compensation of magistrates shall be fixed by the court, and no part of the compensation shall be taxed as costs under *Civ. R. 54(D)*.

(C) Authority.

(1) Scope.

To assist courts of record and pursuant to reference under *Civ. R. 53(D)(1)*, magistrates are authorized, subject to the terms of the relevant reference, to do any of the following:

- (a) Determine any motion in any case;
- (b) Conduct the trial of any case that will not be tried to a jury;
- (c) Upon unanimous written consent of the parties, preside over the trial of any case that will be tried to a jury;
- (d) Conduct proceedings upon application for the issuance of a temporary protection order as authorized by law;
- (e) Exercise any other authority specifically vested in magistrates by statute and consistent with this rule.

(2) Regulation of proceedings.

In performing the responsibilities described in *Civ. R. 53(C)(1)*, magistrates are authorized, subject to the terms of the relevant reference, to regulate all proceedings as if by the court and to do everything necessary for the efficient performance of those responsibilities, including but not limited to, the following:

(a) Issuing subpoenas for the attendance of witnesses and the production of evidence;

(b) Ruling upon the admissibility of evidence;

(c) Putting witnesses under oath and examining them;

(d) Calling the parties to the action and examining them under oath;

(e) When necessary to obtain the presence of an alleged contemnor in cases involving direct or indirect contempt of court, issuing an attachment for the alleged contemnor and setting the type, amount, and any conditions of bail pursuant to *Crim. R. 46*;

(f) Imposing, subject to *Civ. R. 53(D)(8)*, appropriate sanctions for civil or criminal contempt committed in the presence of the magistrate.

(D) Proceedings in Matters Referred to Magistrates.

(1) Reference by court of record.

(a) Purpose and method.

A court of record may, for one or more of the purposes described in *Civ. R. 53(C)(1)*, refer a particular case or matter or a category of cases or matters to a magistrate by a specific or general order of reference or by rule.

(b) Limitation.

A court of record may limit a reference by specifying or limiting the magistrate's powers, including but not limited to, directing the magistrate to determine only particular issues, directing the magistrate to perform particular responsibilities, directing the magistrate to receive and report evidence only, fixing the time and place for beginning and closing any hearings, or fixing the time for filing any magistrate's decision on the matter or matters referred.

(2) Magistrate's order; motion to set aside magistrate's order.

(a) Magistrate's order.

(i) Nature of order.

Subject to the terms of the relevant reference, a magistrate may enter orders without judicial approval if necessary to regulate the proceedings and if not dispositive of a claim or defense of a party.

(ii) Form, filing, and service of magistrate's order.

A magistrate's order shall be in writing, identified as a magistrate's order in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys.

(b) Motion to set aside magistrate's order.

Any party may file a motion with the court to set aside a magistrate's order. The motion shall state the moving party's reasons with particularity and shall be filed not later than ten days after the magistrate's order is filed. The pendency of a motion to set aside does not stay the effectiveness of the magistrate's order, though the magistrate or the court may by order stay the effectiveness of a magistrate's order.

(3) Magistrate's decision; objections to magistrate's decision.

(a) Magistrate's decision.**(i) When required.**

Subject to the terms of the relevant reference, a magistrate shall prepare a magistrate's decision respecting any matter referred under *Civ. R. 53(D)(1)*.

(ii) Findings of fact and conclusions of law.

Subject to the terms of the relevant reference, a magistrate's decision may be general unless findings of fact and conclusions of law are timely requested by a party or otherwise required by law. A request for findings of fact and conclusions of law shall be made before the entry of a magistrate's decision or within seven days after the filing of a magistrate's decision. If a request for findings of fact and conclusions of law is timely made, the magistrate may require any or all of the parties to submit proposed findings of fact and conclusions of law.

(iii) Form; filing, and service of magistrate's decision.

A magistrate's decision shall be in writing, identified as a magistrate's decision in the caption, signed by the magistrate, filed with the clerk, and served by the clerk on all parties or their attorneys no later than three days after the decision is filed. A magistrate's decision shall indicate conspicuously that a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under *Civ. R. 53(D)(3)(a)(ii)*, unless the party timely and specifically objects to that factual finding or legal conclusion as required by *Civ. R. 53(D)(3)(b)*.

(b) Objections to magistrate's decision.**(i) Time for filing.**

A party may file written objections to a magistrate's decision within fourteen days of the filing of the decision, whether or not the court has adopted the decision during that fourteen-day period as permitted by *Civ. R. 53(D)(4)(e)(i)*. If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. If a party makes a timely request for findings of fact and conclusions of law, the time for filing objections begins to run when the magistrate files a decision that includes findings of fact and conclusions of law.

(ii) Specificity of objection.

An objection to a magistrate's decision shall be specific and state with particularity all grounds for objection.

(iii) Objection to magistrate's factual finding; transcript or affidavit.

An objection to a factual finding, whether or not specifically designated as a finding of fact under *Civ. R. 53(D)(3)(a)(ii)*, shall be supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. With leave of court, alternative technology or manner of reviewing the relevant evidence may be considered. The objecting party shall file the transcript or affidavit with the court within thirty days after filing objections unless the court extends the time in writing for preparation of the transcript or other good cause. If a party files timely objections prior to the date on which a transcript is prepared, the party may seek leave of court to supplement the objections.

(iv) Waiver of right to assign adoption by court as error on appeal.

Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under *Civ. R. 53(D)(3)(a)(ii)*, unless the party has objected to that finding or conclusion as required by *Civ. R. 53(D)(3)(b)*.

(4) Action of court on magistrate's decision and on any objections to magistrate's decision; entry of judgment or interim order by court.

(a) Action of court required.

A magistrate's decision is not effective unless adopted by the court.

(b) Action on magistrate's decision.

Whether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification. A court may hear a previously-referred matter, take additional evidence, or return a matter to a magistrate.

(c) If no objections are filed.

If no timely objections are filed, the court may adopt a magistrate's decision, unless it determines that there is an error of law or other defect evident on the face of the magistrate's decision.

(d) Action on objections.

If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.

(e) Entry of judgment or interim order by court.

A court that adopts, rejects, or modifies a magistrate's decision shall also enter a judgment or interim order.

(i) Judgment.

The court may enter a judgment either during the fourteen days permitted by *Civ. R. 53(D)(3)(b)(i)* for the filing of objections to a magistrate's decision or after the fourteen days have expired. If the court enters a judgment during the fourteen days permitted by *Civ. R. 53(D)(3)(b)(i)* for the filing of objections, the timely filing of objections to the magistrate's decision shall operate as an automatic stay of execution of the judgment until the court disposes of those objections and vacates, modifies, or adheres to the judgment previously entered.

(ii) Interim order.

The court may enter an interim order on the basis of a magistrate's decision without waiting for or ruling on timely objections by the parties where immediate relief is justified. The timely filing of objections does not stay the execution of an interim order, but an interim order shall not extend more than twenty-eight days from the date of entry, subject to extension by the court in increments of twenty-eight additional days for good cause shown. An interim order shall comply with *Civ. R. 54(A)*, be journalized pursuant to *Civ. R. 58(A)*, and be served pursuant to *Civ. R. 58(B)*.

(5) Extension of time.

For good cause shown, the court shall allow a reasonable extension of time for a party to file a motion to set aside a magistrate's order or file objections to a magistrate's decision. "Good cause" includes, but is not limited to, a failure by the clerk to timely serve the party seeking the extension with the magistrate's order or decision.

(6) Disqualification of a magistrate.

Disqualification of a magistrate for bias or other cause is within the discretion of the court and may be sought by motion filed with the court.

(7) Recording of proceedings before a magistrate.

Except as otherwise provided by law, all proceedings before a magistrate shall be recorded in accordance with procedures established by the court.

(8) Contempt in the presence of a magistrate.

(a) Contempt order.

Contempt sanctions under *Civ. R. 53(C)(2)(f)* may be imposed only by a written order that recites the facts and certifies that the magistrate saw or heard the conduct constituting contempt.

(b) Filing and provision of copies of contempt order.

A contempt order shall be filed and copies provided forthwith by the clerk to the appropriate judge of the court and to the subject of the order.

(c) Review of contempt order by court; bail.

The subject of a contempt order may by motion obtain immediate review by a judge. A judge or the magistrate entering the contempt order may set bail pending judicial review of the order.

HISTORY: Amended, eff 7-1-75; 7-1-85; 7-1-92; 7-1-93; 7-1-95; 7-1-96; 7-1-98; 7-1-03; 7-1-06; 7-1-11.