S T A T E O F N E W Y O R K

912

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. THIELE -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to making judicial conduct hearings open to the public

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 4 of section 44 of the judiciary law, as added by chapter 156 of the laws of 1978, is amended to read as follows:

4. If in the course of an investigation, the commission determines that a hearing is warranted it shall direct that a formal written complaint signed and verified by the administrator be drawn and served upon the judge involved, either personally or by certified mail, return receipt requested. The judge shall file a written answer to the [the] complaint with the commission within twenty days of such service. If, upon receipt of the answer, or upon expiration of the time to answer, the commission shall direct that a hearing be held with respect to the complaint, the judge involved shall be notified in writing of the date of the hearing either personally, at least twenty days prior thereto, or by certified mail, return receipt requested, at least twenty-two days prior thereto. Upon the written request of the judge, the commission shall, at least five days prior to the hearing or any adjourned date thereof, make available to the judge without cost copies of all documents which the commission intends to present at such hearing and any written statements made by witnesses who will be called to give testimony by the commission. The commission shall, in any case, make available to the judge at least five days prior to the hearing or any adjourned date thereof any exculpatory evidentiary data and material relevant to the complaint. The failure of the commission to timely furnish any documents, statements and/or exculpatory evidentiary data and material provided for herein shall not affect the validity of any proceedings

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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before the commission provided that such failure is not substantially prejudicial to the judge. The complainant may be notified of the hearing and unless he OR SHE shall be subpoenaed as a witness by the judge, his OR HER presence thereat shall be within the discretion of the commission. The hearing shall [not] be public [unless the judge involved shall so demand in writing]. At the hearing the commission may take the testimony of witnesses and receive evidentiary data and material relevant to the complaint. The judge shall have the right to be represented by counsel during any and all stages of the hearing and shall have the right to call and cross-examine witnesses and present evidentiary data and material relevant to the complaint. A transcript of the proceedings and of the testimony of witnesses at the hearing shall be taken and kept with the records of the commission.

S 2. This act shall take effect immediately.