

6264

2009-2010 Regular Sessions

I N S E N A T E

November 4, 2009

Introduced by Sens. SAMPSON, MAZIARZ -- read twice and ordered printed,
and when printed to be committed to the Committee on Rules

AN ACT to amend the judiciary law, in relation to explanation of reasons
for dismissal of complaints

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

1 Section 1. Section 44 of the judiciary law, as added by chapter 156 of
2 the laws of 1978, is amended to read as follows:
3 S 44. Complaint; investigation; hearing and disposition. 1. The
4 commission shall receive, initiate, investigate and hear complaints with
5 respect to the conduct, qualifications, fitness to perform, or perform-
6 ance of official duties of any judge, and, in accordance with the
7 provisions of subdivision d of section twenty-two of article six of the
8 constitution, may determine that a judge be admonished, censured or
9 removed from office for cause, including, but not limited to, misconduct
10 in office, persistent failure to perform his duties, habitual intemper-
11 ance and conduct, on or off the bench, prejudicial to the administration
12 of justice, or that a judge be retired for mental or physical disability
13 preventing the proper performance of his judicial duties. A complaint
14 shall be in writing [and signed by the complainant and, if directed by
15 the commission, shall be verified]. Upon receipt of a complaint (a) the
16 commission shall conduct an investigation of the complaint; or (b) the
17 commission may dismiss the complaint if it determines that the complaint
18 on its face lacks merit. If the complaint is dismissed, the commission
19 shall [so notify] PROVIDE A DETAILED EXPLANATION AS TO THE REASON OR
20 REASONS SUCH COMPLAINT WAS DISMISSED TO the complainant. If the commis-
21 sion shall have notified the judge of the complaint, the commission
22 shall also notify the judge of such dismissal.
23 2. The commission may, on its own motion, initiate an investigation of
24 a judge with respect to his qualifications, conduct, fitness to perform
25 or the performance of his official duties. Prior to initiating any such
26 investigation, the commission shall file as part of its record a written
27 complaint, signed by the administrator of the commission, which
28 complaint shall serve as the basis for such investigation.

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

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1 3. In the course of an investigation, the commission may require the
2 appearance of the judge involved before it, in which event the judge
3 shall be notified in writing of his required appearance, either
4 personally, at least three days prior to such appearance, or by certi-
5 fied mail, return receipt requested, at least five days prior to such
6 appearance. In either case a copy of the complaint shall be served upon
7 the judge at the time of such notification. The judge shall have the
8 right to be represented by counsel during any and all stages of the
9 investigation in which his appearance is required and to present eviden-
10 tiary data and material relevant to the complaint. A transcript shall be
11 made and kept with respect to all proceedings at which testimony or
12 statements under oath of any party or witness shall be taken, and the
13 transcript of the judge's testimony shall be made available to the judge
14 without cost. [Such transcript shall be confidential except as otherwise
15 permitted by section forty-five of this article.]

16 4. If in the course of an investigation, the commission determines
17 that a hearing is warranted it shall direct that a formal written
18 complaint signed and verified by the administrator be drawn and served
19 upon the judge involved, either personally or by certified mail, return
20 receipt requested. The judge shall file a written answer to the the
21 complaint with the commission within twenty days of such service. If,
22 upon receipt of the answer, or upon expiration of the time to answer,
23 the commission shall direct that a hearing be held with respect to the
24 complaint, the judge involved shall be notified in writing of the date
25 of the hearing either personally, at least twenty days prior thereto, or
26 by certified mail, return receipt requested, at least twenty-two days
27 prior thereto. Upon the written request of the judge, the commission
28 shall, at least five days prior to the hearing or any adjourned date
29 thereof, make available to the judge without cost copies of all docu-
30 ments which the commission intends to present at such hearing and any
31 written statements made by witnesses who will be called to give testimo-
32 ny by the commission. The commission shall, in any case, make available
33 to the judge at least five days prior to the hearing or any adjourned
34 date thereof any exculpatory evidentiary data and material relevant to
35 the complaint. The failure of the commission to timely furnish any docu-
36 ments, statements and/or exculpatory evidentiary data and material
37 provided for herein shall not affect the validity of any proceedings
38 before the commission provided that such failure is not substantially
39 prejudicial to the judge. The complainant may be notified of the hearing
40 and unless he shall be subpoenaed as a witness by the judge, his pres-
41 ence thereat shall be within the discretion of the commission. The hear-
42 ing shall [not] be public [unless the judge involved shall so demand in
43 writing]. At the hearing the commission may take the testimony of
44 witnesses and receive evidentiary data and material relevant to the
45 complaint. The judge shall have the right to be represented by counsel
46 during any and all stages of the hearing and shall have the right to
47 call and cross-examine witnesses and present evidentiary data and mate-
48 rial relevant to the complaint. A transcript of the proceedings and of
49 the testimony of witnesses at the hearing shall be taken and kept with
50 the records of the commission.

51 5. Subject to the approval of the commission, the administrator and
52 the judge may agree on a statement of facts and may stipulate in writing
53 that the hearing shall be waived. In such a case, the commission shall
54 make its determination upon the pleadings and the agreed statement of
55 facts.

1 6. If, after a formal written complaint has been served pursuant to
2 subdivision four of this section, or during the course of or after a
3 hearing, the commission determines that no further action is necessary,
4 the complaint shall be dismissed and the complainant and the judge shall
5 be so notified in writing. THE COMPLAINANT SHALL BE PROVIDED WITH A
6 DETAILED EXPLANATION AS TO THE REASON OR REASONS SUCH COMPLAINT WAS
7 DISMISSED.

8 7. After a hearing, the commission may determine that a judge be
9 admonished, censured, removed or retired. The commission shall transmit
10 its written determination, together with its findings of fact and
11 conclusions of law and the record of the proceedings upon which its
12 determination is based, to the chief judge of the court of appeals who
13 shall cause a copy thereof to be served either personally or by certi-
14 fied mail, return receipt requested, on the judge involved. Upon
15 completion of service, the determination of the commission, its findings
16 and conclusions and the record of its proceedings shall be made public
17 and shall be made available for public inspection at the principal
18 office of the commission and at the office of the clerk of the court of
19 appeals. The judge involved may either accept the determination of the
20 commission or make written request to the chief judge, within thirty
21 days after receipt of such determination, for a review thereof by the
22 court of appeals. If the commission has determined that a judge be
23 admonished or censured, and if the judge accepts such determination or
24 fails to request a review thereof by the court of appeals, the commis-
25 sion shall thereupon admonish or censure him in accordance with its
26 findings. If the commission has determined that a judge be removed or
27 retired, and if the judge accepts such determination or fails to request
28 a review thereof by the court of appeals, the court of appeals shall
29 thereupon order his removal or retirement in accordance with the find-
30 ings of the commission.

31 8. (a) The court of appeals may suspend a judge or justice from exer-
32 cising the powers of his office while there is pending a determination
33 by the commission for his removal or retirement, or while he is charged
34 in this state with a felony by an indictment or an information filed
35 pursuant to section six of article one of the constitution. The suspen-
36 sion shall continue upon conviction and, if the conviction becomes
37 final, he shall be removed from office. The suspension shall be termi-
38 nated upon reversal of the conviction and dismissal of the accusatory
39 instrument.

40 (b) Upon the recommendation of the commission or on its own motion,
41 the court may suspend a judge or justice from office when he is charged
42 with a crime punishable as a felony under the laws of this state, or any
43 other crime which involves moral turpitude. The suspension shall contin-
44 ue upon conviction and, if the conviction becomes final, he shall be
45 removed from office. The suspension shall be terminated upon reversal of
46 the conviction and dismissal of the accusatory instrument.

47 (c) A judge or justice who is suspended from office by the court shall
48 receive his judicial salary during such period of suspension, unless the
49 court directs otherwise. If the court has so directed and such suspen-
50 sion is thereafter terminated, the court may direct that he shall be
51 paid his salary for such period of suspension.

52 (d) Nothing in this subdivision shall prevent the commission from
53 determining that a judge or justice be admonished, censured, removed, or
54 retired pursuant to subdivision seven of this section.

55 9. In its review of a determination of the commission, the court of
56 appeals shall review the commission's findings of fact and conclusions

1 of law on the record of the proceedings upon which the commission's
2 determination was based. After such review, the court may accept or
3 reject the determined sanction; impose a different sanction including
4 admonition, censure, removal or retirement for the reasons set forth in
5 subdivision one of this section; or impose no sanction.

6 10. If during the course of or after an investigation or hearing, the
7 commission determines that the complaint or any allegation thereof
8 warrants action, other than in accordance with the provisions of subdivi-
9 sions seven and eight of this section, within the powers of: (a) a
10 person having administrative jurisdiction over the judge involved in the
11 complaint [or;]; OR (b) an appellate division of the supreme court; or
12 (c) a presiding justice of an appellate division of the supreme court;
13 or (d) the chief judge of the court of appeals; or (e) the governor; or
14 (f) an applicable district attorney's office or other prosecuting agen-
15 cy, the commission shall refer such complaint or the appropriate allega-
16 tions thereof and any evidence or material related thereto to such
17 person, agency or court for such action as may be deemed proper or
18 necessary.

19 11. The commission shall notify the complainant of its disposition of
20 the complaint.

21 S 2. Section 45 of the judiciary law, as amended by chapter 35 of the
22 laws of 1983, is amended to read as follows:

23 S 45. Confidentiality of records. 1. [Except as hereinafter provided,
24 all complaints, correspondence, commission proceedings and transcripts
25 thereof, other papers and data and records of the commission shall be
26 confidential and shall not be made available to any person except pursu-
27 ant to section forty-four of this article.] The commission and its
28 designated staff personnel shall have access to confidential material in
29 the performance of their powers and duties. [If the judge who is the
30 subject of a complaint so requests in writing, copies] COPIES of the
31 complaint, the transcripts of hearings by the commission thereon, if
32 any, and the dispositive action of the commission with respect to the
33 complaint, such copies with any reference to the identity of any person
34 who did not participate at any such hearing suitably deleted therefrom,
35 except the subject judge or complainant, shall be made available for
36 inspection and copying to the public, or to any person, agency or body
37 [designated by such judge].

38 2. Notwithstanding any provision in this section, the commission[,
39 with the consent of the applicant,] shall provide the record of any
40 proceeding pursuant to a formal written complaint against an applicant
41 for judicial appointment in which the applicant's misconduct was estab-
42 lished, any pending complaint against an applicant, and the record to
43 date of any pending proceeding pursuant to a formal written complaint
44 against an applicant for judicial appointment:

45 (a) to the commission on judicial nomination established by article
46 three-A of this chapter, with respect to applicants for appointment to
47 the court of appeals;

48 (b) to the governor with respect to all applicants whom the governor
49 indicates are under consideration for any judicial appointment; and

50 (c) to the temporary president of the senate and the chairman of the
51 senate judiciary committee with respect to all nominees for judicial
52 appointments which are subject to the advice and consent of the senate.
53 The commission shall respond within fifteen days of a request for the
54 information provided for in this subdivision.

55 S 3. This act shall take effect immediately.