

1713

2011-2012 Regular Sessions

I N S E N A T E

January 11, 2011

Introduced by Sen. SAMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

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 ASSEMBLY, 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 THE BASIS FOR THE DETERMINATION FOR THE
20 DISMISSAL TO the complainant. If the commission shall have notified the
21 judge of the complaint, the commission shall also notify the judge of
22 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

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

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1 investigation, the commission shall file as part of its record a written
2 complaint, signed by the administrator of the commission, which
3 complaint shall serve as the basis for such investigation.

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

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

1 TRANSCRIPT SHALL BE AVAILABLE TO THE PUBLIC UNLESS THE HEARING WAS
2 CLOSED AT THE REQUEST OF THE COMPLAINANT.

3 5. Subject to the approval of the commission, the administrator and
4 the judge may agree on a statement of facts and may stipulate in writing
5 that the hearing shall be waived. In such a case, the commission shall
6 make its determination upon the pleadings and the agreed statement of
7 facts.

8 6. If, after a formal written complaint has been served pursuant to
9 subdivision four of this section, or during the course of or after a
10 hearing, the commission determines that no further action is necessary,
11 the complaint shall be dismissed and the complainant and the judge shall
12 be so notified in writing. THE COMMISSION SHALL PROVIDE THE BASIS FOR
13 THE DETERMINATION FOR THE DISMISSAL TO THE COMPLAINANT.

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

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

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

53 (c) A judge or justice who is suspended from office by the court shall
54 receive his judicial salary during such period of suspension, unless the
55 court directs otherwise. If the court has so directed and such suspen-

1 sion is thereafter terminated, the court may direct that he shall be
2 paid his salary for such period of suspension.

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

6 9. In its review of a determination of the commission, the court of
7 appeals shall review the commission's findings of fact and conclusions
8 of law on the record of the proceedings upon which the commission's
9 determination was based. After such review, the court may accept or
10 reject the determined sanction; impose a different sanction including
11 admonition, censure, removal or retirement for the reasons set forth in
12 subdivision one of this section; or impose no sanction.

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

26 11. The commission shall notify the complainant of its disposition of
27 the complaint.

28 S 2. This act shall take effect immediately.