

1713

2011-2012 Regular Sessions

I N   S E N A T E

January 11, 2011

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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

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

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

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

7. After a hearing, the commission may determine that a judge be admonished, censured, removed or retired. The commission shall transmit its written determination, together with its findings of fact and conclusions of law and the record of the proceedings upon which its determination is based, to the chief judge of the court of appeals who shall cause a copy thereof to be served either personally or by certified mail, return receipt requested, on the judge involved. Upon completion of service, the determination of the commission, its findings and conclusions and the record of its proceedings shall be made public and shall be made available for public inspection at the principal office of the commission and at the office of the clerk of the court of appeals. The judge involved may either accept the determination of the commission or make written request to the chief judge, within thirty days after receipt of such determination, for a review thereof by the court of appeals. If the commission has determined that a judge be admonished or censured, and if the judge accepts such determination or fails to request a review thereof by the court of appeals, the commission shall thereupon admonish or censure him in accordance with its findings. If the commission has determined that a judge be removed or retired, and if the judge accepts such determination or fails to request a review thereof by the court of appeals, the court of appeals shall thereupon order his removal or retirement in accordance with the findings of the commission.

8. (a) The court of appeals may suspend a judge or justice from exercising the powers of his office while there is pending a determination by the commission for his removal or retirement, or while he is charged in this state with a felony by an indictment or an information filed pursuant to section six of article one of the constitution. The suspension shall continue upon conviction and, if the conviction becomes final, he shall be removed from office. The suspension shall be terminated upon reversal of the conviction and dismissal of the accusatory instrument.

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

(c) A judge or justice who is suspended from office by the court shall receive his judicial salary during such period of suspension, unless the 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 subdi-  
16 visions 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.