

6286

I N S E N A T E

January 9, 2014

Introduced by Sen. DeFRANCISCO -- 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 establishing the commission on prosecutorial conduct

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

1 Section 1. The judiciary law is amended by adding a new article 15-A  
2 to read as follows:

3 ARTICLE 15-A

4 STATE COMMISSION ON PROSECUTORIAL CONDUCT

5 SECTION 499-A. DEFINITIONS.

6 499-B. STATE COMMISSION ON PROSECUTORIAL CONDUCT; ORGANIZATION.

7 499-C. FUNCTIONS; POWERS AND DUTIES.

8 499-D. PANELS; REFEREES.

9 499-E. COMPLAINT; INVESTIGATION; HEARING AND DISPOSITION.

10 499-F. CONFIDENTIALITY OF RECORDS.

11 499-G. BREACH OF CONFIDENTIALITY OF COMMISSION INFORMATION.

12 499-H. RESIGNATION NOT TO DIVEST COMMISSION OR COURT OF APPEALS  
13 OF JURISDICTION.

14 499-I. EFFECT.

15 S 499-A. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE THE FOLLOWING  
16 TERMS HAVE THE FOLLOWING MEANINGS:

17 1. "COMMISSION" MEANS THE STATE COMMISSION ON PROSECUTORIAL CONDUCT.

18 2. "PROSECUTOR" MEANS ANY PERSON WHO REPRESENTS THE STATE OR A POLI-  
19 TICAL SUBDIVISION OF THE STATE IN AN ACTION TO EXACT A PENALTY, FINE,  
20 SANCTION OR FORFEITURE.

21 3. "HEARING" MEANS A PROCEEDING UNDER SUBDIVISION FOUR OF SECTION FOUR  
22 HUNDRED NINETY-NINE-E OF THIS ARTICLE.

23 4. "MEMBER OF THE BAR" MEANS A PERSON ADMITTED TO THE PRACTICE OF LAW  
24 IN THIS STATE FOR AT LEAST FIVE YEARS.

25 S 499-B. STATE COMMISSION ON PROSECUTORIAL CONDUCT; ORGANIZATION. 1.  
26 A STATE COMMISSION ON PROSECUTORIAL CONDUCT IS HEREBY ESTABLISHED. THE  
27 COMMISSION SHALL CONSIST OF ELEVEN MEMBERS, OF WHOM TWO SHALL BE  
28 APPOINTED BY THE GOVERNOR, TWO BY THE TEMPORARY PRESIDENT OF THE SENATE,

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

LBD11880-07-4

1 ONE BY THE MINORITY LEADER OF THE SENATE, TWO BY THE SPEAKER OF THE  
2 ASSEMBLY, ONE BY THE MINORITY LEADER OF THE ASSEMBLY AND THREE BY THE  
3 CHIEF JUDGE OF THE COURT OF APPEALS. OF THE MEMBERS APPOINTED BY THE  
4 GOVERNOR ONE SHALL BE A PUBLIC DEFENDER AND ONE SHALL BE A PROSECUTOR.  
5 OF THE MEMBERS APPOINTED BY THE CHIEF JUDGE ONE PERSON SHALL BE A  
6 JUSTICE OF THE APPELLATE DIVISION OF THE SUPREME COURT AND TWO SHALL BE  
7 JUDGES OF COURTS OTHER THAN THE COURT OF APPEALS OR APPELLATE DIVISION.  
8 OF THE MEMBERS APPOINTED BY THE LEGISLATIVE LEADERS, THERE SHALL BE AN  
9 EQUAL NUMBER OF PROSECUTORS AND ATTORNEYS PROVIDING DEFENSE SERVICES;  
10 PROVIDED, HOWEVER, THAT A TEMPORARY IMBALANCE IN THE NUMBER OF PROSECU-  
11 TORS AND DEFENSE ATTORNEYS PENDING NEW APPOINTMENTS SHALL NOT PREVENT  
12 THE COMMISSION FROM CONDUCTING BUSINESS.

13 2. MEMBERSHIP ON THE COMMISSION BY A PROSECUTOR SHALL NOT CONSTITUTE  
14 THE HOLDING OF A PUBLIC OFFICE AND NO PROSECUTOR SHALL BE REQUIRED TO  
15 TAKE AND FILE AN OATH OF OFFICE BEFORE SERVING ON THE COMMISSION. THE  
16 MEMBERS OF THE COMMISSION SHALL ELECT ONE OF THEIR NUMBER TO SERVE AS  
17 CHAIRMAN DURING HIS OR HER TERM OF OFFICE OR FOR A PERIOD OF TWO YEARS,  
18 WHICHEVER IS SHORTER.

19 3. THE PERSONS FIRST APPOINTED BY THE GOVERNOR SHALL HAVE RESPECTIVELY  
20 THREE AND FOUR YEAR TERMS AS HE OR SHE SHALL DESIGNATE. THE PERSONS  
21 FIRST APPOINTED BY THE CHIEF JUDGE OF THE COURT OF APPEALS SHALL HAVE  
22 RESPECTIVELY TWO, THREE AND FOUR YEAR TERMS AS HE OR SHE SHALL DESIG-  
23 NATE. THE PERSONS FIRST APPOINTED BY THE TEMPORARY PRESIDENT OF THE  
24 SENATE SHALL HAVE RESPECTIVELY THREE AND FOUR YEAR TERMS AS HE OR SHE  
25 SHALL DESIGNATE. THE PERSON FIRST APPOINTED BY THE MINORITY LEADER OF  
26 THE SENATE SHALL HAVE A TWO YEAR TERM. THE PERSONS FIRST APPOINTED BY  
27 THE SPEAKER OF THE ASSEMBLY SHALL HAVE RESPECTIVELY THREE AND FOUR YEAR  
28 TERMS AS HE OR SHE SHALL DESIGNATE. THE PERSON FIRST APPOINTED BY THE  
29 MINORITY LEADER OF THE ASSEMBLY SHALL HAVE A THREE YEAR TERM. EACH  
30 MEMBER OF THE COMMISSION SHALL BE APPOINTED THEREAFTER FOR A TERM OF  
31 FOUR YEARS. COMMISSION MEMBERSHIP OF A JUDGE OR JUSTICE APPOINTED BY THE  
32 GOVERNOR OR THE CHIEF JUDGE SHALL TERMINATE IF SUCH MEMBER CEASES TO  
33 HOLD THE JUDICIAL POSITION WHICH QUALIFIED HIM OR HER FOR SUCH APPOINT-  
34 MENT. MEMBERSHIP SHALL ALSO TERMINATE IF A MEMBER ATTAINS A POSITION  
35 WHICH WOULD HAVE RENDERED HIM OR HER INELIGIBLE FOR APPOINTMENT AT THE  
36 TIME OF HIS OR HER APPOINTMENT. A VACANCY SHALL BE FILLED BY THE  
37 APPOINTING OFFICER FOR THE REMAINDER OF THE TERM.

38 4. IF A MEMBER OF THE COMMISSION WHO IS A PROSECUTOR IS THE SUBJECT OF  
39 A COMPLAINT OR INVESTIGATION WITH RESPECT TO HIS OR HER QUALIFICATIONS,  
40 CONDUCT, FITNESS TO PERFORM OR PERFORMANCE OF HIS OR HER OFFICIAL  
41 DUTIES, HE OR SHE SHALL BE DISQUALIFIED FROM PARTICIPATING IN ANY AND  
42 ALL PROCEEDINGS WITH RESPECT THERETO.

43 5. EACH MEMBER OF THE COMMISSION SHALL SERVE WITHOUT SALARY OR OTHER  
44 COMPENSATION, BUT SHALL BE ENTITLED TO RECEIVE ACTUAL AND NECESSARY  
45 EXPENSES INCURRED IN THE DISCHARGE OF HIS OR HER DUTIES.

46 6. FOR ANY ACTION TAKEN PURSUANT TO SUBDIVISIONS FOUR THROUGH NINE OF  
47 SECTION FOUR HUNDRED NINETY-NINE-E OR SUBDIVISION TWO OF SECTION FOUR  
48 HUNDRED NINETY-NINE-D OF THIS ARTICLE, EIGHT MEMBERS OF THE COMMISSION  
49 SHALL CONSTITUTE A QUORUM OF THE COMMISSION AND THE CONCURRENCE OF SIX  
50 MEMBERS OF THE COMMISSION SHALL BE NECESSARY. TWO MEMBERS OF A THREE  
51 MEMBER PANEL OF THE COMMISSION SHALL CONSTITUTE A QUORUM OF THE PANEL  
52 AND THE CONCURRENCE OF TWO MEMBERS OF THE PANEL SHALL BE NECESSARY FOR  
53 ANY ACTION TAKEN.

54 7. THE COMMISSION SHALL APPOINT AND AT PLEASURE MAY REMOVE AN ADMINIS-  
55 TRATOR WHO SHALL BE A MEMBER OF THE BAR WHO IS NOT A PROSECUTOR OR  
56 RETIRED PROSECUTOR. THE ADMINISTRATOR OF THE COMMISSION MAY APPOINT SUCH

1 DEPUTIES, ASSISTANTS, COUNSEL, INVESTIGATORS AND OTHER OFFICERS AND  
2 EMPLOYEES AS HE OR SHE MAY DEEM NECESSARY, PRESCRIBE THEIR POWERS AND  
3 DUTIES, FIX THEIR COMPENSATION AND PROVIDE FOR REIMBURSEMENT OF THEIR  
4 EXPENSES WITHIN THE AMOUNTS APPROPRIATED THEREFOR.

5 S 499-C. FUNCTIONS; POWERS AND DUTIES. THE COMMISSION SHALL HAVE THE  
6 FOLLOWING FUNCTIONS, POWERS AND DUTIES:

7 1. TO CONDUCT HEARINGS AND INVESTIGATIONS, ADMINISTER OATHS OR AFFIR-  
8 MATIONS, SUBPOENA WITNESSES, COMPEL THEIR ATTENDANCE, EXAMINE THEM UNDER  
9 OATH OR AFFIRMATION AND REQUIRE THE PRODUCTION OF ANY BOOKS, RECORDS,  
10 DOCUMENTS OR OTHER EVIDENCE THAT IT MAY DEEM RELEVANT OR MATERIAL TO AN  
11 INVESTIGATION; AND THE COMMISSION MAY DESIGNATE ANY OF ITS MEMBERS OR  
12 ANY MEMBER OF ITS STAFF TO EXERCISE ANY SUCH POWERS, PROVIDED, HOWEVER,  
13 THAT EXCEPT AS IS OTHERWISE PROVIDED IN SECTION FOUR HUNDRED  
14 NINETY-NINE-D OF THIS ARTICLE, ONLY A MEMBER OF THE COMMISSION OR THE  
15 ADMINISTRATOR SHALL EXERCISE THE POWER TO SUBPOENA WITNESSES OR REQUIRE  
16 THE PRODUCTION OF BOOKS, RECORDS, DOCUMENTS OR OTHER EVIDENCE.

17 2. TO CONFER IMMUNITY WHEN THE COMMISSION DEEMS IT NECESSARY AND PROP-  
18 ER IN ACCORDANCE WITH SECTION 50.20 OF THE CRIMINAL PROCEDURE LAW;  
19 PROVIDED, HOWEVER, THAT AT LEAST FORTY-EIGHT HOURS PRIOR WRITTEN NOTICE  
20 OF THE COMMISSION'S INTENTION TO CONFER SUCH IMMUNITY IS GIVEN THE  
21 ATTORNEY GENERAL AND THE APPROPRIATE DISTRICT ATTORNEY.

22 3. TO REQUEST AND RECEIVE FROM ANY COURT, DEPARTMENT, DIVISION, BOARD,  
23 BUREAU, COMMISSION, OR OTHER AGENCY OF THE STATE OR POLITICAL SUBDIVI-  
24 SION THEREOF OR ANY PUBLIC AUTHORITY SUCH ASSISTANCE, INFORMATION AND  
25 DATA AS WILL ENABLE IT PROPERLY TO CARRY OUT ITS FUNCTIONS, POWERS AND  
26 DUTIES.

27 4. TO REPORT ANNUALLY, ON OR BEFORE THE FIRST DAY OF MARCH IN EACH  
28 YEAR AND AT SUCH OTHER TIMES AS THE COMMISSION SHALL DEEM NECESSARY, TO  
29 THE GOVERNOR, THE LEGISLATURE AND THE CHIEF JUDGE OF THE COURT OF  
30 APPEALS, WITH RESPECT TO PROCEEDINGS WHICH HAVE BEEN FINALLY DETERMINED  
31 BY THE COMMISSION. SUCH REPORTS MAY INCLUDE LEGISLATIVE AND ADMINISTRA-  
32 TIVE RECOMMENDATIONS. THE CONTENTS OF THE ANNUAL REPORT AND ANY OTHER  
33 REPORT SHALL CONFORM TO THE PROVISIONS OF THIS ARTICLE RELATING TO  
34 CONFIDENTIALITY.

35 5. TO ADOPT, PROMULGATE, AMEND AND RESCIND RULES AND PROCEDURES, NOT  
36 OTHERWISE INCONSISTENT WITH LAW, NECESSARY TO CARRY OUT THE PROVISIONS  
37 AND PURPOSES OF THIS ARTICLE. ALL SUCH RULES AND PROCEDURES SHALL BE  
38 FILED IN THE OFFICES OF THE CHIEF ADMINISTRATOR OF THE COURTS AND THE  
39 SECRETARY OF STATE.

40 6. TO DO ALL OTHER THINGS NECESSARY AND CONVENIENT TO CARRY OUT ITS  
41 FUNCTIONS, POWERS AND DUTIES EXPRESSLY SET FORTH IN THIS ARTICLE.

42 S 499-D. PANELS; REFEREES. 1. THE COMMISSION MAY DELEGATE ANY OF ITS  
43 FUNCTIONS, POWERS AND DUTIES TO A PANEL OF THREE OF ITS MEMBERS, ONE OF  
44 WHOM SHALL BE A MEMBER OF THE BAR, EXCEPT THAT NO PANEL SHALL CONFER  
45 IMMUNITY IN ACCORDANCE WITH SECTION 50.20 OF THE CRIMINAL PROCEDURE LAW.  
46 NO PANEL SHALL BE AUTHORIZED TO TAKE ANY ACTION PURSUANT TO SUBDIVISIONS  
47 FOUR THROUGH NINE OF SECTION FOUR HUNDRED NINETY-NINE-E OF THIS ARTICLE  
48 OR SUBDIVISION TWO OF THIS SECTION.

49 2. THE COMMISSION MAY DESIGNATE A MEMBER OF THE BAR WHO IS NOT A  
50 PROSECUTOR OR A MEMBER OF THE COMMISSION OR ITS STAFF AS A REFEREE TO  
51 HEAR AND REPORT TO THE COMMISSION IN ACCORDANCE WITH THE PROVISIONS OF  
52 SECTION FOUR HUNDRED NINETY-NINE-E OF THIS ARTICLE. SUCH REFEREE SHALL  
53 BE EMPOWERED TO CONDUCT HEARINGS, ADMINISTER OATHS OR AFFIRMATIONS,  
54 SUBPOENA WITNESSES, COMPEL THEIR ATTENDANCE, EXAMINE THEM UNDER OATH OR  
55 AFFIRMATION AND REQUIRE THE PRODUCTION OF ANY BOOKS, RECORDS, DOCUMENTS

1 OR OTHER EVIDENCE THAT THE REFEREE MAY DEEM RELEVANT OR MATERIAL TO THE  
2 SUBJECT OF THE HEARING.

3 S 499-E. 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 PROSECUTOR, AND MAY DETERMINE THAT A  
7 PROSECUTOR BE ADMONISHED, CENSURED OR REMOVED FROM OFFICE FOR CAUSE,  
8 INCLUDING, BUT NOT LIMITED TO, MISCONDUCT IN OFFICE, PERSISTENT FAILURE  
9 TO PERFORM HIS OR HER DUTIES, HABITUAL INTEMPERANCE AND CONDUCT, IN AND  
10 OUTSIDE OF HIS OR HER OFFICE, PREJUDICIAL TO THE ADMINISTRATION OF  
11 JUSTICE, OR THAT A PROSECUTOR BE RETIRED FOR MENTAL OR PHYSICAL DISABIL-  
12 ITY PREVENTING THE PROPER PERFORMANCE OF HIS OR HER PROSECUTORIAL  
13 DUTIES. A COMPLAINT SHALL BE IN WRITING AND SIGNED BY THE COMPLAINANT  
14 AND, IF DIRECTED BY THE COMMISSION, SHALL BE VERIFIED. UPON RECEIPT OF A  
15 COMPLAINT (A) THE COMMISSION SHALL CONDUCT AN INVESTIGATION OF THE  
16 COMPLAINT; OR (B) THE COMMISSION MAY DISMISS THE COMPLAINT IF IT DETER-  
17 MINES THAT THE COMPLAINT ON ITS FACE LACKS MERIT. IF THE COMPLAINT IS  
18 DISMISSED, THE COMMISSION SHALL SO NOTIFY THE COMPLAINANT. IF THE  
19 COMMISSION SHALL HAVE NOTIFIED THE PROSECUTOR OF THE COMPLAINT, THE  
20 COMMISSION SHALL ALSO NOTIFY THE PROSECUTOR OF SUCH DISMISSAL.

21 2. THE COMMISSION MAY, ON ITS OWN MOTION, INITIATE AN INVESTIGATION OF  
22 A PROSECUTOR WITH RESPECT TO HIS OR HER QUALIFICATIONS, CONDUCT, FITNESS  
23 TO PERFORM OR THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES. PRIOR TO  
24 INITIATING ANY SUCH INVESTIGATION, THE COMMISSION SHALL FILE AS PART OF  
25 ITS RECORD A WRITTEN COMPLAINT, SIGNED BY THE ADMINISTRATOR OF THE  
26 COMMISSION, WHICH COMPLAINT SHALL SERVE AS THE BASIS FOR SUCH INVESTI-  
27 GATION.

28 3. IN THE COURSE OF AN INVESTIGATION, THE COMMISSION MAY REQUIRE THE  
29 APPEARANCE OF THE PROSECUTOR INVOLVED BEFORE IT, IN WHICH EVENT THE  
30 PROSECUTOR SHALL BE NOTIFIED IN WRITING OF HIS OR HER REQUIRED APPEAR-  
31 ANCE, EITHER PERSONALLY, AT LEAST THREE DAYS PRIOR TO SUCH APPEARANCE,  
32 OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AT LEAST FIVE DAYS PRIOR  
33 TO SUCH APPEARANCE. IN EITHER CASE A COPY OF THE COMPLAINT SHALL BE  
34 SERVED UPON THE PROSECUTOR AT THE TIME OF SUCH NOTIFICATION. THE PROSE-  
35 CUTOR SHALL HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL DURING ANY AND  
36 ALL STAGES OF THE INVESTIGATION IN WHICH HIS OR HER APPEARANCE IS  
37 REQUIRED AND TO PRESENT EVIDENTIARY DATA AND MATERIAL RELEVANT TO THE  
38 COMPLAINT. A TRANSCRIPT SHALL BE MADE AND KEPT WITH RESPECT TO ALL  
39 PROCEEDINGS AT WHICH TESTIMONY OR STATEMENTS UNDER OATH OF ANY PARTY OR  
40 WITNESS SHALL BE TAKEN, AND THE TRANSCRIPT OF THE PROSECUTOR'S TESTIMONY  
41 SHALL BE MADE AVAILABLE TO THE PROSECUTOR WITHOUT COST. SUCH TRANSCRIPT  
42 SHALL BE CONFIDENTIAL EXCEPT AS OTHERWISE PERMITTED BY SECTION FOUR  
43 HUNDRED NINETY-NINE-F OF THIS ARTICLE.

44 4. IF IN THE COURSE OF AN INVESTIGATION, THE COMMISSION DETERMINES  
45 THAT A HEARING IS WARRANTED IT SHALL DIRECT THAT A FORMAL WRITTEN  
46 COMPLAINT SIGNED AND VERIFIED BY THE ADMINISTRATOR BE DRAWN AND SERVED  
47 UPON THE PROSECUTOR INVOLVED, EITHER PERSONALLY OR BY CERTIFIED MAIL,  
48 RETURN RECEIPT REQUESTED. THE PROSECUTOR SHALL FILE A WRITTEN ANSWER TO  
49 THE COMPLAINT WITH THE COMMISSION WITHIN TWENTY DAYS OF SUCH SERVICE.  
50 IF, UPON RECEIPT OF THE ANSWER, OR UPON EXPIRATION OF THE TIME TO  
51 ANSWER, THE COMMISSION SHALL DIRECT THAT A HEARING BE HELD WITH RESPECT  
52 TO THE COMPLAINT, THE PROSECUTOR INVOLVED SHALL BE NOTIFIED IN WRITING  
53 OF THE DATE OF THE HEARING EITHER PERSONALLY, AT LEAST TWENTY DAYS PRIOR  
54 THERETO, OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AT LEAST TWEN-  
55 TY-TWO DAYS PRIOR THERETO. UPON THE WRITTEN REQUEST OF THE PROSECUTOR,  
56 THE COMMISSION SHALL, AT LEAST FIVE DAYS PRIOR TO THE HEARING OR ANY

1 ADJOURNED DATE THEREOF, MAKE AVAILABLE TO THE PROSECUTOR WITHOUT COST  
2 COPIES OF ALL DOCUMENTS WHICH THE COMMISSION INTENDS TO PRESENT AT SUCH  
3 HEARING AND ANY WRITTEN STATEMENTS MADE BY WITNESSES WHO WILL BE CALLED  
4 TO GIVE TESTIMONY BY THE COMMISSION. THE COMMISSION SHALL, IN ANY CASE,  
5 MAKE AVAILABLE TO THE PROSECUTOR AT LEAST FIVE DAYS PRIOR TO THE HEARING  
6 OR ANY ADJOURNED DATE THEREOF ANY EXCULPATORY EVIDENTIARY DATA AND MATE-  
7 RIAL RELEVANT TO THE COMPLAINT. THE FAILURE OF THE COMMISSION TO TIMELY  
8 FURNISH ANY DOCUMENTS, STATEMENTS AND/OR EXCULPATORY EVIDENTIARY DATA  
9 AND MATERIAL PROVIDED FOR HEREIN SHALL NOT AFFECT THE VALIDITY OF ANY  
10 PROCEEDINGS BEFORE THE COMMISSION PROVIDED THAT SUCH FAILURE IS NOT  
11 SUBSTANTIALLY PREJUDICIAL TO THE PROSECUTOR. THE COMPLAINANT MAY BE  
12 NOTIFIED OF THE HEARING AND UNLESS HE OR SHE SHALL BE SUBPOENAED AS A  
13 WITNESS BY THE PROSECUTOR, HIS OR HER PRESENCE THEREAT SHALL BE WITHIN  
14 THE DISCRETION OF THE COMMISSION. THE HEARING SHALL NOT BE PUBLIC UNLESS  
15 THE PROSECUTOR INVOLVED SHALL SO DEMAND IN WRITING. AT THE HEARING THE  
16 COMMISSION MAY TAKE THE TESTIMONY OF WITNESSES AND RECEIVE EVIDENTIARY  
17 DATA AND MATERIAL RELEVANT TO THE COMPLAINT. THE PROSECUTOR SHALL HAVE  
18 THE RIGHT TO BE REPRESENTED BY COUNSEL DURING ANY AND ALL STAGES OF THE  
19 HEARING AND SHALL HAVE THE RIGHT TO CALL AND CROSS-EXAMINE WITNESSES AND  
20 PRESENT EVIDENTIARY DATA AND MATERIAL RELEVANT TO THE COMPLAINT. A TRAN-  
21 SCRIPT OF THE PROCEEDINGS AND OF THE TESTIMONY OF WITNESSES AT THE HEAR-  
22 ING SHALL BE TAKEN AND KEPT WITH THE RECORDS OF THE COMMISSION.

23 5. SUBJECT TO THE APPROVAL OF THE COMMISSION, THE ADMINISTRATOR AND  
24 THE PROSECUTOR MAY AGREE ON A STATEMENT OF FACTS AND MAY STIPULATE IN  
25 WRITING THAT THE HEARING SHALL BE WAIVED. IN SUCH A CASE, THE COMMISSION  
26 SHALL MAKE ITS DETERMINATION UPON THE PLEADINGS AND THE AGREED STATEMENT  
27 OF FACTS.

28 6. IF, AFTER A FORMAL WRITTEN COMPLAINT HAS BEEN SERVED PURSUANT TO  
29 SUBDIVISION FOUR OF THIS SECTION, OR DURING THE COURSE OF OR AFTER A  
30 HEARING, THE COMMISSION DETERMINES THAT NO FURTHER ACTION IS NECESSARY,  
31 THE COMPLAINT SHALL BE DISMISSED AND THE COMPLAINANT AND THE PROSECUTOR  
32 SHALL BE SO NOTIFIED IN WRITING.

33 7. AFTER A HEARING, THE COMMISSION MAY DETERMINE THAT A PROSECUTOR BE  
34 ADMONISHED, CENSURED, REMOVED OR RETIRED. THE COMMISSION SHALL TRANSMIT  
35 ITS WRITTEN DETERMINATION, TOGETHER WITH ITS FINDINGS OF FACT AND  
36 CONCLUSIONS OF LAW AND THE RECORD OF THE PROCEEDINGS UPON WHICH ITS  
37 DETERMINATION IS BASED, TO THE CHIEF JUDGE OF THE COURT OF APPEALS WHO  
38 SHALL CAUSE A COPY THEREOF TO BE SERVED EITHER PERSONALLY OR BY CERTI-  
39 FIED MAIL, RETURN RECEIPT REQUESTED, ON THE PROSECUTOR INVOLVED. UPON  
40 COMPLETION OF SERVICE, THE DETERMINATION OF THE COMMISSION, ITS FINDINGS  
41 AND CONCLUSIONS AND THE RECORD OF ITS PROCEEDINGS SHALL BE MADE PUBLIC  
42 AND SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION AT THE PRINCIPAL  
43 OFFICE OF THE COMMISSION AND AT THE OFFICE OF THE CLERK OF THE COURT OF  
44 APPEALS. THE PROSECUTOR INVOLVED MAY EITHER ACCEPT THE DETERMINATION OF  
45 THE COMMISSION OR MAKE WRITTEN REQUEST TO THE CHIEF JUDGE, WITHIN THIRTY  
46 DAYS AFTER RECEIPT OF SUCH DETERMINATION, FOR A REVIEW THEREOF BY THE  
47 COURT OF APPEALS. IF THE COMMISSION HAS DETERMINED THAT A PROSECUTOR BE  
48 ADMONISHED OR CENSURED, AND IF THE PROSECUTOR ACCEPTS SUCH DETERMINATION  
49 OR FAILS TO REQUEST A REVIEW THEREOF BY THE COURT OF APPEALS, THE  
50 COMMISSION SHALL THEREUPON ADMONISH OR CENSURE HIM OR HER IN ACCORDANCE  
51 WITH ITS FINDINGS. IF THE COMMISSION HAS DETERMINED THAT A PROSECUTOR BE  
52 REMOVED OR RETIRED, AND IF THE PROSECUTOR ACCEPTS SUCH DETERMINATION OR  
53 FAILS TO REQUEST A REVIEW THEREOF BY THE COURT OF APPEALS, THE COURT OF  
54 APPEALS SHALL THEREUPON ORDER HIS OR HER REMOVAL OR RETIREMENT IN  
55 ACCORDANCE WITH THE FINDINGS OF THE COMMISSION.

1 8. IF THE PROSECUTOR REQUESTS A REVIEW OF THE DETERMINATION OF THE  
2 COMMISSION, IN ITS REVIEW OF A DETERMINATION OF THE COMMISSION, THE  
3 COURT OF APPEALS SHALL REVIEW THE COMMISSION'S FINDINGS OF FACT AND  
4 CONCLUSIONS OF LAW ON THE RECORD OF THE PROCEEDINGS UPON WHICH THE  
5 COMMISSION'S DETERMINATION WAS BASED. AFTER SUCH REVIEW, THE COURT MAY  
6 ACCEPT OR REJECT THE DETERMINED SANCTION; IMPOSE A DIFFERENT SANCTION  
7 INCLUDING ADMONITION, CENSURE, REMOVAL OR RETIREMENT FOR THE REASONS SET  
8 FORTH IN SUBDIVISION ONE OF THIS SECTION; OR IMPOSE NO SANCTION.

9 9. (A) THE COURT OF APPEALS MAY SUSPEND A PROSECUTOR FROM EXERCISING  
10 THE POWERS OF HIS OR HER OFFICE WHILE THERE IS PENDING A DETERMINATION  
11 BY THE COMMISSION FOR HIS OR HER REMOVAL OR RETIREMENT, OR WHILE HE OR  
12 SHE IS CHARGED IN THIS STATE WITH A FELONY BY AN INDICTMENT OR AN INFOR-  
13 MATION FILED PURSUANT TO SECTION SIX OF ARTICLE ONE OF THE CONSTITUTION.  
14 THE SUSPENSION SHALL CONTINUE UPON CONVICTION AND, IF THE CONVICTION  
15 BECOMES FINAL, HE OR SHE SHALL BE REMOVED FROM OFFICE. THE SUSPENSION  
16 SHALL BE TERMINATED UPON REVERSAL OF THE CONVICTION AND DISMISSAL OF THE  
17 ACCUSATORY INSTRUMENT.

18 (B) UPON THE RECOMMENDATION OF THE COMMISSION OR ON ITS OWN MOTION,  
19 THE COURT MAY SUSPEND A PROSECUTOR FROM OFFICE WHEN HE OR SHE IS CHARGED  
20 WITH A CRIME PUNISHABLE AS A FELONY UNDER THE LAWS OF THIS STATE, OR ANY  
21 OTHER CRIME WHICH INVOLVES MORAL TURPITUDE. THE SUSPENSION SHALL CONTIN-  
22 UE UPON CONVICTION AND, IF THE CONVICTION BECOMES FINAL, HE OR SHE SHALL  
23 BE REMOVED FROM OFFICE. THE SUSPENSION SHALL BE TERMINATED UPON REVERSAL  
24 OF THE CONVICTION AND DISMISSAL OF THE ACCUSATORY INSTRUMENT.

25 (C) A PROSECUTOR WHO IS SUSPENDED FROM OFFICE BY THE COURT SHALL  
26 RECEIVE HIS OR HER SALARY DURING SUCH PERIOD OF SUSPENSION, UNLESS THE  
27 COURT DIRECTS OTHERWISE. IF THE COURT HAS SO DIRECTED AND SUCH SUSPEN-  
28 SION IS THEREAFTER TERMINATED, THE COURT MAY DIRECT THAT HE OR SHE SHALL  
29 BE PAID HIS OR HER SALARY FOR SUCH PERIOD OF SUSPENSION.

30 (D) NOTHING IN THIS SUBDIVISION SHALL PREVENT THE COMMISSION FROM  
31 DETERMINING THAT A PROSECUTOR BE ADMONISHED, CENSURED, REMOVED, OR  
32 RETIRED PURSUANT TO SUBDIVISION SEVEN OF THIS SECTION.

33 10. IF DURING THE COURSE OF OR AFTER AN INVESTIGATION OR HEARING, THE  
34 COMMISSION DETERMINES THAT THE COMPLAINT OR ANY ALLEGATION THEREOF  
35 WARRANTS ACTION, OTHER THAN IN ACCORDANCE WITH THE PROVISIONS OF SUBDI-  
36 VISIONS SEVEN THROUGH NINE OF THIS SECTION, WITHIN THE POWERS OF: (A) A  
37 PERSON HAVING ADMINISTRATIVE JURISDICTION OVER THE PROSECUTOR INVOLVED  
38 IN THE COMPLAINT; OR (B) AN APPELLATE DIVISION OF THE SUPREME COURT; OR  
39 (C) A PRESIDING JUSTICE OF AN APPELLATE DIVISION OF THE SUPREME COURT;  
40 OR (D) THE CHIEF JUDGE OF THE COURT OF APPEALS; OR (E) THE GOVERNOR  
41 PURSUANT TO SUBDIVISION (B) OF SECTION THIRTEEN OF ARTICLE THIRTEEN OF  
42 THE CONSTITUTION; OR (F) AN APPLICABLE DISTRICT ATTORNEY'S OFFICE OR  
43 OTHER PROSECUTING AGENCY, THE COMMISSION SHALL REFER SUCH COMPLAINT OR  
44 THE APPROPRIATE ALLEGATIONS THEREOF AND ANY EVIDENCE OR MATERIAL RELATED  
45 THERETO TO SUCH PERSON, AGENCY OR COURT FOR SUCH ACTION AS MAY BE DEEMED  
46 PROPER OR NECESSARY.

47 11. THE COMMISSION SHALL NOTIFY THE COMPLAINANT OF ITS DISPOSITION OF  
48 THE COMPLAINT.

49 12. IN THE EVENT OF REMOVAL FROM OFFICE BY THE COMMISSION OF ANY  
50 DISTRICT SERVING ANY COUNTY OF THE STATE A VACANCY SHALL EXIST PURSUANT  
51 TO ARTICLE THREE OF THE PUBLIC OFFICERS LAW.

52 S 499-F. CONFIDENTIALITY OF RECORDS. EXCEPT AS HEREINAFTER PROVIDED,  
53 ALL COMPLAINTS, CORRESPONDENCE, COMMISSION PROCEEDINGS AND TRANSCRIPTS  
54 THEREOF, OTHER PAPERS AND DATA AND RECORDS OF THE COMMISSION SHALL BE  
55 CONFIDENTIAL AND SHALL NOT BE MADE AVAILABLE TO ANY PERSON EXCEPT PURSU-  
56 ANT TO SECTION FOUR HUNDRED NINETY-NINE-E OF THIS ARTICLE. THE COMMIS-

1 SION AND ITS DESIGNATED STAFF PERSONNEL SHALL HAVE ACCESS TO CONFIDEN-  
2 TIAL MATERIAL IN THE PERFORMANCE OF THEIR POWERS AND DUTIES. IF THE  
3 PROSECUTOR WHO IS THE SUBJECT OF A COMPLAINT SO REQUESTS IN WRITING,  
4 COPIES OF THE COMPLAINT, THE TRANSCRIPTS OF HEARINGS BY THE COMMISSION  
5 THEREON, IF ANY, AND THE DISPOSITIVE ACTION OF THE COMMISSION WITH  
6 RESPECT TO THE COMPLAINT, SUCH COPIES WITH ANY REFERENCE TO THE IDENTITY  
7 OF ANY PERSON WHO DID NOT PARTICIPATE AT ANY SUCH HEARING SUITABLY  
8 DELETED THEREFROM, EXCEPT THE SUBJECT PROSECUTOR OR COMPLAINANT, SHALL  
9 BE MADE AVAILABLE FOR INSPECTION AND COPYING TO THE PUBLIC, OR TO ANY  
10 PERSON, AGENCY OR BODY DESIGNATED BY SUCH PROSECUTOR.

11 S 499-G. BREACH OF CONFIDENTIALITY OF COMMISSION INFORMATION. 1. ANY  
12 STAFF MEMBER, EMPLOYEE OR AGENT OF THE STATE COMMISSION ON PROSECUTORIAL  
13 CONDUCT WHO VIOLATES ANY OF THE PROVISIONS OF SECTION FOUR HUNDRED NINE-  
14 TY-NINE-F OF THIS ARTICLE SHALL BE SUBJECT TO A REPRIMAND, A FINE,  
15 SUSPENSION OR REMOVAL BY THE COMMISSION.

16 2. WITHIN TEN DAYS AFTER THE COMMISSION HAS ACQUIRED KNOWLEDGE THAT A  
17 STAFF MEMBER, EMPLOYEE OR AGENT OF THE COMMISSION HAS OR MAY HAVE  
18 BREACHED THE PROVISIONS OF SECTION FOUR HUNDRED NINETY-NINE-F OF THIS  
19 ARTICLE, WRITTEN CHARGES AGAINST SUCH STAFF MEMBER, EMPLOYEE OR AGENT  
20 SHALL BE PREPARED AND SIGNED BY THE CHAIRMAN OF THE COMMISSION AND FILED  
21 WITH THE COMMISSION. WITHIN FIVE DAYS AFTER RECEIPT OF CHARGES, THE  
22 COMMISSION SHALL DETERMINE, BY A VOTE OF THE MAJORITY OF ALL THE MEMBERS  
23 OF THE COMMISSION, WHETHER PROBABLE CAUSE FOR SUCH CHARGES EXISTS. IF  
24 SUCH DETERMINATION IS AFFIRMATIVE, WITHIN FIVE DAYS THEREAFTER A WRITTEN  
25 STATEMENT SPECIFYING THE CHARGES IN DETAIL AND OUTLINING HIS OR HER  
26 RIGHTS UNDER THIS SECTION SHALL BE FORWARDED TO THE ACCUSED STAFF  
27 MEMBER, EMPLOYEE OR AGENT BY CERTIFIED MAIL. THE COMMISSION MAY SUSPEND  
28 THE STAFF MEMBER, EMPLOYEE OR AGENT, WITH OR WITHOUT PAY, PENDING THE  
29 FINAL DETERMINATION OF THE CHARGES. WITHIN TEN DAYS AFTER RECEIPT OF THE  
30 STATEMENT OF CHARGES, THE STAFF MEMBER, EMPLOYEE OR AGENT SHALL NOTIFY  
31 THE COMMISSION IN WRITING WHETHER HE OR SHE DESIRES A HEARING ON THE  
32 CHARGES. THE FAILURE OF THE STAFF MEMBER, EMPLOYEE OR AGENT TO NOTIFY  
33 THE COMMISSION OF HIS OR HER DESIRE TO HAVE A HEARING WITHIN SUCH PERIOD  
34 OF TIME SHALL BE DEEMED A WAIVER OF THE RIGHT TO A HEARING. IF THE HEAR-  
35 ING HAS BEEN WAIVED, THE COMMISSION SHALL PROCEED, WITHIN TEN DAYS AFTER  
36 SUCH WAIVER, BY A VOTE OF A MAJORITY OF ALL THE MEMBERS OF SUCH COMMIS-  
37 SION, TO DETERMINE THE CHARGES AND FIX THE PENALTY OR PUNISHMENT, IF  
38 ANY, TO BE IMPOSED AS HEREINAFTER PROVIDED.

39 3. UPON RECEIPT OF A REQUEST FOR A HEARING, THE COMMISSION SHALL SCHE-  
40 DULE A HEARING, TO BE HELD AT THE COMMISSION OFFICES, WITHIN TWENTY DAYS  
41 AFTER RECEIPT OF THE REQUEST THEREFOR, AND SHALL IMMEDIATELY NOTIFY IN  
42 WRITING THE STAFF MEMBER, EMPLOYEE OR AGENT OF THE TIME AND PLACE THERE-  
43 OF.

44 4. THE COMMISSION SHALL HAVE THE POWER TO ESTABLISH NECESSARY RULES  
45 AND PROCEDURES FOR THE CONDUCT OF HEARINGS UNDER THIS SECTION. SUCH  
46 RULES SHALL NOT REQUIRE COMPLIANCE WITH TECHNICAL RULES OF EVIDENCE. ALL  
47 SUCH HEARINGS SHALL BE HELD BEFORE A HEARING PANEL COMPOSED OF THREE  
48 MEMBERS OF THE COMMISSION SELECTED BY THE COMMISSION. EACH HEARING SHALL  
49 BE CONDUCTED BY THE CHAIRMAN OF THE PANEL WHO SHALL BE SELECTED BY THE  
50 PANEL. THE STAFF MEMBER, EMPLOYEE OR AGENT SHALL HAVE A REASONABLE  
51 OPPORTUNITY TO DEFEND HIMSELF AND TO TESTIFY ON HIS OR HER OWN BEHALF.  
52 HE OR SHE SHALL ALSO HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL, TO  
53 SUBPOENA WITNESSES AND TO CROSS-EXAMINE WITNESSES. ALL TESTIMONY TAKEN  
54 SHALL BE UNDER OATH WHICH THE CHAIRMAN OF THE PANEL IS HEREBY AUTHORIZED  
55 TO ADMINISTER. A RECORD OF THE PROCEEDINGS SHALL BE MADE AND A COPY OF

1 THE TRANSCRIPT OF THE HEARING SHALL, UPON WRITTEN REQUEST, BE FURNISHED  
2 WITHOUT CHARGE TO THE STAFF MEMBER, EMPLOYEE OR AGENT INVOLVED.

3 5. WITHIN FIVE DAYS AFTER THE CONCLUSION OF A HEARING, THE PANEL SHALL  
4 FORWARD A REPORT OF THE HEARING, INCLUDING ITS FINDINGS AND RECOMMENDA-  
5 TIONS, INCLUDING ITS RECOMMENDATIONS AS TO PENALTY OR PUNISHMENT, IF ONE  
6 IS WARRANTED, TO THE COMMISSION AND TO THE ACCUSED STAFF MEMBER, EMPLOY-  
7 EE OR AGENT. WITHIN TEN DAYS AFTER RECEIPT OF SUCH REPORT THE COMMISSION  
8 SHALL DETERMINE WHETHER IT SHALL IMPLEMENT THE RECOMMENDATIONS OF THE  
9 PANEL. IF THE COMMISSION SHALL DETERMINE TO IMPLEMENT SUCH RECOMMENDA-  
10 TIONS, WHICH SHALL INCLUDE THE PENALTY OR PUNISHMENT, IF ANY, OF A  
11 REPRIMAND, A FINE, SUSPENSION FOR A FIXED TIME WITHOUT PAY OR DISMISSAL,  
12 IT SHALL DO SO WITHIN FIVE DAYS AFTER SUCH DETERMINATION. IF THE CHARGES  
13 AGAINST THE STAFF MEMBER, EMPLOYEE OR AGENT ARE DISMISSED, HE OR SHE  
14 SHALL BE RESTORED TO HIS OR HER POSITION WITH FULL PAY FOR ANY PERIOD OF  
15 SUSPENSION WITHOUT PAY AND THE CHARGES SHALL BE EXPUNGED FROM HIS OR HER  
16 RECORD.

17 6. THE ACCUSED STAFF MEMBER, EMPLOYEE OR AGENT MAY SEEK REVIEW OF THE  
18 DETERMINATION OF THE COMMISSION BY WAY OF A SPECIAL PROCEEDING PURSUANT  
19 TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

20 S 499-H. RESIGNATION NOT TO DIVEST COMMISSION OR COURT OF APPEALS OF  
21 JURISDICTION. THE JURISDICTION OF THE COURT OF APPEALS AND THE COMMIS-  
22 SION PURSUANT TO THIS ARTICLE SHALL CONTINUE NOTWITHSTANDING THAT A  
23 PROSECUTOR RESIGNS FROM OFFICE AFTER A DETERMINATION OF THE COMMISSION  
24 THAT THE PROSECUTOR BE REMOVED FROM OFFICE HAS BEEN TRANSMITTED TO THE  
25 CHIEF JUDGE OF THE COURT OF APPEALS, OR IN ANY CASE IN WHICH THE COMMIS-  
26 SION'S DETERMINATION THAT A PROSECUTOR SHOULD BE REMOVED FROM OFFICE  
27 SHALL BE TRANSMITTED TO THE CHIEF JUDGE OF THE COURT OF APPEALS WITHIN  
28 ONE HUNDRED TWENTY DAYS AFTER RECEIPT BY THE CHIEF ADMINISTRATOR OF THE  
29 COURTS OF THE RESIGNATION OF SUCH PROSECUTOR. ANY DETERMINATION BY THE  
30 COURT OF APPEALS THAT A PROSECUTOR WHO HAS RESIGNED SHOULD BE REMOVED  
31 FROM OFFICE SHALL RENDER SUCH PROSECUTOR INELIGIBLE TO HOLD ANY OTHER  
32 PROSECUTORIAL OFFICE.

33 S 499-I. EFFECT. A. THE POWERS, DUTIES, AND FUNCTIONS OF THE STATE  
34 COMMISSION ON PROSECUTORIAL CONDUCT SHALL NOT SUPERSEDE THE POWERS AND  
35 DUTIES OF THE GOVERNOR AS OUTLINED IN SECTION THIRTEEN OF ARTICLE THIR-  
36 TEEN OF THE NEW YORK STATE CONSTITUTION.

37 B. REMOVAL OR RETIREMENT OF A PROSECUTOR PURSUANT TO THIS ARTICLE  
38 SHALL BE CONSIDERED A REMOVAL FROM OFFICE PURSUANT TO SECTION THIRTY OF  
39 THE PUBLIC OFFICERS LAW.

40 S 2. If any part or provision of this act is adjudged by a court of  
41 competent jurisdiction to be unconstitutional or otherwise invalid, such  
42 judgment shall not affect or impair any other part or provision of this  
43 act, but shall be confined in its operation to such part or provision.

44 S 3. This act shall take effect January 1, 2015.