

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.

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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.