

24--B

2015-2016 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2015

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Introduced by Sens. DeFRANCISCO, AVELLA, BOYLE, HASSELL-THOMPSON, KRUEGER, LATIMER, PARKER, PERKINS, RIVERA, SANDERS, SQUADRON -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. ESTABLISHMENT OF COMMISSION.

6                 499-B. DEFINITIONS.

7                 499-C. STATE COMMISSION ON PROSECUTORIAL CONDUCT; ORGANIZATION.

8                 499-D. FUNCTIONS; POWERS AND DUTIES.

9                 499-E. PANELS; REFEREES.

10                499-F. COMPLAINT; INVESTIGATION; HEARING AND DISPOSITION.

11                499-G. CONFIDENTIALITY OF RECORDS.

12                499-H. BREACH OF CONFIDENTIALITY OF COMMISSION INFORMATION.

13                499-I. RESIGNATION NOT TO DIVEST COMMISSION OR COURT OF APPEALS  
14                                OF JURISDICTION.

15                499-J. EFFECT.

16     S 499-A. ESTABLISHMENT OF COMMISSION. A STATE COMMISSION OF PROSECUTO-  
17     RIAL CONDUCT IS HEREBY ESTABLISHED. THE COMMISSION SHALL HAVE THE

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

LBD01145-05-6

1 AUTHORITY TO REVIEW THE CONDUCT OF PROSECUTORS UPON THE FILING OF A  
2 COMPLAINT WITH THE COMMISSION TO DETERMINE WHETHER SAID CONDUCT AS  
3 ALLEGED DEPARTS FROM THE APPLICABLE STATUTES, CASE LAW, NEW YORK RULES  
4 OF PROFESSIONAL CONDUCT, 22 NYCRR 1200, INCLUDING BUT NOT LIMITED TO  
5 RULE 3.8 (SPECIAL RESPONSIBILITIES OF PROSECUTORS AND OTHER GOVERNMENT  
6 LAWYERS).

7 S 499-B. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE THE FOLLOWING  
8 TERMS HAVE THE FOLLOWING MEANINGS:

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

10 2. "PROSECUTOR" MEANS A DISTRICT ATTORNEY OR ANY ASSISTANT DISTRICT  
11 ATTORNEY OF ANY COUNTY OF THE STATE, AND THE ATTORNEY GENERAL OR ANY  
12 ASSISTANT ATTORNEY GENERAL OF THE STATE, OR ANY INDIVIDUAL EMPLOYED BY  
13 OR SUBJECT TO THE DIRECTION AND SUPERVISION OF A DISTRICT ATTORNEY,  
14 ASSISTANT DISTRICT ATTORNEY, ATTORNEY GENERAL OR ASSISTANT ATTORNEY  
15 GENERAL, IN AN ACTION TO EXACT ANY CRIMINAL PENALTY, FINE, SANCTION OR  
16 FORFEITURE.

17 3. "HEARING" MEANS A PROCEEDING UNDER SUBDIVISION FOUR OF SECTION FOUR  
18 HUNDRED NINETY-NINE-F OF THIS ARTICLE.

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

21 S 499-C. STATE COMMISSION ON PROSECUTORIAL CONDUCT; ORGANIZATION. 1.  
22 THE COMMISSION SHALL CONSIST OF ELEVEN MEMBERS, OF WHOM TWO SHALL BE  
23 APPOINTED BY THE GOVERNOR, TWO BY THE TEMPORARY PRESIDENT OF THE SENATE,  
24 ONE BY THE MINORITY LEADER OF THE SENATE, TWO BY THE SPEAKER OF THE  
25 ASSEMBLY, ONE BY THE MINORITY LEADER OF THE ASSEMBLY AND THREE BY THE  
26 CHIEF JUDGE OF THE COURT OF APPEALS. OF THE MEMBERS APPOINTED BY THE  
27 GOVERNOR ONE SHALL BE A PUBLIC DEFENDER AND ONE SHALL BE A PROSECUTOR.  
28 OF THE MEMBERS APPOINTED BY THE CHIEF JUDGE ONE PERSON SHALL BE A  
29 JUSTICE OF THE APPELLATE DIVISION OF THE SUPREME COURT AND TWO SHALL BE  
30 JUDGES OF COURTS OTHER THAN THE COURT OF APPEALS OR APPELLATE DIVISION.  
31 OF THE MEMBERS APPOINTED BY THE LEGISLATIVE LEADERS, THERE SHALL BE AN  
32 EQUAL NUMBER OF PROSECUTORS AND ATTORNEYS PROVIDING DEFENSE SERVICES;  
33 PROVIDED, HOWEVER, THAT A TEMPORARY IMBALANCE IN THE NUMBER OF PROSECU-  
34 TORS AND DEFENSE ATTORNEYS PENDING NEW APPOINTMENTS SHALL NOT PREVENT  
35 THE COMMISSION FROM CONDUCTING BUSINESS.

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

42 3. THE PERSONS FIRST APPOINTED BY THE GOVERNOR SHALL HAVE RESPECTIVELY  
43 THREE AND FOUR YEAR TERMS AS HE OR SHE SHALL DESIGNATE. THE PERSONS  
44 FIRST APPOINTED BY THE CHIEF JUDGE OF THE COURT OF APPEALS SHALL HAVE  
45 RESPECTIVELY TWO, THREE AND FOUR YEAR TERMS AS HE OR SHE SHALL DESIG-  
46 NATE. THE PERSONS FIRST APPOINTED BY THE TEMPORARY PRESIDENT OF THE  
47 SENATE SHALL HAVE RESPECTIVELY THREE AND FOUR YEAR TERMS AS HE OR SHE  
48 SHALL DESIGNATE. THE PERSON FIRST APPOINTED BY THE MINORITY LEADER OF  
49 THE SENATE SHALL HAVE A TWO YEAR TERM. THE PERSONS FIRST APPOINTED BY  
50 THE SPEAKER OF THE ASSEMBLY SHALL HAVE RESPECTIVELY THREE AND FOUR YEAR  
51 TERMS AS HE OR SHE SHALL DESIGNATE. THE PERSON FIRST APPOINTED BY THE  
52 MINORITY LEADER OF THE ASSEMBLY SHALL HAVE A THREE YEAR TERM. EACH  
53 MEMBER OF THE COMMISSION SHALL BE APPOINTED THEREAFTER FOR A TERM OF  
54 FOUR YEARS. COMMISSION MEMBERSHIP OF A JUDGE OR JUSTICE APPOINTED BY THE  
55 GOVERNOR OR THE CHIEF JUDGE SHALL TERMINATE IF SUCH MEMBER CEASES TO  
56 HOLD THE JUDICIAL POSITION WHICH QUALIFIED HIM OR HER FOR SUCH APPOINT-

MENT. MEMBERSHIP SHALL ALSO TERMINATE IF A MEMBER ATTAINS A POSITION WHICH WOULD HAVE RENDERED HIM OR HER INELIGIBLE FOR APPOINTMENT AT THE TIME OF HIS OR HER APPOINTMENT. A VACANCY SHALL BE FILLED BY THE APPOINTING OFFICER FOR THE REMAINDER OF THE TERM.

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

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

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

7. THE COMMISSION SHALL APPOINT AND AT PLEASURE MAY REMOVE AN ADMINISTRATOR WHO SHALL BE A MEMBER OF THE BAR WHO IS NOT A PROSECUTOR OR RETIRED PROSECUTOR. THE ADMINISTRATOR OF THE COMMISSION MAY APPOINT SUCH DEPUTIES, ASSISTANTS, COUNSEL, INVESTIGATORS AND OTHER OFFICERS AND EMPLOYEES AS HE OR SHE MAY DEEM NECESSARY, PRESCRIBE THEIR POWERS AND DUTIES, FIX THEIR COMPENSATION AND PROVIDE FOR REIMBURSEMENT OF THEIR EXPENSES WITHIN THE AMOUNTS APPROPRIATED THEREFOR.

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

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

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

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

4. TO REPORT ANNUALLY, ON OR BEFORE THE FIRST DAY OF MARCH IN EACH YEAR AND AT SUCH OTHER TIMES AS THE COMMISSION SHALL DEEM NECESSARY, TO

1 THE GOVERNOR, THE LEGISLATURE AND THE CHIEF JUDGE OF THE COURT OF  
2 APPEALS, WITH RESPECT TO PROCEEDINGS WHICH HAVE BEEN FINALLY DETERMINED  
3 BY THE COMMISSION. SUCH REPORTS MAY INCLUDE LEGISLATIVE AND ADMINISTRA-  
4 TIVE RECOMMENDATIONS. THE CONTENTS OF THE ANNUAL REPORT AND ANY OTHER  
5 REPORT SHALL CONFORM TO THE PROVISIONS OF THIS ARTICLE RELATING TO  
6 CONFIDENTIALITY.

7 5. TO ADOPT, PROMULGATE, AMEND AND RESCIND RULES AND PROCEDURES, NOT  
8 OTHERWISE INCONSISTENT WITH LAW, NECESSARY TO CARRY OUT THE PROVISIONS  
9 AND PURPOSES OF THIS ARTICLE. ALL SUCH RULES AND PROCEDURES SHALL BE  
10 FILED IN THE OFFICES OF THE CHIEF ADMINISTRATOR OF THE COURTS AND THE  
11 SECRETARY OF STATE.

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

14 S 499-E. PANELS; REFEREES. 1. THE COMMISSION MAY DELEGATE ANY OF ITS  
15 FUNCTIONS, POWERS AND DUTIES TO A PANEL OF THREE OF ITS MEMBERS, ONE OF  
16 WHOM SHALL BE A MEMBER OF THE BAR, EXCEPT THAT NO PANEL SHALL CONFER  
17 IMMUNITY IN ACCORDANCE WITH SECTION 50.20 OF THE CRIMINAL PROCEDURE LAW.  
18 NO PANEL SHALL BE AUTHORIZED TO TAKE ANY ACTION PURSUANT TO SUBDIVISIONS  
19 FOUR THROUGH NINE OF SECTION FOUR HUNDRED NINETY-NINE-F OF THIS ARTICLE  
20 OR SUBDIVISION TWO OF THIS SECTION.

21 2. THE COMMISSION MAY DESIGNATE A MEMBER OF THE BAR WHO IS NOT A  
22 PROSECUTOR OR A MEMBER OF THE COMMISSION OR ITS STAFF AS A REFEREE TO  
23 HEAR AND REPORT TO THE COMMISSION IN ACCORDANCE WITH THE PROVISIONS OF  
24 SECTION FOUR HUNDRED NINETY-NINE-F OF THIS ARTICLE. SUCH REFEREE SHALL  
25 BE EMPOWERED TO CONDUCT HEARINGS, ADMINISTER OATHS OR AFFIRMATIONS,  
26 SUBPOENA WITNESSES, COMPEL THEIR ATTENDANCE, EXAMINE THEM UNDER OATH OR  
27 AFFIRMATION AND REQUIRE THE PRODUCTION OF ANY BOOKS, RECORDS, DOCUMENTS  
28 OR OTHER EVIDENCE THAT THE REFEREE MAY DEEM RELEVANT OR MATERIAL TO THE  
29 SUBJECT OF THE HEARING.

30 S 499-F. COMPLAINT; INVESTIGATION; HEARING AND DISPOSITION. 1. THE  
31 COMMISSION SHALL RECEIVE, INITIATE, INVESTIGATE AND HEAR COMPLAINTS WITH  
32 RESPECT TO THE CONDUCT, QUALIFICATIONS, FITNESS TO PERFORM, OR PERFORM-  
33 ANCE OF OFFICIAL DUTIES OF ANY PROSECUTOR, AND MAY DETERMINE THAT A  
34 PROSECUTOR BE ADMONISHED, OR CENSURED; AND MAKE A RECOMMENDATION TO THE  
35 GOVERNOR THAT A PROSECUTOR BE REMOVED FROM OFFICE FOR CAUSE, FOR,  
36 INCLUDING, BUT NOT LIMITED TO, MISCONDUCT IN OFFICE, AS EVIDENCED BY HIS  
37 OR HER DEPARTURE FROM HIS OR HER OBLIGATIONS UNDER APPROPRIATE STATUTE,  
38 CASELAW, AND/OR NEW YORK RULES OF PROFESSIONAL CONDUCT, 22 NYCRR 1200,  
39 INCLUDING BUT NOT LIMITED TO RULE 3.8 (SPECIAL RESPONSIBILITIES OF  
40 PROSECUTORS AND OTHER GOVERNMENT LAWYERS), PERSISTENT FAILURE TO PERFORM  
41 HIS OR HER DUTIES, HABITUAL INTemperANCE AND CONDUCT, IN AND OUTSIDE OF  
42 HIS OR HER OFFICE, PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE, OR THAT  
43 A PROSECUTOR BE RETIRED FOR MENTAL OR PHYSICAL DISABILITY PREVENTING THE  
44 PROPER PERFORMANCE OF HIS OR HER PROSECUTORIAL DUTIES. A COMPLAINT SHALL  
45 BE IN WRITING AND SIGNED BY THE COMPLAINANT AND, IF DIRECTED BY THE  
46 COMMISSION, SHALL BE VERIFIED. UPON RECEIPT OF A COMPLAINT (A) THE  
47 COMMISSION SHALL CONDUCT AN INVESTIGATION OF THE COMPLAINT; OR (B) THE  
48 COMMISSION MAY DISMISS THE COMPLAINT IF IT DETERMINES THAT THE COMPLAINT  
49 ON ITS FACE LACKS MERIT. IF THE COMPLAINT IS DISMISSED, THE COMMISSION  
50 SHALL SO NOTIFY THE COMPLAINANT. IF THE COMMISSION SHALL HAVE NOTIFIED  
51 THE PROSECUTOR OF THE COMPLAINT, THE COMMISSION SHALL ALSO NOTIFY THE  
52 PROSECUTOR OF SUCH DISMISSAL.

53 2. THE COMMISSION MAY, ON ITS OWN MOTION, INITIATE AN INVESTIGATION OF  
54 A PROSECUTOR WITH RESPECT TO HIS OR HER QUALIFICATIONS, CONDUCT, FITNESS  
55 TO PERFORM OR THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES. PRIOR TO  
56 INITIATING ANY SUCH INVESTIGATION, THE COMMISSION SHALL FILE AS PART OF

1 ITS RECORD A WRITTEN COMPLAINT, SIGNED BY THE ADMINISTRATOR OF THE  
2 COMMISSION, WHICH COMPLAINT SHALL SERVE AS THE BASIS FOR SUCH INVESTI-  
3 GATION.

4 3. IN THE COURSE OF AN INVESTIGATION, THE COMMISSION MAY REQUIRE THE  
5 APPEARANCE OF THE PROSECUTOR INVOLVED BEFORE IT, IN WHICH EVENT THE  
6 PROSECUTOR SHALL BE NOTIFIED IN WRITING OF HIS OR HER REQUIRED APPEAR-  
7 ANCE, EITHER PERSONALLY, AT LEAST THREE DAYS PRIOR TO SUCH APPEARANCE,  
8 OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AT LEAST FIVE DAYS PRIOR  
9 TO SUCH APPEARANCE. IN EITHER CASE A COPY OF THE COMPLAINT SHALL BE  
10 SERVED UPON THE PROSECUTOR AT THE TIME OF SUCH NOTIFICATION. THE PROSE-  
11 CUTOR SHALL HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL DURING ANY AND  
12 ALL STAGES OF THE INVESTIGATION IN WHICH HIS OR HER APPEARANCE IS  
13 REQUIRED AND TO PRESENT EVIDENTIARY DATA AND MATERIAL RELEVANT TO THE  
14 COMPLAINT. A TRANSCRIPT SHALL BE MADE AND KEPT WITH RESPECT TO ALL  
15 PROCEEDINGS AT WHICH TESTIMONY OR STATEMENTS UNDER OATH OF ANY PARTY OR  
16 WITNESS SHALL BE TAKEN, AND THE TRANSCRIPT OF THE PROSECUTOR'S TESTIMONY  
17 SHALL BE MADE AVAILABLE TO THE PROSECUTOR WITHOUT COST. SUCH TRANSCRIPT  
18 SHALL BE CONFIDENTIAL EXCEPT AS OTHERWISE PERMITTED BY SECTION FOUR  
19 HUNDRED NINETY-NINE-G OF THIS ARTICLE.

20 4. IF IN THE COURSE OF AN INVESTIGATION, THE COMMISSION DETERMINES  
21 THAT A HEARING IS WARRANTED IT SHALL DIRECT THAT A FORMAL WRITTEN  
22 COMPLAINT SIGNED AND VERIFIED BY THE ADMINISTRATOR BE DRAWN AND SERVED  
23 UPON THE PROSECUTOR INVOLVED, EITHER PERSONALLY OR BY CERTIFIED MAIL,  
24 RETURN RECEIPT REQUESTED. THE PROSECUTOR SHALL FILE A WRITTEN ANSWER TO  
25 THE COMPLAINT WITH THE COMMISSION WITHIN TWENTY DAYS OF SUCH SERVICE.  
26 IF, UPON RECEIPT OF THE ANSWER, OR UPON EXPIRATION OF THE TIME TO  
27 ANSWER, THE COMMISSION SHALL DIRECT THAT A HEARING BE HELD WITH RESPECT  
28 TO THE COMPLAINT, THE PROSECUTOR INVOLVED SHALL BE NOTIFIED IN WRITING  
29 OF THE DATE OF THE HEARING EITHER PERSONALLY, AT LEAST TWENTY DAYS PRIOR  
30 THERETO, OR BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AT LEAST TWEN-  
31 TY-TWO DAYS PRIOR THERETO. UPON THE WRITTEN REQUEST OF THE PROSECUTOR,  
32 THE COMMISSION SHALL, AT LEAST FIVE DAYS PRIOR TO THE HEARING OR ANY  
33 ADJOURNED DATE THEREOF, MAKE AVAILABLE TO THE PROSECUTOR WITHOUT COST  
34 COPIES OF ALL DOCUMENTS WHICH THE COMMISSION INTENDS TO PRESENT AT SUCH  
35 HEARING AND ANY WRITTEN STATEMENTS MADE BY WITNESSES WHO WILL BE CALLED  
36 TO GIVE TESTIMONY BY THE COMMISSION. THE COMMISSION SHALL, IN ANY CASE,  
37 MAKE AVAILABLE TO THE PROSECUTOR AT LEAST FIVE DAYS PRIOR TO THE HEARING  
38 OR ANY ADJOURNED DATE THEREOF ANY EXCULPATORY EVIDENTIARY DATA AND MATE-  
39 RIAL RELEVANT TO THE COMPLAINT. THE FAILURE OF THE COMMISSION TO TIMELY  
40 FURNISH ANY DOCUMENTS, STATEMENTS AND/OR EXCULPATORY EVIDENTIARY DATA  
41 AND MATERIAL PROVIDED FOR HEREIN SHALL NOT AFFECT THE VALIDITY OF ANY  
42 PROCEEDINGS BEFORE THE COMMISSION PROVIDED THAT SUCH FAILURE IS NOT  
43 SUBSTANTIALLY PREJUDICIAL TO THE PROSECUTOR. THE COMPLAINANT MAY BE  
44 NOTIFIED OF THE HEARING AND UNLESS HE OR SHE SHALL BE SUBPOENAED AS A  
45 WITNESS BY THE PROSECUTOR, HIS OR HER PRESENCE THEREAT SHALL BE WITHIN  
46 THE DISCRETION OF THE COMMISSION. THE HEARING SHALL NOT BE PUBLIC UNLESS  
47 THE PROSECUTOR INVOLVED SHALL SO DEMAND IN WRITING. AT THE HEARING THE  
48 COMMISSION MAY TAKE THE TESTIMONY OF WITNESSES AND RECEIVE EVIDENTIARY  
49 DATA AND MATERIAL RELEVANT TO THE COMPLAINT. THE PROSECUTOR SHALL HAVE  
50 THE RIGHT TO BE REPRESENTED BY COUNSEL DURING ANY AND ALL STAGES OF THE  
51 HEARING AND SHALL HAVE THE RIGHT TO CALL AND CROSS-EXAMINE WITNESSES AND  
52 PRESENT EVIDENTIARY DATA AND MATERIAL RELEVANT TO THE COMPLAINT. A TRAN-  
53 SCRIPT OF THE PROCEEDINGS AND OF THE TESTIMONY OF WITNESSES AT THE HEAR-  
54 ING SHALL BE TAKEN AND KEPT WITH THE RECORDS OF THE COMMISSION.

55 5. SUBJECT TO THE APPROVAL OF THE COMMISSION, THE ADMINISTRATOR AND  
56 THE PROSECUTOR MAY AGREE ON A STATEMENT OF FACTS AND MAY STIPULATE IN

1 WRITING THAT THE HEARING SHALL BE WAIVED. IN SUCH A CASE, THE COMMISSION  
2 SHALL MAKE ITS DETERMINATION UPON THE PLEADINGS AND THE AGREED STATEMENT  
3 OF FACTS.

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

9 7. AFTER A HEARING, THE COMMISSION MAY DETERMINE THAT A PROSECUTOR BE  
10 ADMONISHED OR CENSURED, OR MAY RECOMMEND TO THE GOVERNOR THAT A PROSECU-  
11 TOR BE REMOVED FROM OFFICE FOR CAUSE. THE COMMISSION SHALL TRANSMIT ITS  
12 WRITTEN DETERMINATION, TOGETHER WITH ITS FINDINGS OF FACT AND CONCLU-  
13 SIONS OF LAW AND THE RECORD OF THE PROCEEDINGS UPON WHICH ITS DETERMI-  
14 NATION IS BASED, TO THE CHIEF JUDGE OF THE COURT OF APPEALS WHO SHALL  
15 CAUSE A COPY THEREOF TO BE SERVED EITHER PERSONALLY OR BY CERTIFIED  
16 MAIL, RETURN RECEIPT REQUESTED, ON THE PROSECUTOR INVOLVED. UPON  
17 COMPLETION OF SERVICE, THE DETERMINATION OF THE COMMISSION, ITS FINDINGS  
18 AND CONCLUSIONS AND THE RECORD OF ITS PROCEEDINGS SHALL BE MADE PUBLIC  
19 AND SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION AT THE PRINCIPAL  
20 OFFICE OF THE COMMISSION AND AT THE OFFICE OF THE CLERK OF THE COURT OF  
21 APPEALS. THE PROSECUTOR INVOLVED MAY EITHER ACCEPT THE DETERMINATION OF  
22 THE COMMISSION OR MAKE WRITTEN REQUEST TO THE CHIEF JUDGE, WITHIN THIRTY  
23 DAYS AFTER RECEIPT OF SUCH DETERMINATION, FOR A REVIEW THEREOF BY THE  
24 COURT OF APPEALS. IF THE COMMISSION HAS DETERMINED THAT A PROSECUTOR BE  
25 ADMONISHED OR CENSURED, AND IF THE PROSECUTOR ACCEPTS SUCH DETERMINATION  
26 OR FAILS TO REQUEST A REVIEW THEREOF BY THE COURT OF APPEALS, THE  
27 COMMISSION SHALL THEREUPON ADMONISH OR CENSURE HIM OR HER IN ACCORDANCE  
28 WITH ITS FINDINGS. IF THE COMMISSION HAS AND THE COURT OF APPEALS RECOM-  
29 MENDS THAT A PROSECUTOR BE REMOVED IT SHALL TRANSMIT THE COMMISSION AND  
30 COURT OF APPEALS FINDINGS TO THE GOVERNOR WHO WILL INDEPENDENTLY DETER-  
31 MINE WHETHER THE PROSECUTOR SHOULD BE REMOVED OR RETIRED.

32 8. IF THE PROSECUTOR REQUESTS A REVIEW OF THE DETERMINATION OF THE  
33 COMMISSION, IN ITS REVIEW OF A DETERMINATION OF THE COMMISSION, THE  
34 COURT OF APPEALS SHALL REVIEW THE COMMISSION'S FINDINGS OF FACT AND  
35 CONCLUSIONS OF LAW ON THE RECORD OF THE PROCEEDINGS UPON WHICH THE  
36 COMMISSION'S DETERMINATION WAS BASED. AFTER SUCH REVIEW, THE COURT MAY  
37 ACCEPT OR REJECT THE DETERMINED SANCTION; IMPOSE A DIFFERENT SANCTION  
38 INCLUDING ADMONITION OR CENSURE, RECOMMEND REMOVAL OR RETIREMENT FOR THE  
39 REASONS SET FORTH IN SUBDIVISION ONE OF THIS SECTION; OR IMPOSE NO SANC-  
40 TION. HOWEVER, IF THE COURT OF APPEALS DETERMINES REMOVAL OR RETIRE-  
41 MENT, IT SHALL, TOGETHER WITH THE COMMISSION, TRANSMIT THE ENTIRE RECORD  
42 TO THE GOVERNOR WHO WILL INDEPENDENTLY DETERMINE WHETHER A PROSECUTOR  
43 SHOULD BE REMOVED OR RETIRED.

44 9. (A) THE COURT OF APPEALS MAY SUSPEND A PROSECUTOR FROM EXERCISING  
45 THE POWERS OF HIS OR HER OFFICE WHILE THERE IS PENDING A DETERMINATION  
46 BY THE COMMISSION FOR HIS OR HER REMOVAL OR RETIREMENT, OR WHILE HE OR  
47 SHE IS CHARGED IN THIS STATE WITH A FELONY BY AN INDICTMENT OR AN INFOR-  
48 MATION FILED PURSUANT TO SECTION SIX OF ARTICLE ONE OF THE CONSTITUTION.  
49 THE SUSPENSION SHALL CONTINUE UPON CONVICTION AND, IF THE CONVICTION  
50 BECOMES FINAL, HE OR SHE SHALL BE REMOVED FROM OFFICE BY THE GOVERNOR.  
51 THE SUSPENSION SHALL BE TERMINATED UPON REVERSAL OF THE CONVICTION AND  
52 DISMISSAL OF THE ACCUSATORY INSTRUMENT.

53 (B) UPON THE RECOMMENDATION OF THE COMMISSION OR ON ITS OWN MOTION,  
54 THE COURT MAY SUSPEND A PROSECUTOR FROM OFFICE WHEN HE OR SHE IS CHARGED  
55 WITH A CRIME PUNISHABLE AS A FELONY UNDER THE LAWS OF THIS STATE, OR ANY  
56 OTHER CRIME WHICH INVOLVES MORAL TURPITUDE. THE SUSPENSION SHALL CONTIN-

1 UE UPON CONVICTION AND, IF THE CONVICTION BECOMES FINAL, HE OR SHE SHALL  
2 BE REMOVED FROM OFFICE. THE SUSPENSION SHALL BE TERMINATED UPON REVERSAL  
3 OF THE CONVICTION AND DISMISSAL OF THE ACCUSATORY INSTRUMENT.

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

9 (D) NOTHING IN THIS SUBDIVISION SHALL PREVENT THE COMMISSION FROM  
10 DETERMINING THAT A PROSECUTOR BE ADMONISHED OR CENSURED OR PREVENT THE  
11 COMMISSION FROM RECOMMENDING REMOVAL OR RETIREMENT PURSUANT TO SUBDIVI-  
12 SION SEVEN OF THIS SECTION.

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 THROUGH NINE OF THIS SECTION, WITHIN THE POWERS OF: (A) A  
17 PERSON HAVING ADMINISTRATIVE JURISDICTION OVER THE PROSECUTOR INVOLVED  
18 IN THE COMPLAINT; 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  
21 PURSUANT TO SUBDIVISION (B) OF SECTION THIRTEEN OF ARTICLE THIRTEEN OF  
22 THE CONSTITUTION; OR (F) AN APPLICABLE DISTRICT ATTORNEY'S OFFICE OR  
23 OTHER PROSECUTING AGENCY, THE COMMISSION SHALL REFER SUCH COMPLAINT OR  
24 THE APPROPRIATE ALLEGATIONS THEREOF AND ANY EVIDENCE OR MATERIAL RELATED  
25 THERETO TO SUCH PERSON, AGENCY OR COURT FOR SUCH ACTION AS MAY BE DEEMED  
26 PROPER OR NECESSARY.

27 11. THE COMMISSION SHALL NOTIFY THE COMPLAINANT OF ITS DISPOSITION OF  
28 THE COMPLAINT.

29 12. IN THE EVENT OF REMOVAL FROM OFFICE BY THE GOVERNOR OF ANY PROSE-  
30 CUTOR, A VACANCY SHALL EXIST PURSUANT TO ARTICLE THREE OF THE PUBLIC  
31 OFFICERS LAW.

32 S 499-G. CONFIDENTIALITY OF RECORDS. EXCEPT AS HEREINAFTER PROVIDED,  
33 ALL COMPLAINTS, CORRESPONDENCE, COMMISSION PROCEEDINGS AND TRANSCRIPTS  
34 THEREOF, OTHER PAPERS AND DATA AND RECORDS OF THE COMMISSION SHALL BE  
35 CONFIDENTIAL AND SHALL NOT BE MADE AVAILABLE TO ANY PERSON EXCEPT PURSU-  
36 ANT TO SECTION FOUR HUNDRED NINETY-NINE-F OF THIS ARTICLE. THE COMMIS-  
37 SION AND ITS DESIGNATED STAFF PERSONNEL SHALL HAVE ACCESS TO CONFIDEN-  
38 TIAL MATERIAL IN THE PERFORMANCE OF THEIR POWERS AND DUTIES. IF THE  
39 PROSECUTOR WHO IS THE SUBJECT OF A COMPLAINT SO REQUESTS IN WRITING,  
40 COPIES OF THE COMPLAINT, THE TRANSCRIPTS OF HEARINGS BY THE COMMISSION  
41 THEREON, IF ANY, AND THE DISPOSITIVE ACTION OF THE COMMISSION WITH  
42 RESPECT TO THE COMPLAINT, SUCH COPIES WITH ANY REFERENCE TO THE IDENTITY  
43 OF ANY PERSON WHO DID NOT PARTICIPATE AT ANY SUCH HEARING SUITABLY  
44 DELETED THEREFROM, EXCEPT THE SUBJECT PROSECUTOR OR COMPLAINANT, SHALL  
45 BE MADE AVAILABLE FOR INSPECTION AND COPYING TO THE PUBLIC, OR TO ANY  
46 PERSON, AGENCY OR BODY DESIGNATED BY SUCH PROSECUTOR.

47 S 499-H. BREACH OF CONFIDENTIALITY OF COMMISSION INFORMATION. 1. ANY  
48 STAFF MEMBER, EMPLOYEE OR AGENT OF THE STATE COMMISSION ON PROSECUTORIAL  
49 CONDUCT WHO VIOLATES ANY OF THE PROVISIONS OF SECTION FOUR HUNDRED NINE-  
50 TY-NINE-G OF THIS ARTICLE SHALL BE SUBJECT TO A REPRIMAND, A FINE,  
51 SUSPENSION OR REMOVAL BY THE COMMISSION.

52 2. WITHIN TEN DAYS AFTER THE COMMISSION HAS ACQUIRED KNOWLEDGE THAT A  
53 STAFF MEMBER, EMPLOYEE OR AGENT OF THE COMMISSION HAS OR MAY HAVE  
54 BREACHED THE PROVISIONS OF SECTION FOUR HUNDRED NINETY-NINE-G OF THIS  
55 ARTICLE, WRITTEN CHARGES AGAINST SUCH STAFF MEMBER, EMPLOYEE OR AGENT  
56 SHALL BE PREPARED AND SIGNED BY THE CHAIRMAN OF THE COMMISSION AND FILED

1 WITH THE COMMISSION. WITHIN FIVE DAYS AFTER RECEIPT OF CHARGES, THE  
2 COMMISSION SHALL DETERMINE, BY A VOTE OF THE MAJORITY OF ALL THE MEMBERS  
3 OF THE COMMISSION, WHETHER PROBABLE CAUSE FOR SUCH CHARGES EXISTS. IF  
4 SUCH DETERMINATION IS AFFIRMATIVE, WITHIN FIVE DAYS THEREAFTER A WRITTEN  
5 STATEMENT SPECIFYING THE CHARGES IN DETAIL AND OUTLINING HIS OR HER  
6 RIGHTS UNDER THIS SECTION SHALL BE FORWARDED TO THE ACCUSED STAFF  
7 MEMBER, EMPLOYEE OR AGENT BY CERTIFIED MAIL. THE COMMISSION MAY SUSPEND  
8 THE STAFF MEMBER, EMPLOYEE OR AGENT, WITH OR WITHOUT PAY, PENDING THE  
9 FINAL DETERMINATION OF THE CHARGES. WITHIN TEN DAYS AFTER RECEIPT OF THE  
10 STATEMENT OF CHARGES, THE STAFF MEMBER, EMPLOYEE OR AGENT SHALL NOTIFY  
11 THE COMMISSION IN WRITING WHETHER HE OR SHE DESIRES A HEARING ON THE  
12 CHARGES. THE FAILURE OF THE STAFF MEMBER, EMPLOYEE OR AGENT TO NOTIFY  
13 THE COMMISSION OF HIS OR HER DESIRE TO HAVE A HEARING WITHIN SUCH PERIOD  
14 OF TIME SHALL BE DEEMED A WAIVER OF THE RIGHT TO A HEARING. IF THE HEAR-  
15 ING HAS BEEN WAIVED, THE COMMISSION SHALL PROCEED, WITHIN TEN DAYS AFTER  
16 SUCH WAIVER, BY A VOTE OF A MAJORITY OF ALL THE MEMBERS OF SUCH COMMIS-  
17 SION, TO DETERMINE THE CHARGES AND FIX THE PENALTY OR PUNISHMENT, IF  
18 ANY, TO BE IMPOSED AS HEREINAFTER PROVIDED.

19 3. UPON RECEIPT OF A REQUEST FOR A HEARING, THE COMMISSION SHALL SCHE-  
20 DULE A HEARING, TO BE HELD AT THE COMMISSION OFFICES, WITHIN TWENTY DAYS  
21 AFTER RECEIPT OF THE REQUEST THEREFOR, AND SHALL IMMEDIATELY NOTIFY IN  
22 WRITING THE STAFF MEMBER, EMPLOYEE OR AGENT OF THE TIME AND PLACE THERE-  
23 OF.

24 4. THE COMMISSION SHALL HAVE THE POWER TO ESTABLISH NECESSARY RULES  
25 AND PROCEDURES FOR THE CONDUCT OF HEARINGS UNDER THIS SECTION. SUCH  
26 RULES SHALL NOT REQUIRE COMPLIANCE WITH TECHNICAL RULES OF EVIDENCE. ALL  
27 SUCH HEARINGS SHALL BE HELD BEFORE A HEARING PANEL COMPOSED OF THREE  
28 MEMBERS OF THE COMMISSION SELECTED BY THE COMMISSION. EACH HEARING SHALL  
29 BE CONDUCTED BY THE CHAIRMAN OF THE PANEL WHO SHALL BE SELECTED BY THE  
30 PANEL. THE STAFF MEMBER, EMPLOYEE OR AGENT SHALL HAVE A REASONABLE  
31 OPPORTUNITY TO DEFEND HIMSELF AND TO TESTIFY ON HIS OR HER OWN BEHALF.  
32 HE OR SHE SHALL ALSO HAVE THE RIGHT TO BE REPRESENTED BY COUNSEL, TO  
33 SUBPOENA WITNESSES AND TO CROSS-EXAMINE WITNESSES. ALL TESTIMONY TAKEN  
34 SHALL BE UNDER OATH WHICH THE CHAIRMAN OF THE PANEL IS HEREBY AUTHORIZED  
35 TO ADMINISTER. A RECORD OF THE PROCEEDINGS SHALL BE MADE AND A COPY OF  
36 THE TRANSCRIPT OF THE HEARING SHALL, UPON WRITTEN REQUEST, BE FURNISHED  
37 WITHOUT CHARGE TO THE STAFF MEMBER, EMPLOYEE OR AGENT INVOLVED.

38 5. WITHIN FIVE DAYS AFTER THE CONCLUSION OF A HEARING, THE PANEL SHALL  
39 FORWARD A REPORT OF THE HEARING, INCLUDING ITS FINDINGS AND RECOMMENDA-  
40 TIONS, INCLUDING ITS RECOMMENDATIONS AS TO PENALTY OR PUNISHMENT, IF ONE  
41 IS WARRANTED, TO THE COMMISSION AND TO THE ACCUSED STAFF MEMBER, EMPLOY-  
42 EE OR AGENT. WITHIN TEN DAYS AFTER RECEIPT OF SUCH REPORT THE COMMISSION  
43 SHALL DETERMINE WHETHER IT SHALL IMPLEMENT THE RECOMMENDATIONS OF THE  
44 PANEL. IF THE COMMISSION SHALL DETERMINE TO IMPLEMENT SUCH RECOMMENDA-  
45 TIONS, WHICH SHALL INCLUDE THE PENALTY OR PUNISHMENT, IF ANY, OF A  
46 REPRIMAND, A FINE, SUSPENSION FOR A FIXED TIME WITHOUT PAY OR DISMISSAL,  
47 IT SHALL DO SO WITHIN FIVE DAYS AFTER SUCH DETERMINATION. IF THE CHARGES  
48 AGAINST THE STAFF MEMBER, EMPLOYEE OR AGENT ARE DISMISSED, HE OR SHE  
49 SHALL BE RESTORED TO HIS OR HER POSITION WITH FULL PAY FOR ANY PERIOD OF  
50 SUSPENSION WITHOUT PAY AND THE CHARGES SHALL BE EXPUNGED FROM HIS OR HER  
51 RECORD.

52 6. THE ACCUSED STAFF MEMBER, EMPLOYEE OR AGENT MAY SEEK REVIEW OF THE  
53 RECOMMENDATION BY THE COMMISSION BY WAY OF A SPECIAL PROCEEDING PURSUANT  
54 TO ARTICLE SEVENTY-EIGHT OF THE CIVIL PRACTICE LAW AND RULES.

55 S 499-I. RESIGNATION NOT TO DIVEST COMMISSION OR COURT OF APPEALS OF  
56 JURISDICTION. THE JURISDICTION OF THE COURT OF APPEALS AND THE COMMIS-



1 SION PURSUANT TO THIS ARTICLE SHALL CONTINUE NOTWITHSTANDING THAT A  
2 PROSECUTOR RESIGNS FROM OFFICE AFTER A RECOMMENDATION BY THE COMMISSION  
3 THAT THE PROSECUTOR BE REMOVED FROM OFFICE HAS BEEN TRANSMITTED TO THE  
4 CHIEF JUDGE OF THE COURT OF APPEALS, OR IN ANY CASE IN WHICH THE COMMIS-  
5 SION'S RECOMMENDATION THAT A PROSECUTOR SHOULD BE REMOVED FROM OFFICE  
6 SHALL BE TRANSMITTED TO THE CHIEF JUDGE OF THE COURT OF APPEALS WITHIN  
7 ONE HUNDRED TWENTY DAYS AFTER RECEIPT BY THE CHIEF ADMINISTRATOR OF THE  
8 COURTS OF THE RESIGNATION OF SUCH PROSECUTOR. ANY DETERMINATION BY THE  
9 GOVERNOR THAT A PROSECUTOR WHO HAS RESIGNED SHOULD BE REMOVED FROM  
10 OFFICE SHALL RENDER SUCH PROSECUTOR INELIGIBLE TO HOLD ANY OTHER PROSE-  
11 CUTORIAL OFFICE.

12 S 499-J. EFFECT. 1. THE POWERS, DUTIES, AND FUNCTIONS OF THE STATE  
13 COMMISSION ON PROSECUTORIAL CONDUCT SHALL NOT SUPERSEDE THE POWERS AND  
14 DUTIES OF THE GOVERNOR AS OUTLINED IN SECTION THIRTEEN OF ARTICLE THIR-  
15 TEEN OF THE NEW YORK STATE CONSTITUTION.

16 2. REMOVAL OR RETIREMENT OF A PROSECUTOR PURSUANT TO THIS ARTICLE  
17 SHALL BE CONSIDERED A REMOVAL FROM OFFICE PURSUANT TO SECTION THIRTY OF  
18 THE PUBLIC OFFICERS LAW.

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

23 S 3. This act shall take effect January 1, 2017.