

1131--B

2015-2016 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. PERRY, MAGNARELLI, TITUS, SOLAGES, MOSLEY, GANTT, RIVERA, GOTTFRIED, WRIGHT, DAVILA, AUBRY, RODRIGUEZ, ABINANTI, DINOW-ITZ, STECK, BRONSON, ORTIZ, SEAWRIGHT, SEPULVEDA, RUSSELL, WALKER, ROBINSON, BICHOTTE, CAHILL, ARROYO -- Multi-Sponsored by -- M. of A. BRENNAN, COOK, DenDEKKER, FAHY, FARRELL, HOOPER, LAVINE, LENTOL, LUPARDO, MAGEE, MONTESANO, O'DONNELL, PICHARDO, SIMON -- read once and referred to the Committee on Judiciary -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- 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.

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

LBD01145-04-6

1 S 499-A. ESTABLISHMENT OF COMMISSION. A STATE COMMISSION OF PROSECUTO-
2 RIAL CONDUCT IS HEREBY ESTABLISHED. THE COMMISSION SHALL HAVE THE
3 AUTHORITY TO REVIEW THE CONDUCT OF PROSECUTORS UPON THE FILING OF A
4 COMPLAINT WITH THE COMMISSION TO DETERMINE WHETHER SAID CONDUCT AS
5 ALLEGED DEPARTS FROM THE APPLICABLE STATUTES, CASE LAW, NEW YORK RULES
6 OF PROFESSIONAL CONDUCT, 22 NYCRR 1200, INCLUDING BUT NOT LIMITED TO
7 RULE 3.8 (SPECIAL RESPONSIBILITIES OF PROSECUTORS AND OTHER GOVERNMENT
8 LAWYERS).

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

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

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

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

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

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

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

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

GOVERNOR OR THE CHIEF JUDGE SHALL TERMINATE IF SUCH MEMBER CEASES TO HOLD THE JUDICIAL POSITION WHICH QUALIFIED HIM OR HER FOR SUCH APPOINTMENT. 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.

1 4. TO REPORT ANNUALLY, ON OR BEFORE THE FIRST DAY OF MARCH IN EACH
2 YEAR AND AT SUCH OTHER TIMES AS THE COMMISSION SHALL DEEM NECESSARY, TO
3 THE GOVERNOR, THE LEGISLATURE AND THE CHIEF JUDGE OF THE COURT OF
4 APPEALS, WITH RESPECT TO PROCEEDINGS WHICH HAVE BEEN FINALLY DETERMINED
5 BY THE COMMISSION. SUCH REPORTS MAY INCLUDE LEGISLATIVE AND ADMINISTRA-
6 TIVE RECOMMENDATIONS. THE CONTENTS OF THE ANNUAL REPORT AND ANY OTHER
7 REPORT SHALL CONFORM TO THE PROVISIONS OF THIS ARTICLE RELATING TO
8 CONFIDENTIALITY.

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

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

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

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

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

55 2. THE COMMISSION MAY, ON ITS OWN MOTION, INITIATE AN INVESTIGATION OF
56 A PROSECUTOR WITH RESPECT TO HIS OR HER QUALIFICATIONS, CONDUCT, FITNESS

1 TO PERFORM OR THE PERFORMANCE OF HIS OR HER OFFICIAL DUTIES. PRIOR TO
2 INITIATING ANY SUCH INVESTIGATION, THE COMMISSION SHALL FILE AS PART OF
3 ITS RECORD A WRITTEN COMPLAINT, SIGNED BY THE ADMINISTRATOR OF THE
4 COMMISSION, WHICH COMPLAINT SHALL SERVE AS THE BASIS FOR SUCH INVESTI-
5 GATION.

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

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

1 5. SUBJECT TO THE APPROVAL OF THE COMMISSION, THE ADMINISTRATOR AND
2 THE PROSECUTOR MAY AGREE ON A STATEMENT OF FACTS AND MAY STIPULATE IN
3 WRITING THAT THE HEARING SHALL BE WAIVED. IN SUCH A CASE, THE COMMISSION
4 SHALL MAKE ITS DETERMINATION UPON THE PLEADINGS AND THE AGREED STATEMENT
5 OF FACTS.

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

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

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

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

55 (B) UPON THE RECOMMENDATION OF THE COMMISSION OR ON ITS OWN MOTION,
56 THE COURT MAY SUSPEND A PROSECUTOR FROM OFFICE WHEN HE OR SHE IS CHARGED

1 WITH A CRIME PUNISHABLE AS A FELONY UNDER THE LAWS OF THIS STATE, OR ANY
2 OTHER CRIME WHICH INVOLVES MORAL TURPITUDE. THE SUSPENSION SHALL CONTIN-
3 UE UPON CONVICTION AND, IF THE CONVICTION BECOMES FINAL, HE OR SHE SHALL
4 BE REMOVED FROM OFFICE. THE SUSPENSION SHALL BE TERMINATED UPON REVERSAL
5 OF THE CONVICTION AND DISMISSAL OF THE ACCUSATORY INSTRUMENT.

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

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

15 10. IF DURING THE COURSE OF OR AFTER AN INVESTIGATION OR HEARING, THE
16 COMMISSION DETERMINES THAT THE COMPLAINT OR ANY ALLEGATION THEREOF
17 WARRANTS ACTION, OTHER THAN IN ACCORDANCE WITH THE PROVISIONS OF SUBDI-
18 VISIONS SEVEN THROUGH NINE OF THIS SECTION, WITHIN THE POWERS OF: (A) A
19 PERSON HAVING ADMINISTRATIVE JURISDICTION OVER THE PROSECUTOR INVOLVED
20 IN THE COMPLAINT; OR (B) AN APPELLATE DIVISION OF THE SUPREME COURT; OR
21 (C) A PRESIDING JUSTICE OF AN APPELLATE DIVISION OF THE SUPREME COURT;
22 OR (D) THE CHIEF JUDGE OF THE COURT OF APPEALS; OR (E) THE GOVERNOR
23 PURSUANT TO SUBDIVISION (B) OF SECTION THIRTEEN OF ARTICLE THIRTEEN OF
24 THE CONSTITUTION; OR (F) AN APPLICABLE DISTRICT ATTORNEY'S OFFICE OR
25 OTHER PROSECUTING AGENCY, THE COMMISSION SHALL REFER SUCH COMPLAINT OR
26 THE APPROPRIATE ALLEGATIONS THEREOF AND ANY EVIDENCE OR MATERIAL RELATED
27 THERETO TO SUCH PERSON, AGENCY OR COURT FOR SUCH ACTION AS MAY BE DEEMED
28 PROPER OR NECESSARY.

29 11. THE COMMISSION SHALL NOTIFY THE COMPLAINANT OF ITS DISPOSITION OF
30 THE COMPLAINT.

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

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

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

54 2. WITHIN TEN DAYS AFTER THE COMMISSION HAS ACQUIRED KNOWLEDGE THAT A
55 STAFF MEMBER, EMPLOYEE OR AGENT OF THE COMMISSION HAS OR MAY HAVE
56 BREACHED THE PROVISIONS OF SECTION FOUR HUNDRED NINETY-NINE-G OF THIS

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

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

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

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

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

1 S 499-I. RESIGNATION NOT TO DIVEST COMMISSION OR COURT OF APPEALS OF
2 JURISDICTION. THE JURISDICTION OF THE COURT OF APPEALS AND THE COMMIS-
3 SION PURSUANT TO THIS ARTICLE SHALL CONTINUE NOTWITHSTANDING THAT A
4 PROSECUTOR RESIGNS FROM OFFICE AFTER A RECOMMENDATION BY THE COMMISSION
5 THAT THE PROSECUTOR BE REMOVED FROM OFFICE HAS BEEN TRANSMITTED TO THE
6 CHIEF JUDGE OF THE COURT OF APPEALS, OR IN ANY CASE IN WHICH THE COMMIS-
7 SION'S RECOMMENDATION THAT A PROSECUTOR SHOULD BE REMOVED FROM OFFICE
8 SHALL BE TRANSMITTED TO THE CHIEF JUDGE OF THE COURT OF APPEALS WITHIN
9 ONE HUNDRED TWENTY DAYS AFTER RECEIPT BY THE CHIEF ADMINISTRATOR OF THE
10 COURTS OF THE RESIGNATION OF SUCH PROSECUTOR. ANY DETERMINATION BY THE
11 GOVERNOR THAT A PROSECUTOR WHO HAS RESIGNED SHOULD BE REMOVED FROM
12 OFFICE SHALL RENDER SUCH PROSECUTOR INELIGIBLE TO HOLD ANY OTHER PROSE-
13 CUTORIAL OFFICE.

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

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

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

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