

24--A

2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sens. DeFRANCISCO, AVELLA, HASSELL-THOMPSON, KRUEGER, LATIMER, PARKER, PERKINS, 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

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
18 AUTHORITY TO REVIEW THE CONDUCT OF PROSECUTORS UPON THE FILING OF A
19 COMPLAINT WITH THE COMMISSION TO DETERMINE WHETHER SAID CONDUCT AS
20 ALLEGED DEPARTS FROM THE APPLICABLE STATUTES, CASE LAW, NEW YORK RULES

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

LBD01145-02-6

1 OF PROFESSIONAL RESPONSIBILITY AND RULE 3.8 (SPECIAL RESPONSIBILITIES OF
2 PROSECUTORS) OF THE MODEL RULES OF PROFESSIONAL CONDUCT OF THE AMERICAN
3 BAR ASSOCIATIONS.

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

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

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

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

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

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

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

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

1 TIME OF HIS OR HER APPOINTMENT. A VACANCY SHALL BE FILLED BY THE
2 APPOINTING OFFICER FOR THE REMAINDER OF THE TERM.

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

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

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

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

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

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

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

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

53 4. TO REPORT ANNUALLY, ON OR BEFORE THE FIRST DAY OF MARCH IN EACH
54 YEAR AND AT SUCH OTHER TIMES AS THE COMMISSION SHALL DEEM NECESSARY, TO
55 THE GOVERNOR, THE LEGISLATURE AND THE CHIEF JUDGE OF THE COURT OF
56 APPEALS, WITH RESPECT TO PROCEEDINGS WHICH HAVE BEEN FINALLY DETERMINED

1 BY THE COMMISSION. SUCH REPORTS MAY INCLUDE LEGISLATIVE AND ADMINISTRA-
2 TIVE RECOMMENDATIONS. THE CONTENTS OF THE ANNUAL REPORT AND ANY OTHER
3 REPORT SHALL CONFORM TO THE PROVISIONS OF THIS ARTICLE RELATING TO
4 CONFIDENTIALITY.

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

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

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

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

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

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

1 COMMISSION, WHICH COMPLAINT SHALL SERVE AS THE BASIS FOR SUCH INVESTI-
2 GATION.

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

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

54 5. SUBJECT TO THE APPROVAL OF THE COMMISSION, THE ADMINISTRATOR AND
55 THE PROSECUTOR MAY AGREE ON A STATEMENT OF FACTS AND MAY STIPULATE IN
56 WRITING THAT THE HEARING SHALL BE WAIVED. IN SUCH A CASE, THE COMMISSION

1 SHALL MAKE ITS DETERMINATION UPON THE PLEADINGS AND THE AGREED STATEMENT
2 OF FACTS.

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

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

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

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

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

1 BE REMOVED FROM OFFICE. THE SUSPENSION SHALL BE TERMINATED UPON REVERSAL
2 OF THE CONVICTION AND DISMISSAL OF THE ACCUSATORY INSTRUMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

54 S 499-I. RESIGNATION NOT TO DIVEST COMMISSION OR COURT OF APPEALS OF
55 JURISDICTION. THE JURISDICTION OF THE COURT OF APPEALS AND THE COMMIS-
56 SION PURSUANT TO THIS ARTICLE SHALL CONTINUE NOTWITHSTANDING THAT A

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

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

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

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

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