

STATE OF NEW YORK

5299

2019-2020 Regular Sessions

IN ASSEMBLY

February 8, 2019

Introduced by M. of A. KOLB -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to investigations of the state commission on judicial misconduct and authorizing the removal of judges who are convicted of certain misdemeanor crimes and/or parole violations

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 44 of the judiciary law is amended by adding a new
2 subdivision 2-a to read as follows:

3 2-a. If the commission initiates an investigation based upon a felony
4 or misdemeanor conviction of a judge, the commission is required to
5 provide a written determination within one hundred twenty days of the
6 start of the investigation recommending that the court of appeals either
7 admonish, censure, suspend or remove a judge or justice from office,
8 unless the commission dismisses the complaint in its entirety.

9 § 2. Subdivision 4 of section 44 of the judiciary law, as added by
10 chapter 156 of the laws of 1978, is amended to read as follows:

11 4. If in the course of an investigation, the commission determines
12 that a hearing is warranted it shall direct that a formal written
13 complaint signed and verified by the administrator be drawn and served
14 upon the judge involved, either personally or by certified mail, return
15 receipt requested. The judge shall file a written answer to the [the]
16 complaint with the commission within twenty days of such service. If,
17 upon receipt of the answer, or upon expiration of the time to answer,
18 the commission shall direct that a hearing be held with respect to the
19 complaint, the judge involved shall be notified in writing of the date
20 of the hearing either personally, at least twenty days prior thereto, or
21 by certified mail, return receipt requested, at least twenty-two days
22 prior thereto. Upon the written request of the judge, the commission
23 shall, at least five days prior to the hearing or any adjourned date

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

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1 thereof, make available to the judge without cost copies of all docu-
2 ments which the commission intends to present at such hearing and any
3 written statements made by witnesses who will be called to give testimo-
4 ny by the commission. The commission shall, in any case, make available
5 to the judge at least five days prior to the hearing or any adjourned
6 date thereof any exculpatory evidentiary data and material relevant to
7 the complaint. The failure of the commission to timely furnish any docu-
8 ments, statements and/or exculpatory evidentiary data and material
9 provided for herein shall not affect the validity of any proceedings
10 before the commission provided that such failure is not substantially
11 prejudicial to the judge. The complainant may be notified of the hearing
12 and unless he or she shall be subpoenaed as a witness by the judge, his
13 or her presence thereat shall be within the discretion of the commis-
14 sion. The hearing shall [~~not~~] be public [~~unless the judge involved shall~~
15 ~~so demand in writing~~]. At the hearing the commission may take the
16 testimony of witnesses and receive evidentiary data and material rele-
17 vant to the complaint. The judge shall have the right to be represented
18 by counsel during any and all stages of the hearing and shall have the
19 right to call and cross-examine witnesses and present evidentiary data
20 and material relevant to the complaint. A transcript of the proceedings
21 and of the testimony of witnesses at the hearing shall be taken and kept
22 with the records of the commission.

23 § 3. Paragraphs (b) and (c) of subdivision 8 of section 44 of the
24 judiciary law, as added by chapter 156 of the laws of 1978, are amended
25 to read as follows:

26 (b) Upon the recommendation of the commission or on its own motion,
27 the court may suspend a judge or justice from office when he or she is
28 charged with a crime punishable as a felony under the laws of this
29 state, or any other crime which involves moral turpitude. Crimes
30 involving moral turpitude, for the purposes of this subdivision, shall
31 be defined as a misdemeanor or felony that reflects adversely on the
32 judge's honesty, trustworthiness or fitness; any violation of the terms
33 of probation or post-release supervision from a prior felony or misde-
34 meanor conviction; and/or any willful repeated misconduct. The suspen-
35 sion shall continue upon conviction and, if the conviction becomes
36 final, he or she shall be removed from office. The suspension shall be
37 terminated upon reversal of the conviction and dismissal of the accusa-
38 tory instrument.

39 (c) A judge or justice who is suspended from office by the court shall
40 not receive his or her judicial salary during such period of suspen-
41 sion[~~, unless the court directs otherwise. If the court has so directed~~
42 ~~and such suspension is thereafter terminated, the court may direct that~~
43 ~~he shall be paid his salary for such period of suspension~~].

44 § 4. This act shall take effect immediately.