

STATE OF NEW YORK

1190

2019-2020 Regular Sessions

IN SENATE

January 11, 2019

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the judiciary law, in relation to the state commission on prosecutorial conduct; and to amend chapter 202 of the laws of 2018 amending the judiciary law relating to establishing the commission on prosecutorial conduct, in relation to the effectiveness thereof

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

Section 1. Article 15-A of the judiciary law, as added by chapter 202 of the laws of 2018, is amended to read as follows:

ARTICLE 15-A

STATE COMMISSION ON PROSECUTORIAL CONDUCT

Section 499-a. Establishment of commission.

499-b. Definitions.

499-c. State commission on prosecutorial conduct; organization.

499-d. Functions; powers and duties.

499-e. Panels; referees.

499-f. Complaint; investigation; hearing and disposition.

499-g. Confidentiality of records.

499-h. Breach of confidentiality of commission information.

499-i. Resignation not to divest commission or [~~court~~ of
~~appeals~~] presiding justices of the appellate division
of jurisdiction.

499-j. Effect.

§ 499-a. Establishment of commission. [~~A~~] There is hereby created within the executive department a state commission of prosecutorial conduct [~~is hereby established~~]. The commission shall have the authority to review the conduct of prosecutors upon the filing of a complaint with the commission to determine whether said conduct as alleged departs from the applicable statutes, case law, New York Rules of Professional

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

LBD06137-01-9

1 Conduct, 22 NYCRR 1200, including but not limited to Rule 3.8 (Special
2 Responsibilities of Prosecutors and Other Government Lawyers).

3 § 499-b. Definitions. For the purposes of this article the following
4 terms have the following meanings:

5 1. "Commission" means the state commission on prosecutorial conduct.

6 2. "Prosecutor" means a district attorney or any assistant district
7 attorney of any county of the state in an action to exact any criminal
8 penalty, fine, sanction or forfeiture.

9 3. "Hearing" means a proceeding under subdivision four of section four
10 hundred ninety-nine-f of this article.

11 4. "Member of the bar" means a person admitted to the practice of law
12 in this state for at least five years.

13 5. "Presiding justices of the appellate division" shall mean, collec-
14 tively, the presiding justices of the appellate division of the supreme
15 court of each judicial department. The chief administrative judge
16 shall, by rule, establish an appropriate mechanism, not inconsistent
17 with law, for persons and entities interacting with the presiding
18 justices of the appellate division pursuant to this article to file
19 papers and communicate with such body.

20 6. "Retired judge" shall mean a former judge or justice of the unified
21 court system who was qualified as an attorney during such service and
22 served as such a judge or justice for at least five years.

23 § 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.] The commission shall consist~~
38 of eleven members, of whom four shall be appointed by the governor, one
39 by the temporary president of the senate, one by the minority leader of
40 the senate, one by the speaker of the assembly, one by the minority
41 leader of the assembly and three by the chief judge of the court of
42 appeals.

43 (a) Of the members appointed by the governor, two shall be attorneys
44 providing public defense services who have provided such services for at
45 least five years, and two shall be active, former or retired prosecutors
46 with at least five years of prosecutorial experience.

47 (b) Of the members appointed by the chief judge, two shall be retired
48 judges, one of whom shall possess significant work experience providing
49 public defense services and one of whom shall have significant prosecu-
50 torial experience; one shall be a full time law professor or dean at an
51 accredited law school with significant criminal law experience.

52 (c) Of the members appointed by the legislative leaders, two shall be
53 attorneys providing defense services and two shall be active, former, or
54 retired prosecutors. Each candidate for appointment as an attorney
55 providing defense services shall have provided such services for at
56 least five years and each candidate for appointment as an active, former

1 or retired prosecutor shall have had at least five years of prosecuti-
2 al experience. After the speaker of the assembly and temporary president
3 of the senate shall have made their initial appointments, the minority
4 leaders of each house shall make their appointments to the commission in
5 a manner to ensure an equal number of attorneys providing defense
6 services and active, former or retired prosecutors. After such initial
7 appointments, successive appointments must be made in a manner to ensure
8 an equal number of attorneys providing defense services and active,
9 former or retired prosecutors. A temporary imbalance in the number of
10 prosecutors and defense attorneys pending new appointments shall not
11 prevent the commission from conducting business.

12 2. Membership on the commission by a prosecutor shall not constitute
13 the holding of a public office and no prosecutor shall be required to
14 take and file an oath of office before serving on the commission. The
15 members of the commission shall elect one of their number to serve as
16 [~~chairman~~] chairperson during his or her term of office or for a period
17 of two years, whichever is shorter. Members of the commission who fail
18 to participate for ninety days may be replaced by the original appoint-
19 ing authority for the remainder of the term.

20 3. The persons first appointed by the governor shall have respectively
21 three and four year terms as he or she shall designate. The persons
22 first appointed by the chief judge of the court of appeals shall have
23 respectively two, three and four year terms as he or she shall desig-
24 nate. The [~~persons~~] person first appointed by the temporary president of
25 the senate shall have [~~respectively~~] a three [~~and four~~] year [~~terms as~~
26 ~~he or she shall designate~~] term. The person first appointed by the
27 minority leader of the senate shall have a two year term. The [~~persons~~]
28 person first appointed by the speaker of the assembly shall have
29 [~~respectively~~] a three [~~and four~~] year [~~terms as he or she shall desig-~~
30 ~~nate~~] term. The person first appointed by the minority leader of the
31 assembly shall have a [~~three~~] two year term. Each member of the commis-
32 sion shall be appointed thereafter for a term of four years. [~~Commission~~
33 ~~membership of a judge or justice appointed by the governor or the chief~~
34 ~~judge shall terminate if such member ceases to hold the judicial posi-~~
35 ~~tion which qualified him or her for such appointment.~~] Membership shall
36 [~~also~~] terminate if a member attains a position which would have
37 rendered him or her ineligible for appointment at the time of his or her
38 appointment. A vacancy shall be filled by the appointing officer for the
39 remainder of the term.

40 4. If a member of the commission who is a prosecutor is the subject of
41 a complaint or investigation with respect to his or her qualifications,
42 conduct, fitness to perform or performance of his or her official
43 duties, he or she shall be disqualified from participating in any and
44 all proceedings with respect thereto. If a member of the commission is
45 employed in the same organization as the subject of a complaint or
46 investigation with respect to his or her qualifications, conduct,
47 fitness to perform, or performance of his or her official duties, he or
48 she shall be disqualified from participating in any and all proceedings
49 with respect thereto.

50 5. Each member of the commission shall serve without salary or other
51 compensation, but shall be entitled to receive actual and necessary
52 expenses incurred in the discharge of his or her duties.

53 6. For any action taken pursuant to subdivisions four through nine of
54 section four hundred ninety-nine-f or subdivision two of section four
55 hundred ninety-nine-e of this article, eight members of the commission
56 shall constitute a quorum of the commission and the concurrence of six

1 members of the commission shall be necessary. Two members of a three
2 member panel of the commission shall constitute a quorum of the panel
3 and the concurrence of two members of the panel shall be necessary for
4 any action taken.

5 7. The commission shall appoint and at pleasure may remove an adminis-
6 trator who shall be a member of the bar who is not [~~a prosecutor or~~] an
7 active, former or retired prosecutor. The administrator of the commis-
8 sion may appoint such deputies, assistants, counsel, investigators and
9 other officers and employees as he or she may deem necessary, prescribe
10 their powers and duties, fix their compensation and provide for
11 reimbursement of their expenses within the amounts appropriated there-
12 for. No appointment of an administrator shall be valid unless approved
13 by an executive appointee, the appointee of the temporary president of
14 the senate, and the appointee of the speaker of the assembly.

15 § 499-d. Functions; powers and duties. The commission shall have the
16 following functions, powers and duties:

17 1. To conduct hearings and investigations, administer oaths or affir-
18 mations, subpoena witnesses, compel their attendance, examine them under
19 oath or affirmation and require the production of any books, records,
20 documents or other evidence that it may deem relevant or material to an
21 investigation; and the commission may designate any of its members or
22 any member of its staff to exercise any such powers, provided, however,
23 that except as is otherwise provided in section four hundred ninety-
24 nine-e of this article, only a member of the commission or the adminis-
25 trator shall exercise the power to subpoena witnesses or require the
26 production of books, records, documents or other evidence. [~~The prose-~~
27 ~~cuting agency may inform the commission of its position that the commis-~~
28 ~~sion's investigations will substantially interfere with the agency's own~~
29 ~~investigation or prosecution. If the prosecuting agency, by affirmation~~
30 ~~with specificity and particularity, informs the commission of its basis~~
31 ~~for that position, the commission shall only exercise its powers in a~~
32 ~~way that will not interfere with an agency's active investigation or~~
33 ~~prosecution.~~] In accordance with section twenty-three hundred four of
34 the civil practice law and rules, a request to withdraw or modify a
35 subpoena issued pursuant to this article may be made to the person who
36 issued it and/or to the commission. The prosecuting agency may inform
37 the commission, by affirmation with specificity and particularity, in a
38 form and manner in which shall be prescribed by the commission, of its
39 position that the commission's investigations will substantially inter-
40 fere with the agency's own criminal investigation. If the prosecuting
41 agency informs the commission of its basis for that position, the
42 commission shall only exercise its powers in a way that will not inter-
43 fere with an agency's active investigation or prosecution and in no
44 event shall the commission exercise its powers prior to the earlier of:
45 (a) the filing of an accusatory instrument with respect to the crime or
46 crimes that led to such prosecuting agency's investigation and underlie
47 the complaint; or (b) one year from the commencement of the occurrence
48 of the crime or crimes that led to such prosecuting agency's investi-
49 gation and underlie the complaint.

50 2. To confer immunity when the commission deems it necessary and prop-
51 er in accordance with section 50.20 of the criminal procedure law;
52 provided, however, that at least forty-eight hours prior written notice
53 of the commission's intention to confer such immunity is given the
54 attorney general and the appropriate district attorney.

55 3. To request and receive from any court, department, division, board,
56 bureau, commission, or other agency of the state or political subdivi-

1 sion thereof or any public authority such assistance, information and
2 data as will enable it properly to carry out its functions, powers and
3 duties.

4 4. To report annually, on or before the first day of March in each
5 year and at such other times as the commission shall deem necessary, to
6 the governor, the legislature and the chief judge of the court of
7 appeals, with respect to proceedings which have been finally determined
8 by the commission. Such reports may include legislative and administra-
9 tive recommendations. The contents of the annual report and any other
10 report shall conform to the provisions of this article relating to
11 confidentiality.

12 5. To adopt, promulgate, amend and rescind rules and procedures, not
13 otherwise inconsistent with law, necessary to carry out the provisions
14 and purposes of this article. All such rules and procedures shall be
15 filed in the offices of the chief administrator of the courts and the
16 secretary of state.

17 6. To do all other things necessary and convenient to carry out its
18 functions, powers and duties expressly set forth in this article.

19 § 499-e. Panels; referees. 1. The commission may delegate any of its
20 functions, powers and duties to a panel of three of its members, one of
21 whom shall be a member of the bar, except that no panel shall confer
22 immunity in accordance with section 50.20 of the criminal procedure law.
23 No panel shall be authorized to take any action pursuant to subdivisions
24 four through nine of section four hundred ninety-nine-f of this article
25 or subdivision two of this section.

26 2. The commission may designate a member of the bar who is not a
27 prosecutor or a member of the commission or its staff as a referee to
28 hear and report to the commission in accordance with the provisions of
29 section four hundred ninety-nine-f of this article. Such referee shall
30 be empowered to conduct hearings, administer oaths or affirmations,
31 subpoena witnesses, compel their attendance, examine them under oath or
32 affirmation and require the production of any books, records, documents
33 or other evidence that the referee may deem relevant or material to the
34 subject of the hearing.

35 § 499-f. Complaint; investigation; hearing and disposition. 1. The
36 commission shall receive, initiate, investigate and hear complaints with
37 respect to the conduct, qualifications, fitness to perform, or perform-
38 ance of official duties of any prosecutor, and may determine that a
39 prosecutor be admonished, or censured; and make a recommendation to the
40 governor that a prosecutor be removed from office for cause, for,
41 including, but not limited to, misconduct in office, as evidenced by his
42 or her departure from his or her obligations under appropriate statute,
43 case law, and/or New York Rules of Professional Conduct, 22 NYCRR 1200,
44 including but not limited to Rule 3.8 (Special Responsibilities of
45 Prosecutors and Other Government Lawyers), persistent failure to perform
46 his or her duties, [~~habitual intemperance and~~] conduct [~~in and outside~~
47 ~~of his or her office,~~] prejudicial to the administration of justice, or
48 that a prosecutor be retired for mental or physical disability prevent-
49 ing the proper performance of his or her prosecutorial duties. A
50 complaint shall be in writing and signed by the complainant and, if
51 directed by the commission, shall be verified. Upon receipt of a
52 complaint (a) the commission shall conduct an investigation of the
53 complaint; or (b) the commission may dismiss the complaint if it deter-
54 mines that the complaint on its face lacks merit. If the complaint is
55 dismissed, the commission shall so notify the complainant. If the
56 commission shall have notified the prosecutor of the complaint, the

1 commission shall also notify the prosecutor of such dismissal. Pursuant
2 to paragraph a of subdivision four of section ninety of this chapter,
3 any person being an attorney and counselor-at-law who shall be convicted
4 of a felony as defined in paragraph e of subdivision four of section
5 ninety of this chapter, shall upon such conviction, cease to be any
6 attorney and counselor-at-law, or to be competent to practice law as
7 such.

8 2. The commission may, on its own motion, initiate an investigation of
9 a prosecutor with respect to his or her qualifications, conduct, fitness
10 to perform or the performance of his or her official duties. Prior to
11 initiating any such investigation, the commission shall file as part of
12 its record a written complaint, signed by the administrator of the
13 commission, which complaint shall serve as the basis for such investi-
14 gation.

15 3. In the course of an investigation, the commission may require the
16 appearance of the prosecutor involved before it, in which event the
17 prosecutor shall be notified in writing of his or her required appear-
18 ance, either personally, at least three days prior to such appearance,
19 or by certified mail, return receipt requested, at least five days prior
20 to such appearance. In either case a copy of the complaint shall be
21 served upon the prosecutor at the time of such notification. The prose-
22 cutor shall have the right to be represented by counsel during any and
23 all stages of the investigation in which his or her appearance is
24 required and to present evidentiary data and material relevant to the
25 complaint. A transcript shall be made and kept with respect to all
26 proceedings at which testimony or statements under oath of any party or
27 witness shall be taken, and the transcript of the prosecutor's testimony
28 shall be made available to the prosecutor without cost. Such transcript
29 shall be confidential except as otherwise permitted by section four
30 hundred ninety-nine-g of this article.

31 4. If in the course of an investigation, the commission determines
32 that a hearing is warranted it shall direct that a formal written
33 complaint signed and verified by the administrator be drawn and served
34 upon the prosecutor involved, either personally or by certified mail,
35 return receipt requested. The prosecutor shall file a written answer to
36 the complaint with the commission within twenty days of such service.
37 If, upon receipt of the answer, or upon expiration of the time to
38 answer, the commission shall direct that a hearing be held with respect
39 to the complaint, the prosecutor involved shall be notified in writing
40 of the date of the hearing either personally, at least twenty days prior
41 thereto, or by certified mail, return receipt requested, at least twen-
42 ty-two days prior thereto. Upon the written request of the prosecutor,
43 the commission shall, at least five days prior to the hearing or any
44 adjourned date thereof, make available to the prosecutor without cost
45 copies of all documents which the commission intends to present at such
46 hearing and any written statements made by witnesses who will be called
47 to give testimony by the commission. The commission shall, in any case,
48 make available to the prosecutor at least five days prior to the hearing
49 or any adjourned date thereof any exculpatory evidentiary data and mate-
50 rial relevant to the complaint. The failure of the commission to timely
51 furnish any documents, statements and/or exculpatory evidentiary data
52 and material provided for herein shall not affect the validity of any
53 proceedings before the commission provided that such failure is not
54 substantially prejudicial to the prosecutor. The complainant may be
55 notified of the hearing and unless he or she shall be subpoenaed as a
56 witness by the prosecutor, his or her presence thereat shall be within

1 the discretion of the commission. The hearing shall not be public unless
2 the prosecutor involved shall so demand in writing. At the hearing the
3 commission may take the testimony of witnesses and receive evidentiary
4 data and material relevant to the complaint. The prosecutor shall have
5 the right to be represented by counsel during any and all stages of the
6 hearing and shall have the right to call and cross-examine witnesses and
7 present evidentiary data and material relevant to the complaint. A tran-
8 script of the proceedings and of the testimony of witnesses at the hear-
9 ing shall be taken and kept with the records of the commission.

10 5. Subject to the approval of the commission, the administrator and
11 the prosecutor may agree on a statement of facts and may stipulate in
12 writing that the hearing shall be waived. In such a case, the commission
13 shall make its determination upon the pleadings and the agreed statement
14 of facts.

15 6. If, after a formal written complaint has been served pursuant to
16 subdivision four of this section, or during the course of or after a
17 hearing, the commission determines that no further action is necessary,
18 the complaint shall be dismissed and the complainant and the prosecutor
19 shall be so notified in writing.

20 7. After a hearing, the commission may determine that a prosecutor be
21 admonished or censured, or may recommend to the governor that a prosecu-
22 tor be removed from office for cause. The commission shall transmit its
23 written determination, together with its findings of fact and conclu-
24 sions of law and the record of the proceedings upon which its determi-
25 nation is based, to the ~~[chief judge of the court of appeals]~~ presiding
26 justices of the appellate division who shall cause a copy thereof to be
27 served either personally or by certified mail, return receipt requested,
28 on the prosecutor involved. Upon completion of service, the determi-
29 nation of the commission, its findings and conclusions and the record of
30 its proceedings shall be made public and shall be made available for
31 public inspection at the principal office of the commission and at the
32 office of the clerk of the ~~[court of appeals]~~ appellate division in the
33 department in which the alleged misconduct occurred. Records of a pros-
34 ecuting agency provided by the agency to the commission pursuant to this
35 article shall not be subject to disclosure by the commission under arti-
36 cle six of the public officers law. The prosecutor involved may either
37 accept the determination of the commission or make written request to
38 the ~~[chief judge]~~ presiding justices of the appellate division, within
39 thirty days after receipt of such determination, for a review thereof by
40 the ~~[court of appeals]~~ presiding justices of the appellate division. If
41 the commission has determined that a prosecutor be admonished or
42 censured, and if the prosecutor accepts such determination or fails to
43 request a review thereof by the ~~[court of appeals]~~ presiding justices of
44 the appellate division, the commission shall thereupon admonish or
45 censure him or her in accordance with its findings. If the commission
46 has recommended that a prosecutor be removed or retired and the prosecu-
47 tor accepts such determination or fails to request a review thereof by
48 the ~~[court of appeals]~~ presiding justices of the appellate division, the
49 ~~[court of appeals]~~ presiding justices of the appellate division shall
50 thereupon transmit the commission's findings to the governor who will
51 independently determine whether the prosecutor should be removed or
52 retired.

53 8. If the prosecutor requests a review of the determination of the
54 commission, in its review of a determination of the commission ~~[pursuant~~
55 ~~to the second undesignated paragraph of subdivision b of section three~~
56 ~~of article six of the state constitution]~~, the ~~[court of appeals]~~

1 presiding justices of the appellate division shall review the commis-
2 sion's findings of fact and conclusions of law on the record of the
3 proceedings upon which the commission's determination was based. After
4 such review, the ~~[court]~~ presiding justices of the appellate division
5 may accept or reject the determined sanction; impose a different sanc-
6 tion including admonition or censure, recommend removal or retirement
7 for the reasons set forth in subdivision one of this section; or impose
8 no sanction. However, if the ~~[court of appeals recommends]~~ presiding
9 justices of the appellate division recommend removal or retirement, ~~[it]~~
10 they shall, together with the commission, transmit the entire record to
11 the governor who will independently determine whether a prosecutor
12 should be removed or retired.

13 9. (a) The ~~[court of appeals]~~ presiding justices of the appellate
14 division may suspend a prosecutor from exercising the powers of his or
15 her office while there is pending a determination by the commission for
16 his or her removal or retirement, or while he or she is charged in this
17 state with a felony by an indictment or an information filed pursuant to
18 section six of article one of the constitution. The suspension shall
19 terminate upon conviction of a felony resulting in such prosecutor's
20 disbarment pursuant to paragraph a of subdivision four of section ninety
21 of this chapter. If such conviction becomes final, he or she shall be
22 removed from office. The suspension shall be terminated upon reversal
23 of the conviction and dismissal of the accusatory instrument.

24 (b) Upon the recommendation of the commission or on its own motion,
25 the ~~[court]~~ presiding justices of the appellate division may suspend a
26 prosecutor from office when he or she is charged with a crime punishable
27 as a felony under the laws of this state, or any other crime which
28 involves moral turpitude. The suspension shall terminate upon
29 conviction of a felony resulting in such prosecutor's disbarment pursu-
30 ant to paragraph a of subdivision four of section ninety of this chap-
31 ter. The suspension shall continue upon conviction of any other crime
32 which involves moral turpitude and, if such conviction becomes final, he
33 or she shall be removed from office. The suspension shall be terminated
34 upon reversal of the conviction and dismissal of the accusatory instru-
35 ment.

36 (c) A prosecutor who is suspended from office by the ~~[court]~~ presiding
37 justices of the appellate division shall receive his or her salary
38 during such period of suspension, unless the court directs otherwise. If
39 the court has so directed and such suspension is thereafter terminated,
40 the ~~[court]~~ presiding justices of the appellate division may direct that
41 he or she shall be paid his or her salary for such period of suspension.

42 (d) Nothing in this subdivision shall prevent the commission from
43 determining that a prosecutor be admonished or censured or prevent the
44 commission from recommending removal or retirement pursuant to subdivi-
45 sion seven of this section.

46 10. If during the course of or after an investigation or hearing, the
47 commission determines that the complaint or any allegation thereof
48 warrants action, other than in accordance with the provisions of subdivi-
49 sions seven through nine of this section, within the powers of: (a) a
50 person having administrative jurisdiction over the prosecutor involved
51 in the complaint; or (b) an appellate division of the supreme court; or
52 (c) a presiding justice of an appellate division of the supreme court;
53 or (d) the chief judge of the court of appeals; or (e) the governor
54 pursuant to subdivision (b) of section thirteen of article thirteen of
55 the constitution; or (f) an applicable district attorney's office or
56 other prosecuting agency, the commission shall refer such complaint or

1 the appropriate allegations thereof and any evidence or material related
2 thereto to such person, agency or court for such action as may be deemed
3 proper or necessary.

4 11. The commission shall notify the complainant of its disposition of
5 the complaint.

6 12. In the event of removal from office of any prosecutor, pursuant to
7 subdivision seven or eight or paragraph (a) or (b) of subdivision nine
8 of this section, a vacancy shall exist pursuant to article three of the
9 public officers law.

10 § 499-g. Confidentiality of records. Except as hereinafter provided,
11 all complaints, correspondence, commission proceedings and transcripts
12 thereof, other papers and data and records of the commission shall be
13 confidential and shall not be made available to any person except pursu-
14 ant to section four hundred ninety-nine-f of this article. The commis-
15 sion and its designated staff personnel shall have access to confiden-
16 tial material in the performance of their powers and duties. If the
17 prosecutor who is the subject of a complaint so requests in writing,
18 copies of the complaint, the transcripts of hearings by the commission
19 thereon, if any, and the dispositive action of the commission with
20 respect to the complaint, such copies with any reference to the identity
21 of any person who did not participate at any such hearing suitably
22 deleted therefrom, except the subject prosecutor or complainant, shall
23 be made available for inspection and copying to the public, or to any
24 person, agency or body designated by such prosecutor.

25 § 499-h. Breach of confidentiality of commission information. 1. Any
26 staff member, employee or agent of the state commission on prosecutorial
27 conduct who violates any of the provisions of section four hundred nine-
28 ty-nine-g of this article shall be subject to a reprimand, a fine,
29 suspension or removal by the commission.

30 2. Within ten days after the commission has acquired knowledge that a
31 staff member, employee or agent of the commission has or may have
32 breached the provisions of section four hundred ninety-nine-g of this
33 article, written charges against such staff member, employee or agent
34 shall be prepared and signed by the chairman of the commission and filed
35 with the commission. Within five days after receipt of charges, the
36 commission shall determine, by a vote of the majority of all the members
37 of the commission, whether probable cause for such charges exists. If
38 such determination is affirmative, within five days thereafter a written
39 statement specifying the charges in detail and outlining his or her
40 rights under this section shall be forwarded to the accused staff
41 member, employee or agent by certified mail. The commission may suspend
42 the staff member, employee or agent, with or without pay, pending the
43 final determination of the charges. Within ten days after receipt of the
44 statement of charges, the staff member, employee or agent shall notify
45 the commission in writing whether he or she desires a hearing on the
46 charges. The failure of the staff member, employee or agent to notify
47 the commission of his or her desire to have a hearing within such period
48 of time shall be deemed a waiver of the right to a hearing. If the hear-
49 ing has been waived, the commission shall proceed, within ten days after
50 such waiver, by a vote of a majority of all the members of such commis-
51 sion, to determine the charges and fix the penalty or punishment, if
52 any, to be imposed as hereinafter provided.

53 3. Upon receipt of a request for a hearing, the commission shall sche-
54 dule a hearing, to be held at the commission offices, within twenty days
55 after receipt of the request therefor, and shall immediately notify in

1 writing the staff member, employee or agent of the time and place there-
2 of.

3 4. The commission shall have the power to establish necessary rules
4 and procedures for the conduct of hearings under this section. Such
5 rules shall not require compliance with technical rules of evidence. All
6 such hearings shall be held before a hearing panel composed of three
7 members of the commission selected by the commission. Each hearing shall
8 be conducted by the [~~chairman~~] chairperson of the panel who shall be
9 selected by the panel. The staff member, employee or agent shall have a
10 reasonable opportunity to defend himself and to testify on his or her
11 own behalf. He or she shall also have the right to be represented by
12 counsel, to subpoena witnesses and to cross-examine witnesses. All
13 testimony taken shall be under oath which the [~~chairman~~] chairperson of
14 the panel is hereby authorized to administer. A record of the
15 proceedings shall be made and a copy of the transcript of the hearing
16 shall, upon written request, be furnished without charge to the staff
17 member, employee or agent involved.

18 5. Within five days after the conclusion of a hearing, the panel shall
19 forward a report of the hearing, including its findings and recommenda-
20 tions, including its recommendations as to penalty or punishment, if one
21 is warranted, to the commission and to the accused staff member, employ-
22 ee or agent. Within ten days after receipt of such report the commission
23 shall determine whether it shall implement the recommendations of the
24 panel. If the commission shall determine to implement such recommenda-
25 tions, which shall include the penalty or punishment, if any, of a
26 reprimand, a fine, suspension for a fixed time without pay or dismissal,
27 it shall do so within five days after such determination. If the charges
28 against the staff member, employee or agent are dismissed, he or she
29 shall be restored to his or her position with full pay for any period of
30 suspension without pay and the charges shall be expunged from his or her
31 record.

32 6. The accused staff member, employee or agent may seek review of the
33 recommendation by the commission by way of a special proceeding pursuant
34 to article seventy-eight of the civil practice law and rules.

35 § 499-i. Resignation not to divest commission or [~~court of appeals~~]
36 presiding justices of the appellate division of jurisdiction. The
37 jurisdiction of the [~~court of appeals~~] presiding justices of the appel-
38 late division and the commission pursuant to this article shall continue
39 notwithstanding that a prosecutor resigns from office after a recommen-
40 dation by the commission that the prosecutor be removed from office has
41 been transmitted to the [~~chief judge of the court of appeals~~] presiding
42 justices of the appellate division, or in any case in which the commis-
43 sion's recommendation that a prosecutor should be removed from office
44 shall be transmitted to the [~~chief judge of the court of appeals~~]
45 presiding justices of the appellate division within one hundred twenty
46 days after receipt by the chief administrator of the courts of the
47 resignation of such prosecutor. Any determination by the governor that a
48 prosecutor who has resigned should be removed from office shall render
49 such prosecutor ineligible to hold any other prosecutorial office.

50 § 499-j. Effect. 1. The powers, duties, and functions of the state
51 commission on prosecutorial conduct shall not supersede the powers and
52 duties of the governor as outlined in section thirteen of article thir-
53 teen of the New York state constitution.

54 2. Removal or retirement of a prosecutor pursuant to this article
55 shall be considered a removal from office pursuant to section thirty of
56 the public officers law.

1 § 2. Section 3 of chapter 202 of the laws of 2018 amending the judici-
2 ary law relating to establishing the commission on prosecutorial
3 conduct, is amended to read as follows:
4 § 3. This act shall take effect on the first of [~~January~~] April next
5 succeeding the date upon which it shall have become a law.
6 § 3. If any part or provision of this act is adjudged by a court of
7 competent jurisdiction to be unconstitutional or otherwise invalid, such
8 judgment shall not affect or impair any other part or provision of this
9 act, but shall be confined in its operation to such part or provision.
10 § 4. This act shall take effect immediately.