STATE OF NEW YORK

165--A

2019-2020 Regular Sessions

IN SENATE

(Prefiled)

January 9, 2019

Introduced by Sen. HELMING -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

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

4. If in the course of an investigation, the commission determines that a hearing is warranted it shall direct that a formal written complaint signed and verified by the administrator be drawn and served upon the judge involved, either personally or by certified mail, return receipt requested. The judge shall file a written answer to the [~~the~~] complaint with the commission within twenty days of such service. If, upon receipt of the answer, or upon expiration of the time to answer, the commission shall direct that a hearing be held with respect to the complaint, the judge involved shall be notified in writing of the date of the hearing either personally, at least twenty days prior thereto, or

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

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by certified mail, return receipt requested, at least twenty-two days prior thereto. Upon the written request of the judge, the commission shall, at least five days prior to the hearing or any adjourned date thereof, make available to the judge without cost copies of all documents which the commission intends to present at such hearing and any written statements made by witnesses who will be called to give testimony by the commission. The commission shall, in any case, make available to the judge at least five days prior to the hearing or any adjourned date thereof any exculpatory evidentiary data and material relevant to the complaint. The failure of the commission to timely furnish any documents, statements and/or exculpatory evidentiary data and material provided for herein shall not affect the validity of any proceedings before the commission provided that such failure is not substantially prejudicial to the judge. The complainant may be notified of the hearing and unless he **or she** shall be subpoenaed as a witness by the judge, his **or her** presence thereat shall be within the discretion of the commission. The hearing shall [~~not~~] be public [~~unless the judge involved shall so demand in writing~~]. At the hearing the commission may take the testimony of witnesses and receive evidentiary data and material relevant to the complaint. The judge shall have the right to be represented by counsel during any and all stages of the hearing and shall have the right to call and cross-examine witnesses and present evidentiary data and material relevant to the complaint. A transcript of the proceedings and of the testimony of witnesses at the hearing shall be taken and kept with the records of the commission.

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

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

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

§ 4. This act shall take effect immediately.