STATE OF NEW YORK

4908

2023-2024 Regular Sessions

IN ASSEMBLY

February 24, 2023

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

AN ACT to amend the judiciary law, in relation to requiring the state commission on judicial conduct to transmit its annual budget request to the governor for inclusion in the executive budget without revision; to complaints regarding judges; and to extending the jurisdiction of the state commission on judicial conduct as to judges who resign or retire while under investigation or formal charges

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

Section 1. Section 42 of the judiciary law is amended by adding a new subdivision 7 to read as follows:

7. To transmit its annual budget request to the governor for inclusion in the executive budget without revision but with such recommendation as the governor may deem proper.

§ 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~~] **formal written** complaint with the commission within twenty days of such service. **The formal written complaint and answer, and the record of proceedings thereafter, including the hearing and any proceedings before the commission, shall be public.** 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 **formal written** complaint, the judge involved shall be notified in writing of the date of the hearing either personally, at least twenty days prior thereto, or by certified mail, return receipt requested, at least twenty-two days prior thereto. Upon

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

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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 **formal written** 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 shall be subpoenaed as a witness by the judge, his 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 **formal written** 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 **formal written** 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. Section 45 of the judiciary law, as amended by chapter 35 of the laws of 1983, is amended to read as follows:

§ 45. Confidentiality of records. [~~1.~~] Except as hereinafter provided, all complaints, correspondence, commission proceedings and transcripts thereof, other papers and data and records of the commission shall be confidential and shall not be made available to any person except pursuant to section forty-four of this article. The commission and its designated staff personnel shall have access to confidential material in the performance of their powers and duties. If the judge who is the subject of a complaint so requests in writing, copies of [~~the~~] **any pending** complaint, [~~the transcripts of hearings by the commission thereon, if any~~] **any documents made public pursuant to section forty-four of this article**, and the dispositive action of the commission with respect to [~~the~~] **any** complaint **resulting in a caution, admonition, censure, removal, retirement, or resignation from judicial office**, such copies with any reference to the identity of any person who did not participate at any such hearing suitably deleted therefrom, except the subject judge or complainant, shall be made available for inspection and copying to the public, or to any person, agency or body designated by such judge.

[~~2. Notwithstanding any provision in this section, the commission, with the consent of the applicant, shall provide the record of any proceeding pursuant to a formal written complaint against an applicant for judicial appointment in which the applicant's misconduct was established, any pending complaint against an applicant, and the record to date of any pending proceeding pursuant to a formal written complaint against an applicant for judicial appointment:~~

~~(a) to the commission on judicial nomination established by article three-A of this chapter, with respect to applicants for appointment to the court of appeals;~~

~~(b) to the governor with respect to all applicants whom the governor indicates are under consideration for any judicial appointment; and~~

~~(c) to the temporary president of the senate and the chairman of the senate judiciary committee with respect to all nominees for judicial appointments which are subject to the advice and consent of the senate.~~] The commission shall respond within fifteen days of a request for the information provided for in this [~~subdivision~~] **section**.

§ 4. Section 47 of the judiciary law, as added by chapter 156 of the laws of 1978, is amended to read as follows:

§ 47. Resignation **or retirement** not to divest commission or court of appeals of jurisdiction. The jurisdiction of the court of appeals and the commission pursuant to this article shall continue notwithstanding that a judge resigns **or retires** from office after a [~~determination of the commission that the judge be removed from office has been transmitted to the chief judge of the court of appeals,~~] **formal written complaint authorized pursuant to section forty-four of this article has been served on the judge** or in any case in which the [~~commission's determination that a judge should be removed from office shall be transmitted to the chief judge of the court of apppeals~~] **formal written complaint is served on the judge** within one hundred twenty days after receipt by the chief administrator of the courts of the resignation **or retirement** of such judge. Any determination by the court of appeals that a judge who has resigned **or retired** should be removed from office shall render such judge ineligible to hold any other judicial office. The chief administrator of the courts shall give written notice to the commission of the resignation **or retirement** of any judge who is the subject of an investigation within five days after his receipt thereof.

§ 5. This act shall take effect immediately.