

Commission of Judicial Conduct

**Not Accountable to the Public:
Resolving Charges Against Judges
is Cloaked in Secrecy**

Report 90-S-23

**Office of the
State Comptroller
Edward V. Regan
State Comptroller**

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A. Introduction

The Commission on Judicial Conduct (Commission) investigates complaints against judges of the Unified Court System and determines if disciplinary action is warranted. In performing its investigatory and disciplinary role, the Commission holds closed door hearings. The entire proceedings remain secret from the public except when a judge is disciplined. Even then, all investigations and pre-hearing records remain confidential. If the judge is not disciplined, all records of the proceedings remain secret forever.

The Commission has shielded itself from any independent review of its operations by invoking confidentiality provisions of the Judiciary Law. During the course of this audit, their practice of operating in secrecy was cited to deny the State Comptroller's auditors access to confidential operating records thereby impairing the State Comptroller's ability to conduct an independent audit of Commission activities in accordance with generally accepted government auditing standards. The State Comptroller has traditionally served as the people's watchdog and, as such, has played a vital role in the system of checks and balances which strengthen our form of democratic government. When important hearings such as these are closed and the State Comptroller is denied access to independently review operating records, the citizens of the State are foreclosed from receiving any independent assurance regarding the prudent and fair operation of a critical State program, which, if abused, negatively affects the foundation of State government.

The Commission was established by Chapter 156 of the Laws of 1978 to receive, initiate, investigate and hear complaints of misconduct against judges in New York's Unified Court System. In doing so, it conducts investigations and hearings, subpoenas witnesses and documents, and makes appropriate determinations as to dismissing complaints or disciplining judges. The Commission also has jurisdiction over matters pertaining to the physical and mental disability of judges. It does not review judicial decisions or alleged errors of law, nor does it issue advisory opinions, give legal advice or represent litigants. When appropriate, it refers complaints to other agencies.

Misconduct includes, but is not limited to the persistent failure to perform duties, habitual intemperance, assertion of influence, gender bias, corruption and conduct on or off the bench prejudicial to the administration of justice. Discipline can be in the form of admonishment, censure, removal or retirement of the judge.

The Commission is composed of 11 members serving four year terms. Four members are appointed by the Governor, three by the Chief Judge of the Court

of Appeals, and one each by the four leaders of the legislature. The Constitution requires that Commission membership include four judges, at least one attorney and no fewer than two lay persons. The Commission elects a chairperson and appoints an administrator, who is responsible for hiring and supervising staff under the direction of the Commission.

The Commission has an administrative staff of 41 employees, including attorneys, investigators, and support staff. Although the Commission's main office is located in New York City, investigations are also conducted from offices in Albany and Rochester. The Commission spent about \$2 million in fiscal year 1988-89.

Draft copies of the matters in this report were provided to Commission officials for review and comment. Their comments were considered in preparing this report and are attached as Appendix A to this report.

Commission officials disagree with our recommendation that the Commission propose legislation authorizing the State Comptroller to have access to the Commission's non-public operating records for audit purposes. The Commission states that it is not in the best position to seek a change in the law which makes Commission records confidential, because "...the Commission has some strong doubts about the kind of access being sought for the purposes expressed in your report...."

We sought access to Commission records to determine whether the Commission conducts thorough investigations and hearings, and that it documents its decisions for dismissing complaints against judges, or disciplining judges. We did not attempt to determine whether the Commission's decisions were appropriate, and we would not propose to do so. We believe that the Commission serves a vital public function in disposing of complaints against judges and that it is in the public's interest that this function be properly conducted. However, due to the Commission's invoking of the confidentiality provisions of the Judiciary Law during our audit, the Commission's activities remain shielded from independent review and the citizens of the State are denied independent assurance that a critical State program is operated in compliance with all applicable laws and procedures.

Because the Commission has refused to propose legislation to open its records to the State Comptroller's independent review, we suggest that the leadership of the State Legislature consider acting to provide the State Comptroller with specific statutory authority for access to the Commission's non-public records for audit purposes so there can be adequate public accountability over this vital government activity.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Administrator of the Commission shall report to the Governor, the State Comptroller and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

In addition to matters discussed in this report, we have provided the Commission with comments concerning certain financial management practices at the Commission. Although these matters, which are considered to be of lesser significance, are not included in this report, the recommendations should be implemented to improve operations. Included in this letter is our report of internal controls over financial management practices of the Commission.