

STATEMENT OF
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TO THE
JOINT LEGISLATIVE BUDGET COMMITTEE HEARING
ON THE
2010-11 EXECUTIVE BUDGET



Albany, New York
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New York State Commission on Judicial Conduct
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Members of the Legislature:

My name is Robert H. Tembeckjian, and I am the Administrator and Counsel to the New York State Commission on Judicial Conduct.

I thank you for the opportunity to address the Commission's budget for the coming fiscal year, as proposed in the Executive Budget.

Like most agencies in this time of financial struggle and sacrifice, the Commission has been struggling to manage its resources in a way that does not compromise its ability to execute its core constitutional responsibilities while confronting the unrelenting reality that for the foreseeable future, more must be done with less.

As a result, and as discussed more fully below, the Commission is asking for less money than it would need simply to meet our mandated, contractual obligations. Our current fiscal year budget is \$5.2 million, which was 2% less than the year before. For FY 2010-11, to cover the contractual increase in rent and mandated salary obligations, and conservatively estimating the annual increases in basic operating costs, we would need a budget increase of \$352,000 (7 %), just to maintain our current level of services. However, in consultation with the Governor's Office, we are asking for only \$206,000 (4 %). This will require us to continue making serious economies. We have voluntarily limited ourselves to 49 staff, rather than the 55 positions allotted to us – an 11 % reduction in personnel.

We have suspended our valuable annual training and education programs. We have given up certain physical assets, such as an agency automobile and periodical subscriptions, in order to save even relatively small amounts of money.

At the same time, we are maintaining a very active professional pace. We handle nearly 1,900 complaints per year (far more than any other state judicial disciplinary agency and about three times as many as in our early years), conduct more preliminary and full-scale inquiries per year than ever before (approximately 600) – and publicly discipline approximately 25 judges per year.

The Commission's Constitutional Authority and Independence

The Commission was created in 1978 in the Judiciary Article of the Constitution (Article 6, Section 22). Its enabling statute is the Judiciary Law (Article 2-A, Sections 40-48). The Commission's 11 members are appointed by six different officers of government, none of whom commands a majority: 4 by the Governor, 4 by the leaders of the Legislature and 3 by the Chief Judge of the State of New York. The Commission elects its own Chair and appoints its own chief executive officer (the Administrator, who in law is the agency head). It was purposely designed in such a fashion so as to work cooperatively with all three branches of government but not to be dominated or controlled by any one of them.

Although the Commission is not a gubernatorial agency, historically its budget request has been submitted to the Legislature by the Executive, as have the

budget requests of other independent officers of state government: the Attorney General (Department of Law) and the Comptroller (Department of Audit and Control).

Notwithstanding its constitutional independence, my office continues to enjoy mutually respectful and cooperative relations with the Governor, the Legislature, the Attorney General, the Comptroller and the Office of Court Administration.

Mission and Recent History

The Commission is the sole state agency responsible for receiving, initiating, investigating and conducting evidentiary trials with respect to complaints of misconduct or disability against judges and justices of the New York State Unified Court System, which is comprised of approximately 3,500 judges and justices. Where appropriate, at the end of such proceedings, the Commission has authority to render disciplinary decisions of confidential caution, public admonition, public censure, removal or retirement from office.

The Commission was originally created legislatively in 1974, began operations in January 1975 and expanded its authority as a result of constitutional and statutory amendments that took effect in April 1978 and remain in effect to the present.

The agency has only one program, *i.e.* its core constitutional mission. With their varying responsibilities, all agency staff – lawyers, investigators, administrative – are deployed and devoted to fulfilling the agency’s sole and core mission: disposing of complaints that judges have engaged in misconduct.

The agency also handles its own appellate caseload. By law, disciplined judges have the right of review in the New York State Court of Appeals. In addition, the agency handles much of its own outside litigation, either in conjunction with the Attorney General’s Office or on its own, such as when complainants or judges commence lawsuits attempting to compel or enjoin the Commission from investigating or prosecuting complaints.

The September 2008 Report by the Special Commission on the Future of the New York State Courts highlights the unique and critical role played by the Judicial Conduct Commission in overseeing disciplinary rules enforcement among the far-flung statewide network of approximately 2,300 justices in approximately 1250 town and village courts.

The Commission, which provides the only forum for complaints of misconduct against the 3,500 judges and justices in the state Unified Court System, undertakes comprehensive and efficient investigations of such complaints; exonerates those judges who have been falsely accused; takes appropriate disciplinary action against those who have violated the high standards of conduct

applicable to judges; and, by its presence and actions, makes the judiciary more sensitive to ethics standards and more apt to avoid misconduct.

This mission is of vital importance in protecting both the public and judges from potential abuse. Every judge wields considerable power and as such must follow high standards of ethical conduct. If a judge fails to follow these standards, it is in the public interest to provide the appropriate discipline, expeditiously yet with careful regard to due process; but if a judge is falsely accused, he or she should not be subject to prolonged procedures. Undue delay detracts from the Commission's mission and accomplishments and could inhibit the independence of the judiciary.

Continued Sacrifice in the Coming Year

Last fiscal year, in light of the significant financial situation constraining all of state government, the Commission, like many agencies, agreed to its share of sacrifice. At the same time, the Governor and the Commission propose to follow through on the extraordinary commitment the Legislature made three years ago, when for the first time in more than a generation, after a downward budgetary trend of nearly 30 years, the Commission's resources were enhanced to reflect both the importance of its constitutional mission and the unrelenting burden of its case load.

Over the past three fiscal years, my office has worked cooperatively and successfully on a range of matters with the Governor's Counsel, the Attorney General, the State Comptroller, the Office of Court Administration, the Office of General Services and the Division of Budget (DOB), to devise and implement strategies to make the best possible use of our resources. The Public Protection Unit at DOB has been especially attentive to our needs and conducted an extensive review of our operation to ensure that we were deploying the public's money wisely.

Nevertheless, given the harsh realities of diminishing resources throughout state government, we like others have made important sacrifices.

- We have indefinitely limited our staff at 49, rather than our allotted 55 – an 11% reduction.
- Through careful stewardship of our resources and postponing certain hires, we absorbed \$250,000 in capital expenses two years ago which were expected to come from other state sources. That alone effectively meant a 5% reduction of our budget, as we diverted those funds from their intended purpose to relieve the burden on other state entities.
- We have given up certain physical assets, such as one of our agency automobiles and certain periodical subscriptions, to achieve savings.
- Although it would take a 7% increase to maintain our services at present levels, we have agreed to 4%, meaning we still have to find 3% in savings, on top of the 2% we reduced this year and the 5% we saved the year before.

While achieving these savings will not be easy – the Commission's budget is remarkably free of discretionary funds – this proposed level of funding

would permit the Commission to live up to its constitutional and legislative mandates to render discipline where appropriate, and dismiss unsubstantiated complaints, as fairly and promptly as possible. I thank the Governor for proposing this figure, I thank the Legislative leaders and staff who consulted with me and supported us in this process, and I respectfully request that the Legislature adopt the proposed budget as it relates to the Commission.

Indeed, there are many people for the Commission to thank for this achievement.

Helene E. Weinstein, Chair of the Assembly Judiciary Committee, and John A. DeFrancisco, immediate past Chair of the Senate Judiciary Committee, championed this cause, gave me opportunities to present my case in public hearings, met with and encouraged me individually on numerous occasions and, throughout the past four years, have always been available when I sought their advice and guidance. They made the Commission a priority and saw it through. John L. Sampson, who now chairs both the Senate Majority Conference and the Senate Judiciary Committee, has followed suit. He has met with and offered guidance to us, held vigorous oversight hearings during 2009 to explore ways in which the disciplinary process might be improved, and introduced legislation that among other things would make formal judicial disciplinary proceedings public – long a Commission goal.

Other legislative leaders have devoted special attention to the Commission's situation and encouraged me along the way: Assembly Government Operations Committee Chair RoAnn M. Destito, Assembly Codes Committee Chair Joseph R. Lentol, Assembly Ways and Means Committee Chair Herman D. Farrell and former Senate Finance Committee Chair Owen H. Johnson. The Speaker's Counsel William Collins, the Senate Majority Counsel Shelley Mayer, the staffs of the Assembly and Senate Judiciary Committees, and the staff of the Assembly Ways and Means Committee have been especially attentive to the Commission's situation. And I look forward to a productive working relationship with the Chair of the Senate Finance Committee, Carl Kruger.

When both legislative houses took up the issue, our four legislative appointing authorities – the Assembly Speaker, the Senate President Pro Tem, the Senate Minority Leader and the Assembly Minority Leader – were all very supportive. That they would devote careful attention to a \$5 million item in a \$130 billion budget reflects their appreciation for the Commission's important role. I look forward to continued good relations with Speaker Silver, President Pro Tem Malcolm Smith, and Minority Leaders Dean Skelos and Brian Kolb.

From the Governor's Office, Counsel to the Governor Peter Kiernan devoted invaluable time and attention to the Commission when it was most needed in the past year. Budget Director Robert Megna and the Public Protection Unit in

DOB – Chief Budget Examiner Susan Knapp and her team, Gerard Minot-Scheuermann, Timothy Eskeli and Joseph Paolucci – applied their professional skill and dedication to the Commission’s mission, offering guidance on the most effective way to deploy our resources and altogether ensuring that the Commission’s resources were most effectively positioned to advance the public interest.

Throughout the past three years, Attorney General Andrew Cuomo has been especially helpful, and his Chief of Staff Steven Cohen and Deputy Attorney General Leslie Leach have generously responded to my various requests for guidance. Comptroller Thomas DiNapoli and his counsel, Luke Bierman, have been unfailing and unstinting in their advice and cooperation.

While my office is sometimes in an adversarial posture with individual judges, the judiciary in general, and the leadership of the court system in particular, appreciate the valuable if difficult role the Commission plays in the administration of justice, and have fostered a professional and mutually respectful relationship. Without compromising its own or the judiciary’s independence, OCA has offered us guidance in such areas as technology and security, so that the confidentiality and integrity of our information systems would be maintained.

In a microcosmic way, the story of this small agency from 2007 to the present is an example of government at its best – all three branches, working in harmony to promote the public interest.

From outside government, civic organizations such as the New York State Bar Association, the New York City Bar Association, the New York County Lawyers and the Fund for Modern Courts have continued to offer advice and, when appropriate, spoken up on the Commission's behalf. State Bar Executive Director Patricia Bucklin, Special Counsel Richard Rifkin and Legislative Affairs Director Ronald Kennedy have always been attentive to and supportive of the Commission, as have the Chairs of the Committee on Judicial Disciplinary Procedures, Rene Hollyer and now Judge Robert Noonan. Modern Courts' Chair Victor A. Kovner, a former member and chair of the Commission, vigorously promotes the Commission's goals and is always available to encourage and advise.

On the Commission's behalf, I offer our appreciation and respect.

Why is all this effort on behalf of a properly-funded and prudently-managed Commission so important? Because neither the judiciary nor the public would otherwise be appropriately protected. The prompt and effective enforcement of judicial ethics is essential in promoting public confidence in the administration of justice. If the public is to have any assurance that judges are accountable for their behavior, without encroachment on their fundamental

independence to call cases as they see them, the Commission must function efficiently as well as fairly. The resources allocated to the Commission now appropriately reflect its significant responsibility. I thank the Legislature for making that happen in 2007 and sticking with it in the years since. I thank the Governor for reaffirming this mandate in his current fiscal year budget proposal, even though we all agree that some sacrifice is unavoidable. And I respectfully request that you both, Governor and Legislature, continue this welcome and cooperative development.