



NEW YORK STATE
ALL FUNDS BUDGET REQUEST FY 2012-2013

New York State Commission On Judicial Conduct

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POLICY ADVICE ON REQUEST TO
NEW YORK STATE
DIVISION OF THE BUDGET

ALL FUNDS BUDGET REQUEST FY 2012 –2013



STATEMENT OF THE AGENCY HEAD



NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT



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I. PRELIMINARY OVERVIEW

This Preliminary Overview of the Statement of the Agency Head summarizes the charter, functions, results, challenges and needs of the New York State Commission on Judicial Conduct. These are further documented in the following sections.

A. 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 constitutionally created, independent officers of state government: the Attorney General (Department of Law) and the Comptroller (Department of Audit and Control).

Notwithstanding its constitutional independence, the Commission continues to enjoy cooperative relations with the Governor's Office and the leaders of the Legislature and Judiciary. In view of the agency's sensitivity to the nation's continuing economic downturn, and after consultations with leaders in all three branches, for FY 2012-13 the Administrator is submitting a "flat" budget request, *i.e.* the same dollar amount as last year, which nevertheless will require certain economies to account for increases in contractual obligations such as rent, and the return to full-time status of two attorneys who spent much of the previous year on maternity leave.

B. 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, and removal from office or retirement for disability.

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.

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: examining and deciding complaints that judges have engaged in misconduct. The number of complaints received annually in the past 10

years has substantially increased compared to the first two decades of the Commission's existence.

- In the last five years, the agency has averaged over 1,800 new complaints, 410 preliminary inquiries and 240 investigations. In 2010, 2,025 new complaints were received, the highest number ever.
- The agency publicly disciplines approximately 20 judges per year and confidentially cautions between 35 and 50 per year.

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 judges or complainants commence lawsuits attempting to enjoin the Commission from investigating or prosecuting complaints.

The September 2009 Report by the Special Commission on the Future of the New York State Courts, established by Chief Judge Judith S. Kaye, 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 2,250 justices in approximately 1,250 town and village courts.

The Commission, which provides the only forum for complaints of misconduct against judges in the state unified court system, undertakes comprehensive 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 less apt to commit 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 swiftly provide the appropriate discipline; 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.

C. Recent Fiscal History and Impact on Agency Mission

Over the years, the Commission's workload steadily increased, outpacing the resources needed to cope with it. In FY 2007-08, at the Commission's request, the Legislature increased its appropriation to the Commission from the \$2.8 million to nearly \$4.8 million. This constituted the first significant increase in the Commission's resources in nearly 30 years. As a result, in cooperation with the Division of Budget, the Office of General Services and the State Comptroller, the Commission implemented a major staff and physical plant expansion. In FY 2011-12, the Legislature appropriated \$5.384 million to the Commission.

While the Commission's caseload has continued to expand, the positive impact of the increase in resources can already be quantified. Though the number of complaints received increased in

2010 rose to an all-time high, the backlog of matters pending at year's end dropped to 226, representing a 7% reduction from the year before and an overall 18% reduction since the infusion of resources in 2007.

The following chart is illustrative.

FISCAL YEAR	ANNUAL BUDGET	COMPLAINTS RECEIVED	PRELIM'Y INQUIRIES	NEW INVESTIG'S	PENDING YEAR END	ATTORNEYS/ INVESTIG'RS	TOTAL STAFF
1978-79	\$1,644,000	641	N.A.	170	324	21/18	63
1988-89	\$2,224,000	1109	N.A.	200	141	9/13	41
1992-93	\$1,666,700	1452	363	180	141	8/6½	26
1996-97	\$1,696,000	1490	492	192	172	8/2½	20
2005-06	\$2,609,000	1565	366	260	260	10/7	28½
2006-07	\$2,800,000	1500	375	267	275	10/7	28½
2007-08	\$4,795,000	1711	413	192	238	17/10	38
2008-09	\$5,304,000	1923	354	262	208	19/10½	47½
2009-10	\$5,200,000	1855	471	257	243	18/10	47
2010-11	\$5,384,000	2025	439	225	226	18/10	44
2011-12	\$5,384,000	~	~	~	~	18/9	48
2012-13	\$5,384,000 (proposed)	~	~	~	~	20/9	50

However, this expansion has been affected by the economic downturn that has impacted the entire country since 2008, and as a result the Commission has instituted voluntary restraints in order to share in the sacrifice being borne by all state agencies. As noted in the above chart, the Commission's budget has remained constant – no additional dollars – despite increases in rent and other costs.

First, the Commission has been constrained in its budget requests and, by carefully monitoring its resources, typically *underspends* its annual appropriation. Second, although authorized to hire 55 FTEs, the Commission's Administrator has abolished one (1) position and indefinitely deferred filling four (4) vacant positions. Thus, the number of active FTEs is 50, or 9% under the agency's allotment. Yet at no time in the year were all 50 positions filled, and additional savings were achieved by not hiring temps to fill in for two attorneys on maternity leave for most of the year. Third, whenever possible the Administrator deferred filling vacated positions to keep the number of active FTEs under count. Fourth, for two years, FY 2010-11 and FY 2011-12, the Administrator kept the salary schedule flat. As a result of such economies, the agency underspent its appropriation by approximately 10%.

D. Summary of FY 2012-13 Plans

Recognizing the negative impact on state revenues due to the recent economic downturn and slow recovery, and after consulting with Executive Branch officials and considering Legislative and Judicial Branch views, the Commission is making another appropriately constrained request for FY 2012-13 – a “flat” *i.e.* no-increase budget. At the same time, the Commission again expects to underspend its actual appropriation. For example, it will not temporarily replace an investigator who is on leave and deployed with his National Guard unit in Afghanistan for a year.

For PS funds the Administrator requests \$4,093,000, a no-increase figure that will cover: (1) the salaries of currently active staff and obligatory annual employee performance advances for those not at the top of their salary grades; (2) the additional costs for two attorneys returning from maternity leave; and (3) the cost for filling a vacant Attorney II position. All total, the number of FTEs which reach 50 at some point in the fiscal year, though some will be inactive or in reserve for much or all of the year, such as the line for the investigator on leave with the National Guard.

For NPS funds the Administrator requests \$1,291,000, a no-increase figure that will meet increased contractual obligations such as rent and equipment leases by making sacrifices such as deferring the replacement of aged office equipment and vehicles.

The flat Budget Request of **\$5,384,000** for FY 2012-13 will permit the Commission to function at the level intended by the Legislature's commitment in FY 2007-08, thus enabling the agency to fulfill its constitutional mission, continue its tradition of quality decision-making, keep abreast of the steady high volume of complaints and commit resources toward reducing the time it takes to resolve matters.

II. PROGRAM GOALS AND DESCRIPTION

The Commission is mandated to provide a forum for complaints against judges, to investigate such complaints if they are facially meritorious, to exonerate judges falsely accused, to take appropriate action against those who have violated judicial standards of conduct, and thereby to help sensitize all judges to their ethical obligations and deter misconduct. The public interest in a strong Commission was demonstrated by the overwhelming majority by which the electorate constituted the Commission in its present form in the 1977 constitutional referendum. The Commission assumed the judicial disciplinary authority of five separate courts: the Court on the Judiciary, which was abolished, and the four Appellate Divisions, whose mandates in this field were transferred to the Commission.

The Commission's caseload priorities arise out of the number and nature of credible complaints and news media reports of judicial misconduct. The Commission is authorized to determine whether or not there was misconduct and to impose appropriate sanctions, but not to change or reverse a judge's decisions in a particular case.

Once the Commission authorizes an investigation, the goal is to conduct a fair, comprehensive inquiry within a reasonable period of time, and, if charges are filed, to complete the matter within a reasonable period. The following sections A and B describe Commission procedures in handling complaints, as illustrated in the attached flowchart. Depending upon how far each complaint goes through this set of procedures, the elapsed time to resolution may be anywhere from 8 weeks in the case of dismissal, to 3 years or more in the case of a full investigation, hearing and appeal.

A. Investigations

Each incoming complaint is recorded, summarized, analyzed and presented to the Commission. About 22% are clarified with transcript reviews, interviews of the participating lawyers and complainant, and review of court records. If investigation is authorized, staff responsibilities may include interviews with and/or sworn testimony from witnesses, court personnel, attorneys

and others; legal and documentary research; review of court transcripts and other court records; monitoring the judge's court; corresponding with and/or taking sworn testimony from the judge; and detailing the investigation in memoranda to the Commission. After this exhaustive process, the Commission must decide whether to dismiss the matter or to proceed with a formal, adjudicatory disciplinary proceeding. Investigations vary in scope, detail and comprehensiveness, depending on the complexity of the complaint and the issues.

B. Formal Proceedings

If a disciplinary proceeding is required, the staff prepares and serves on the judge a Formal Written Complaint that commences the adjudicatory phase formerly handled by the Court on the Judiciary or the Appellate Division. The formal rules of evidence, specific provisions of the state Judiciary Law and relevant Commission rules take effect. The judge must answer the Formal Written Complaint, for example. An impartial referee must be designated to preside at the hearing. Witnesses are prepared for trial; pre-hearing motions and discovery take place; conferences are held between the parties and referee; documentary evidence is prepared; stipulations may be negotiated; etc.

The hearing itself proceeds in the fashion of a non-jury trial, with introduction of documentary evidence, testimony, cross-examination and motions before the referee. After the hearing, a transcript is prepared and post-hearing memoranda are submitted to the referee, who then files a written report of his or her findings and conclusions to the Commission. Briefs and oral argument are then presented to the Commission with respect to confirming or disaffirming the referee's report and disciplining the judge. The Commission thereafter renders its decision.

If the Commission determines to discipline the judge, the judge may request review of the action by the Court of Appeals, which is granted automatically upon the judge's request. This generates a new phase of appellate practice that did not exist as of right before the Commission superseded the Court on the Judiciary. Briefs and oral argument must be presented to the Court of Appeals, which may accept or reject the Commission's decision.

The time and resources allocated to particular hearings vary widely from case to case. Where the hearing involves multiple charges of misconduct and numerous witnesses, the process is more demanding than where there is a single issue and few witnesses.

C. Litigation Underscoring the Commission's Work

Since its creation, the Commission has been challenged on more than a hundred occasions – in federal as well as state courts – by judges attacking the constitutionality, authority, procedures and decisions of the Commission, and by complainants unhappy with the outcome of their complaints. Moreover, there have been 91 appeals of Commission disciplinary determinations heard by the Court of Appeals. In no instance has a Commission rule or provision been overturned. In only one instance, in 1988, has a Commission determination been completely vacated, when the Court of Appeals decided the Commission had no jurisdiction. Subsequently, in a 2009 case that revisited the issue, the Court held that the Commission *did* have jurisdiction, and the determination was modified and returned to the Commission for further proceedings. The courts over the years have thus underscored the Legislature's enactment of the public will

that there be a strong Commission to enforce ethics standards on the judges of the New York State.

In 2010, although there were no requests for review of Commission determinations by the Court of appeals, one judge who was the subject of a removal determination filed a motion to vacate the determination and to accept a proposed stimulation when the Commission had rejected. The Court dismissed the motion and issued an order removing the judge. The Commission staff provided all the litigation services in this proceeding.

D. Personnel Functions and Structure

The Commission itself is composed of 11 uncompensated members, four of whom are appointed by the Governor, four of whom are appointed by the leaders of the Legislature, and three of whom are appointed by the Chief Judge of the Court of Appeals. The Commission members meet once every six to eight weeks for one or two full days and are on call for consultation. At least one member or a referee must be present each time a judge is examined under oath during an investigation; a quorum of 8 must be present for the scheduled meetings at which the Commission reviews and/or decides pending matters.

The Commission elects its own Chair from among its members for a renewable two-year term and hires an Administrator to run the agency, pursuant to statute. The Commission, pursuant to rule, also designates a Clerk to assist it in disciplinary cases, since it would be a conflict for the Administrator (who serves as prosecutor) to do so.

The Administrator of the Commission is an attorney, employed full-time, responsible for hiring and directing staff and for overseeing the day-to-day operations of the agency and both its legal/investigative and administrative activities.

The staff, which is full time, falls into four general categories:

1. **The legal and investigative staff** in each of the Commission's three offices reports to a Deputy Administrator in that office. With the exception of the Clerk of the Commission, all attorneys on staff handle investigations and hearings, with assistance from investigators.
2. **The administrative staff** is divided into two groups. One is responsible for the Commission's records-keeping, files, preparation of materials for Commission meetings, and annual report preparation and distribution, as well as various case-related responsibilities such as processing and summarizing the 2000 or so incoming complaints per year and providing assistance and information to complainants and others. The other group is responsible for functions including preparation of the annual budget request and cash disbursement plan; payroll processing; classification and compensation research; accounts payable accounting; employee travel reimbursement; employee benefits processing; cash advance accounting; internal accounting and personnel controls; maintenance of accounting and personnel records; selection and implementation of payroll and accounting computer systems; management of vehicle fleet; purchasing; reconciliation of accounts; etc.

3. **The support staff**, i.e. secretaries, administrative assistants, clerks and an IT specialist, provides essential IT technology, typing, filing, reception and miscellaneous support functions. Periodically, college or law students serve as volunteer interns.

4. **The Clerk of the Commission** reports independently to the 11 Commission members on those matters in which by rule or law the Commission may not be assisted by the Administrator or his staff, such as deciding motions, drafting opinions, rendering determinations, etc. Although an attorney, he or she is not involved in investigating or preparing cases for prosecution.

Referees: In addition to the regular staff, the Commission calls upon a panel of 62 referees (retired judges or prominent attorneys), who are independent of staff as required by law and preside over those matters that, after investigation, proceed to formal hearings. Referees work on a per diem basis, as needed, at \$250 a day, which is less than the compensation received by referees in other agencies.

E. Geographic Organization

The Commission has offices in three cities: New York (principal office), Albany and Rochester. Having geographic coverage is critical to being able to serve all citizens of the state because many of the state's judges are in remote locations considerably distant from any major city. Investigations in these remote locations are already more difficult than those in major metropolitan areas, as travel is more time consuming and court may be held in places other than a courthouse, since not all municipalities provide court facilities to their local justices. Our three offices render the courts and complainants in each of the state's four judicial departments more accessible to the Commission and the Commission more accessible to the courts and complainants. All three offices were expanded in 2008 to accommodate the increase in staff made possible by the Legislature's increase in the Commission's budget. In New York City and Rochester, our existing offices were expanded into contiguous space. In Albany, our office was relocated from the Hampton Plaza on State Street to the Corning Tower in Empire State Plaza.

III. WORKLOAD AND RESULTS

Commission workload is a function of the number of complaints we receive; the size and structure of the state's judiciary; and the size, seriousness and complexity of matters being investigated or heard (tried). In 2010, the Commission received 2,025 complaints against judges and investigated 225 of them. Investigations and formal proceedings were also continued in 243 matters commenced but not completed prior to 2010. These numbers are expected to remain constant, if not increase. As of September 15, 2011, the number of new complaints received was approximately 1,337.

The Commission's workload is also a function of the size and structure of the state's judiciary. Of the state's approximately 3,500 judges, approximately 1,200 preside in courts of record located in readily accessible cities and county seats. The remaining 2,250 – 65% – are part-time town and village court justices. Many are from remote parts of the state; some hold court in their local business places or homes because there is no available court facility. Such physical limitations make investigation of complaints against these judges more difficult and time-consuming.

There is no way to distinguish or prioritize the significance of complaints against full-time higher-court judges versus part-time town and village justices. Part-time town and village justices do not have to be lawyers. Indeed, approximately 1,800 of them – constituting 80% of the town and village justices and 52% of the entire state judiciary – are not lawyers. Yet these justices are part of the state unified court system, subject to the same statewide rules governing judicial conduct, as are full-time judges. They wield considerable power in both civil and criminal matters. Most citizens will have their only experience in a court before one of the state's part-time justices. Complaints against them must be treated individually on the merits, the same as complaints against full-time judges.

Another factor in workload is the nature of the complaints and resulting investigations. A complaint alleging a single instance of rudeness will generally require much less investigation than one alleging a series of financial improprieties. Review of a transcript and several interviews may wrap up the former. Detailed analysis and auditing of records, in addition to interviews, would be required in the latter. On occasion, investigation of a complaint concerning a single incident of misconduct may disclose a wider pattern of misbehavior, triggering a broader investigation.

In addition to conducting full-fledged investigations, the Commission staff conducts an "initial review and inquiry" on approximately 400 complaints a year (in 2010 the number was 439) before the complaints are presented to the Commission for its decision on whether to authorize an investigation. The "initial review and inquiry" may entail witness interviews and analysis of trial transcripts or other court or public records.

While investigations and initial review and inquiries – entailing interviews, research and summaries of the inquiry to the Commission – can be time-consuming, hearings (full trials) produce considerable additional work and take months to complete. Hearings are authorized only if the results of an investigation so warrant, and involve trial preparation, the hearing itself, and preparation of a transcript, legal memoranda to the referee, legal memoranda to the Commission, etc., all of which may be reviewed by the Court of Appeals at the judge's request after the Commission makes its decision.

From an average of five (5) hearings each year in the late 1990's and early 2000's, there were four (4) hearings in 2009 and nine (9) in 2010. A large number of cases have been resolved by stipulation, in part because it would have been impossible for staff to have hearings in every matter without a significant decline in the use of resources for conducting investigations and completing those matters expeditiously.

Workload has increased not just for attorneys and investigators, but for other staff as well. For example, since 1990, as part of a state initiative toward electronic transcription services, staff has largely taken on the task of preparing transcripts of hearings and investigative testimony, made from electronic recording equipment on site, doing work that was previously performed by court reporting services. That process has placed further burdens upon secretarial, clerical and administrative personnel.

Our business procedures have also become more complex over time, but the Commission's finance staff has kept pace with all internal controls and audit requirements, having consistently

scored the highest grades available in performance measures evaluated by the State Comptroller's Office as to payroll, petty cash management, procurement procedures, etc.

The Commission will continue to pursue its goal of effectively discharging its constitutional mandate to investigate and discipline unethical judicial conduct and improving the quality and administration of justice in New York State. Among its priorities: (1) To clear two "old" matters apiece per year per lawyer, so that if the number of new matters remains relatively constant, the backlog will continue its downward trend. From 2007, when the Commission's resources were expanded for the first time in decades, to present, the backlog of pending matters has been reduced from 275 to 226, or 18%. The Commission will continue to pursue its goal of reducing it to be the lowest in the Commission's history. (2) Promptly processing and "staying ahead" of new incoming complaints. (3) Implementing a system of follow-up on discipline imposed by the Commission on judges, to insure compliance with ethical mandates by those shown to have violated them. (4) Contributing in a significant way to the education and training of judges and judicial candidates. (5) Better acquainting the public with the Commission's mandate and work, both as reassurance that judges are being held accountable for their behavior and to assist citizens in recognizing unethical conduct and reporting it so that appropriate remedial action may be undertaken.

The related strategic plan includes: (1) Maintaining staff at the level needed to handle the heavy caseload. (2) Continuing to increase the number of Commission meeting-days, from approximately 10 to between 12 and 16, to process the increased number of cases made ready for disposition. (3) Continuing to implement a technology plan developed with assistance from the Office of Court Administration, to facilitate more efficient handling of the substantial caseload and keep the backlog from reappearing. (4) Continuing to make senior staff available to education, training and public awareness events, to improve the quality of judicial conduct and ultimately reduce the number of legitimate complaints that arise.

IV. FINANCIAL NEEDS

A. Personal Service

The agency is authorized for fifty five (55) FTEs. However, in FY 2008-09, in consultation with DOB and in furtherance of achieving savings, the Commission's Administrator agreed to defer the hiring of four (4) staff, effectively reducing the number of FTEs to fifty-one (51).

In FY 2009-10, the Commission's active FTEs reached forty-eight (48), with three (3) vacant positions. In FY 2010-11, the Commission's Administrator deferred filling three additional (3) positions when the employees departed for other opportunities and abolished one (1) position due to the employee's participation in the State's Retirement Incentive Program. At the end of 2010, 44 positions were filled, *i.e.* 19% less than the FTE allotment of 54. The Commission slowly recovered its workforce in FY 2010-12 and the number of active FTEs is back to forty-eight (48).

1. Personal Service (Regular)

In recognition of an economic downturn that will require sacrifices throughout government, the Commission will voluntarily institute significant economies in the coming fiscal year. The Administrator plans to continue the indefinite deferral of 4 positions. He also plans on the return

to full-time positions of two employees who were on maternity leave, and to fill 1 vacant Staff Attorney II position early in the next fiscal year.

An agency-prepared schedule entitled "Recap of Personal Service Cost Estimates Budget Year 2012-2013" has been generated to document the projected personal service cost. The base of this projection is \$3,764,500, an estimate of the current FY annual staff salary, at 48 FTEs. The amount added to the base includes (1) \$82,000 for obligatory performance advance and longevity payments for eligible staff for FY 2012-2013; (2) \$79,100 for mandated location pay; and (3) \$131,400 for hiring one Staff Attorney II and changing the status of two attorneys returning from maternity leave from half time to full time. In total, the funds needed for regular personal service at 50 FTEs should be \$4,057,000, which is \$16,000 less than the current year's appropriation.

As usual, no calculation for a turnover adjustment has been incorporated into the Personal Service figures. Where possible due to turnover, replacement hires will be phased in and efforts will be made to replace departing staff with lower-salaried successors.

2. Personal Service (Temporary)

The request for Personal Service Temporary (PST) on the attached "Recap of Personal Service Cost Estimates" primarily will cover per diem expenses for referees, who preside over formal hearings and are compensated at \$250 a day. The Commission now has three large cases in process which are expected to be completed in next fiscal year and will require significant funds to pay for lengthy referee engagements and additional outside clerical service, particularly in typing trial transcripts from our audio recordings. This accounts for the budget request of \$36,000 in this category, which is \$16,000 more than the current year's amount.

3. PS Recap

In total, the Recap of Personal Service Cost for FY 2012-2013 is \$4,093,000.

B. Non-Personal Service

A consistent effort has been made for the past two years to achieve all possible savings in NPS spending. Faced with mandated increases in certain expenses (such as rent and Equipment lease fees) and inflation, the Administrator is nevertheless requesting another no-increase NPS budget of \$1,291,000 for FY 2012-13. The Commission will defer the proposed PC upgrades and vehicle replacement to absorb the contractual increases of about \$50,000. The Commission will also offset the other cost increases due to inflation by generating savings from two new operations of electronic document mailing and in-house transcript.

NPS Categories	2011-12 Approved Appropriation	2011-12 Requested Appropriation	Change
Supplies & Materials	51,000	43,000	-8,000
Travel	100,000	100,000	0
Contractual Services	1,085,000	1,122,000	+37,000
<u>Equipment</u>	<u>55,000</u>	<u>26,000</u>	<u>-29,000</u>
TOTAL NPS	1,291,000	1,291,000	+0.00

Adjusted NPS Appropriation for FY 2011-12 was actually \$1,291,000

1. Supplies and Materials

This includes General Office Supplies and Publications. The Commission projected that a small amount of savings would be generated by continually using more online procurement but it would be offset by inflation. However, replacing paper with electronic devices in document mailing and archiving will reduce paper usage, and therefore result in a further decrease in General Office Supplies.

2. Travel

This category includes all travel expenses of staff, Commission members and referees. The Commission staff has put considerable effort into managing business travel more efficiently for years. Although inflation will add to travel costs in the next fiscal year, it is projected to be offset by savings the agency will continue to generate in using video conferencing tools for Commission meetings and other intra agency communication.

3. Contractual Services

This broad category includes the following:

Real Estate	\$956,900	Postage & Shipping	\$7,400
Equipment Lease	\$29,000	OGS Charge-back	\$2,500
Vehicles	\$21,800	Telecommunications	\$14,500
Utilities	\$28,000	Books/Publications	\$5,000
Professional Services	\$9,900	Other/Miscellaneous	\$44,250

The Real Estate cost for FY 2012-2013 will be \$41,000 higher than the current year due to a contractual rent increase for the Commission's New York City office. However, the Utility expenses will decrease due to realization of some energy saving measures in-house.

The Vehicle Leasing and Maintenance cost for FY 2012 -2013 will remain relatively constant. The agency's 3 leased vehicles were replaced at the beginning of this fiscal year, which resulted in a lease with an unchanged price but lower maintenance and repair costs. However, the agency owns 5 aging vehicles, whose maintenance and repair costs will likely increase. For this reason, no saving is projected in this category even though the agency will continue to monitor the use of all vehicles to minimize costs as well as ensuring driver safety and extending vehicle life.

Telecommunication costs will also be flat in FY 2012-2013. The replacement of the regular/conventional phone service (provided by outside vendors for a fee) with IP phone service in FY 2008-09 will continue to result in low billings from commercial vendors and in OGS Charge-Back vouchers. The funds projected will be used for wireless phone service (e.g. BlackBerry devices for senior staff), back-up internet service, and standard commercial phone lines for the agency fax machines, which cannot be accommodated on the IP phones.

The cost for Equipment Rental and Maintenance is projected \$9,000 higher than the current year due to necessary equipment upgrading and inflation. However, the funds for professional services, which cover the costs of a State contracted vendor for document imaging, indexing and filing, should be reduced by 20%. The agency has started archiving document electronically in-

house to minimize services provided by commercial vendors. More savings are expected in the near future.

Postage and Shipping costs are also projected to be reduced in FY 2012-13 because the Commission will use more e-document alternatives. Significant savings will be achieved by eliminating the mailing of hundreds of annual reports with an announcement of its availability online. More savings are also projected in OGS Charge-back, which includes the cost of the State run courier service.

Books/Publications and Other/Miscellaneous services are projected relatively "flat," but for inflation.

The funds requested for all the other items in this category have been adjusted upward for inflation and downward for anticipated savings or for reclassification.

4. Equipment & Furniture

The normal replacement of aging or malfunctioning equipment and/or furniture is still anticipated and will cost around \$26,000.

In order to absorb the inevitable cost increases in other categories, the Administrator determined to remove from this year's request \$30,000 in computer upgrades and \$25,000 for car replacement.

Hence, the requested amount for FY 2012-2013 is \$26,000 in total, \$29,000 less than the current year's appropriation.

5. NPS Recap

In total, the Commission requests funding for FY 2012-13 Non Personal Services in the amount of \$1,291,000, a zero increase from FY 2010-11.

C. Conclusion

The total (PS and NPS) fund request for FY 2012-2013 is \$5,384,000. This includes (1) a flat PS budget request of \$4,093,000, *i.e.* the same as the amount appropriated by the Legislature to the Commission for FY 2011-12; and (2) a flat NPS budget request of \$1,291,000, *i.e.* zero increase as the amount of the FY 2011-12's NPS appropriation.

Complete schedules are attached.

New York State
Division of the Budget
All Funds Budget Request FY 2012-2013
Agency Summary
Recapitulation of Current Year Adjusted Appropriations
and Requested Changes for the Next Fiscal Year

Agency: NYS Commission on Judicial Conduct

(A) Appropriation Category/Fund Type	(B) Adjusted Appropriations 2011-12	(C) Requested Change	(D) Total Request (Column B+C) 2012-13
State Operations			
General Fund	5,384,000	0	5,384,000
Special Revenue - Federal	0	0	0
Special Revenue - Other	0	0	0
Enterprise	0	0	0
Internal Service	0	0	0
Private Purpose Trust	0	0	0
Subtotal	5,384,000	0	5,384,000
Aid to Localities			
General Fund	0	0	0
Special Revenue - Federal	0	0	0
Special Revenue - Other	0	0	0
Enterprise	0	0	0
Subtotal	0	0	0
Capital Projects			
Capital Projects Fund	0	0	0
Special Revenue - Other	0	0	0
Enterprise	0	0	0
Internal Service	0	0	0
Subtotal	0	0	0
Debt Service			
Agency Total	5,384,000	0	5,384,000

New York State
Division of the Budget
All Funds Budget Request FY 2012-2013
Program Recapitulation
of Current Year Adjusted Appropriations
and Requested Changes for the Next Fiscal Year

Agency: JUDICIAL CONDUCT

Category: JUDICIAL COMMISSION

(A) Program/Fund Type	(B) Adjusted Appropriations 2011-2012	(C) Requested Change	(D) Total Request (Column B+C) 2012-2013
Program			
General Fund	5,384,000	0	5,384,000
Special Revenue - Federal			0
Special Revenue - Other			0
Enterprise			0
Internal Service			0
Private Purpose Trust			0
Program Total	5,384,000	0	5,384,000
Program			
General Fund			0
Special Revenue - Federal			0
Special Revenue - Other			0
Enterprise			0
Internal Service			0
Private Purpose Trust			0
Program Total	0	0	0
Program			
General Fund			0
Special Revenue - Federal			0
Special Revenue - Other			0
Enterprise			0
Internal Service			0
Private Purpose Trust			0
Program Total	0	0	0
All Program Recapitulation			
Program	5,384,000	0	5,384,000
Program			0
Program			0
Agency Total	5,384,000	0	5,384,000

New York State
Division of the Budget
All Funds Budget Request FY 2012-2013
State Operations and Aid to Localities
Recapitulation of Current Year Adjusted and
and Requested New Year Appropriations

Agency: JUDICIAL COMMISSION
 Program: JUDICIAL CONDUCT
 Division/Institution:

Fund Type: GENERAL
 Fund: STATE PURPOSES
 Account: 1220200-33350-10050

(A)	(B)	(C)	(D)
Object and Subobject of Appropriation/Aid Purpose	Adjusted Appropriations 2011-2012	Change	Requested Appropriations (Column B+C) 2012-2013
State Operations			
Personal Service			
Personal Service -- Regular	4,073,000	(16,000)	4,057,000
Temporary Service	20,000	16,000	36,000
Holiday/Overtime Compensation			0
Total PS	4,093,000	0	4,093,000
Nonpersonal Service			
Supplies and Materials	51,000	(8,000)	43,000
Travel	100,000	0	100,000
Contractual Services	1,085,000	37,000	1,122,000
Equipment	55,000	(29,000)	26,000
Fringe Benefits	0		0
Indirect Costs	0		0
Total NPS	1,291,000	0	1,291,000
Maintenance Undistributed			
Personal Service -- Regular			0
Temporary Service			0
Holiday/Overtime Compensation			0
Supplies and Materials			0
Travel			0
Contractual Services			0
Equipment			0
Fringe Benefits			0
Indirect Costs			0
Total MU	0	0	0
Total State Operations	5,384,000	0	5,384,000
Aid to Localities			
Purpose:			
--			0
--			0
--			0
--			0
--			0
Total Aid to Localities	0	0	0
Grand Total SO and ATL	5,384,000	0	5,384,000

Commission on Judicial Conduct: FY 2012-2013 Total Service Cost Projection

Categories		2011-2012 Request	2011-2012 Approved	2012-2013 Request	Compared to 2011-12 Approved
PS	Salary	\$4,073,000	\$4,073,000	\$4,057,000	-\$16,000
	Temp	\$20,000	\$20,000	\$36,000	\$16,000
	Add *				\$0
Total		\$4,093,000	\$4,093,000	\$4,093,000	\$0
Non-PS	Supplies	\$51,000	\$51,000	\$43,000	-\$8,000
	Travel	\$100,000	\$100,000	\$100,000	\$0
	Contractual	\$1,085,000	\$1,085,000	\$1,122,000	\$37,000
	Equipment	\$55,000	\$55,000	\$26,000	-\$29,000
Total		\$1,291,000	\$1,291,000	\$1,291,000	\$0
Agency Sum		\$5,384,000.00	\$5,384,000.00	\$5,384,000.00	\$0.00

Recap of Personal Service Cost Estimates
Budget Year 2012- 2013, Annual & Non-Annual Salaried Positions
 Estimates From Pay Period 2011-PP09

Department: 21-Miscellaneous Boards and Commissions
 Agency: 21080-Judicial Commissions

Fund: 003 - State Operations Account
 Account: 00-State Purposes Account
 Program: D850-Judicial Conduct Program

JE NO	DESCRIPTOR	NO. OF POSITIONS FTE (A)	NEXT FISCAL YR ESTIMATE (B)
	Annual-Salaried Personal Service; Current Fiscal Year (CFY) Ending Estimate		
1	Filled Annual-Salaried Positions; CFY		
	Adjustments to Current Year Ending Estimate	48.000	3,768,248
2	General Salary Increases; Next Fiscal Year (NFY) (Including NS)		
3	Performance Advances & Step Increases; NFY (Excl. most NS, M8 & SG38)	0.000	0
4	Longevity Comp & Longevity Increases; NFY (Excl. most NS, M8 & SG38)		
5	SUNY Discretionary Increases; NFY		
6	Annualization of Current Fiscal Year Increases		
7	<i>Subtotal -- Annual-Salaried Positions (lines 1 through 6)</i>	48.000	-3,774
	Other Compensation		3,764,474
8	Geographic Differential		
9	Inconvenience Pay (Irregular Intermittent Pay Below)		
10	Location & Supplemental Location Pay		
11	Premium Pay In Lieu of Overtime	29.000	79,038
12	Pre-Shift Briefing, Command, Expanded Duty Pay, Marine Off Road Enforcement, Facility Security Supervisor Pay, Security Enforcement Differential & Expertise Duty Pay		
13	Shift Differential		
14	Taxable Maintenance & Clothing and Uniform Allowance		
15	Sub-Subtotal - Other Compensation (8 through 14)		
16	<i>Subtotal -- Annual-Salaried Positions (lines 7 and 15)</i>	48.000	79,038
	Average FTE (A-FTE) Adjustment		3,843,512
17			
18	Average Salary: (18B) = Average Annual [\$78,427] + Average Other Comp [\$1,647]	0.000	
19	Default A-FTE Adjustment: (19B) = Average Salary (18B) X FTE Adjustment (19A) X .82 (use .82 if 19A is positive; use 1 if 19A is negative)		80,073
20	<i>Subtotal -- Annual-Salaried Positions (Including A-FTE Adjustment) (lines 16 and 19)</i>	2.000	131,320
	Additions to Annual-Salaried Position Projections	50.000	3,974,832
21	M/C (Graded & NS), PEF & DC-37 Merit Awards, Lump Sum Payment		
22	Performance Awards (For Graded & NS Items)	0.000	0
23	Advances & Longevities from NS (Excluding Trainees) Listing		
24	Advances from NS (Trainee) Listing	48.000	82,168
25	Irregular Intermittent Inconvenience Pay		
26	Overtime Compensation		
27	Hazardous Duty Pay		
28	Holiday Pay		
29	Leave & Overtime Accrual Payments Adjustment		
30	Miscellaneous		
31	Sub-Subtotal - Additions (21 through 30)		
32	<i>Subtotal -- Annual-Salaried Positions (lines 20 and 31)</i>	50.000	82,168
	Subtractions from Annual-Salaried Position Projections		4,057,000
33	Maintenance Undistributed		
34	Suballocations From Other Agency(s)		
35	35B = Turnover Adjustment Factor (TAF) X 20B (see Instructions for TAF calculation)		
36	Miscellaneous		
37	Sub-Subtotal - Subtractions (33 through 36)		
38	<i>Total -- Annual-Salaried Positions (line 32 minus line 37)</i>	50.000	0
	Compensation for Nonannual-Salaried Employees		4,057,000
39	Regular (example: hourly)		
40	Overtime		36,000
41	Extra Service Compensation		
42	Hazardous Duty Pay		
43	Holiday Pay		
44	Miscellaneous (Additions or Reductions)		
45	<i>Total -- Nonannual-Salaried Positions (lines 39 through 44)</i>		36,000
46	Grand Total -- Estimated Personal Service For NFY (lines 38 and 45)	50.000	4,093,000

TITLE CODE

TITLE

FTE NU SG

A

B

C

D E

ANNUAL
F1OTHER
F2TOTAL
F3ANNUAL
G1OTHER
G2TOTAL
G3

H

Fund: 00: State Operations Account

Program: D850 Judicial Conduct Program

Account: 00 State Purposes Account

001

POSITION POOL ID -

COST CENTER - 216200041C11

25 01300	1	79	600	45,087	3,020	48,107	45,041	3,017	48,058	-49
32 99761	1	79	600	71,811	3,020	74,831	71,739	3,017	74,756	-75
93 02244	1	79	600	103,267	3,020	106,287	103,164	3,017	106,181	-106
94 43457	2	79	600	244,470	6,040	250,510	244,226	6,034	250,260	-250
95 19055	1	79	600	71,810	3,020	74,830	71,738	3,017	74,755	-75
95 20181	1	79	600	67,574	3,020	70,594	67,506	3,017	70,523	-71
95 21001	1	79	600	150,684	3,020	153,704	150,533	3,017	153,550	-154
95 21005	1	79	600	67,574	3,020	70,594	67,506	3,017	70,523	-71
95 21027	3	79	600	185,419	6,240	191,659	185,232	6,233	191,465	-194
95 21030	1	79	600	140,071	3,020	143,091	139,931	3,017	142,948	-143
95 21036	3	79	600	196,423	3,220	199,643	196,227	3,216	199,443	-200
95 21037	3.5	79	600	395,084	4,530	399,614	394,688	4,525	399,213	-401
95 21038	4	79	600	579,200	3,220	582,420	578,620	3,216	581,836	-584
95 21041	4	79	600	211,020	6,040	217,060	210,810	6,034	216,844	-216
95 21042	1	79	600	66,374	0	66,374	66,307	0	66,307	-67
95 21043	4.5	79	600	405,383	4,530	409,913	404,977	4,525	409,502	-411
95 21049	5	79	600	201,611	6,040	207,651	201,409	6,034	207,443	-208
95 21050	3	79	600	171,138	3,020	174,158	170,967	3,017	173,984	-174
95 21051	6	79	600	290,981	9,060	300,041	290,689	9,051	299,740	-301
95 21053	1	79	600	103,267	3,020	106,287	103,164	3,017	106,181	-106

JUDICIAL CONDUCT PROGRAM

48	3,768,248	79,120	3,847,368	3,764,474	79,038	3,843,512	-3,856
48	3,768,248	79,120	3,847,368	3,764,474	79,038	3,843,512	-3,856
48	3,768,248	79,120	3,847,368	3,764,474	79,038	3,843,512	-3,856
48	3,768,248	79,120	3,847,368	3,764,474	79,038	3,843,512	-3,856
48	3,768,248	79,120	3,847,368	3,764,474	79,038	3,843,512	-3,856
48	3,768,248	79,120	3,847,368	3,764,474	79,038	3,843,512	-3,856
48	3,768,248	79,120	3,847,368	3,764,474	79,038	3,843,512	-3,856
48	3,768,248	79,120	3,847,368	3,764,474	79,038	3,843,512	-3,856

Annual Factor = 0.998

Commission on Judicial Conduct: 2012-2013 Non-Personal Service Cost Projection

Categories	2011-2012 Request	2011-2012 Approved	2012-2013 Request	Change in Request
Supplies & Materials	\$51,000	\$51,000	\$43,000	-\$8,000
Travel	\$100,000	\$100,000	\$100,000	\$0
Contractual Services	\$1,085,000	\$1,085,000	\$1,122,000	\$37,000
Equipment Rental	\$20,000	\$20,000	\$29,000	\$9,000
Car (Leased & State Owned)	\$22,000	\$22,000	\$21,800	-\$200
Utility	\$33,000	\$33,000	\$28,000	-\$5,000
Real Estate	\$915,900	\$915,900	\$956,900	\$41,000
Postage and Shipping	\$12,000	\$12,000	\$7,400	-\$4,600
Others/Misc.	\$35,250	\$35,250	\$33,500	-\$1,750
Professional Service	\$13,000	\$13,000	\$9,900	-\$3,100
IT Service	\$1,700	\$1,700	\$2,500	\$800
Books & Publication	\$5,000	\$5,000	\$5,000	\$0
Telephone	\$14,000	\$14,000	\$14,500	\$500
OGS Charge Back	\$4,150	\$4,150	\$2,500	-\$1,650
Food	\$9,000	\$9,000	\$11,000	\$2,000
Equipment	\$55,000	\$55,000	\$26,000	-\$29,000
Office \$ IT Equipment	\$52,000	\$52,000	\$23,000	-\$29,000
Office Furniture	\$3,000	\$3,000	\$3,000	\$0
Vehicles	\$0	\$0	\$0	\$0
Total NPS	\$1,291,000	\$1,291,000	\$1,291,000	\$0

**NYS Division of the Budget
Miscellaneous Receipts Status Report**

Status	Receipt Name	Indicator	Receipt Description	Agency Contact	DOB Contact
Agency : 21080 - Judicial Commissions					
Agency Approved	Public Access Records	Regulatory	Refunds and Reimbursement received	Shouchu Luo ((212) 809-3703)	bdeske
Agency Approved	Public Access Records	Regulatory	Fees collected from any users who access to the agency's public records and make hard copy or down load data to a CD	Shouchu Luo ((646) 386-4768)	bdeske
In FY 2011, up to the date, there were 2 payers. The payment was \$111.25 in total and submitted to OSC general funds on 10/28/2011.					

Scheduel of Annual Salaried Positions

COMMISSION ON JUDICIAL CONDUCT

Item No.	Title	Not Exceed 5/2/2011
0001	ADMR	
0002	DEPY ADMINISTRATOR	\$150,986
0009	DEPY ADMINISTRATOR	\$145,090
0010	SENR ATTORNEY	\$145,090
0011	SENR ATTORNEY	\$118,410
0012	SENR ATTORNEY	\$122,256
0013	SENR ATTORNEY	\$106,120
0014	SENR ATTORNEY	\$110,217
0014	STAFF ATTORNEY II	
0016	STAFF ATTORNEY I	\$79,800
0019	SENR INVESTIGATOR	\$66,507
0020	INVESTIGATOR I	\$71,815
0021	INVESTIGATOR II	\$43,434
0022	INVESTIGATOR II	\$41,691
0022	INVESTIGATOR II	\$46,985
0023	INVESTIGATOR II	\$53,356
0025	INVESTIGATOR I	\$48,664
0028	SENR ADMNV ASSNT	\$67,709
0029	SENR ADMNV ASSNT	\$66,217
0030	SENR ADMNV ASSNT	\$66,217
0032	ADMNV FIN & PERS OFFR	\$103,474
0034	SECY II	\$45,224
0035	SECY II	\$37,189
0036	SECY II	\$38,796
0038	ASST ADMIN OFFICER	\$53,356
0042	ASST ADMIN OFFICER	\$55,340
0047	SENR CLERK	\$45,177
0060	DEPY ADMINISTRATOR	\$145,090
0061	STAFF ATTORNEY II	\$84,853
0062	STAFF ATTORNEY II	\$96,617
0063	PRINCIPAL ATTORNEY	\$122,480
0064	EXECUTIVE SECRETARY	\$67,709
0065	INFORMATION SPECIALIST	\$71,955
0078	INVESTIGATOR II	\$46,895
0079	INVESTIGATOR II	\$57,323
0089	DEPY ADMINISTRATOR	\$145,090
0090	CLERK OF COMMISSION	\$140,352
0091	STAFF ATTORNEY II	\$96,617
0092	STAFF ATTORNEY II	\$96,617
0093	STAFF ATTORNEY II	Vacant
0094	PRINCIPAL ATTORNEY	\$122,480
0095	INVESTIGATOR II	\$45,224
0096	SENR INVESTIGATOR	\$79,778
0097	SENR INVESTIGATOR	\$79,383
0098	SENR INVESTIGATOR	\$45,224
0100	PUBLIC INFO OFFICER	\$71,954
0101	CHF ADMIN OFFICER	\$103,474
0102	SECY II	\$40,403
0103	SECY II	\$40,403
0104	ASST ADMIN OFFICER	\$51,374
0105	ASST ADMIN OFFICER	\$53,356
0107	ASST ADMIN OFFICER	\$51,374
		\$3,885,144

Approved

Date

5/10/11