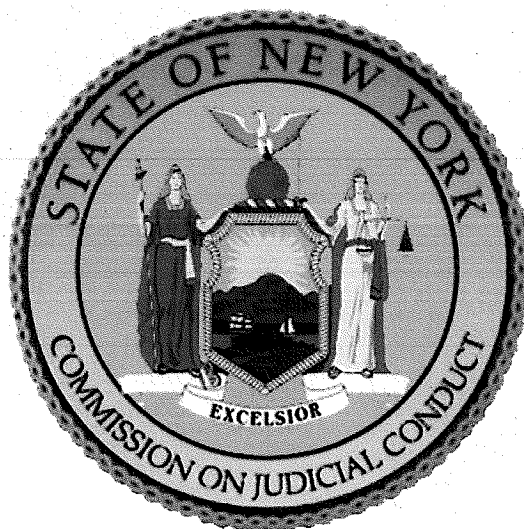


POLICY ADVICE ON REQUEST TO  
NEW YORK STATE  
DIVISION OF THE BUDGET

ALL FUNDS BUDGET REQUEST FY 2015 – 2016



**Statement of the Agency Head**



**New York State Commission on Judicial Conduct**



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## EXECUTIVE SUMMARY OF BUDGET REQUEST

The Commission on Judicial Conduct 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. The Commission has authority to render disciplinary decisions of confidential caution, public admonition, public censure or removal from office for misconduct, and retirement for mental or physical disability.

As a result of economically challenging times, the Commission, like most of state government, has struggled to make do with less than needed, for years. Our fiscal year (FY) 2014-15 budget of \$5,484,000 is virtually identical to our FY 2010-11 budget of \$5,406,000. For a small agency like ours, operating on marginal resources and maintaining a perennially "flat" budget are tantamount to regressive financing, which is inevitable when rising costs (such as rent and other obligations) must be met year after year with the same dollar amount. Cuts are made to cover mandated increases that are not otherwise funded. Among other things, this has meant a reduction in authorized full-time employees (FTEs) from 55 to 50, of which only 46 are filled, representing a 16% reduction in FTEs overall.<sup>1</sup> Moreover, in order to save money, vacancies are not filled promptly when they occur. Such deficiencies ultimately detract from the timely completion of the Commission's business and, in practical terms, mean that it takes longer than it should to discipline justly accused and clear wrongly accused judges. In other words, justice and the public interest are delayed for want of a few dollars.

The Commission is submitting a budget request of \$5,757,300, representing an increase of \$273,300 (5%) over last year. The increase is less than what is needed to cover contractual obligations (such as rent) and other mandates, but in-house economies of \$53,000 can make up the difference.

(1) In non-personal services (NPS), where we have been at the same dollar amount for four (4) years (\$1,291,000), our contractual obligations will increase by \$155,500, but we are asking for only \$102,500 because we will endeavor to find savings totaling \$53,000 in equipment, supply, utility and travel costs.

(2) In personal services (PS), contractual mandates require an increase of \$170,800.

Comporting with the Budget Director's suggestion for another year of "flat" budgeting would mean that the Commission would have to make \$273,300 in cuts to make up for the mandated increase in its operational costs. The only way to accomplish that would be to fire at least three (3) and as many as five (5) staff, which would be crippling to the agency's function and add further delay to the process of exonerating the innocent and holding the guilty accountable.

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<sup>1</sup> In dramatic contrast, the Commission's 1978-79 budget of \$1,644,000 supported a staff of 63 FTEs. Had our budget simply kept pace with the rate of inflation, that \$1.644 million would be equivalent to \$6.002 million today, *i.e.* \$245,000 *more* than our currently request.

## I. OVERVIEW

The prompt and effective enforcement of judicial ethics is essential to promoting public confidence in the administration of justice, especially in view of the recently renewed attention to integrity in government overall. If the public is to have confidence that judges are accountable for their behavior, without encroachment on their fundamental independence to render fair and proper decisions, the Commission's resources must be commensurate with its significant responsibility and workload. No judge should be under investigation for longer than is reasonable, and no unfit incumbent should remain on the bench longer than appropriate, simply because the resources are lacking for the Commission to do its job promptly as well as fairly.

### A. The Commission's Constitutional Independence, Mission and Recent History

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 (6) different officers of government, none of whom commands a majority: four (4) by the Governor, four (4) by the leaders of the Legislature and three (3) by the Chief Judge of the State of New York. The 11 members serve part-time, without pay. The Commission elects its own Chair and appoints an Administrator, who serves as chief executive officer and head of the agency. The Commission 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 an Executive agency, historically its budget request has been submitted to the Legislature by the Governor, 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).

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 alleging that judges have engaged in misconduct. The number of complaints received annually in the past ten 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 1,850 new complaints, 460 preliminary inquiries and 200 investigations.

- The agency publicly disciplines approximately 20 judges per year and confidentially cautions approximately 35 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 routinely works on its own outside litigation in conjunction with the Attorney General's Office, such as when judges commence lawsuits attempting to enjoin the Commission from investigating complaints or complainants attempt to compel the Commission to investigate or discipline a judge.

The 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 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 the 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. Judges wield 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 swiftly; 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.

#### **B. Recent Fiscal History and Impact on Agency Mission**

Over the years, the Commission's workload steadily increased, far outpacing the resources appropriated to cope with it. Complaints were taking longer to adjudicate, and the backlog of matters pending at year end steadily increased. In FY 2007-08, at the Commission's request, the Legislature increased its appropriation to the Commission from \$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 each of the last five fiscal years, mindful of the economic stresses on the national and state economies, the Commission requested and the Legislature appropriated around \$5.4 million. At the same time, the Commission's workload continued to expand. In the years since 2007, when the Legislature increased its appropriation, the Commission has averaged 353 more complaints per year than in the year immediately preceding the budget increase. Over that same period, the number of matters pending at year end dropped from 238 to 185.

The following chart is illustrative.

Fiscal Year	Annual Budget	Complaints Received	Preliminary Inquiries	New Investigations	Pending Year End	Attorneys/ Investigators	Total Staff
1978-79	\$1,644,000	641	NA	170	324	21/18	63
1988-89	\$2,224,000	1109	NA	200	141	9/13	41
1996-97	\$1,696,000	1490	492	192	172	8/2½	20
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	\$5,173,000	1923	354	262	208	19/10½	47½*
2009-10	\$5,200,000	1855	471	257	243	18/10	47
2010-11	\$5,406,000	2025	439	225	226	18/10	44
2011-12	\$5,384,000	1818	464	172	216	18/9	48
2012-13	\$5,384,000	1785	460	182	183	19/8	47
2013-14	\$5,384,000	1770	477	177	185	19/7	46*
2014-15	\$5,484,000					19/7	46*

\* Authorized for 55 full-time staff in 2008, and 50 in 2014, but to conserve resources, not all 50 are or will be filled.

However, this progress has been slowed by the economic downturn that has impacted the entire country since 2008, as 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 current budget is virtually identical to what it was four years ago, despite steady increases in rent and other costs. The number of authorized FTEs has shrunk from 55 to 50, and the number of staff positions actually filled is down to 46. (One of those 46 has been on unpaid leave for several months.) Moreover, whenever possible the Administrator deferred filling vacancies to save money needed for other services, and most often replacements were hired at lower salaries than departing staff. Staff education and training programs were dramatically reduced, and other inhibiting economies have been instituted. For example, all stenographic transcription services were eliminated, and staff produces all transcripts in-house from audio recordings of proceedings – a much slower process that prolongs investigations and contributes to a backlog. Field inspections and witness interviews have also been reduced to conserve travel expenses, potentially compromising the thoroughness of certain investigations.

Years of such constraint now threaten to reverse the gains that have been achieved since the Legislature's commitment to the Commission in 2007-08.

### **C. Summary of FY 2015-16 Plans**

After consulting with Executive, Legislative and Judicial Branch officials, the Commission is making another appropriately constrained request for FY 2015-16, requesting a bare-bones increase of \$273,300, to cover mandated increases such as rent and other contractual obligations. The Commission will continue to save funds whenever opportunities arise, as it has in the past by retarding the hiring of replacements, paying new staff less than their predecessors, reducing its already small fleet of cars, conducting video conferences in lieu of travel for meetings, etc.

For PS funds the Administrator requests \$4,363,800, an increase of \$170,800 that will (1) cover obligatory 2% COLA increase while keeping our FTEs under the adjusted allotment of 50, (2)

cover obligatory annual employee performance advances for those not at the top of their salary grades and (3) make the refund of DRP to eligible employees.

For NPS funds the Administrator requests \$1,393,500, an increase of \$102,500 that will cover mandated rises in rent and essential IT upgrades. Inflationary and other increases will partially be offset by such sacrifices as deferring the replacement of aged office equipment and reducing travel costs to a bare minimum.

This Budget Request of **\$5,757,300** for FY 2015-16, representing a modest increase of \$273,300 to meet mandatory obligations, after four years in which the agency's budget was effectively static, will permit the Commission to fulfill its constitutional mission, carry on its functioning at the level intended by the Legislature in furtherance of that mission, keep abreast of the steady high volume of complaints and try to reduce 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 formal disciplinary proceedings fairly and expeditiously. 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 from intake to resolution may be anywhere from eight (8) weeks in the case of dismissal, to three (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 25% are clarified with transcript reviews, interviews of the participating lawyers and the 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 complaint 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.

One recent high-priority, intensive investigation entailed – in a three-month period – evaluation of thousands of electronic and paper documents, over 20 subpoenas for testimony and/or records and numerous unsworn witness interviews. The matter, which occupied six (6) Commission staff more or less full-time and resulted in the judge's agreement to resign from office, necessarily diverted resources from many other pending matters. Resolution of those matters was consequently delayed. Had Commission resources been at a level equivalent to what the agency had in 1978, those delays would have been prevented, and justice would have been timelier.

### **B. Formal Proceedings**

If a disciplinary proceeding is authorized by the Commission, 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 95 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 on the facts presented. Subsequently, in a 2009 case that revisited the issue, the Court held that the Commission *did* have jurisdiction and remanded the matter for further proceedings, which resulted in public admonishment of the judge. 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 New York State.

In 2010, one judge who was the subject of a removal determination filed a motion to vacate the determination and to accept a proposed stipulation which the Commission had rejected. The Court dismissed the motion and issued an order removing the judge. In 2012, after briefs and oral argument, the Court upheld the Commission's determination that a judge should be removed. In June 2014, in the only appeal heard this year, the Court upheld the Commission's determination to remove a judge from office. Commission staff provided all the litigation services in these proceedings.

#### **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 seven 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 1,800 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, including the all-important, statutorily mandated production of transcripts. 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, rendering determinations, drafting opinions, 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 received; the size and structure of the state's judiciary; and the size, seriousness and complexity of matters being investigated or heard (tried). In 2013, the Commission received 1,770 complaints against judges, conducted preliminary inquiries as to 477 and investigated 177. Investigations and formal proceedings were also continued in 206 matters commenced but not completed prior to 2013. These numbers will likely remain constant, if not increase. As of mid-October 2014, the number of new complaints received was approximately 1,350.

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, roughly 1,250 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 borrowed facilities (including their private business places) because there is no available courtroom. 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 1,500 of them, constituting 65% of the town and village justices and 42% 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 over 450 complaints a year (in 2013 the number was 477) 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 may 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.

The number of hearings averages about five (5) each year. In 2011-12, one hearing in a case involving complex issues extended over 15 full days. To date, two (2) hearings have been held in 2014. Two lengthy hearings are scheduled to begin soon. 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, 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 saved money but 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.

The related strategic plan includes: (1) Maintaining staff at the level needed to handle the heavy caseload. (2) Increasing the number of Commission meeting-days, from approximately 10 to between 12 and 16, to process the increased number of cases 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 was authorized for 55 FTEs in 2007, when the Legislature increased its funding. 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 51. In FY 2010-11, the Commission's Administrator 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. Subsequently, recognizing the strained state of the economy and coping with four consecutive years of a "flat" or no-increase budget, the Administrator relinquished four additional FTE positions, reducing the agency's allotment to 50. As of October 2014, 46 of the 50 were filled. The Commission has no plans to fill the remaining four (4) in the current fiscal year, because the funds that would be needed to pay them were diverted to pay for other expenses.

##### **1. Personal Service (Regular)**

The Commission will continue voluntarily to institute economies in the coming fiscal year.

An agency-prepared schedule entitled "Recap of Personal Service Cost Estimates Budget Year 2015-2016" has been generated to document the projected personal service cost. The base of this projection is \$4,020,600, an estimate of the current FY annual staff salary, at 46 FTEs. The amount added to the base includes (1) \$77,100 for obligatory 2% COLA adjustment; (2) \$69,200

Performance Advance and Longevity payments for eligible staff in FY 2015-2016; (3) \$82,200 for mandated Location Pay; and (4) \$74,700 DRP Repayment for eligible staff. In total, the amount needed for regular personal service at 46 FTEs is \$4,327,800.

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 continued 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" is \$36,000, which primarily will cover (1) per diem expenses for referees, who preside over formal hearings and are compensated at \$250 a day and (2) if possible, compensation for a former Deputy Administrator, now retired, who volunteers his services on a part-time basis.

## **3. PS Recap**

In total, the Recap of Personal Service Cost for FY 2014-2015 is \$4,363,800, which is \$170,800 more than the current year's PS Appropriation.

## **B. Non-Personal Service**

A determined and unrelenting effort has been made for the past seven years, and will continue, to achieve all possible savings in NPS spending. Having previously reduced its fleet of cars from nine (9) to eight (8), the Commission has now downsized its fleet from eight (8) to seven (7) cars by discarding a 2005 Ford Taurus without replacement. The Commission will continue to offset other costs (such as postage and paper) by further increases in its electronic documentation protocols and by continuing its production of all transcripts in-house, although having already reduced outside transcription services to zero, we can no longer achieve new savings in this regard.

However, faced with mandated rises in certain expenses – such as \$121,000 for increased rent, tax escalations and related lease obligations; \$11,000 for increases in essential IT software and hardware upgrades and data storage services, and \$11,000 in increased utility bills over which we have no control<sup>2</sup> – the Administrator is requesting an increased NPS budget of \$1,393,500 which is \$102,500 more than the current year, after offsetting economies in other NPS items.

<b>NPS Categories</b>	<b>2014-15 Approved Appropriation</b>	<b>2015-16 Requested Appropriation</b>	<b>Change</b>
Supplies & Materials	43,000	38,600	-4,400
Travel	100,000	57,000	-43,000
Contractual Services	1,122,000	1,276,400	+154,400
Equipment	26,000	21,500	-4,500
<b>TOTAL NPS</b>	<b>1,291,000</b>	<b>1,393,500</b>	<b>+102,500</b>

<sup>2</sup> In the Commission's New York City office, for example, HVAC is controlled by the landlord but billed to the tenants.

### 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, though it would be offset by inflation. Therefore a small decrease in this category is projected.

### 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	\$1,140,600	Postage & Shipping	\$9,300
Equipment Lease	\$17,700	OGS Charge-back	\$4,500
Vehicles	\$16,000	Telecommunications	\$11,000
Utilities	\$33,000	Books/Publications	\$2,200
Professional Services	\$9,500	Other/Miscellaneous	\$13,200
IT Service	\$19,400		

The Real Estate cost for FY 2015-2016 will be \$116,100 higher than the current year due to the annual contractual rent increase and tax escalations for the New York City office. Utility expenses are also projected at a small increase due to inflation.

The Vehicle Leasing and Maintenance cost for FY 2015-2016 will remain relatively constant. The agency's 3 leased vehicles were replaced at the beginning of 2012, which resulted in a lease with an unchanged price but lower maintenance and repair costs. However, after discarding one 8-year-old car without replacement, the agency still owns 4 aging vehicles whose maintenance and repair costs will likely increase. Coupled with elimination of one vehicle, the agency's continued monitoring of vehicle use will result in small savings overall.

Telecommunication costs will be slightly higher in FY 2015-2016. The replacement of 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 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 agency has merged certain service lines and canceled certain service items in this category, which will generate continued savings in the next budget year. However, the inflation of outside vendors' service is inevitable.

The cost for Equipment Rental and Maintenance is also projected relatively constant. Equipment leases will be renewed in the current year and an increase is projected due to inflation. However, retiring one copier will generating savings. The repair and maintenance costs will also be reduced.

The increases in Professional Services and IT Services are due to a reclassification of certain professional membership fees and pending changes in IT technology, as implemented by the Office of Court Administration, with whom the Commission contracts for IT services. The agency will continue archiving documents electronically in-house to minimize or eliminate the need for commercial vendors. More savings are expected in the near future.

Postage and Shipping costs are also projected to be higher due to the significant price increase charged by outside vendors. OGS and OFT Charge-backs, which includes the cost of the State run courier service, will increase due to inflation.

Books/Publications and Other/Miscellaneous services are also projected to be constant.

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 \$21,500.

#### **5. NPS Recap**

In total, the Commission requests funding for FY 2015-16 Non Personal Services in the amount of \$1,393,500, an increase of \$102,500 from FY 2014-15.

#### **C. Conclusion**

The total (PS and NPS) budget requested for FY 2015-2016 is **\$5,755,300**. This includes (1) a PS request of \$4,363,800 and (2) a NPS request of \$1,393,500.

Complete schedules are attached.

## STATISTICAL TABULATION

**New York State**  
**Division of the Budget**  
**All Funds Budget Request FY 2015-16**  
**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 2014-15	(C) Requested Change	(D) Total Request (Column B+C) 2015-16
State Operations			
General Fund	5,484,000	273,300	5,757,300
Special Revenue - Federal	0		0
Special Revenue - Other	0		0
Enterprise	0		0
Internal Service	0		0
Private Purpose Trust	0		0
Subtotal	5,484,000	273,300	5,757,300
Aid to Localities			
General Fund			0
Special Revenue - Federal			0
Special Revenue - Other			0
Enterprise			0
Subtotal			0
Capital Projects			
Capital Projects Fund			0
Special Revenue - Other			0
Enterprise			0
Internal Service			0
Subtotal			0
Debt Service			0
Agency Total	5,484,000	273,300	5,757,300

## STATISTICAL TABULATION

**New York State**  
**Division of the Budget**  
**All Funds Budget Request FY 2015-16**  
**Program Recapitulation**  
**of Current Year Adjusted Appropriations**  
**and Requested Changes for the Next Fiscal Year**

Agency: NYS Commission on Judicial Conduct

Category: JUDICIAL COMMISSION

(A) Program/Fund Type	(B) Adjusted Appropriations 2014-15	(C) Requested Change	(D) Total Request (Column B+C) 2015-16
Program			
General Fund	5,484,000	273,300	5,757,300
Special Revenue - Federal			0
Special Revenue - Other			0
Enterprise			0
Internal Service			0
Private Purpose Trust			0
Program Total	5,484,000	273,300	5,757,300
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	5,484,000	273,300	5,757,300
Program			0
Program			0
Agency Total	5,484,000	273,300	5,757,300

## STATISTICAL TABULATION

**New York State**  
**Division of the Budget**  
**All Funds Budget Request FY 2015-2016**  
**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:  
 Fund:  
 Subfund:

GENERAL  
 STATE PURPOSES  
 1220000-33301-10050

(A) Object and Subobject of Appropriation/Aid Purpose	(B) Adjusted Appropriations 2014-15	(C) Change	(D) Requested Appropriations (Column B+C) 2015-16
<b>State Operations</b>			
Personal Service	4,157,000	170,800	4,327,800
Personal Service -- Regular	36,000	0	36,000
Temporary Service			0
Holiday/Overtime Compensation			0
<b>Total PS</b>	<b>4,193,000</b>	<b>170,800</b>	<b>4,363,800</b>
<b>Nonpersonal Service</b>			
Supplies and Materials	43,000	(4,400)	38,600
Travel	100,000	(43,000)	57,000
Contractual Services	1,122,000	154,400	1,276,400
Equipment	26,000	(4,500)	21,500
Fringe Benefits			0
Indirect Costs			0
<b>Total NPS</b>	<b>1,291,000</b>	<b>102,500</b>	<b>1,393,500</b>
<b>Maintenance Undistributed</b>			
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
<b>Total MU</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Total State Operations</b>	<b>5,484,000</b>	<b>273,300</b>	<b>5,757,300</b>
<b>Aid to Localities</b>			
Purpose:			
--			0
--			0
--			0
--			0
--			0
<b>Total Aid to Localities</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Grand Total SO and ATL</b>	<b>5,484,000</b>	<b>273,300</b>	<b>5,757,300</b>

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

Status	Receipt Name	Indicator	Receipt Description	Agency Contact	DOB Contact
Agency : 1220000 - Judicial Conduct, Commission on					
DOB Approved	Fees for Copy of Documents	Regulatory	Collected fees for material used by public who access our files and make paper or electronic copies	Wanita Gonzalez ((646) 386-4724)	bdpaol
DOB Approved	Refunds	Regulatory	Refunds received	Shouchu Luo ((646) 386-4768)	bdpaol
DOB Approved	Reimbursements	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)	bdpaol

## CJC01 : 2015-16 Budget Request SUM Final

11/10/2014

Categories		2014-2015 Request	2014-2015 Approved	2015-2016 Request	Compared to 2013-14 Approved
PS	Salary Temp Add *	\$4,168,000 \$36,000	\$4,157,000 \$36,000	\$4,327,800 \$36,000	\$170,800 \$0
Total		\$4,204,000	\$4,193,000	\$4,363,800	\$170,800
Non-PS	Supplies Travel Contractual Equipment	\$47,600 \$99,000 \$1,264,400 \$39,000	\$43,000 \$100,000 \$1,122,000 \$26,000	\$38,600 \$57,000 \$1,276,400 \$21,500	-\$4,400 -\$43,000 \$154,400 -\$4,500
Total		\$1,450,000	\$1,291,000	\$1,393,500	\$102,500

Agency Sum      \$5,654,000      \$5,484,000      \$5,757,300      \$273,300

**Recap of Personal Service Cost Estimates**  
**Budget Year 2015- 2016, Annual & Non-Annual Salaried Positions**  
**Estimates From Pay Period 2013-PP15**

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

**Fund:** 003 - State Operations Account  
**Account:** 10050-State Purposes Account  
**Program:** 33301-Judicial Conduct

LINE NO	DESCRIPTOR	NO. OF POSITIONS FTE (A)	NEXT FISCAL YR ESTIMATE (B)
	<b>Annual-Salaried Personal Service; Current Fiscal Year (CFY) Ending Estimate</b>		
1	Filled Annual-Salaried Positions; CFY	46,000	4,020,747
	<b>Adjustments to Current Year Ending Estimate</b>		
2	General Salary Increases; Next Fiscal Year (NFY) (Including NS)	46,000	27,955
3	Performance Advances & Step Increases; NFY (Excl. most NS, M8 & SG38)		
4	Longevity Comp & Longevity Increases; NFY (Excl. most NS, M8 & SG38)		
5	SUNY Discretionary Increases; NFY		
6	Annualization of Current Fiscal Year Increases		1846
7	<i>Subtotal -- Annual-Salaried Positions (lines 1 through 6)</i>	46,000	4,101,648
	<b>Other Compensation</b>		
8	Geographic Differential		
9	Inconvenience Pay (Irregular Intermittent Pay Below)		
10	Location & Supplemental Location Pay	29,000	82,264
11	Premium Pay In Lieu of Overtime		
12	Pre-Shift Briefing, Command, Expanded Duty, Marine Off Road Enf, Facility Security Supervisor, Security Enf Differential, Expertise Duty, Haz Material, DSP Haz Duty & Special Assignment to Duty		
13	Shift Differential		
14	Taxable Maintenance & Clothing and Uniform Allowance		
15	<b>Sub-Subtotal - Other Compensation (8 through 14)</b>		82,264
16	<i>Subtotal -- Annual-Salaried Positions (lines 7 and 15)</i>	46,000	4,183,912
	<b>Average FTE (A-FTE) Adjustment</b>		
17			
18	Average Salary: (18B) = Average Annual [\$84,551] + Average Other Comp [\$1,799]		0
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)	0.000	0
20	<i>Subtotal -- Annual-Salaried Positions (Including A-FTE Adjustment) (lines 16 and 19)</i>	46,000	4,183,912
	<b>Additions to Annual-Salaried Position Projections</b>		
21	Lump Sum Retention Payment, DRP Repayment	42,000	74,636
22	Longevities & Performance Awards (For Graded & NS Items)		
23	Performance Advances & Longevities from NS (Excluding Trainees) Listing	46,000	69,258
24	Performance Advances from NS (Trainee) Listing		
25	Irregular Intermittent Inconvenience Pay		
26	Overtime Compensation		
27	Civilian Hazardous Duty Pay		
28	Holiday Pay		
29	Leave & Overtime Accrual Payments Adjustment		
30	Miscellaneous		
31	<b>Sub-Subtotal - Additions (21 through 30)</b>		143,894
32	<i>Subtotal -- Annual-Salaried Positions (lines 20 and 31)</i>	46,000	4,327,806
	<b>Subtractions from Annual-Salaried Position Projections</b>		
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	<b>Sub-Subtotal - Subtractions (33 through 36)</b>		0
38	<i>Total -- Annual-Salaried Positions (line 32 minus line 37)</i>	46,000	4,327,806
	<b>Compensation for Nonannual-Salaried Employees</b>		
39	Regular (example: hourly)		36,000
40	Overtime		
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>		0
46	<b>Grand Total -- Estimated Personal Service For NFY (lines 38 and 45)</b>	46,000	4,363,806

Group Listing

Budget Year 2015-16, Annual Salaried Positions

Estimated from Payroll 2014-PP 15

Department 21		Miscellaneous Boards and Commissions				Agency:		21080 Judicial Commissions							
TITLE CODE	TITLE	FTE	NU	SG	C	D	E	Current Year - Adjusted Amount				Next Year - Estimated Amount			
								ANNUAL	OTHER	F1	F2	F3	ANNUAL	OTHER	Diff.
A	B												G1	G2	H
Fund: 003 State Operations Account Subfund: 10050 State Purposes Account															
Program: 33301 Judicial Conduct															
POSITION POOL II001															
COST CENTER - 216200041C14 JUDICIAL COMMISSIONS															
25 01300	SENR CLERK	1	79	600				53,192	3,029				54,257	3,032	1,068
32 99761	INFORMATION TECHNOLOGY SP	1	79	600				88,258	3,029				93,522	3,032	5,267
93 02244	CHF ADMIN OFFICER	1	79	600				112,420	3,029				118,931	3,032	6,514
94 43457	PRIN ATTY	2	79	600				268,522	6,058				273,892	6,064	5,376
95 19055	PUBLIC INFO OFFICER	1	79	600				76,487	3,029				81,172	3,032	4,688
95 20181	EXECUTIVE SECRETARY	1	79	600				73,251	3,029				77,477	3,032	4,229
95 21001	ADMN	1	79	600				168,000	3,029				174,000	3,032	6,003
95 21005	ADMNV ASSNT	1	79	600				69,063	3,029				70,444	3,032	1,384
95 21027	SENR ADMNV ASSNT	2	79	600				112,212	3,029				118,777	3,032	6,568
95 21030	CLERK OF COMMISSION	1	79	600				147,992	3,029				150,952	3,032	2,963
95 21036	SENR INVESTIGATOR	3	79	600				214,341	3,229				224,151	3,232	9,813
95 21037	SENR ATTORNEY	5	79	600				582,997	6,058				603,181	6,064	20,190
95 21038	DEPY ADMINISTRATOR	4	79	600				591,968	3,229				603,807	3,232	11,842
95 21040	ADMNV OFFICER	1	79	600				75,958	3,029				80,238	3,032	4,283
95 21041	ASST ADMIN OFFICER	3	79	600				185,521	6,058				191,296	6,064	5,781
95 21042	STAFF ATTORNEY I	1	79	600				81,025	0				86,145	0	5,120
95 21043	STAFF ATTORNEY II	5	79	600				461,311	9,087				476,796	9,096	15,494
95 21049	SECY II	4	79	600				179,595	6,058				186,530	6,064	6,941
95 21050	INVESTIGATOR I	2	79	600				95,765	3,029				101,260	3,032	5,498
95 21051	INVESTIGATOR II	4	79	600				226,146	3,029				234,297	3,032	8,154
95 21052	JR ADMNV ASSNT	1	79	600				44,303	3,029				47,332	3,032	2,703
95 21053	ADMNV FIN & PERS OFFR	1	79	600				112,420	3,029				118,931	3,032	6,514
PPID Totals															
		46						4,020,747	82,183				4,167,060	82,264	146,394
CC Totals															
		46						4,020,747	82,183				4,167,060	82,264	146,394
Program Totals															
		46						4,020,747	82,183				4,167,060	82,264	146,394
Account Totals															
		46						4,020,747	82,183				4,167,060	82,264	146,394
Fund Totals															
		46						4,020,747	82,183				4,167,060	82,264	146,394
Agency Totals															
		46						4,020,747	82,183				4,167,060	82,264	146,394

Categories	2014-2015 Request	2014-2015 Approved	2015-2016 Request	Change in Request
Supplies & Materials	\$47,600	\$43,000	\$38,600	-\$4,400
Travel	\$99,000	\$100,000	\$57,000	-\$43,000
Contractual Services	\$1,274,400	\$1,122,000	\$1,276,400	\$154,400
Equipment Rental & M	\$28,500	\$16,300	\$17,700	\$1,400
Car (Leased & State Owned)	\$20,500	\$14,500	\$16,000	\$1,500
Utility	\$27,000	\$24,000	\$33,000	\$9,000
Real Estate	\$1,109,000	\$1,024,500	\$1,140,600	\$116,100
Postage and Shipping	\$4,200	\$5,000	\$9,300	\$4,300
Others/Misc.	\$43,400	\$5,500	\$2,200	-\$3,300
Professional Service	\$6,000	\$6,400	\$9,500	\$3,100
IT Service	\$3,100	\$2,500	\$19,400	\$16,900
Books & Publication	\$2,000	\$2,800	\$2,200	-\$600
Telephone	\$9,500	\$9,000	\$11,000	\$2,000
OGS Charge Back	\$6,700	\$2,500	\$4,500	\$2,000
Commission	\$14,500	\$9,000	\$11,000	\$2,000
Equipment	\$29,000	\$26,000	\$21,500	-\$4,500
Office & IT Equipment	\$27,000	\$23,000	\$19,500	-\$3,500
Office Furniture	\$2,000	\$3,000	\$2,000	-\$1,000
Vehicles				\$0
Total NPS	\$1,442,500	\$1,291,000	\$1,393,500	\$102,500

Schedule of Annual Salaried Positions  
Commission on Judicial Conduct

Cost Center : 620004

Item No.	Title	Status	Performance Advance,
			Not Exceed (07/16/2014)
0001	Administrator	NS	\$168,000
0002	Deputy Administrator	NS	\$147,992
0009	Deputy Administrator	NS	\$147,992
0010	Senior Attorney	NS	\$120,778
0011	Senior Attorney	NS	\$112,421
0012	Senior Attorney	NS	\$120,778
0013	Senior Attorney	NS	\$120,778
0014	Staff Attorney II	NS	\$95,120
0016	Staff Attorney I	NS	\$81,025
0019	Senior Investigator	NS	\$81,374
0020	Investigator I	NS	Vacant
0021	Jr. Administrative Officer	NS	\$49,636
0022	Investigator I	NS	\$51,481
0023	Investigator II	NS	\$62,514
0025	Investigator I	NS	\$51,462
0028	Senior Administrative Assistant	NS	\$69,063
0029	Senior Administrative Assistant	NS	\$57,788
0030	Senior Administrative Assistant	NS	\$54,424
0032	Finance/Personnel Officer	NS	\$112,420
0034	Secretary II	NS	\$47,767
0035	Secretary II	NS	\$44,489
0036	Secretary II	NS	\$39,572
0038	Senior Administrative Assistant	NS	\$54,424
0042	Assistant Admn. Officer	NS	\$62,515
0047	Senior Clerk	NS	\$53,192
0060	Deputy Administrator	NS	\$147,992
0061	Staff Attorney II	NS	\$98,549
0062	Staff Attorney II	NS	\$98,549
0063	Principal Attorney	NS	\$134,261
0064	Executive Secretary	NS	\$73,251
0065	IT Specialist	NS	\$88,258
0078	Investigator II	NS	Vacant
0079	Investigator II	NS	\$62,515
0089	Deputy Administrator	NS	\$147,992
0090	Clerk of the Commission	NS	\$147,992
0091	Senior Attorney	NS	\$108,242
0092	Staff Attorney II	NS	\$98,549
0093	Staff Attorney II	NS	\$70,544
0094	Principal Attorney	NS	\$134,261
0095	Investigator II	NS	Vacant
0096	Senior Investigator	NS	\$67,837
0097	Senior Investigator	NS	\$44,303
0098	Senior Investigator	NS	\$65,130
0100	Public Information Officer	NS	\$76,487
0101	Chief Administrative Officer	NS	\$112,420
0102	Jr. Administrative Officer	NS	\$44,303
0103	Secretary II	NS	\$47,767
0104	Assistant Administrative Officer	NS	\$60,492
0105	Assistant Administrative Officer	NS	\$62,514
0107	Assistant Administrative Officer	NS	\$75,958
		NS	\$4,075,171

Updated 10/21/2014

11/19/2014

Salary Schedule as of 10\_21\_2014 after 2% and Performance Ad.xls