



State of New York



Statement of Robert H. Tembeckjian
Administrator and Counsel
Commission on Judicial Conduct



New York State Senate
Standing Committee on the Judiciary



Public Hearing on Reform of the
New York State Justice Courts



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Chairman DeFrancisco and Members of the Senate Judiciary Committee:

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

I thank you for the decision to examine the New York State Town and Village Justice Courts, and for the invitation to discuss the Judicial Conduct Commission's perspectives. I also thank Chairman DeFrancisco for having met with me twice in recent months to discuss judicial ethics issues and other matters of importance to the Commission, and for always responding promptly and thoughtfully to our communications. I also appreciate the career-long commitment to improving our criminal justice system demonstrated by my own Senator, Tom Duane, who is a member of this Committee.

Summary

Before delving into details, permit me to summarize what I hope will be the import of my remarks today. There are three essential components necessary to enhance public confidence in the administration of justice, particularly as it concerns justices of the town and village courts.

First, the constitutional and statutory framework of the courts must be such that the public is confident justice can be and is being done. In this regard, the Legislature is doing its part by examining the structure of the court system and, as you are also exploring, the very method by which judges ascend to the bench. We hope you will also consider restoring suspension without pay as a sanction the Commission may impose and, as you have done in the past, pass a bill that would open formal disciplinary proceedings to the public, as they are in 37 other states.

Second, the judges and staff who preside over and operate the courts must be properly prepared for the important jobs they have. In this regard, Chief Judge Judith Kaye and Chief Administrative Judge Jonathan Lippman have announced an Action Plan for the town and village courts, aiming significantly to increase and improve the training and education that all town and village justices must complete, and committing \$10 million to it, as a start.

Third, there must be no doubt that the people in the system are and will be held accountable for their behavior. The constitution reposes authority in and the public relies upon the Judicial Conduct Commission to investigate allegations of impropriety against judges and, where appropriate, publicly discipline those judges who engage in misconduct. But very plainly, our workload is huge – over 1,500 matters a year – and we do not have the resources we need to do the job comprehensively and promptly. We need help, particularly from the Governor, since our funding comes from the Executive Budget. We sincerely appreciate the support of the State Bar and other responsible civic organizations that have advocated on our behalf. We very much appreciated it when, in the past, the Legislature restored funds from one of many cuts that a previous Governor imposed on us. Unfortunately, for the most part, for years, our budget has been wanting. We are not talking about much. The Commission is simply asking for the equivalent of what it had back in 1978, as discussed below in the Budget section of this statement. With so much focus today on ethics and public integrity, I have hope that help may be on the way. But I have been around too long and been disappointed too often to take anything for granted. Yet if the public is to have any confidence that judges are

accountable for their behavior, without encroachment on their fundamental independence to call cases as they see them, the Commission must have help.

Background

As you know, the Commission is the state agency that investigates complaints against judges and justices of the state unified court system and, where appropriate, disciplines judges for having engaged in misconduct. Its authority derives from the State Constitution. The Commission's 11 members are appointed by the Governor, the Chief Judge and the leaders of the Assembly and Senate. Although its budget comes out of the Executive Branch, the Commission is functionally independent. No one appoints a majority of its members, and by law the Commission elects its own chair and appoints its own Administrator or Chief Executive Officer.

As you also know, the Commission has never taken a position on some of the more sensitive issues you are likely to be considering, such as whether all town and village justices should be attorneys, or whether this entire system of part-time justice courts should be replaced by a full-time district court structure such as Nassau and Suffolk Counties have implemented. The Commission declines to take such positions in order to preserve its independence and impartiality as it acts on the hundreds of complaints it receives each year regarding judges at all levels of the court system. We would not want there to be even an appearance that the Commission's decisions were motivated by its view as to whether these courts should be altered or abolished. If a town justice is removed from office, for example, there should be no doubt that the Commission's evaluation of the judge's misconduct, not its evaluation of the town and village court system, was the basis for the decision.

The town and village courts are an extensive network of nearly 1,300 courts and around 2,300 part-time justices, the great majority of whom are not lawyers. They are the place most New Yorkers are likely to have their first and perhaps only experience with the courts. They handle a broad range of cases, from routine speeding tickets, to serious DWI's, to contentious small claims and local property disputes, to misdemeanor trials and felony arraignments.

Over the years, the Commission has made recommendations in its annual reports to improve the town and village court system, based on its experiences with them in disciplinary cases. For example, we have called for enhanced training and education in such areas as the judge's obligation to advise defendants of certain fundamental rights, and take steps to effectuate them, such as the right to counsel and the right to assigned counsel for the indigent, and the criteria on which bail decisions are to be rendered. We have reminded town and village justices of the requirement that court proceedings be held in public, not in chambers or in such non-neutral settings as a police barracks. We have called for every court to have a listed address and telephone number, to enhance public access. And we have called for the recording of all proceedings in town and village courts. In our society, which so deeply values justice and the rights of the individual, it does not seem creditable to have courts that may try, convict and sentence a person to a term of imprisonment without a verbatim account of what went on in the courtroom, and without as accurate a record as possible for appellate review.

The Commission appreciates the broad-ranging reform program for the town and village courts recently announced by Chief Judge Kaye and Chief Administrative Judge Lippman. Their program is an enormous step forward, designed to improve the

existing system in ways that do not require legislation, while the Legislature contemplates whether and how to change the fundamental structure of the town and village courts. Though there may be competing views on whether the system should be changed fundamentally, no one can disagree with the idea that the system we have now should be improved while its ultimate fate is debated. In the time it would take for a constitutional amendment to take effect, for example, hundreds of thousands of people would have passed through the town and village courts. The Chief Judge's plan would clearly enhance the quality of justice our fellow citizens would receive.

As you consider the important issues at stake, I am pleased to provide an overview of the Commission's disciplinary enforcement experiences with part-time town and village justices, both lawyers and non-lawyers, as compared to judges of higher courts, most of whom are full-time and all of whom are law-trained and licensed. I believe it is sensible to do so in two ways – by statistics, and by subject matter.

Statistics

The authority to render disciplinary determinations was shifted from the courts to the Commission in April 1978. Since then, as indicated in the following table, the Commission has rendered 634 public decisions, 448 of which (70.5%) were against town and village justices. Since the roughly 2,300 town and village justices comprise 68% of the approximately 3,400 judges throughout the state unified court system, it could not be said from this statistic alone that town and village justices are more likely than higher court judges to be disciplined.

Of the 152 cases egregious enough to warrant removal from judicial office, however, 115, or 76%, were against town and village justices.

DISCIPLINARY DETERMINATIONS BY THE COMMISSION ON JUDICIAL CONDUCT			
	Town & Village Court Justices	All Other Judges	Total
Removal from Office	115	37	152
Public Censure	179	75	254
Public Admonition	140	71	211
Stipulated Resignation/Retirement	14	3	17
Totals	448	186	634

The Commission is now receiving over 1,500 complaints per year. From 1975¹ through December 31, 2005, the total number of complaints received was 34,323. Of these, approximately 9,605 (28%) were against town and village justices. Yet of the 6,611 full-scale investigations conducted by the Commission, about 4,033 (61%) were against town and village justices.

This 30-year statistical profile indicates that complaints of misconduct against town and village justices are more likely to have merit, warrant investigation and result in punishment than complaints against judges of higher courts. It also underscores that the lion's share of Commission resources is devoted to investigating and litigating complaints against town and village justices.

The Commission's Budget

Let me say an important word here about the Commission's resources, which are not commensurate with our important constitutional role and enormous caseload. In 1978, when our caseload was under 650 complaints, we had a staff of 63, including 21

¹ Although the constitutional provision governing the Commission went into effect in April 1978, the Commission began operations as a legislatively-created temporary agency in 1975.

lawyers, on a budget of \$1.644 million. Had that budget simply been adjusted for inflation, it would be slightly more than \$5 million today. Yet a long era of fiscal reductions has left us with 28½ staff, including only 10 lawyers, on a budget of \$2.77 million, to handle over 1,500 complaints. Where it once took less than 20 months to complete an investigation and a full due-process disciplinary hearing, it now takes over 26 months. One complex case can tie up more lawyers and investigators than we can spare, taking time and attention away from other cases. We are close to a breaking point, which is not in the public interest.

- Right now, we have formal disciplinary complaints pending against 36 judges. If our 10 lawyers could somehow work at a pace that would resolve one a month – and with each judge properly entitled to due process, including time to respond and an evidentiary hearing, such a pace is constitutionally impossible – it would still take three years to dispose of them all.

- We also have, right now, 230 pending investigations. If they were all simple, and our seven investigators were somehow able to close out one per week, it would still take more than four years to dispose of them all.

It is unfair for the eventually exonerated judge to remain under the cloud of inquiry for longer than necessary, and unfair to the public that it takes us longer to remove unfit incumbents from the bench – all for want of a relatively humble sum. In an overall state budget of \$120 billion, a modest \$5 million for the Commission seems negligible. Indeed, it is only half of what the court system will spend out of its own multi-billion-dollar budget, just on its new Action Plan for the town and village courts.

However the court system may ultimately evolve, it seems clear that effective enforcement of judicial ethics rules is an essential element in promoting public confidence in the administration of justice. But the resources allocated to the Commission on Judicial Conduct for this important job are simply not enough.

As often as I am asked why we suffer from this chronic budgetary neglect, I answer that I honestly do not know. It may be the result of indifference. It may be that we are too small to register on anyone's budgetary radar scope. It may be that, because appointments to the Commission are nearly evenly divided among the three branches of government, with no one branch dominating, no one branch feels we are its to protect. Or it may be the result of a deliberate policy, ironically deriving from our hard work and success. Strained though our resources are, New York perennially leads the nation in judicial disciplinary activity. In 2005, we publicly disciplined 30 judges, more than any other two states combined. Last year, as we started to buckle under the strain of so many pending cases, we publicly disciplined 14 and were 2 for 2 in the Court of Appeals, which was still enough to lead every other state in the nation. Perhaps some of our capitol policymakers worry that a Commission doing so much on so little would do too much with more. The truth is, however, that the most significant result of more funding would be speedier dispositions, including public discipline where warranted and, more likely, exonerations, since the truth also is that most judges work hard and abide by the Code of Judicial Conduct.

Subject Matter

As to most of the subject matter areas Commission investigations cover – conflicts of interest, intemperate demeanor, asserting the prestige of judicial office for

private benefit, inappropriate political activity – town and village justices and higher-court judges alike have been disciplined by the Commission. There are three areas, however, where we have had proportionally more experience with town and village justices.

1. Uniquely, town and village court justices are responsible for promptly depositing court funds (such as fines and bail) in court bank accounts and promptly remitting such funds to the State Comptroller. Full-time judges of higher courts do not literally handle the court's money or, in general, directly supervise the administrative staff that does. The higher courts tend to have full-time professional staffing to handle such matters. Through 2005, we have had 92 complaints that resulted in public discipline, including removals from office, for the mishandling of funds or the failure to supervise rigorously the clerical staff assigned to handle the money. Virtually all of these were town and village justices.

2. Full-time judges are not permitted to practice law. Part-time judges who are also licensed to practice law may do so, but their judicial duties must take priority, and there are restrictions on the scope of their law practice. For example, a part-time lawyer-judge may not practice in his or her own court, and may not appear in cases before another part-time lawyer-judge in the same county, to avoid even the appearance that they would accommodate each other with favorable rulings. Fortunately, the Commission was far more likely to encounter problems in this area 20 years ago than today.

3. The Code of Judicial Conduct requires a judge to respect and comply with the law, to be faithful to the law and to maintain professional competence in it. The

Commission has determined and the Court of Appeals has upheld discipline against judges of both town and village courts and higher courts for shocking disregard of fundamental rights – whether it was the city court judge who repeatedly failed to advise defendants of the right to counsel or the town justice who summarily held a defendant guilty without a plea, trial or other due process. It would be fair to say, however, that in this regard, the Commission has seen proportionally more legitimate complaints involving town and village justices than others.

Conclusion

It is important to remember that, because of the Commission’s role as the state’s judicial ethics enforcer, I am more likely to be acquainted, at least by reputation if not personally, with judges who have gotten into trouble for bad conduct than judges who have avoided it with good conduct. Nothing pleases me more – or greatly relieves a judge – than when I am introduced to a jurist whose name is utterly unfamiliar to me.

I offer these observations to the Judiciary Committee without agenda, in response to the Committee’s request that I appear and give some straightforward commentary based on 30 years of experience and a formidable body of judicial disciplinary law. We take our cases as they come, and our record speaks for itself.

Any system will have both its strengths and flaws, and so long as it is made up of fallible human beings, there will be a need for a Commission on Judicial Conduct, whose annual report aptly describes its mission: “to enforce high standards of conduct for judges, who must be free to act independently, on the merits and in good faith, but also must be held accountable by an independent disciplinary system should they commit misconduct.”