

STATEMENT OF
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TO THE
JOINT LEGISLATIVE BUDGET COMMITTEE HEARING
ON THE
2024-25 EXECUTIVE BUDGET



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Table of Contents

Overview	1
Background: The Commission's Unique Constitutional Status	5
Codifying the Commission's Budgetary Relationships	6
The Commission's Record of Accomplishment	7
Conclusion	8
Selected Budget Figures: 1978 to Present	8

Overview

Without consultation or explanation, the Division of the Budget (DOB), which produces the Executive Budget, slashed the Judicial Conduct Commission's budget request by almost \$600,000.

Our request for \$8.9 million – an increase of \$770,000 – was based on carefully considering our increased fixed costs and the need to add staff and upgrade our technology to process our burgeoning caseload.

In response, as usual, DOB unilaterally picked a much lower number without so much as a phone call or email. Their recommendation of a \$184,000 increase – a flat two percent¹ – will not cover mandated salary increases for existing staff, let alone filling vacancies, or covering our 2024 rent increases, IT upgrades and licenses. Incredibly, just a few months ago, DOB signed off on a contract for more than \$400,000 for a badly needed case management system, but provided not one penny in this budget to pay for it.

The Commission received 2,800 complaints in 2023 – our highest total ever, nearly 15% more than in 2022, and 44% more than our caseload just five years ago. Unless the Legislature steps in, the level of funding proposed for our agency in the current Executive Budget will not allow us to keep pace. We would have to

¹ In contrast, the Executive Budget proposes a 13% increase – \$1.3 million – for the State Inspector General. And the Judiciary requested a 7% increase, to which the Governor did not object.

shelve plans to increase our full-time staff from 49 to 56.² And we would not have the resources to meet all our contractual obligations, such as the annual rent increases negotiated and approved by OGS³ and DOB, the DOB-approved contract for a case management system, or legislatively-mandated staff salary increases.

This annual budget game, in which DOB insists on treating the Commission as a gubernatorial agency subject to its control, does not befit a constitutionally independent and successful ethics-enforcement entity such as the Commission.

I know from our experience together over many years that the Legislature appreciates the Commission's work. Some highlights this year:

- Over 2,800 new complaints processed – a record.
- Over 500 preliminary reviews and inquiries.
- Over 200 full-fledged investigations – the most since 2010 and a 28% increase over our 10-year average.
- 17 judges publicly disciplined, 13 of which were removals or stipulated permanent resignations.

I also know that the Legislature understands the Commission's unique relationship to the Executive and Judicial Branches. We perform a purely Judicial Branch function: investigating and, where appropriate, disciplining judges for ethical misconduct. While it would be a serious conflict for our funding to come from or be controlled by the Judicial Branch whose officers we oversee, it would

² In comparison, back in 1978, we had 63 full-time staff.

³ Office of General Services.

also be a serious breach of the separation of powers doctrine for the Governor or others in the Executive Branch to control the entity that reprimands or removes judges from office.

Thus, it was decided at our creation in 1978 that the Commission's budget would be submitted to the Legislature by the Governor. But that protocol never meant the Governor, either directly or through DOB, would unilaterally decide what the *Judicial Disciplinary* budget should be. Yet with few variations over the years, that is what DOB has done.

And so, as you well know, year after year I have asked the Legislature to make up the difference. And time and again, you have done so, adding hundreds of thousands of dollars – and, in 2007, \$2 million – to the arbitrary, unilateral figures proposed in the Executive Budget.

Over the weekend, in response to a New York Law Journal article about our budget shortfall, the Governor's press office said they look forward to budget conversations with stakeholders. While we would welcome the dialogue, at this point the conversation must be about putting an end to this budget game, once and for all. The Commission invites the Governor to join us in supporting pending legislation, passed overwhelmingly by the Senate and awaiting Assembly action (S4398, A40980), which would require that our annual budget request be transmitted to the Legislature in the same way as the Judiciary's budget – with

comment but without amendment by the Governor. Let's codify in statute what the Constitution already makes clear: the Commission on Judicial Conduct is not a gubernatorial agency, and it should not be treated as if it were.

As you know, the pending legislation also addresses two other important reforms: extending the Commission's jurisdiction so that judges may not evade public discipline by leaving office when we open an investigation, and fostering transparency by making our proceedings public upon filing formal disciplinary charges, as they are in 38 other states.

I have had encouraging discussions with Senate and Assembly leaders about this legislation and our present budget situation. I hope you will agree that now is the time to act.

Background: The Commission's Unique Constitutional Status

The Commission on Judicial Conduct is created in the Constitution to enforce judicial ethics by investigating and disciplining judges for misconduct. Since 1978, we have handled nearly 65,000 complaints and publicly disciplined 945 judges.⁴

The Commission's design is purposefully and uniquely independent. Its 11 members are appointed by leaders of the judicial, legislative and executive branches, but no one appoints a controlling number, and the Commission itself elects a Chair and designates a full-time Administrator/Counsel as chief executive officer.⁵ Commission members serve without compensation.

To avoid an obvious conflict, our funding is not controlled by the Judiciary or the Office of Court Administration. It comes from the Legislature, which considers both the Governor's recommendation in the Executive Budget and the Commission's response. But the Commission is not an Executive agency reporting

⁴ From its inception in 1978 through December 31, 2023, we have rendered 182 removals from office, 131 stipulated resignations and 632 public reprimands. However, these numbers should not lead to the misimpression of a judiciary run amok. While 1.5% of our complaints result in discipline, the vast majority – 98.5% – are dismissed after individualized analysis or inquiry. In this way, we enhance the independence of the judiciary by absorbing criticism that would otherwise be directed at them, absolving them where appropriate and freeing them to decide cases on the facts and the law, without outside influence.

⁵ The Commission is comprised of four judges, five lawyers and two non-lawyers. The Governor appoints four members, the Chief Judge appoints three, and one each is appointed by the Assembly Speaker and Minority Leader, the Senate President Pro Tem and Senate Minority Leader.

to the Governor. Indeed, the Commission is created in the Judiciary Article of the Constitution, its statutory operating authority is in the Judiciary Law, and its function is strictly limited to Judicial Branch ethics enforcement.⁶

Of course, we strive for a collaborative relationship with the Executive Branch – as with other constitutionally independent entities such as the Office of the Attorney General, the Office of the State Comptroller and the Judicial Branch – but our constitutional independence has not always been appreciated or accommodated by DOB.

In contrast, the Legislature has been most appreciative and, significantly, has supplemented the Executive’s budget recommendation for us multiple times since 2007, by a total of nearly \$3 million.

Codifying the Commission’s Budgetary Relationships

Too often we have been disadvantaged by incumbents or budget officials unattuned to the Commission’s constitutional independence or unappreciative of the fundamental separation-of-powers principle at stake. With us as with you, working relations with the staffs of some governors vary.

It is critically important, therefore, to build some stability into the budget process, equivalent to existing law that requires the Governor to transmit the Judiciary’s budget – without revision but with comment – to the Legislature. To

⁶ Article VI, Section 22, of the Constitution; Article 2-A, Sections 40-48, of the Judiciary Law.

that end, pending legislation would add a new subdivision 7 to Judiciary Law

Section 42, as follows:

The commission shall transmit its annual budget request to the governor for inclusion in the executive budget without revision but with such recommendation as the governor may deem proper.

We have also discussed two other important statutory proposals: extending the Commission's jurisdiction so that judges may not evade discipline by resigning from office, and fostering transparency by making its formal disciplinary charges public, as they are in the majority of states.

The Commission's Record of Accomplishment

The Commission may well be the most consistently effective ethics-enforcement entity in government, as reflected in this record of accomplishment since its inception in 1978:

- Over 65,000 complaints processed, including 2,800 in 2023 – the most ever in a single year.
- Over 10,000 preliminary reviews and inquiries.
- Nearly 10,000 full-scale investigations.
- 945 public dispositions:
 - 182 removals
 - 131 permanent resignations
 - 349 censures
 - 283 admonitions
- Nearly 1,800 confidential cautionary letters were issued to judges.
- 205 investigations are currently pending.

Conclusion

I appreciate the warm reception and thoughtful consideration the Legislature always gives me. I hope you support the Commission's request for a budget of \$8.9 million. Even more, I hope we finally memorialize in statute a budgetary process that accounts for the Commission's unique constitutional status and protects the fundamental separation-of-powers doctrine on which it is based.

SELECTED BUDGET FIGURES: 1978 TO PRESENT

Fiscal Year	Budget (Millions)*	Complaints Received	Preliminary Inquiries	New Investigations	Pending Year End	Attorneys / Investigators	Total Staff **
1978-79	\$1.6	641	NA	170	324	21 / 18	63
1996-97	\$1.7	1,490	492	192	172	8 / 2	20
2006-07	\$2.8	1,500	375	267	275	10 / 7	28
2007-08	\$4.8	1,711	413	192	238	17 / 10	38
2019-20	\$6.0	1,944	505	149	231	16 / 7	40
2022-23	\$7.2	2,439	545	169	186	22 / 8	46
2023-24	\$8.1	2,800	505	205	205	24 / 8	49
2024-25	\$8.3 proposed in the Executive Budget; \$8.9 requested by the Commission						49***

* Figures are rounded.

** Reflects full-time employees (FTEs).

*** 56 FTEs is the Commission's goal.