

STATEMENT OF  
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TO THE  
**JOINT LEGISLATIVE BUDGET COMMITTEE HEARING**  
ON THE  
**2020-21 EXECUTIVE BUDGET**



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## **Executive Summary**

For the 9<sup>th</sup> time in 10 years, the Executive Budget recommends no increase in funding for the Commission on Judicial Conduct (CJC). We request a modest \$330,000 increase – the same amount the Legislature added to our appropriation last year – which the Commission needs to continue rebuilding our depleted staff and to fully reinstate essential services. We asked for last year’s \$330,000 increase as the first step in a two-year rebuilding program. An equivalent legislative boost this year would complete our comeback by allowing us to refill staff positions lost to prior budgetary constraints, meet our ever-increasing contractual obligations and keep abreast of our steadily increasing caseload.

In contrast, the Executive proposes to keep us flat at \$6,026,000, which would cause us to freeze or reduce staff in order to cover rising operational costs.

CJC was created in the Constitution to enforce judicial ethics on the state’s 3,300 judges by investigating and disciplining them for misconduct. Since 1978, we have handled over 57,000 complaints and publicly disciplined 865 judges.<sup>1</sup>

Last year, we removed or facilitated the permanent resignation of seven judges and publicly reprimanded six.

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<sup>1</sup> 173 removals from office, 89 stipulated resignations and 603 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, and by absolving them where appropriate and freeing them to decide their cases on the merits.

To avoid the obvious conflict of our funding being controlled by the very judiciary we discipline, our budget has been submitted to the Legislature by the Executive since 1978. However, CJC is not an Executive agency reporting to the Governor. We do strive for a collaborative relationship with the Division of the Budget (DOB), similar to other constitutionally independent entities such as the Office of the Attorney General, the Office of the State Comptroller and the Judicial Branch. In the past, I was able to discuss and reach agreement with the Governor's senior staff on the Executive's budget recommendation for CJC. In recent years, our budget request has been received without comment or discussion by DOB, which tends to propose keeping us "flat." Still, I look forward to a return of the collaborative process that makes for good government.

Last year the Legislature took an important first step in relieving years of fiscal stress, in which our workload increased by 25% while our staff was reduced by 25%. In 2007, we handled 1,711 matters in 2007 with a staff of 51 full-time employees (FTEs). In each of the last four years, we handled between 1,923 and 2,143 matters with a staff of only 38 FTEs.

Thanks to the Legislature's intervention last year:

- We are now at 42 FTEs as of February 2020, but we are still well under our authorized full level of 50 FTEs.
- We have cut down on our disposition time by bringing in court reporters to transcribe our hearings, allowing other staff to devote time to more substantive responsibilities. The average

disposition time for all complaints fell from 115 days in 2018 to 97 days in 2019. The average time to discipline a judge, after full-fledged due process proceedings, also fell from 266 days to 253. But we still have a backlog of 235 pending cases, up from 207 at the end of 2018, due to a 4<sup>th</sup> quarter surge in new complaints and our simultaneous attention to several unrelated but highly complex priority cases.

- For the first time in years, we did not have to hold positions vacant to have enough funds to meet increased contractual obligations such as rent and mandated salary increases.

Public confidence in the courts requires a judiciary both independent and accountable. While most of our state’s 3,300 judges are capable and conscientious, the public must be assured that misconduct will be redressed in a timely manner. The best way to do so is to ensure well-resourced ethics enforcement.

### **CJC’s Record of Accomplishment**

Since 1978, CJC has publicly disciplined 865 judges throughout New York State, including 173 who were removed and 89 who resigned and stipulated never to return. In 2019, there were six such determinations:

- Removal of a judge who denigrated women in judicial proceedings by referring to them with the “c word” and other pejoratives;<sup>2</sup>
- Permanent resignation of a judge for an online post that depicted a noose as something needed to “Make America Great Again;”<sup>3</sup>

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<sup>2</sup> <http://cjc.ny.gov/Determinations/S/Senzer.htm>. The case is on review in the Court of Appeals and will be argued March 24, 2020.

<sup>3</sup> <http://cjc.ny.gov/Determinations/C/Canning.htm>

- Permanent resignation of a judge charged with publicly denigrating the legal system and lawyers, and publicly saying some people should be sentenced to “swinging outside the door;”<sup>4</sup>
  - Permanent resignation of a judge who signed an arrest warrant for the husband in a divorce case, notwithstanding that, as a part-time judge who also practiced law, he was representing the wife;<sup>5</sup>
  - Permanent resignation of a judge charged with calling the local police chief and thwarting the arrest of his former brother-in-law for DWI;<sup>6</sup> and
  - Permanent resignation of a judge who *inter alia* engaged in partisan politics.<sup>7</sup>
- And just this month, we announced the permanent resignation of a newly

reelected Supreme Court Justice accused of creating a hostile workplace environment for years by making inappropriate personal demands on staff.<sup>8</sup>

### **CJC’s Constitutional Status**

CJC is created in the Judiciary Article of the Constitution, and its operating authority is in the Judiciary Law.<sup>9</sup> The 11 CJC members – four judges, five lawyers, two non-lawyers – are appointed by leaders of the judicial, legislative and executive branches, but none appoints a controlling number, and CJC itself elects a Chair and appoints a full-time Administrator/Counsel as chief executive officer.<sup>10</sup>

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<sup>4</sup> <http://cjc.ny.gov/Determinations/S/Stone.htm>

<sup>5</sup> <http://cjc.ny.gov/Determinations/K/Katz.Jonathan.D.htm>

<sup>6</sup> <http://cjc.ny.gov/Determinations/M/Mann.htm>

<sup>7</sup> <http://cjc.ny.gov/Determinations/C/Chamberlain.htm>

<sup>8</sup> <http://cjc.ny.gov/Determinations/R/Rosenbaum.htm>

<sup>9</sup> Article 6, Section 22, of the Constitution, and Article 2-A, Sections 40-48, of the Judiciary Law.

<sup>10</sup> The Governor appoints four, the Chief Judge appoints three, and one each is appointed by the Assembly Speaker and Minority Leader, and the Senate President Pro Tem and Minority Leader.

To avoid an obvious conflict, our funding is not controlled by the judiciary or the Office of Court Administration (OCA). A recommended figure is submitted to the Legislature in the Executive Budget. Where the Executive and CJC disagree, I may appeal to the Legislature directly for help, which is not something a commissioner who reports to the Governor is likely to do.

In the past, the Legislature has been most receptive, supplementing the Executive's recommendation four times since 2007.<sup>11</sup> This helped us reduce what was a growing backlog of pending cases. In recent years, however, as our staff decreased while our caseload increased, the backlog recurred, spurring the Legislature to act last year and, I hope, again this year.

### **Prudent Budgeting and a Responsible Funding Request**

Judicial accountability and ethics enforcement are important enough to fund adequately. A modest \$330,000 increase, getting us to \$6,356,000 this year, seems doable in the context of a \$178 billion state budget.

The Commission appreciates the fiscal demands on DOB and all of state government, and we have worked hard to use our resources wisely and function with less. Since 2012, we have: (1) reduced staff; (2) eliminated stenographic

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<sup>11</sup> In 2007, after two decades of chronic underfunding, the Assembly and Senate Judiciary Committees held public hearings and increased the Commission's budget from \$2.8 million to \$4.8 million. Thrice since then, the Legislature supplemented the Executive's recommendation, twice by \$100,000, and last year by \$330,000.

services and produced transcripts in-house, at great cost to our efficiency and disposition time, until phasing stenos back in after last year's legislative boost to our budget; (3) curtailed our formal training program; and (4) adopted one-time cost-saving technologies that save money once but cannot be repeated. Last year, the Legislature recognized that such efficiencies only go so far and that some, such as eliminating stenographic services, are counter-productive, particularly for a small agency with no "fat" to trim.

To put the matter into greater perspective, consider that in 1978, when we had a caseload of 641 complaints a year, we supported a staff of 63 on a budget of \$1.644 million. Under a formula often used to justify other increases – adjusting our 1978 appropriation for inflation – our present budget should be \$6.446 million, or \$420,000 more than our current budget. I am asking for \$6.356 million, which would allow us to bring our staffing up to 46 FTEs – still less than the 50 we are allotted, but enough to keep us on the right track.

### **The Toll from Years of Flat Budgeting**

From 2011 into 2019, in order to make ends meet on virtually the same dollar amount while rent and other mandated costs have increased, we made significant cuts in staff while modernizing our operations to achieve significant cost savings. For example:

1. **Staff Cuts.** Our allotment of full-time employees (FTEs) had dropped by 25%, from 51 in 2007 to 38 in 2018, due to funding constraints. A 25% reduction in force is significantly higher than the overall state government average of about



9% in the same time frame. As a result of the Legislature's help last year, we just got back up to 42 FTEs this month.

2. **Stenographic Services.** To save about \$200,000 a year, we eliminated all outside stenographic services from 2009 through 2018.<sup>12</sup> We produced over 12,000 transcript pages a year in-house, by audio-recording testimony and having our own staff type and proofread it. This process was far more time-consuming than a professional stenographic service and slowed us in at least two ways.
  - A. Transcript production is delayed in individual cases; therefore, disposition of those cases is slowed.
  - B. Employees who are tied up preparing transcripts are not free to work on other matters, thus slowing down resolution of those matters. Depending on the complexity of the case and the number of witnesses, it adds two to six months to our disposition time just to prepare transcripts.

Last year's legislative boost to our budget allowed us to start phasing back in our use of professional stenographers, quickening the pace of our activities and freeing administrative staff for other important work.

3. **Reduction in Fleet and Travel.** We reduced our agency allotment of automobiles from nine to seven. We reduced investigative field travel, which delayed the resolution of some matters. There is no substitute for visiting and developing an appreciation for the scene and context in which misconduct is alleged to have occurred. And many witnesses, particularly from remote parts of the state, are unable to take time off or otherwise travel to our offices in New York, Albany or Rochester, necessitating our travelling to them. We have also reduced intra-agency meeting travel, relying instead on video conferencing.
4. **Administrative Cost-Cutting.** With technology that became affordable to us only as a result of the major increase in our funding in 2007, we have achieved significant savings, such as:
  - A. We switched from conventional telephone service to Internet-based VOIP service, dramatically cutting costs. We also eliminated all 11 agency cellphones. Where we used to spend nearly \$38,000 a year on phones, we now spend less than \$1,000.

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<sup>12</sup> We gave up stenographic services prior to 2007 as a cost-cutting measure, but with a statutory mandate and due process obligations, we still have to produce transcripts in order to create a record of our various investigative and formal disciplinary proceedings. In 2007 and 2008, after a major funding increase by the Legislature, we reinstated stenographic services. Due to flat budgeting, we had to cut them out again. In 2019, we began phasing them back in, thanks again to the Legislature.

- B. We scan virtually all documents into “pdf” format and distribute them electronically. Consequently, our photocopying, paper and postage costs have dropped dramatically, particularly as it pertains to the 11 sets of voluminous materials we must produce for our 11 Commission members for each Commission meeting. Where we used to spend over \$17,000 a year on postage, we now spend less than \$5,000. Where we used to spend over \$8,000 a year on paper, we now spend around \$3,000.
- C. Where we used to spend more than \$14,000 a year on law books, periodicals and newspaper subscriptions, we now rely primarily on low-cost Internet options and spend around \$2,000.

**All of these were one-time savings, eliminating expenses we no longer have and therefore cannot cut again.**

Some of these changes, such as staff attrition, were negative, and we finally reversed the trend this past year, thanks to the Legislature’s help. Others are positive and will be permanent, though even the constructive changes made in a given year do not save us money in succeeding years. For example, for Commission meetings we now prepare all agenda materials electronically, *i.e.* no paper, and no mailing costs.<sup>13</sup> But this only saved us money in 2011, when we implemented the paperless agenda. Having saved thousands of dollars in paper and mailing costs that first year, we no longer have those items in our budget and therefore cannot cut them again.

All of these savings in prior years were used to cover mandated increases in costs and, to the extent possible, redirected toward new necessities. For example,

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<sup>13</sup> The success of our paperless management is such that representatives of government agencies from New York and other states have come to study and emulate it.

with our increasing reliance on IT in lieu of more traditional media (*e.g.* scanning and emailing documents rather than photocopying and mailing them), we must pay to upgrade our computers when their warranties expire and keep our annual software licenses up to date. Annual software licensing fees and anti-virus protection cost us around \$30,000 more annually now than a decade ago.

Ten years of creative belt-tightening on an already small budget did not save us from the painful consequences of flat budgeting. Flat budgeting is regressive. It forced us to reduce staff and services to survive on the same dollar amount, year after year. In 2019, for the first time in a decade, we started to reverse that trend, thanks to the Legislature's significant financial boost to our appropriation.

### **Conclusion**

CJC still needs help, to complete our recovery from a decade of financial constraint and decline.

As I have in the past, I respectfully appeal to the Legislature to recognize the important work we have accomplished, the vital mission we fulfill, and the sacrifices we have made. None of us wants to relinquish New York's well-earned leadership in the field of judicial ethics enforcement. I ask you to supplement the Executive recommendation by the same \$330,000 you added last year.

Thank you, as ever, for the warm reception and thoughtful consideration you always give me.

### SELECTED BUDGET FIGURES: 1978 TO PRESENT

Fiscal Year	Annual Budget <sup>1</sup>	New Complaints <sup>2</sup>	Prelim Inquiries	New Investigations	Pending Year End	Public Dispositions	Full-Time Staff
1978	1.6m	641	N.A.	170	324	24	63
1988	2.2m	1109	N.A.	200	141	14	41
1996	1.7m	1490	492	192	172	15	20
2006	2.8m	1500	375	267	275	14	28
2007	4.8m	1711	413	192	238	27	51
2008	5.3m	1923	354	262	208	21	49
2017	5.6m	2143	605	148	173	16	41
2018	5.7m	2000	497	167	207	19	38
2019 <sup>3</sup>	6.0m	1950	450	152	235	13	39
2020						3	42

<sup>1</sup> Budget figures are rounded off; budget figures are fiscal year (Apr 1 – Mar 31).

<sup>2</sup> Complaint figures are calendar year (Jan 1 – Dec 31).

<sup>3</sup> Highlighted figures for 2019 are unofficial.