

STATEMENT OF
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TO THE

JOINT LEGISLATIVE BUDGET COMMITTEE HEARING
ON THE
2022-23 EXECUTIVE BUDGET



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(By Video)
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Executive Summary

For the first time in over a decade:

- The Executive Budget recommends what the Judicial Conduct Commission requested: \$7,189,000.¹
- The Governor's office appreciates that the Commission is a constitutionally independent agency with Judicial Branch responsibilities, not an Executive agency subject to the control of the Governor's office, Division of Budget or other bodies that exercise authority over Executive agencies.

This new and welcome cooperation could easily disappear under a future Governor, as was sometimes the case in the past. It therefore should be made permanent by adding a single sentence to the Commission's governing statute:



Proposed new subdivision 7 to Judiciary Law Section 42:

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.



This new statutory language would emulate the manner in which the Executive transmits the Judiciary's budget request to the Legislature with comments but *without revisions*. It is my hope this will be included in the Governor's 30-day budget amendments, or alternatively that the Legislature will introduce and pass a bill to implement it this year.

¹ This would allow us to hire additional staff, implement case-management and records-keeping software, and meet mandated increases in various contractual obligations.

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 over 60,000 complaints and publicly disciplined 903 judges.²

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.³ 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

² From its inception in 1978 through December 31, 2021, we have rendered 175 removals from office, 110 stipulated resignations and 618 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.

³ 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.⁴

Of course, we strive for a collaborative relationship with the Governor and the Division of Budget (DOB) – as do 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.

In contrast, the Legislature has been most appreciative and receptive and has modeled other ethics-enforcement entities on the Commission. Significantly, the Legislature has supplemented the Executive’s budget recommendation for us five times since 2007.⁵

This year, I am very pleased to report that Governor Hochul and her senior staff appreciate the Commission’s constitutional independence and its accomplishments. For the first time in over a decade, the Executive Budget recommends the funding level we requested: \$7,189,000, representing an increase of \$840,000 over last year.

⁴ Article VI, Section 22, of the Constitution; Article 2-A, Sections 40-48, of the Judiciary Law.

⁵ In 2007, after two decades of chronic underfunding, the Legislature held hearings and increased CJC’s budget from \$2.8 million to \$4.8 million. Four times since then, the Legislature has supplemented the Executive’s recommendation, twice by \$100,000, and twice in the last three years by \$330,000.

Codifying the Commission's Budgetary Relationships

As gratifying as it is to get fair treatment from *this* Governor and her senior staff, too often we have been disadvantaged by incumbents or budget officials less attuned to the Commission's constitutional independence or less appreciative of the fundamental separation-of-powers principle at stake. History suggests that as swiftly as *this* Governor positively changed the dynamic, her successors and their budget officers could just as easily revert to the unsatisfactory old ways.

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 that end, I have asked the Governor's Office to propose Article VII budget bill language as follows:

Proposed new subdivision 7 to Judiciary Law Section 42:

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.

It is my hope that this proposal appears in the Governor's 30-day Amendments to the Executive Budget. If it does not, I respectfully request that the Legislature independently adopt and present it to the Governor, once and for all codifying an appropriate budgetary relationship among the Commission, the Executive and the Legislature.

The Commission's Record of Accomplishment in Pandemic Times

As it became clear in early 2020 that a novel coronavirus was going to disrupt business-as-usual dramatically, CJC prepared a contingency plan that went into effect in early March. Among other things:

- VPN accounts were activated for all staff, providing for remote electronic access to our agency network.
- Accounts for electronic postage, faxes and other services were instituted or upgraded.
- Agency laptops and supplies were distributed for remote use.
- Electronic platforms were initiated for Commission meetings, video conferencing, depositions, hearings and other agency business that ordinarily would have occurred in person.

The results have been dramatic, due in large part to the dedicated and professional efforts of our staff and the dedication of our Commission members. In these past two pandemic-plagued years:

- We processed over 3,400 new complaints.
- We conducted over 633 initial reviews and inquiries.
- We initiated 240 full-fledged investigations.
- We removed or effectuated the permanent resignation of 24 judges, publicly censured 11, publicly admonished 6 and confidentially cautioned 53.
- We successfully defended two removal decisions that were appealed to the Court of Appeals: a judge who denigrated women in judicial proceedings by referring to them with the “c word” and other pejoratives, and a judge who *inter alia* failed to report or pay taxes on thousands of dollars in extra-judicial income.⁶

⁶ <http://cjc.ny.gov/Determinations/S/Senzer.htm>;
<http://cjc.ny.gov/Determinations/M/Miller.Richard.2.htm>

A History of Responsible Financial Management

For a much of the last decade and a half, the Commission's budget has been "flat" from year-to-year. The lack of additional funding required us to make significant cutbacks in existing operations to keep from falling into a deficit. Most significantly, this led to a 22% reduction in full-time employees (FTEs) from 51 in 2007 to 39 in 2020.

Thanks to the intervention of the Legislature, which twice in the last three years increased our budget by approximately 5%, we are now at 43 FTEs. With this year's Executive Budget recommendation, we expect to hire at least two additional staff, implement much-needed case-management and records-keeping software, and meet various mandated increases in salaries, rent and other contractual obligations.

Conclusion

I appreciate the warm reception and thoughtful consideration the Legislature always gives me. I also welcome the mutually respectful relationship between my office and the Governor's. I hope we may all take advantage of this unusual moment to put into law a budgetary process that appropriately 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	Annual Budget ¹	New Complaints ²	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
2019	6.0m	1944	505	149	231	13	39
2020	6.0m	1504	318	120	177	24	39
2021	6.4m	1935	315	120	185	17	43

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

² Complaint figures are calendar year (Jan 1 – Dec 31).