

**STATEMENT OF  
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**TO THE  
JOINT LEGISLATIVE BUDGET COMMITTEE HEARING  
ON THE  
2019-20 EXECUTIVE BUDGET**



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## **Introduction**

My story line is simple. The Judicial Conduct Commission needs budgetary help. While our workload increases, our resources remain flat and our staff decreases. We handled 1,711 matters in 2007 with a staff of 51 full-time employees (FTEs); in 2017 and 2018 we handled over 2,000 a year, and our staff is down to 38 FTEs. That represents a 25% increase in complaints and a 25% decrease in staff, all because our budget has been virtually flat for almost a decade. I believe the public interest requires us to do better.

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 those who misbehave will be held to account. The best way to do that is by ensuring that ethics enforcement is well resourced.

The Commission on Judicial Conduct is an independent agency of state government, created in the Constitution to enforce judicial ethics by investigating and disciplining judges for misconduct. Where appropriate, we admonish, censure or remove judges from office for serious violations of the Code of Judicial Conduct. Since 1978, we have handled over 55,000 complaints and publicly disciplined 849 judges.<sup>1</sup> We are the busiest judicial disciplinary entity in the

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<sup>1</sup> 172 removals from office, 83 stipulated resignations and 594 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

country. In 2017 we handled a record 2,146 complaints, and we had another 2,000 in 2018. And we do it all on a relative shoestring.

For nine years, our budget has been relatively flat: \$5.4 million in 2010, and just under \$5.7 million today. Meanwhile, because our workload has increased while our staff has decreased, we have been forced to make other significant economies that have impeded our operations. Consequently, it takes longer for us to complete our investigations, which is not fair to the innocent judge awaiting exoneration, or to the public which rightfully expects the guilty to be disciplined expeditiously.

### **Commission's Relationship to the Three Branches of Government**

We are not an agency of the court system. The 11 Commission members – four judges, five lawyers, two non-lawyers – are appointed by leaders of the executive, legislative and judicial branches.<sup>2</sup>

To avoid an obvious conflict, our funding is not controlled by the judiciary or the Office of Court Administration (OCA). It comes from the Legislature on recommendation of the Executive Budget. Where the Executive

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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 call their cases as they see them.

<sup>2</sup> The Governor appoints four, the Chief Judge appoints three, and one is appointed by each of the legislative leaders: the Assembly Speaker and Minority Leader, the Senate President Pro Tem and Senate Minority Leader. No branch appoints a controlling number, and the Commission itself elects a Chair and designates a full-time Administrator/Counsel as chief executive officer.

and the Commission disagree, I may appeal to the Legislature directly for help. In the past, you have been most receptive, having supplemented the Executive's recommendation three times since 2007.<sup>3</sup> This helped us reduce what was a growing backlog of pending cases. In recent years, however, we have been in retreat, and our backlog is again growing.

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

Are judicial accountability and ethics enforcement important enough to fund adequately and, in the overall scheme of things, modestly, at \$6.055 million a year? While that is what I proposed to the Division of Budget, the Executive Budget recommends \$5.696 million, *i.e.* no increase over last year, not one penny. While I appreciate the demands on DOB, and I hope they find way to meet our request in the 21-day amendments soon to be announced, I do not expect it and cannot count on it.

I also appreciate the demands on all of you from worthy causes competing for a finite share of resources. If you were able to supplement DOB's recommendation, it would help alleviate the strain under which we have been operating for years, and which will no doubt continue into the foreseeable future.

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<sup>3</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. Twice since then, the Legislature supplemented the Executive's recommendation, once by \$100,000 and once by \$78,000.

Over the past nine years, we have tried hard to function with less. We have reduced staff; we have eliminated stenographic transcription services and taken to producing them in-house, at great cost to our efficiency and disposition time; we have curtailed our formal training program; and we have adopted one-time cost-saving technologies that save money once but cannot be repeated. But such efficiencies can only go so far and some, such as eliminating stenographic services, are actually counter-productive. We are a small agency with no “fat” to trim. Years of flat budgeting and corresponding cuts in staff and services have diminished our capacity to resolve matters in timely fashion.

Realistically, a flat budget is less than we need to cover mandatory increases. For example, the lease for our New York City office that OGS recently negotiated will cost us a \$180,000 more this coming fiscal year than last year.<sup>4</sup> I don’t know how to make that up, except by reducing our staff even further, which will slow us down and add to our backlog. We will not be able to put more resources into casework, engage stenographic transcript services or otherwise conclude our disciplinary proceedings in a more timely fashion.

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

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<sup>4</sup> We are only able to mitigate some of that cost because the first year will not include the \$120,000 in tax escalations we paid last year, but we will still fall short by \$60,000.

\$1.644 million. Under a formula often used to justify other increases – taking our 2010 appropriation, when this era of stagnant budgeting began for us, and adjusting it for inflation – our present budget should be \$6.4 million.<sup>5</sup> Instead, I am asking for a little under \$6.1 million, which would allow us to bring our staffing up to 45 FTEs – less than the 50 we are allotted, but enough to get us back on the right track.

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

Since 2010, in order to make ends meet on virtually the same dollar amount while rent and other mandated costs have increased, we have made significant cuts in staff and modernized our operations to achieve significant cost savings. For example:

1. **Reduction in Staff.** Our allotment of full-time employees (FTEs) has dropped by 25%, from 51 in 2007 to 38 now, 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.
2. **Elimination of Stenographic Services.** To save about \$200,000 a year, we again eliminated all outside stenographic services, as we had done prior to 2007.<sup>6</sup> We now produce approximately 12,000 transcript pages every year in-house, by audio-recording testimony and then having our own staff type and

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<sup>5</sup> Our \$5,406,000 budget in 2010-11, compounded annually at 2%, would be worth \$6,416,000 in 2019-20, *i.e.* more than the \$6,055,000 we are actually requesting.

<sup>6</sup> We had given up steno 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 the infusion in our funding by the Legislature, we had the resources to resume stenographic services. This not only relieved our staff of this time-consuming responsibility and freed them to concentrate on other important responsibilities, but also contributed to the more prompt disposition of complaints and investigations.

proofread it. This process, which is much more time-consuming than a professional stenographic service, slows 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.
3. **Reduction in Fleet and Travel.** We reduced our agency allotment of automobiles from nine to seven. We have reduced investigative field travel, which has delayed the resolution of some matters and affected the comprehensiveness of our investigations. 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 2007 increase in our funding, we have achieved significant savings, such as follows.
- A. We switched from conventional telephone service to Internet-based VOIP service, dramatically cutting costs. We also eliminated eight of 11 cellphones and pool our rate-plan for the remaining three. Where we used to spend nearly \$38,000 a year on phones, we now spend around \$7,500.
  - 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, representing money we no longer have and therefore cannot cut again.**

Some of these changes, such as staff attrition, are negative and would be reversed if funding permitted. 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>7</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, 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.<sup>8</sup>

Nine 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 forces us to reduce staff and services in order to survive on the same

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<sup>7</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.

<sup>8</sup> Annual software licensing fees and anti-virus protection cost us nearly \$25,000 more annually now than nine years ago.

dollar amount, year after year. As I have said many times, I am out of acceptable options.

### **Support Expressed by Judicial Associations**

It has not been lost on various judicial associations that an underfunded Commission means longer disposition times both as to exonerating the wrongly accused and disciplining the guilty. In recent days, two judicial associations – the County Court Judges' Association of New York and the New York State Magistrates Association – have passed resolutions calling for a fully funded Judicial Conduct Commission. I am told other judicial associations are taking up the issue as well.

### **Conclusion**

The Commission needs help.

As I have in the past, I respectfully appeal to the Legislature to recognize not only the sacrifices we have made over the past nine years, but the difficult days ahead. 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 \$359,000 the Commission requested.

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 <sup>3</sup>	5.7m	<u>2000</u>	<u>497</u>	<u>167</u>	<u>207</u>	19	38
2019	6.1m <sup>4</sup>	~	~	~	~	~	

<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 2018 are unofficial.

<sup>4</sup> Proposed by the Commission; the Executive Budget recommends \$5.7 million.