

STATEMENT OF
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TO THE

JOINT LEGISLATIVE BUDGET COMMITTEE HEARING
ON THE
2023-24 EXECUTIVE BUDGET



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Table of Contents

Executive Summary	1
Background: The Commission’s Unique Constitutional Status	2
Codifying the Commission’s Budgetary Relationships	4
The Commission’s Record of Accomplishment in Pandemic Times	5
Conclusion	6
Selected Budget Figures: 1978 to Present	6

Executive Summary

For the second year in a row, reflecting the cooperative relationship between the Governor's Office and the Commission on Judicial Conduct, the Executive Budget recommends what the Commission requested for the coming fiscal year: \$8,128,000. Among other things, this would allow us to hire additional staff to cope with a dramatically increasing caseload: 2,439 new complaints in 2022, the most ever in a single year, by far.

Unlike some prior administrations, Governor Hochul's office appreciates that the Commission is a constitutionally independent agency with Judicial Branch responsibilities, not an Executive agency subject to gubernatorial control through the Division of Budget or other Executive entities.

The Commission has also had encouraging discussions with the Chairs of the Senate and Assembly Judiciary Committees regarding proposed legislation to formalize the Commission's budgetary relationship with both the Governor and the Legislature, emulating the manner in which the Executive transmits the Judiciary's budget request to the Legislature with comments but without revisions. These meetings have addressed two other important reforms: 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.

Background: The Commission's Unique Constitutional Status

The Commission on Judicial Conduct was 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 931 judges.¹

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.² 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

¹ From its inception in 1978 through December 31, 2022, we have rendered 178 removals from office, 123 stipulated resignations and 628 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.

² 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.³

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

In contrast, the Legislature has been most appreciative and, significantly, has supplemented the Executive’s budget recommendation for us five times since 2007, by a total of nearly \$3 million.⁴

I am very pleased to report that Governor Hochul and her senior staff appreciate the Commission’s constitutional independence and its accomplishments. For the second year in a row, the Executive Budget recommends the funding level we requested: \$8,128,000, representing an increase of \$939,000 over last year.

³ Article VI, Section 22, of the Constitution; Article 2-A, Sections 40-48, of the Judiciary Law.

⁴ 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, the Commission and the Chairs of the Senate and Assembly Judiciary Committees have discussed a proposed 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 in Pandemic Times

After two years of disruption caused by the Covid-19 virus, much of the Commission's business returned to "normal" in 2022, in that Commission meetings, many investigative interviews, disciplinary hearings and oral arguments were held once again conducted in-person. Yet many efficiencies and innovations implemented as a result of the pandemic have become permanent, such as taking witness depositions via remote video platforms and disseminating documents electronically.

While 2020 and 2021 were busy years⁵ despite the pandemic, 2022 was especially active and, in one significant respect, record-breaking. For example:

- 2,439 new complaints – the most ever in a single year, by far – were received and processed, including more than 1,500 submitted electronically through the interactive complaint portal on the Commission's website.
- 549 preliminary inquiries and/or full-scale investigations were authorized.
- 25 public dispositions – the most in a single year since 2009 – were rendered: 3 removals from office, 12 permanent resignation stipulations, 7 censures and 3 admonitions.
- 27 confidential cautionary letters were issued to judges.

⁵ Through the rapid agency-wide implementation of an electronic communications infrastructure at the onset of the pandemic, and the dedication of Commission members and staff, we accomplished much compared to others: 3,400 new complaints processed, 633 initial reviews & inquiries, 240 full-fledged investigations, 24 judges removed or permanently resigned, 11 judges censured publicly, 6 judges admonished publicly, 53 judges confidentially cautioned, and 2 removals successfully defended on review in the Court of Appeals

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 current Governor's.

I hope we may all take advantage of this unusual moment – where we are all on the same procedural page – to put into law what is now only an informal 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
2020-21	\$6.0	1,504	318	120	177	18 / 8	41
2021-22	\$6.4	1,938	375	125	191	22 / 7	44
2022-23	\$7.2	2,439	545	169	186	22 / 8	46

* Figures are rounded.

** Reflects full-time employees (FTEs). Authorized for 55 FTEs in 2008, and 50 in 2014, but to conserve resources, not all 50 are filled.