



# 2021 Annual Conference

Niagara Falls, New York

Issues in Judicial Ethics & Discipline

September 28, 2021

Presented by:

Robert H. Tembeckjian, Esq.

2.0 MCLE Ethics

This program has been approved for credit in New York State  
for all attorneys including those who are  
Newly Admitted (less than 24 months) and administered by  
the Onondaga County Bar Association.



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**NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT**

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**Robert H. Tembeckjian** has been Administrator and Counsel to the New York State Commission on Judicial Conduct since 2003 and has been on the staff of the Commission since 1976. He received an A.B. from Syracuse University, a J.D. from the Fordham University School of Law, and an M.P.A. from Harvard University's Kennedy School of Government. He was a Fulbright Scholar to

Armenia in 1994, teaching graduate courses and lecturing on constitutional law and ethics at the American University of Armenia and Yerevan State University. Mr. Tembeckjian served on the Advisory Committee to the American Bar Association Joint Commission to Evaluate the Model Code of Judicial Conduct from 2003 to 2007 and served on the editorial board of the Justice System Journal, a publication of the National Center for State Courts. He has also served on various ethics committees of the New York State Bar Association and the New York City Bar Association and on the boards of the Association of Judicial Disciplinary Counsel, the Westwood Mutual Funds, the United Nations International School, and the Civic Education Project.

**New York State Commission on Judicial Conduct  
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## **ISSUES IN JUDICIAL ETHICS & DISCIPLINE**

**NEW YORK STATE MAGISTRATES ASSOCIATION  
ANNUAL MEETING ♦ SEPTEMBER 27-28, 2021 ♦ NIAGARA FALLS, NY**



**HON. DAVID SEARS**  
PLEASANT VALLEY TOWN JUSTICE  
DUTCHESS COUNTY



**ROBERT H. TEMBECKJIAN**  
ADMINISTRATOR & COUNSEL  
COMMISSION ON JUDICIAL CONDUCT



Commission Overview

Undue Delays

The New Bail Law

Right to Counsel at Arraignment

Alcohol-Related Conduct, On or Off Bench


Lack of Available Interpreters

Failure to Cooperate with Commission

What to Do if the Commission Calls



**CONSULT THE ADVISORY COMMITTEE ON JUDICIAL ETHICS**



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Commission on  
Judicial Conduct**

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*Legal Authorities*

Constitution: Art. 6, §22

Judiciary Law: §§40-48

Rules Governing Judicial Conduct:  
22 NYCRR Part 100

Commission Operating Procedures & Rules:  
22 NYCRR Parts 7000, 7001

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*Appointment to the Commission*

**11 Commission Members**

Governor (appoints 4 members)	<ul style="list-style-type: none"><li>• 1 must be a judge</li><li>• 1 must be a lawyer</li><li>• 2 must be non-lawyers</li></ul>
Chief Judge (appoints 3 judge members)	<ul style="list-style-type: none"><li>• 1 must be from Appellate Division</li><li>• 1 must be a town or village justice</li></ul>
Four Legislative Leaders (each appoint one member)	<ul style="list-style-type: none"><li>• May be a lawyer or non-lawyer</li><li>• May not be a judge or former judge</li></ul>

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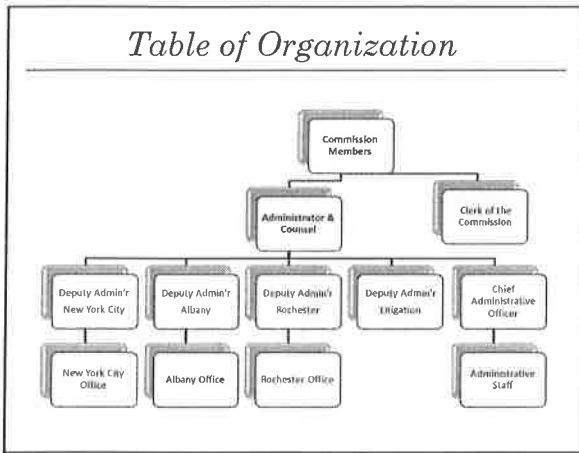
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### *Jurisdiction*



The Commission has jurisdiction over 3,400 Judges and Justices of the State Unified Court System

No jurisdiction over:

- Administrative Law Judges
- Judicial Hearing Officers
- NYC Housing Court Judges
  - Non-judges
  - Federal Judges



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### Confidentiality

#### Judiciary Law Sections 44 & 45

- All proceedings are confidential unless:
  - Judge waives confidentiality
  - Commission determines to publicly discipline a judge



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### Incoming Complaints



- Staff analyzes incoming complaints, conducts initial review and inquiry where necessary (e.g. interviews, document review)

The Commission receives over 1,900 complaints per year

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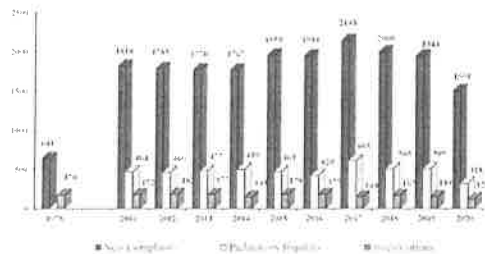
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### 10-Year Overview of Complaints



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### *Commission Review of Complaints*

➤ Commission reviews all incoming complaints, including results of initial reviews & inquiries

➤ Considers complaints on its own motion and directs Administrator to file complaint



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### *Disposition of New Complaints*



Commission may:

- ✓ Dismiss complaint
- ✓ Refer to another agency (e.g. attorney grievance committee, District Attorney)
- ✓ Authorize investigation, including testimony from the judge

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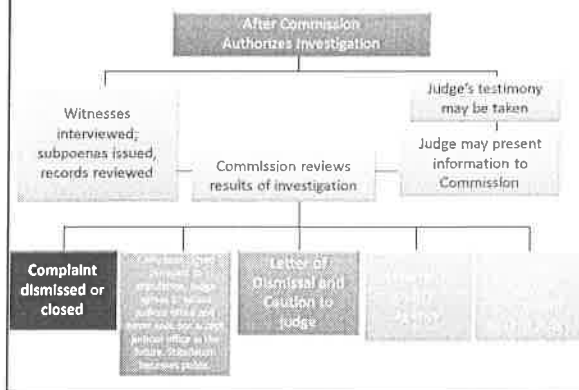
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### *The Investigation*



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### Three Stages of a Formal Disciplinary Proceeding

The following three charts depict the various stages involved in resolving a Formal Written Complaint:

- pleadings and motions
- evidentiary hearing or stipulated agreement
- oral argument and Commission determination
- Court of Appeals review

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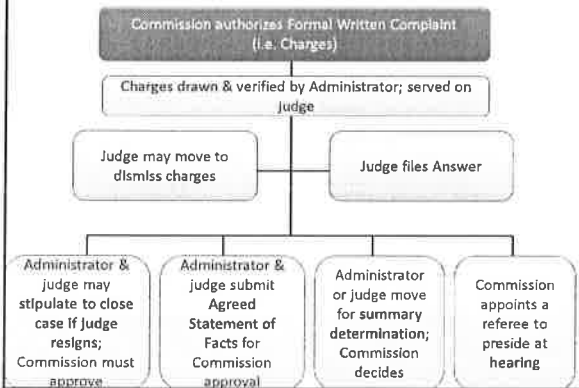
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### Formal Written Complaints




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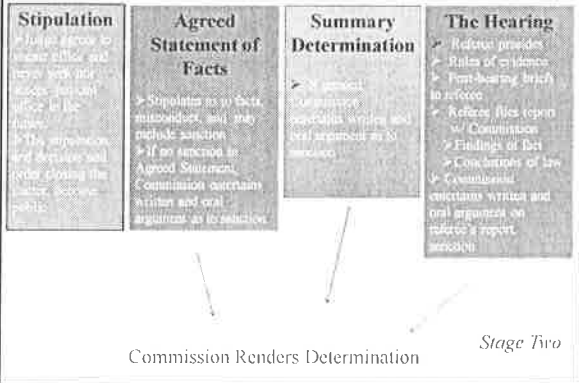
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### Formal Written Complaints




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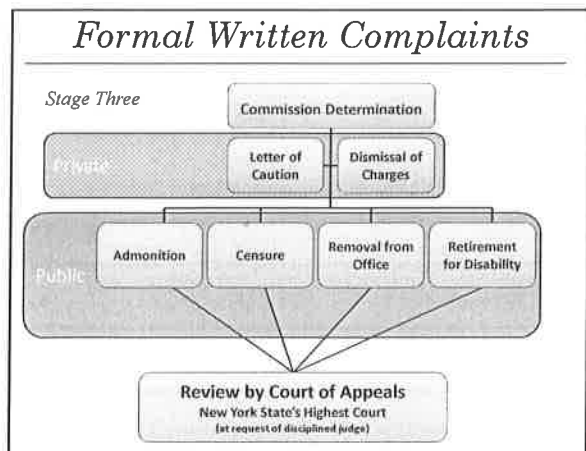
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### A Brief History



The following pages offer a brief history of the development of the Commission system in New York

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### Before there was a Commission...



**Court on the Judiciary**  
*(Ad hoc court for discipline of higher court judges)*

**Appellate Divisions**  
*(Discipline of lower court judges)*

No permanent judicial disciplinary staff, office or procedures

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### *Temporary Commission (1974)*

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1974: New York State Legislature created a Temporary State Commission on Judicial Conduct, with limited authority to investigate complaints and recommend action against judges for engaging in misconduct. The Commission's authority was expanded by constitutional amendments in 1976 and 1978 (following pages).



1960: California is first to create a judicial disciplinary commission.

Today: All 50 states and the District of Columbia have a judicial disciplinary commission of some sort.

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### *Constitutional Amendment (1976)*

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- 9 Commission Members
- Powers:
  - ❖ Investigate complaints
  - ❖ Privately Admonish Judges
  - ❖ Commence Hearings before Court on the Judiciary and Appellate Division
  - ❖ Courts decide whether to Censure, Suspend or Remove Judges from office

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### *2<sup>nd</sup> Constitutional Amendment (1978)*

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- 11 Commission Members instead of 9
- Powers:
  - ❖ Investigate complaints
  - ❖ Conduct formal disciplinary hearings
  - ❖ Determine that a judge be publicly admonished, censured, removed from office, retired for disability
  - ❖ Decisions are final unless disciplined judge seeks review in Court of Appeals

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For More Information  
Please Visit the Commission's  
Website:  
[www.cjc.ny.gov](http://www.cjc.ny.gov)

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### Substantive Resources

- From the Commission's Website:
  - Undue Delays
  - The New Bail Law
  - Right to Counsel at Arraignment
  - Alcohol-Related Conduct
    - On or Off the Bench

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### Substantive Resources (cont'd)

- Lack of Available Interpreters
- Failure to Cooperate with the Commission
- Advisory Committee on Judicial Ethics

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**What to do if the Commission  
Contacts You**

- Don't Panic
- Take It Seriously
- Cooperate!
  - Do Not Fail to Respond
  - Failure to Cooperate Is Itself Disciplinable
- Consider Consulting an Attorney with Experience in Disciplinary Matters

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