



**Issues in  
Judicial Ethics  
&  
Discipline**

DATE: Monday, October 31, 2022  
Instructor(s): Robert H. Tembeckjian, Esq.  
David Sears, Esq.  
MCLE: 2.0 Ethics & Professionalism

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.





**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.



**Hon. David A. Sears** is a Town Justice for the Town of Pleasant Valley and maintains a law practice in Poughkeepsie, NY. His practice areas include representing professionals, including judges, in professional disciplinary proceeds. He is experienced with regulatory agencies governing various professionals and represents professionals from the investigation stage through formal disciplinary hearings.

Judge Sears received his law degree from Pace University School of Law, magna cum laude in 1989. He received a Post Baccalaureate Certificate in Criminal Justice Administration from Virginia Commonwealth University in 1985. Judge Sears has served as adjunct faculty at the Commonwealth of Virginia Department of Corrections Training Academy.





## ISSUES IN JUDICIAL ETHICS & DISCIPLINE

**NEW YORK STATE MAGISTRATES ASSOCIATION**  
ANNUAL MEETING ♦ OCT. 31/NOV. 1, 2022 ♦ SARATOGA, NY



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



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



Commission Overview



Undue Delays

Bail; Right to Counsel at Arraignment  
Improper Delegation of Judicial Duties  
Lack of Available Interpreters  
Alcohol-Related Conduct, On or Off Bench



What [Not] to Do if the Commission Calls  
Failure to Cooperate with Commission



**CONSULT THE ADVISORY COMMITTEE ON JUDICIAL ETHICS**



**POLICY STATEMENTS FROM THE  
WEBSITE OF THE  
NEW YORK STATE  
COMMISSION ON JUDICIAL CONDUCT**



In 2009, the Commission determined that James P. Gilpatric, then a Judge of the Kingston City Court, Ulster County, [should be admonished](#) for failing to render decisions in a timely manner in 47 cases, notwithstanding that he had previously been cautioned by the Commission for delays and that his administrative judge and several litigants had inquired about the delays. The Commission found that such delays constitute “serious misconduct because of the adverse consequences on individual litigants, who are deprived of the opportunity to have their claims resolved in a timely manner, and on public confidence in the administration of justice.”

In an opinion dated December 15, 2009, the Court of Appeals affirmed that the Commission has jurisdiction to investigate complaints of delay in the rendering of decisions and, where appropriate, to pursue formal disciplinary proceedings and impose discipline for inexcusable delay. *Matter of Gilpatric*, 13 NY3d 586 (2009). The Court in *Gilpatric* effectively reversed the holding in an earlier case, *Matter of Greenfield*, 76 NY2d 293 (1990).

In *Greenfield*, the Court had held that decisional delays generally “can and should be resolved in the administrative setting,” and that the Commission could impose discipline where the judge “has defied administrative directives or has attempted to subvert the system by, for instance, falsifying, concealing or persistently refusing to file records indicating delays.” *Id.* at 298. In *Gilpatric*, the Court stated: “after nearly twenty years of experience with *Greenfield*, we think it is not workable to exclude completely the possibility of more formal discipline for [delays], in cases where the delays are lengthy and without valid excuse.” 13 NY3d 586, 589-90 (2009).

The Court in *Gilpatric* held that “lengthy, inexcusable delays may...be the subject of disciplinary action, particularly when a judge fails to perform judicial duties despite repeated administrative efforts to assist the judge and his or her conduct demonstrates an unwillingness or inability to discharge those duties.” *Id.* at 590. The Court remitted the case to the Commission for further proceedings to determine “whether these delayed decisions were inexcusable and whether the problem could have been, or was, adequately dealt with administratively.” *Id.*

In 2010, based on stipulated findings of fact and conclusions of law between the judge and his attorney and the Commission’s Administrator, [Judge Gilpatric was admonished](#) for delays in 26 cases that were lengthy and without valid excuse. In its determination, the Commission explained the adverse consequences of such delays:

We view such delays as significant misconduct because of the adverse consequences on individual litigants, who are deprived of the opportunity to have their claims resolved in a timely manner, and on public confidence in the administration of justice. Twenty-two of the delayed matters were small claims actions, which generally involve relatively simple issues and do not require a lengthy analysis. The “informal and simplified” procedures for small claims are intended to provide litigants with an efficient and just resolution to their legal disputes (Uniform City Court Act §1804). This goal is thwarted and litigants are adversely affected when decisions are unduly delayed. Litigants in such matters, who are often unrepresented and are hoping to receive a prompt adjudication of their claims, have little recourse when months pass without a decision; understandably, they may be concerned that if they complain about the delay, they risk antagonizing the judge who will be deciding their case. The cases depicted in this record offer a cross-section of the kinds of disputes that the “informal and simplified” procedures of small claims are intended to resolve expeditiously. In cases where the law required a decision to be issued within 30 days, a man claiming he was owed \$1,900 by a relative had to wait seven months for a judgment; a tenant seeking the return of her \$800 security deposit had to wait eight months for respondent’s decision; and respondent took nine months to decide a customer’s claim seeking \$90 from a hair salon. To the litigants who filed these claims, the sums at issue were significant and the delays onerous. Moreover, for some litigants such cases may represent their only personal involvement with the courts, and an unduly delayed resolution of their dispute would necessarily have the effect of leaving them with the impression that our judicial system is inefficient and insensitive to their concerns.

Adapted from the [2010 Annual Report, page 16](#) and the [2011 Annual Report, pages 11, 97-106](#).

# Judicial Responses to the New Bail Law



In New York, historically, the sole purpose of setting bail on a criminal defendant has been to ensure that the defendant would return to court for scheduled proceedings. Section 510.30 of the Criminal Procedure Law required the judge to consider various factors in setting bail, including the defendant's previous record, financial resources and ties to the community.

On January 1, 2020, changes in New York's bail law went into effect. A judge may only set bail or order pretrial detention in certain cases, such as violent felonies and a small number of misdemeanors, witness tampering and intimidation, terrorism and terrorism-related charges.

In the short time since January 1st, there has been widespread public and legislative discussion about amending the new law, as strong views both for and against the reforms have been expressed in public forums, on editorial pages and elsewhere.

The Commission does not take a position on the efficacy of the law or on proposals to amend it. The Commission takes this opportunity to remind judges that, whatever their individual views of the law may be, they are obliged under the Rules Governing Judicial Conduct to respect and comply with the law, to be faithful to the law and to maintain professional competence in the law. 22 NYCRR 100.2(A), 100.3(B)(1).

In a particular case, a judge who in good faith interprets the law need not fear disciplinary consequences for what may turn out to be legal error that is reversed on appeal. However, a judge who purposefully fails to abide by the law, *e.g.* to make a political point or because s/he personally disagrees with the law, invites discipline. In *Matter of Duckman*, 92 NY2d 141 (1998), the Court of Appeals upheld the removal of a judge for *inter alia* "willfully disregard[ing] the law" by dismissing accusatory instruments for being insufficient on their face, knowing they were in fact sufficient, because he disagreed with the prosecutor for pursuing the underlying cases. As the Court said:

*Misconduct in Connection with Case Dispositions:*

Largely consisting of transcripts of court proceedings before petitioner, the evidence establishes that petitioner willfully disregarded the law in disposing of the criminal charges in 16 cases: 13 dismissals for facial insufficiency, one purportedly in the interests of justice, and two adjournments in contemplation of dismissal (ACDs). Cases were dismissed without notice or an opportunity for the prosecution to be heard, without allowing an opportunity to redraft charges, without requiring written motions, and in the case of ACDs, without the consent of the prosecutor. What is significant for present purposes is both that petitioner dismissed these cases in knowing disregard of requirements of the law [cites omitted], and the abusive, intemperate behavior he manifested in dismissing those cases, at times not permitting the attorney to make a record of an objection either to the disposition or in response to the accusations.

In the overwhelming number of these cases it is clear that petitioner dismissed accusatory instruments for facial insufficiency because the prosecutor refused to agree to petitioner's requests for an ACD or to offer a plea to a violation. In others, petitioner simply believed that the cases should not be prosecuted.

92 NY2d at 146.

From the [2020 Annual Report, pages 19-20](#).





## Improper Delegation of Judicial Responsibilities

It is fundamental to the independence, impartiality and integrity of the judiciary for a judge to exercise the powers of office without undue or unauthorized reliance upon non-judges. Over the years, in disciplinary determinations or formal opinions, both the Commission and the Advisory Committee on Judicial Ethics, respectively, have addressed the matter of judges who literally or effectively ceded or inquired about delegating to others certain uniquely judicial functions and duties.

Certain delegations would seem so unequivocally improper, they need no explanation. For example, in *Matter of Greenfeld*, 71 NY2d 389 (1988), the Court of Appeals upheld the Commission's determination to remove a village justice from office for *inter alia* improperly permitting the deputy village attorney to accept guilty pleas and determine the amount of fines in various cases. In *Matter of Rider*, 1988 Annual Report 212, a town justice was censured for permitting the local prosecutor to prepare the judge's decision, without notice to the defense. In *Matter of Hopeck*, 1981 Annual Report 133, a town justice was censured for *inter alia* allowing his wife to preside over a series of traffic cases on an evening when the judge himself was unavailable.

In Opinion 15-127, the Advisory Committee on Judicial Ethics opined that it would be improper for a judge to delegate to a court clerk the tasks of accepting written guilty pleas and imposing and collecting fines and surcharges, without consulting the judge, even when based on specific written guidelines created and approved by the judge in the form of a "fixed schedule" of fines. As it often has, the Advisory Committee distinguished between "ministerial" functions that may be delegated, and "judicial" functions that may not be delegated. The Committee reiterated prior advice that "judicial decision-making" is not delegable, and that "the imposition of a fine, even if only for an arguably 'routine' traffic infraction, is a nondelegable judicial duty." Opinion 15-127, which cites pertinent Judicial Conduct cases and commentary from the Commission's annual reports, goes on to emphasize that imposing a fine is a discretionary judicial function that must be made on a case-by-case basis, which would be thwarted by a system in which a court clerk would apply a predetermined fine to each traffic offense where a guilty plea was entered.

While accepting pleas and imposing fines in "routine" traffic matters may seem monotonous or inconsequential, it is nevertheless an adjudicative role that is to be fulfilled only by the judge of the court with jurisdiction. That there may be mitigating or aggravating circumstances in a particular case, such as prior convictions against the motorist, would only underscore the importance in assuring that a judge was reviewing the record and making the decision. In such a situation, the judge may find it appropriate to impose a fine lower or higher than a formulaic guideline from which a clerk or other designee could not veer.

From time to time, the Commission has also become aware of situations – in both civil and criminal parts – in which judges have delegated authority to court attorneys or law clerks who act in a manner that creates the appearance that they are judges. While it is not uncommon or inappropriate for a judge to ask a court attorney to conduct conferences with the lawyers or parties in a case and make recommendations, at times such assignments may constitute and/or appear to constitute improper delegations of judicial authority. Some court attorneys take the bench to conduct conferences, or have made express references to "my ruling," "my cases" or "my decision," or otherwise convey the impression that they are the judges. Some have acted in a manner that encourages lawyers and parties to call them "Your Honor" or "Judge." This can be especially confusing to *pro se* litigants who may not readily appreciate that the "judge" before whom they are conferencing a case may not be a judge at all.

While a court attorney should know better than to foster such an appearance, it is the judge who is ultimately responsible. A judge is obliged not only to safeguard the independence and integrity of the judiciary but also to "require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge..." Section 100.3(C)(2) of the Rules Governing Judicial Conduct.

The Commission has also been apprised of potentially problematic administrative situations in some courts where institutional litigants appear on a regular basis. It would not be unusual, for example, for a judge to organize the court's calendar in such a manner as to facilitate the presence of particular prosecutors or public defenders in criminal cases, or a city's corporation counsel in civil parts where numerous claims against the municipality are docketed. However, it would be entirely inappropriate for the judge or the court staff to cede the scheduling of motions or appearances to such an institutional party, no matter how convenient it might be. The Commission has been advised informally of at least one court that appears to have yielded such authority to attorneys for a particular corporation counsel's office. It would be wise for a judge to consult with the Advisory Committee on Judicial Ethics before allowing such a delegation, which could be viewed as an improper encroachment on the independence and impartiality of the judiciary.

The Commission urges all judges and court attorneys to acquaint themselves with the pertinent Advisory Opinions and disciplinary determinations that address and offer guidelines about delegating duties.

From the [2019 Annual Report, pages 22-24.](#)



The Commission recently investigated a complaint alleging that certain town and village court proceedings were held and dispositions rendered notwithstanding that certain defendants needed but did not receive the assistance of qualified foreign-language interpreters. We learned that such interpreters were not available when needed in many town and village courts, and some city courts, both because of a shortage of qualified interpreters in certain areas and because individual municipalities did not provide funding for the courts to bring in such interpreters. We learned that in some town and village courts, interpreting was done on an *ad hoc* basis by spectators or court personnel with varying degrees of familiarity with a particular defendant's language, with no guarantee that the interpretation was accurate or that the witness or defendant properly understood his/her rights or what was being said and asked. In one situation, we learned that a local prosecutor assigned to cases in a town court occasionally interpreted for Vehicle & Traffic Law (VTL) defendants attempting to negotiate pleas on speeding or other VTL charges.

The Commission is reluctant to pursue disciplinary charges against town and village justices who confront such situations and are unable to secure necessary interpreter services through no fault of their own. The Commission is also aware of the inconvenience to both the courts and individual defendants for whom it would be a burden to keep returning to court on adjourned dates to dispose of VTL matters on the possibility that an interpreter might be available. Where there is a shortage of qualified interpreters in a given area and/or no public funds allocated for their services, it is unlikely that interpreters would ever be available on any adjourned date. At the same time, the Commission is concerned about the due process implications of pleas being negotiated or taken with the assistance of unqualified interpreters drawn *ad hoc* from the ranks of randomly present spectators, court employees or, most problematically, opposing advocates whose neutrality or impartiality would obviously be lacking.

The issues addressed herein are not necessarily confined to city, town and village courts.

The Commission draws the Legislature's attention to this matter, particularly as it relates to the need for funding. The Commission also recommends that the Office of Court Administration examine the issue and help fashion a solution.

From the [2020 Annual Report, pages 23-24](#).



The Commission has publicly disciplined numerous judges over the years for having committed various alcohol-related driving offenses and, on occasion, discharging or attempting to discharge judicial duties while under the influence of alcohol. Apart from the obvious – that drinking to excess and then operating a car puts the driver and everyone in the vicinity at great risk of harm – when the wrongdoer is a judge, public confidence in the courts, where intoxication-related offenses are adjudicated, is seriously compromised.

The Commission's docket seems always to have one or more active inquiries into complaints of public alcohol-fueled misconduct by judges, and in recent years, numerous disciplinary determinations have been rendered in such matters, particularly as to instances in which judges were arrested and convicted for driving under the influence.

## Driving Under the Influence of Alcohol

The Rules Governing Judicial Conduct require a judge to respect and comply with the law, and to act at all times in a manner that promotes public confidence in the integrity of the judiciary and upholds the dignity of judicial office. Those rules are violated whenever a judge is convicted of an alcohol-fueled offense, and the offending judge will surely be disciplined.

According to the National Highway Traffic Safety Administration, in 2018 there were 10,511 fatalities in motor vehicle traffic crashes nationwide in which alcohol was involved. Of those, 7,051 involved at least one driver with a blood alcohol concentration of .15% or higher, which is nearly twice the threshold of .08% for a Driving While Intoxicated (DWI) conviction in New York, and three times higher than the .05% threshold for Driving While Ability Impaired by alcohol (DWAI).

According to the New York State 2018 Highway Safety Annual Report, alcohol-impaired driving causes more than 300 fatalities and more than 5,000 injuries in New York State each year.

In view of the seriousness of driving under the influence of alcohol, judicial disciplinary commissions throughout the country, like society as a whole, have become increasingly intolerant of it while also recognizing that alcoholism is a disease. Throughout most of the United States, public reprimand or its equivalent – the mildest public discipline available – is the standard disciplinary punishment for a judge's first alcohol-related driving offense where there are no aggravating circumstances. In other words, a judge found guilty of DWI or DWAI in New York should expect at least a public admonition. Any one of a number of aggravating circumstances – such as the judge asserting his/her judicial title to avoid arrest, causing an accident, obstructing the police as they carry out their duties or committing repeated alcohol-related offenses – would likely elevate the level of discipline to censure. It is no excuse that the judge may have been too drunk to control what he or she was saying. Where the aggravating circumstances are individually or collectively egregious, removal from office would likely result. At the same time, as noted below under the subheading "Seeking Treatment for an Alcohol Problem," the Commission will consider a judge's sincere effort at confronting and treating an alcohol problem in determining the appropriate sanction.

In *Matter of Astacio*, 32 NY3d 131 (2018), a city court judge was removed from office for a series of events that began with her arrest and conviction of DWI and included her assertion of judicial office during the arrest and violations of court-ordered conditions of her sentence.

In *Matter of Quinn*, 54 NY2d 386 (1981), the Commission determined to remove from office a Supreme Court Justice who had two alcohol-related convictions and other alcohol-related incidents, was uncooperative, belligerent and abusive to the arresting officers and repeatedly referred to his judicial position. On review, the Court of Appeals reduced the removal to censure in view of the fact that the judge had retired between issuance of the Commission determination and adjudication of the review by the Court.

Other cases in which the Commission censured a judge for an alcohol-related driving offense include *Matter of Landicino*, 2016 NYSCJC Annual Report 129, a judge was censured for DWI and repeatedly asserting his judicial office during the arrest. In *Matter of Newman*, 2014 NYSCJC Annual Report 164, a judge was censured for DWAI, in the course of which he caused a minor accident and, on arrival of the police, behaved in an unruly, self-destructive and suicidal manner, *inter alia* threatening to take the arresting officer's gun. In *Matter of Apple*, 2013 NYSCJC Annual Report 95, a judge was censured for DWI and in the process causing a minor accident. The same judge thereafter left office after another DWI episode a short time later. In *Matter of Maney*, 2011 NYSCJC Annual Report 106, a judge was censured for DWAI and in the process making an illegal U-turn to avoid a sobriety checkpoint and repeatedly invoking his judicial office while asking for special "consideration" and "professional courtesy" from the police. In *Matter of Martineck*, 2011 NYSCJC Annual Report 116, a judge was censured for DWI and in the process driving erratically and hitting a mile marker post. In *Matter of Burke*, 2010 NYSCJC Annual Report 110, a judge was censured *inter alia* for DWAI and causing a minor accident. In *Matter of Stelling*, 2003 NYSCJC Annual Report 165, a judge was censured for two alcohol-related convictions. In *Matter of Barr*, 1981 NYSCJC Annual Report 139, a judge was censured for two alcohol-related convictions, asserting his judicial office with police officers and being abusive and uncooperative during his arrests, after which he made "a sincere effort to rehabilitate himself."

In January 2020, shortly after the reporting period covered in this Annual Report, two other judges in unrelated incidents were censured after pleading guilty to DWAI. In both cases, the judges had accidents causing property damage. One invoked his judicial office during arrest, and the other was belligerent and uncooperative with the police. [Matter of Miranda](#) and [Matter of Petucci](#) are available on the Commission's website.

### **Alcohol-Influenced Behavior on the Bench**

As serious as it is for a judge to commit an alcohol-related driving offense, it can be even more troubling when a judge attempts to exercise the powers of judicial office while under the influence of alcohol. Litigants and the public can have little faith in the decisions and judgments of a judge who appears in court while under the influence of alcohol.

In *Matter of Aldrich*, 58 NY2d 279 (1983), a judge was removed from office for presiding over two sessions of court while under the influence of alcohol and, in the process, uttering racist, vulgar and otherwise grossly offensive and inappropriate comments and at one point brandishing a knife and threatening a security guard with it while uttering racial slurs.

In *Matter of Wangler*, 1985 NYSCJC Annual Report 241, a judge was removed *inter alia* for being intoxicated and belligerent in court and at a meeting with court auditors. In *Matter of Giles*, 1998 NYSCJC Annual Report 127, a judge was censured for twice presiding over off-hours arraignments while under the influence of alcohol. In *Matter of Bradigan*, 1996 NYSCJC Annual Report 71, a judge was censured *inter alia* for twice presiding while under the influence of alcohol. In *Matter of Purple*, 1998 NYSCJC Annual Report 149, a judge was censured for DWI and for presiding under the influence of alcohol on one occasion. In *Matter of Gilpatric*, 2006 NYSCJC Annual Report 160, a judge was censured for appearing in court as an attorney while under the influence of alcohol and, later that day, taking the bench while under the influence of alcohol, although court staff and a co-judge intervened and the judge left for the day without adjudicating any matters.

Fortunately, alcohol-related transgressions on the bench are rare. However, court staff, attorneys and fellow judges should be alert to the signs that it is indeed affecting a colleague in the performance of judicial duties and, where appropriate as in *Gilpatric*, be prepared to intervene and notify both the appropriate court administrators and the Commission.

### **Seeking Treatment for an Alcohol Problem**

In several cases cited above, such as *Landicino*, *Newman* and *Gilpatric*, the judges in question sought assistance for their alcohol problems after being arrested for DWI or diverted from taking the bench while intoxicated. In appropriate situations, the Commission Administrator has given the judge time to complete such a program before submitting a recommendation to the Commission as to disposition of the complaint. The successful completion of such a program would not obviate public discipline, but depending on the severity of the alcohol-fueled misbehavior, it could mitigate the degree of discipline imposed.

Unfortunately, it too often takes an arrest or other serious public event for a judge to seek treatment for alcoholism or alcohol-fueled behavior. Yet there are programs available to assist those who seek help even before the problem manifests itself on the bench or behind the wheel of an automobile. For example, the New York State Bar Association has a Judicial Assistance Program, a Lawyer Assistance Program and a Judicial Wellness Committee that are available to provide assistance to those willing to avail themselves of the opportunity. The New York City Bar Association has a Lawyer Assistance Program. County bar associations throughout the state also offer assistance programs. These various programs offer such services as evaluation and assessment, counseling, referrals and mentoring. Many provide services not only to the alcoholic but to members of his/her family. There are also any number of private and/or non-profit assistance programs such as Alcoholics Anonymous and Al-Anon/Alateen that are available to help.

Although the Commission does not endorse one such program over others, we do encourage all who need assistance to take advantage of the opportunities that exist, before the effects of alcoholism exhibit themselves in behavior that must be addressed in a disciplinary setting.

The Commission also encourages the Office of Court Administration (OCA) to devote sufficient resources to encourage judges and court employees to come forward and seek treatment, before they violate the law, get caught, become a public embarrassment or worse, cause serious injury to themselves or others – and face disciplinary consequences before the Commission. Training programs for new judges, and continuing education programs for veteran judges, should routinely include medical and treatment professionals presenting programs on alcohol and drug abuse-prevention for all, and facilitating treatment for those who need it. OCA should consider establishing a permanent full-time office, sufficiently staffed to coordinate presentations, give confidential advice, make referrals and otherwise provide prevention and treatment related assistance to the thousands of professionals who populate the far-flung state court system.

From the [2020 Annual Report, pages 20-23](#).



Cooperation with a Commission inquiry or proceeding is mandatory, not optional. Such conduct as failing to respond to letters of inquiry, failing to produce documents, court audio recordings or other materials when requested, and failing to appear for testimony when summoned, subject a judge to disciplinary consequences without regard to the nature of the complaint that gave rise to the inquiry. A judge who refuses to cooperate risks removal from office even if the facts of the underlying complaint would not necessarily warrant such a severe result.

In March 2018, the Commission determined to remove from office a New York City Civil Court judge for the underlying conduct alleged in a complaint of persistent intemperance and for his willful failure to cooperate with the Commission's inquiry. *Matter of O'Connor*, 2019 NYSCJC Annual Report 182, *accepted*, 32 NY3d 121 (2018). In the course of the inquiry, the judge *inter alia* did not respond to written Commission inquiries, refused to take an oath to tell the truth when he appeared at the Commission for testimony during the investigation, and refused to participate in the disciplinary hearing when formal charges of misconduct were filed against him.

In upholding the Commission's removal determination, the Court of Appeals upheld the underlying demeanor charges against the judge and affirmed the principle that a judge is obliged to cooperate with the Commission. Underscoring a judge's responsibility to promote public confidence in the integrity of the judiciary, and noting the Commission's constitutional and statutory authorities, the Court declared:

In short, willingness to cooperate with the Commission's investigations and proceedings is not only required – it is essential. Here, in addition to a sustained pattern of inappropriate behavior in the courtroom, petitioner repeatedly failed to appear before the Commission, and engaged in other conduct demonstrating his unwillingness to cooperate fully with the investigation. Under all of the relevant circumstances, and considering petitioner's conduct as a whole, we conclude that the determined sanction of removal is warranted. 32 NY3d at 129.

In doing so, the Court underscored and cited its own precedents:

Indeed, it is well settled that, when a judge fails to cooperate with an investigation of the Commission – which is vested with the statutory authority to 'require the appearance of the judge involved before it' [statutes omitted] – that dereliction can be a significant aggravating factor in determining the appropriate sanction for misconduct (*see Matter of Mason*, 100 NY2d at 60; *see Matter of Cooley*, 53 NY2d at 66). 32 NY3d at 129.

From the [2020 Annual Report, pages 24-25](#).



## New York State Commission on Judicial Conduct

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## Legal Authorities

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Constitution: Art. VI, §22

Judiciary Law: §§40-48

Rules Governing Judicial Conduct:

22 NYCRR Part 100

Commission Operating Procedures & Rules:

22 NYCRR Parts 7000, 7001

Commission Policy Manual



# Appointment to the Commission

## 11 Commission Members

**Governor**  
(appoints 4 members)

- 1 must be a judge
- 1 must be a lawyer
- 2 must be non-lawyers

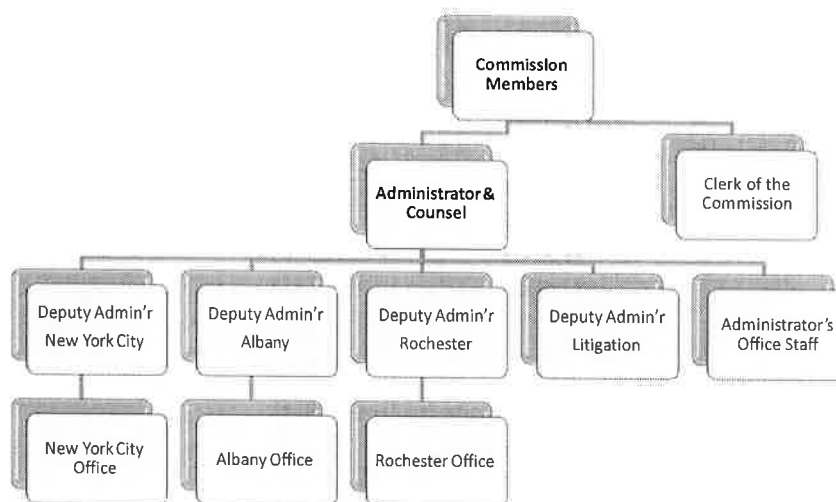
**Chief Judge**  
(appoints 3 judge members)

- 1 must be from Appellate Division
- 1 must be a town or village justice

**Four Legislative Leaders**  
(each appoint one member)

- May be a lawyer or non-lawyer
- May not be a judge or former judge

# Table of Organization



## Jurisdiction

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

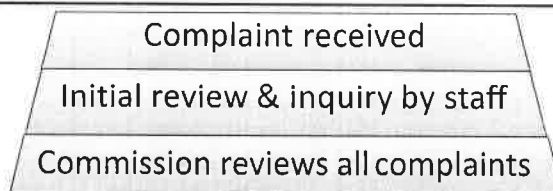
No jurisdiction over:

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

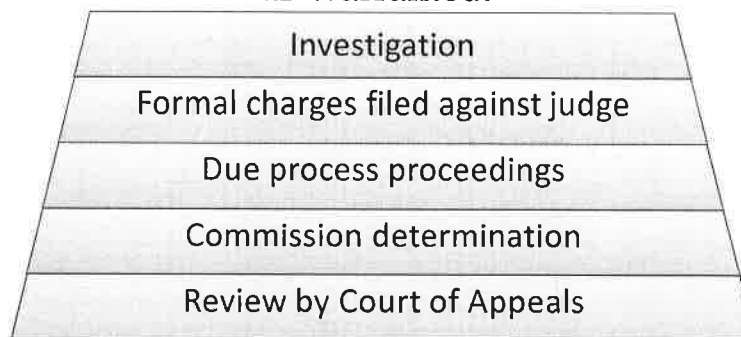


## Quick Overview of Complaint & Disciplinary Process

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If Warranted:





## Confidentiality

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### Judiciary Law Sections 44 & 45

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



## Incoming Complaints

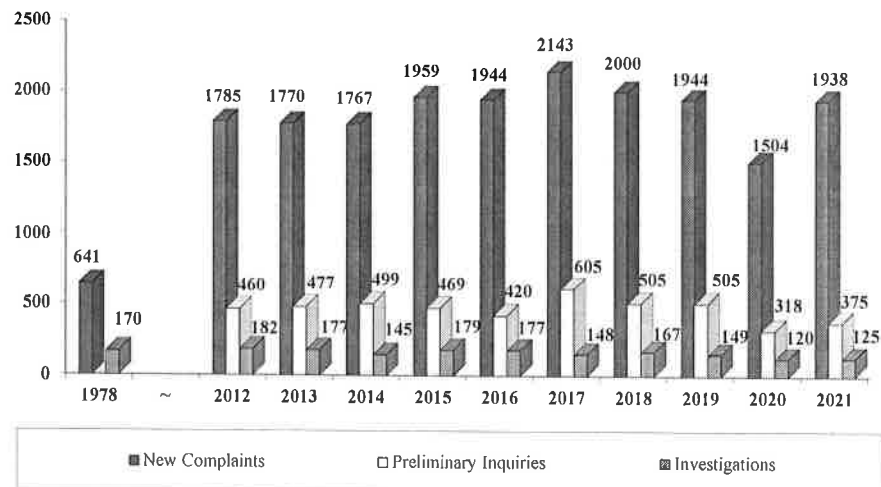
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- Staff analyzes incoming complaints, conducts initial review and inquiry where necessary (*e.g.* interviews, document review)

The Commission receives over 1,900 complaints per year

## 10-Year Overview of Complaints



## 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



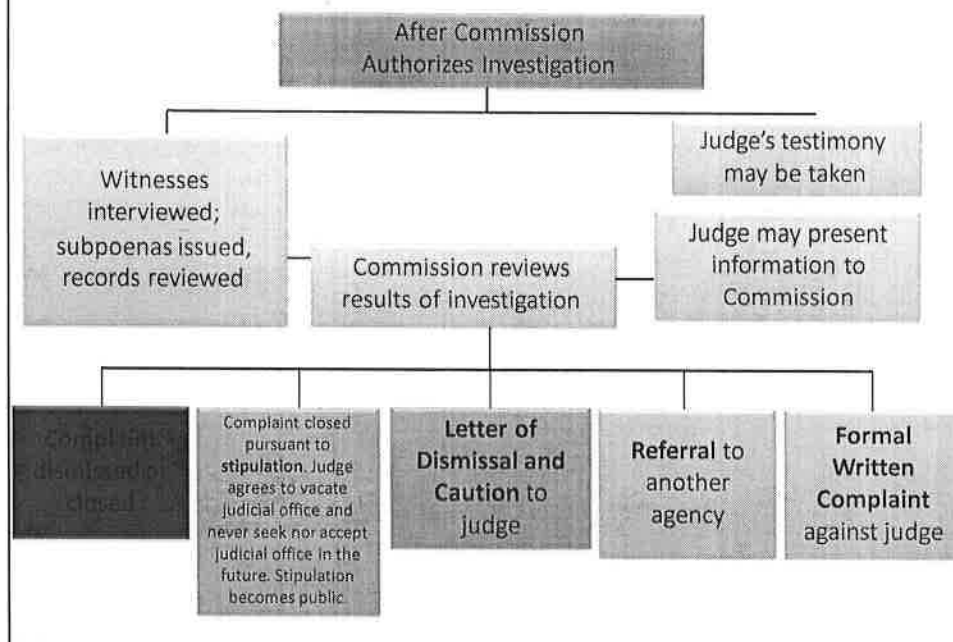
## Disposition of New Complaints



Commission may:

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

## The Investigation

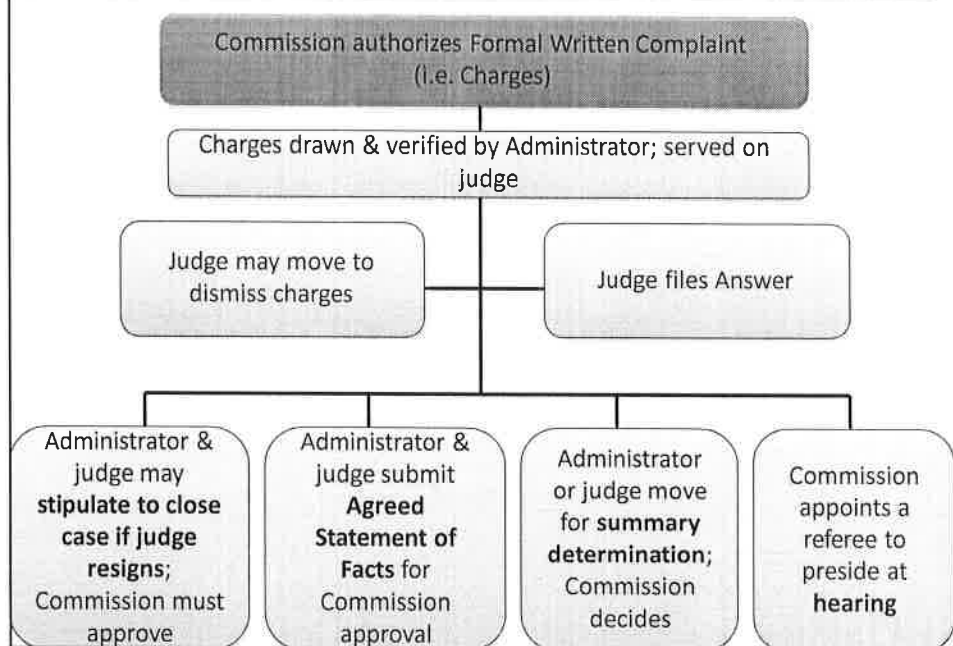


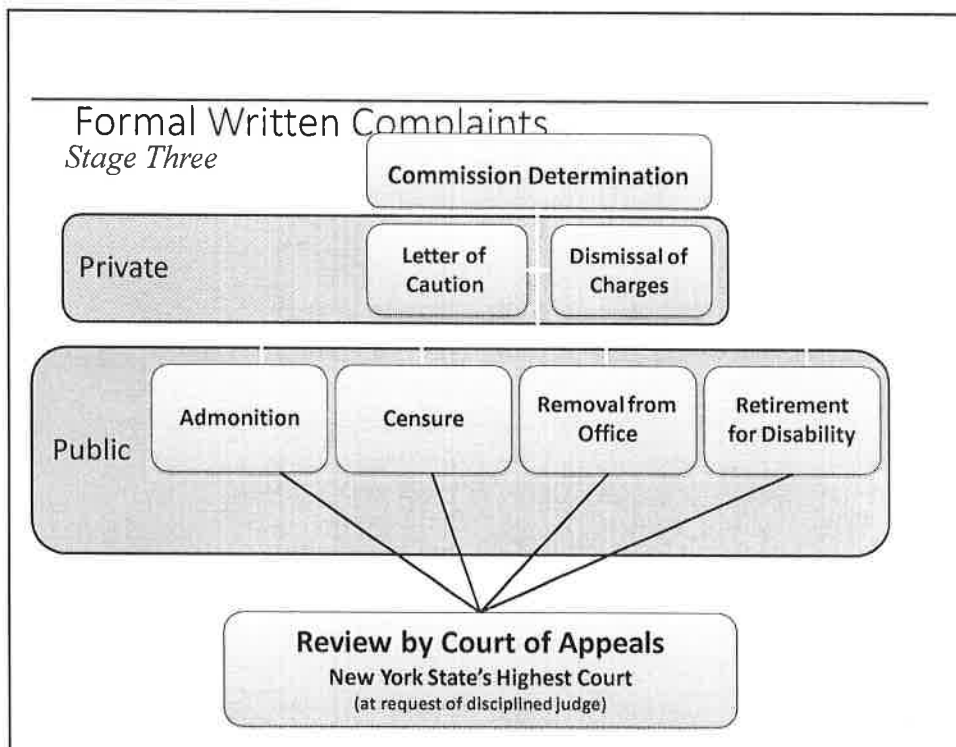
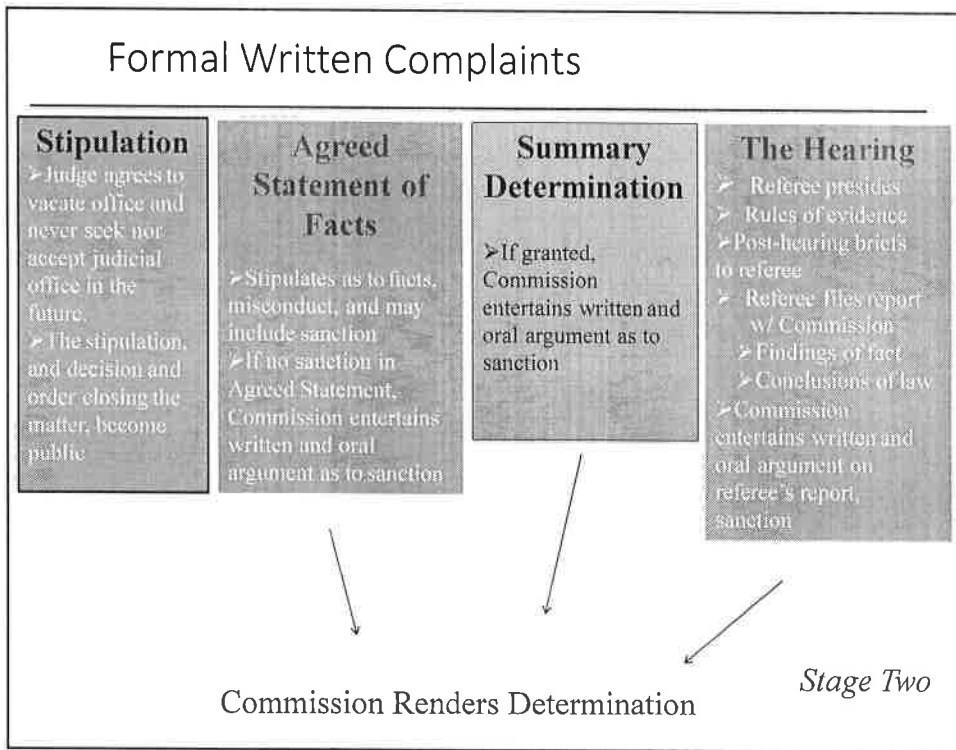
## Three Stages of a Formal *Disciplinary Proceeding*

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

### Formal Written Complaints







## 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.

## 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

## 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



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