

1 NEW YORK STATE SENATE
2 STANDING COMMITTEE ON JUDICIARY

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4 PUBLIC HEARING IN THE MATTER OF
5 AN EXAMINATION OF THE JUDICIAL DISCIPLINARY PROCESS
6 -----

7 Senate Hearing Room
8 250 Broadway
9 19th Floor
10 New York, N.Y.

11 September 24, 2009
12 Thursday
13 10 a.m.

14 BEFORE: Senator John Sampson
15 Chair
16 Judiciary Committee
17
18 Senator Bill Perkins
19 Chair
20 Corporations, Authorities & Commissions
21
22 Senator George D. Maziarz
23
24 Senator Eric Adams
25
26 Senator Ruben Diaz

27 OTHER STAFF MEMBERS:

28 Shelly Mayer
29 Majority Counsel

30 Lisa Lashley
31 Counsel

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1 MS. WILKINSON: Thank you.

2 SENATOR SAMPSON: Thank you. At this
3 point in time Mr. Victor Kovner who was
4 second to speak, he is here now and I will
5 take him.

6 MR. KOVNER: Mr. Chairman,
7 distinguished members of the Senate, thank
8 you for giving me the opportunity to present
9 testimony.

10 Before I do that, let me say I want to
11 thank the Senate for its leadership and its
12 progress on so many issues, the passing of
13 the Bill for the new family courts, bravo.

14 But I am here today to say on behalf of
15 the Committee for Modern Courts I want to
16 thank you for providing us with the
17 opportunity to give this testimony.

18 As you know Modern Courts is an
19 independent nonpartisan state-wide court
20 reform organization, committed to improving
21 the court system for all New Yorkers.

22 Modern Courts supports a judiciary that
23 is -- that provides for the fair
24 administration of justice, equal access to

1 the courts that is independent, highly
2 qualified and divorced.

3 By research, public outreach, public
4 education and lobbying efforts we seek to
5 advance these goals.

6 And I also -- my comments are going to
7 be focused on the committee on the judicial
8 conduct which, for the record, you should
9 know I served as a member of that commission
10 from 1975 through 1989, a long, long time
11 ago and towards the end of my service I was
12 Chair of that commission and so I'm quite
13 familiar with the work of the commission.

14 Now, over 30 years ago modern courts
15 supported the legislative initiative
16 establishing a temporary commission on
17 judicial conduct, it was critical, there was
18 no independent review of judicial conduct on
19 the Bench.

20 There were no attorneys looking at
21 allegations of misconduct, there was no
22 commission, the judicial disciplinary system
23 was simply some judges with the authority to
24 discipline other judges.

1 We proposed a permanent commission on
2 judicial conduct, and together with the
3 League of Women Voters we worked hard to get
4 a constitutional amendment on the ballot to
5 establish it, and in 1976 the voters of the
6 State of New York in a referendum approved
7 that amendment and the commission came into
8 existence in 1978.

9 It was one of the first such
10 commissions in the country, there are now 49
11 commissions like the New York commission
12 around the country, and the New York
13 commission is extremely vigorous, it is, as
14 I will indicate, it set a lot of the law of
15 judicial conduct around the committee and
16 its work is followed by other commissions
17 and it's really the only forum responsible
18 for enforcing violations of ethical
19 standards of judges of the State of New
20 York, and I want to emphasize that, that's
21 violations of ethical standards.

22 Errors of law do not come before the
23 commission, are not appropriate before the
24 commission, those issues as we have heard

1 from some of the witnesses this morning, are
2 really matters that as the Chairman has
3 pointed out should be and are regularly
4 reviewed by our Appellate Courts.

5 Now, we have a lot of judges in this
6 state and it's a very large judicial system,
7 so the workload is quite large.

8 There were 4.5 million cases filed in
9 our courts throughout the state and our
10 courts include Town and Village Courts, City
11 Courts, District Courts, Surrogate Court's,
12 the Court of Claims and the Supreme Court.

13 There are more than 3,000 judges in New
14 York. The Commission on Judicial Conduct
15 receives over 1,600 complaints each year
16 based on over the past -- that's the average
17 over the past five years, and in '08 it
18 received 1,923 and the commission's ability
19 to assure complete investigation and
20 appropriate action is one of the most
21 important parts of the judicial system of
22 New York.

23 Modern Courts strongly supports the
24 work on judicial misconduct according to the

1 American Jurisprudence Society, New York
2 State has consistently publicly disciplined
3 more judges than any other state.

4 This reflects a willingness of the
5 commission to effectively and efficiently
6 meet its constitutional mandate.

7 The commission works with truly under
8 difficult resource constraints, a few years
9 ago we believed they didn't have sufficient
10 staff and we made pleas to the legislature
11 and you and your colleagues and others
12 happily addressed that issue, and the staff
13 and resources have been expanded so that
14 they can effectively address this huge
15 volume of complaints.

16 Now, one question that is asked is the
17 confidentiality of proceedings.

18 The judiciary law requires that the
19 commission investigation and formal hearings
20 remain confidential.

21 Commission activity is only made public
22 at the end of the disciplinary process with
23 a determination of public admonition, public
24 censure or removal is made and filed with

1 the Chief Judge of the State.

2 Or when the accused judge requests that
3 the disciplinary hearing be public.

4 But we think that there should be
5 confidentiality during the investigatory
6 phase of the commission work and I think
7 that to open up the process may address some
8 of the concerns that you have heard this
9 morning, which are legitimate concerns that
10 ought to be heard and aired because
11 unfounded claims can damage the reputation
12 of individual judges, but at the same time
13 the public is entitled to see the process
14 work during the investigatory phase.

15 So we agree with and the commission has
16 testified on that before this committee, and
17 we think confidentiality should cease after
18 a commission finds a reasonable cause to
19 bring formal disciplinary proceedings
20 against the judge and decides to hold a
21 formal hearing.

22 I think at that point the public should
23 be able to watch and find out what's going
24 on.

1 The need for openness and transparency
2 at the hearing stage will provide the public
3 with greater opportunity to understand and
4 witness the process of disciplinary
5 hearings.

6 Public confidence in the process is
7 essential to the success of the system, it
8 will provide a judge with an opportunity to
9 be heard in public, thus removing any rumor
10 or innuendo that might remain after a
11 private hearing and might linger after the
12 commission exonerates a judge.

13 35 states now provide for public
14 hearings once the investigation is complete
15 and the charge is made, there is no reason
16 to keep this part of the process behind
17 closed doors, that change would require an
18 amendment to the judiciary law.

19 In short, we support the work of the
20 commission on judicial conduct and we thank
21 you for the opportunity to provide this
22 testimony.

23 SENATOR SAMPSON: Thank you very much
24 Mr. Kovner.

1 Before we pose any questions to you, we
2 have been joined by my co-chair, George
3 Maziarz.

4 Senator Maziarz. So basically, Mr.
5 Kovner, you are taking about you feel that
6 if this process was open, people would
7 understand more about, one, about not only
8 the construction, but the process that takes
9 place, instead of making all these
10 speculative allegations, of chicanery that
11 occurs behind closed doors?

12 MR. KOVNER: Precisely. Once the
13 commission has reached the point where they
14 are going to file a formal charge against a
15 judge, there is no reason why that should
16 not be held publicly and that people, the
17 public can hear the arguments for the
18 commission prosecuting the judge and the
19 judge in defense, and take into
20 consideration the outcome, rather than
21 simply see the ultimate result, and we make
22 that recommendation and I think it would
23 address some, but by no means all, but some
24 of the concerns you have heard this morning.

