

1 BEFORE THE NEW YORK STATE SENATE
2 STANDING COMMITTEE ON JUDICIARY

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4 Public Hearing on the
5 Appellate Division First Department
6 Departmental Disciplinary Committee,
7 the Grievance Committees of the
8 Various Judicial Districts, and the
9 New York State Commission on Judicial Conduct

8 Hearing Room 6
9 Empire State Plaza
10 Albany, NY

10 June 8, 2009
11 10:35 a.m.

12 PRESIDING:

13 Senator John Sampson
14 Chair
15 Senate Standing Committee on Judiciary

16 PRESENT:

17 Senator John A. DeFrancisco (R)
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23
24 Senator Bill Perkins

	<u>LIST OF PARTICIPANTS</u>	<u>STATEMENT</u>
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1 CHAIRMAN SAMPSON: I'd like to just
2 get this hearing started. And I apologize
3 for my tardiness.

4 First of all, I want to welcome all
5 those who are attending this hearing dealing
6 with the disciplinary process as it refers
7 to lawyers and also to judges in the State
8 of New York. My name is Senator John
9 Sampson, I'm from the 19th Senatorial
10 District, along with my colleague Senator
11 John DeFrancisco, who is from the Syracuse
12 region.

13 Am I correct, Senator?

14 SENATOR DeFRANCISCO: That's correct.

15 CHAIRMAN SAMPSON: And we want to
16 welcome you all here this morning.

17 This is the first in a series of
18 hearings that will examine the disciplinary
19 process for lawyers and judges in the State
20 of New York. When a complaint comes to a
21 disciplinary body, we want to know how is it
22 being handled, how many people examine the
23 complaint to decide what the process is,
24 what review mechanisms are in place to

1 ensure that once the decision is reached it
2 is fair and according to the rules of law.

3 These are just a few questions that
4 we'll be examining during the course of this
5 hearing. I know many of you have traveled
6 great distances to be here today to observe
7 and to participate in today's hearing. I
8 would like to take this opportunity to thank
9 you all. Your participation and input on
10 the disciplinary process will help the
11 committee determine what if any measures are
12 needed to improve or repair the system so
13 that the members of the public as well as
14 the lawyers and judges are all treated
15 fairly and equitably by the disciplinary
16 system.

17 This hearing has generated a great deal
18 of interest from the public. A lot of
19 people want to speak today, but
20 unfortunately the committee was not able to
21 accommodate them all due to the limited
22 time. We have about 30 witnesses, close to
23 30 witnesses. I'm going to try to ask
24 everybody to keep their comments within five

1 minutes. We want to get to the point so we
2 can have, you know, the interchange between
3 questions and answers.

4 And due to the number of responses we
5 received, the committee will conduct
6 additional hearings in New York City as well
7 as in Western New York so that we can get a
8 better understanding of the total picture
9 across the state and accommodate those who
10 couldn't testify today.

11 As I indicated, we have about 30
12 individuals who are going to testify, and I
13 do apologize for that. But we're going to
14 try to be as swift as possible.

15 As I said, this hearing will examine
16 the disciplinary process for the judges and
17 attorneys in the State of New York. Judges
18 in our state are disciplined by the
19 Commission on Judicial Conduct. The
20 commission acts pursuant to Article 6,
21 Section 22 of the New York State
22 Constitution. This law was put in place in
23 1978, after the people of New York spoke
24 with one voice that there needed to be a

1 better system for judicial discipline.

2 The Legislature acted through the
3 Judiciary Law to codify what the people
4 asked for. Article 2 of the Judiciary Law
5 sets out the powers and duties of the
6 commission. The commission consists of 11
7 individuals, four appointed by the Governor,
8 one by the Temporary President of the
9 Senate, one by the Minority Leader of the
10 Senate, one by the Speaker of the Assembly,
11 one by the Minority Leader of the Assembly,
12 and three by the Chief Judge of the Court of
13 Appeals.

14 This commission is empowered to
15 censure, admonish or remove judges from
16 office if necessary. They can subpoena
17 witnesses, compel courts to release records
18 to them, offer immunity to witnesses,
19 investigate written complaints about judges
20 or, on their initiative, conduct
21 investigations concerning judges of the
22 United Court System.

23 There are approximately 3500 judges and
24 justices in the New York State Unified Court

1 System. Last year alone, there were 1900
2 complaints of judicial misconduct, and of
3 these the commission conducted 262
4 full-fledged investigations, along with 174
5 investigations that were pending from 2007.

6 Dealing with attorney discipline in
7 New York is governed by the Appellate
8 Division of the State of New York Supreme
9 Court. The rules that govern attorney
10 conduct and discipline are found in rules of
11 professional conduct. Lawyers who violate
12 those rules are subject to discipline. This
13 discipline can take the form of a letter of
14 caution, an order of public censure,
15 suspension or disbarment of the attorneys.
16 Only complaints that do result in formal
17 disciplinary action, censure, suspension or
18 disbarment are available to the public.

19 Once again, ladies and gentlemen, I
20 want to thank you very much for being here
21 today. We're going to try to conduct this
22 hearing as quickly as possible in an orderly
23 fashion.

24 And I would like to introduce one of my

1 colleagues who just came, Senator Perkins,
2 from New York City, from Harlem.

3 But at this point in time I would like
4 my colleague Senator DeFrancisco to say a
5 few words.

6 SENATOR DeFRANCISCO: My words are
7 very few.

8 Everybody is handing in a written
9 presentation. Do me a favor, because I've
10 gone through many, many hearings in the last
11 17 years. Assume, just for the sake of
12 argument, that we can read. You know, maybe
13 that's a bad assumption on behalf of
14 officials in state government, but let's
15 assume that we can read. And get to the
16 main points of your presentation.

17 Otherwise, we'll never get you to say what's
18 really on your mind and we get into a
19 reading contest, which doesn't do anybody
20 any good, and those who are here towards the
21 end of the list will be here about 4 o'clock
22 this afternoon waiting for their turn.

23 So please do that, and it will really
24 be helpful for all of us. Thank you.

1 CHAIRMAN SAMPSON: Senator Bill
2 Perkins.

3 SENATOR PERKINS: I'm going to be
4 even briefer.

5 I of course echo the sentiments of my
6 colleague in terms of the fact that the
7 testimony has been written, and a brief
8 summarization that allows us to sort of
9 explore your questions and concerns more
10 would be helpful.

11 And I just also want to compliment the
12 chairman for his vision with respect to this
13 committee, and particularly on this issue
14 which is of such great importance to many of
15 us. And I just want to urge him to keep up
16 the good work.

17 CHAIRMAN SAMPSON: Thank you very
18 much, Senator Perkins.

19 Without further ado, we're going to get
20 started. The first witness is Martin Gold,
21 a member of the First Department
22 Departmental Disciplinary Committee, and
23 also Alan Friedberg, chief counsel, First
24 Department Departmental Disciplinary