NEW YORK STATE
ALL FUNDS BUDGET REQUEST FY 2011-2012

New York State Commission On Judicial Conduct

CONTENTS

POLICY ADVICE ON REQUEST TO
NEW YORK STATE
DIVISION OF THE BUDGET

ALL FUNDS BUDGET REQUEST FY 2011 –2012

STATEMENT OF THE AGENCY HEAD

NEW YORK STATE COMMISSION ON JUDICIAL CONDUCT

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I. PRELIMINARY OVERVIEW

This Preliminary Overview of the Statement of the Agency Head summarizes the charter, functions, results, challenges and needs of the New York State Commission on Judicial Conduct. These are further documented in the following sections.

A. <u>The Commission's Constitutional Authority and Independence</u>

The Commission was created in 1978 in the Judiciary Article of the Constitution (Article 6, Section 22). Its enabling statute is the Judiciary Law (Article 2-A, Sections 40-48). The Commission's 11 members are appointed by six different officers of government, none of whom commands a majority: 4 by the Governor, 4 by the leaders of the Legislature and 3 by the Chief Judge of the State of New York. The Commission elects its own Chair and appoints its own chief executive officer (the Administrator, who in law is the agency head). It was purposely designed in such a fashion so as to work cooperatively with all three branches of government but not to be dominated or controlled by any one of them.

Although the Commission is not a gubernatorial agency, historically its budget request has been submitted to the Legislature by the Executive, as have the budget requests of other constitutionally created, independent officers of state government: the Attorney General (Department of Law) and the Comptroller (Department of Audit and Control).

Notwithstanding its constitutional independence, the Commission continues to enjoy cooperative relations with the Division of the Budget, and particularly DOB's Public Protection Unit. As noted below, in view of the agency's sensitivity to the serious recent downturn in the state and the national economies, for FY 2011-12 the Administrator is submitting (1) an NPS request that is lower than FY 2010-11's appropriation, requiring certain economies to account for increases in contractual obligations such as rent, and (2) a bare-minimum PS request, reflecting *status quo* in the number of authorized full-time employee positions and providing only for standard obligatory annual employee performance advances set by the Legislature.

B. <u>Mission and Recent History</u>

The Commission is the sole state agency responsible for receiving, initiating, investigating and conducting evidentiary trials with respect to complaints of misconduct or disability against judges and justices of the New York State Unified Court System, which is comprised of approximately 3,500 judges and justices. Where appropriate, at the end of such proceedings, the Commission has authority to render disciplinary decisions of confidential caution, public admonition, public censure, removal from office or retirement for disability.

The Commission was originally created legislatively in 1974, began operations in January 1975 and expanded its authority as a result of constitutional and statutory amendments that took effect in April 1978 and remain in effect to the present.

The agency has only one program, *i.e.* its core constitutional mission. With their varying responsibilities, all agency staff – lawyers, investigators, administrative – are deployed and devoted to fulfilling the agency's sole and core mission: examining and deciding complaints that judges have engaged in misconduct.

- The agency receives and handles over 1,550 complaints per year. Record highs of 1,923 and 1,855 were received in 2008 and 2009.
- The agency conducts over 650 preliminary and full-scale investigations combined per year. In 2009, the number was 728.
- The agency publicly disciplines approximately 22 judges per year. In 2009, the number was 25.

The agency also handles its own appellate caseload. By law, disciplined judges have the right of review in the New York State Court of Appeals. In addition, the agency handles much of its own outside litigation, either in conjunction with the Attorney General's Office or on its own, such as when judges or complainants commence lawsuits attempting to enjoin the Commission from investigating or prosecuting complaints.

The September 2009 Report by the Special Commission on the Future of the New York State Courts, established by Chief Judge Judith S. Kaye, highlights the unique and critical role played by the Judicial Conduct Commission in overseeing disciplinary rules enforcement among the far-flung statewide network of approximately 2,300 hundred justices in approximately 1,250 town and village courts.

The Commission, which provides the only forum for complaints of misconduct against judges in the state unified court system, undertakes comprehensive and efficient investigations of such complaints; exonerates those judges who have been falsely accused; takes appropriate disciplinary action against those who have violated the high standards of conduct applicable to judges; and, by its presence and actions, makes the judiciary more sensitive to ethics standards and less apt to commit misconduct.

This mission is of vital importance in protecting both the public and judges from potential abuse. Every judge wields considerable power and as such must follow high standards of ethical conduct. If a judge fails to follow these standards, it is in the public interest to swiftly provide the appropriate discipline; but if a judge is falsely accused, he or she should not be subject to prolonged procedures. Undue delay detracts from the Commission's mission and accomplishments.

C. <u>Recent Fiscal History and Impact on Agency Mission</u>

Over the years, the Commission's workload steadily increased, outpacing the resources needed to cope with it. In FY 2007-08, at the Commission's request, the Legislature increased its appropriation to the Commission from the $2.8 million to nearly $4.8 million. This constituted the first significant increase in the Commission's resources in nearly 30 years. In FY 2010-11, the Legislature appropriated $5.406 million to the Commission.

As a result, in cooperation with the Division of Budget, the Office of General Services and the State Comptroller, the Commission implemented a major staff and physical plant expansion.

While the Commission's caseload has continued to expand, the positive impact of the increase in resources can already be quantified. Though the number of complaints received increased, in

2008 constituted an all-time high of 1,923, the backlog of matters pending at year's end was reduced by 14% in 2007 and by another 12.6% in 2008. As of September 15, 2010, the number of pending matters was 198, representing a 28% reduction from the point in 2007 when the Commission's resources were expanded to cope with the burgeoning caseload.

The following chart is illustrative.

FISCAL YEAR	ANNUAL BUDGET	COMPLAINTS RECEIVED	PRELIM'Y INQUIRIES	NEW INVESTIG'S	PENDING YEAR END	ATTORNEYS/ INVESTIG'RS	TOTAL STAFF
1978-79	$1,644,000	641	N.A.	170	324	21/18	63
1988-89	$2,224,000	1109	N.A.	200	141	9/13	41
1992-93	$1,666,700	1452	363	180	141	8/6½	26
1996-97	$1,696,000	1490	492	192	172	8/2½	20
2005-06	$2,609,000	1565	366	260	260	10/7	28½
2006-07	$2,800,000	1500	375	267	275	10/7	28½
2007-08	$4,795,000	1711	413	192	238	17/10	38
2008-09	$5,304,000	1923	354	262	208	19/10½	47½
2009-10	$5,200,000	1855	471	257	243	18/10	47
2010-11	$5,384,000	1420	N/A	N/A	198	18/7	44
2010-11 figures are approximate as of September 15, 2010.							
2011-12	$5,384,000 (requested)		~	~	~	~	48

However, this expansion has been affected by the economic downturn that has impacted the entire country since 2008, and as a result the Commission has instituted voluntary restraints in order to share in the sacrifice being borne by all state agencies.

First, the Commission has been constrained in its budget requests. Second, although authorized to hire 55 FTEs, the Commission's Administrator has abolished one position and indefinitely deferred filling five (5) vacant positions. Thus, the number of active FTEs is 11% under the agency's allotment. Third, wherever possible, the Administrator defers filling vacated positions or hires replacements at salaries lower than that of departing staff. To date in FY 2010-11, in order to help balance the state's budget, the Administrator deferred hiring new staff for 3 additional positions which were vacated when employees left for other career opportunities or law school. The number of filled positions at present is 44, or 22% less than full strength.

Overall, while the Legislature appropriated $5,406,000 to the Commission for FY 2010-11, the agency agreed to an adjusted appropriation of $5,384,000, the same figure it requests next year.

D. <u>Summary of FY 2011-12 Plans</u>

Recognizing the negative impact on state revenues due to the recent economic downturn, the Commission is making an appropriately constrained budget request for FY 2011-12 – a "flat" or no-increase request. For NPS funds the Administrator requests $1,291,000, and for PS funds the Administrator requests $4,093,000. This means creating no new staff positions, keeping the number of filled FTEs at 48, providing only for obligatory annual employee performance advances and achieving significant savings to make up for mandated increases in such contractual obligations as rent. The **$5,384,000** Budget Request for FY 2011-12 is intended to maintain the operational level intended by the Legislature's commitment in FY 2008-09, thus enabling the agency to fulfill its constitutional mission, continue its tradition of quality decision-making, keep abreast of the steady high volume of complaints and commit resources toward reducing the time it takes to resolve matters. While this budget requires certain economies, the Commission is prepared to do its part and make such sacrifices.

II. PROGRAM GOALS AND DESCRIPTION

The Commission is mandated to provide a forum for complaints against judges, to investigate such complaints, to exonerate judges falsely accused, to take appropriate action against those who have violated judicial standards of conduct, and thereby to help sensitize all judges to their ethical obligations and deter misconduct. The public interest in a strong Commission was demonstrated by the overwhelming majority by which the electorate constituted the Commission in its present form in the 1977 election. The Commission assumed the judicial disciplinary authority of five separate courts: the Court on the Judiciary, which was abolished, and the four Appellate Divisions, whose mandates in this field were transferred to the Commission.

The Commission's caseload priorities arise out of the number and nature of credible complaints and news media reports of judicial misconduct. The Commission is authorized to determine whether or not there was misconduct and to impose appropriate sanctions, but not to change or reverse a judge's decisions in a particular case.

Once the Commission authorizes an investigation, the goal is to conduct a fair, comprehensive inquiry within a reasonable period of time, and, if charges are filed, to complete the matter within a reasonable period. The following sections A and B describe Commission procedures in handling complaints, as illustrated in the attached flowchart. Depending upon how far each complaint goes through this set of procedures, the elapsed time to resolution may be anywhere from 8 weeks in the case of dismissal, to 3 years or more in the case of a full investigation, hearing and appeal. During the late 1980s, it took an average of 20 months to complete a complicated case that included a full hearing. Today, it takes approximately two years, but that time is already being reduced as a result of the increased resources made available to the Commission by the Legislature in 2007, notwithstanding the significant increase in the volume of complaints between 1978 and today.

A. Investigations

Each incoming complaint is recorded, summarized, analyzed and presented to the Commission. About 25% are clarified with transcript reviews and interviews of the participating lawyers and complainant. If investigation is authorized, staff responsibilities may include interviews with and/or sworn testimony from witnesses, court personnel, attorneys and others; legal and documentary research; review of court transcripts and other court records; monitoring the judge's court; corresponding with and/or taking sworn testimony from the judge; and detailing the investigation in memoranda to the Commission. After this exhaustive process, the Commission must decide whether to dismiss the matter or to proceed with a formal, adjudicatory disciplinary proceeding. Investigations vary in scope, detail and comprehensiveness, depending on the complexity of the complaint and the issues.

B. Formal Proceedings

If a disciplinary proceeding is required, the staff prepares and serves on the judge a Formal Written Complaint that commences the adjudicatory phase formerly handled by the Court on the Judiciary or the Appellate Division. The rules of civil trial practice, specific provisions of the state Judiciary Law and relevant Commission rules take effect. The judge must answer the Formal Written Complaint, for example. An impartial referee must be designated to preside at the hearing. Witnesses are prepared for trial; pre-hearing motions and discovery take place; conferences are held between the parties and referee; documentary evidence is prepared; stipulations may be negotiated; etc.

The hearing itself proceeds in the fashion of a non-jury trial, with introduction of documentary evidence, testimony, cross-examination and motions before the referee. After the hearing, a transcript is prepared and post-hearing memoranda are submitted to the referee, who then files a written report of his or her findings and conclusions to the Commission. Briefs and oral argument are then presented to the Commission with respect to confirming or disaffirming the referee's report and disciplining the judge. The Commission thereafter renders its decision, which is called a "determination".

If the Commission determines to discipline the judge, the judge may request review of the action by the Court of Appeals, which is granted automatically upon the judge's request. This generates a new phase of appellate practice that did not exist as of right before the Commission superseded the Court on the Judiciary. Briefs and oral argument must be presented to the Court of Appeals, which may accept or reject the Commission's decision.

The time and resources allocated to particular hearings vary widely from case to case. Where the hearing involves multiple charges of misconduct and numerous witnesses, the process is more demanding than where there is a single issue and few witnesses.

C. Litigation Underscoring the Commission's Work

Since its creation, the Commission has been challenged on more than a hundred occasions – in federal as well as state courts – by judges attacking the constitutionality, authority, procedures and decisions of the Commission. Moreover, there have been 91 appeals of Commission disciplinary determinations heard by the Court of Appeals. In no instance has a Commission rule or provision been overturned. In only one instance has a Commission determination that a judge committed misconduct been reversed, and that decision was by a vote of 4-2, with a strong dissent by two judges of the Court of Appeals. In the third case last year, the determination was modified and returned to the Commission for further proceedings. The courts over the years have thus underscored the Legislature's enactment of the public will that there be a strong Commission to enforce ethics standards on the judges of the New York State.

In 2009, there were three reviews of Commission determinations heard by the Court of Appeals, one of which resulted in removal of the judge involved, the second of which resulted in public admonition of the judge, and the third of which resulted in the Court's ruling that the Commission had jurisdiction to discipline where a judge engages in lengthy and unexcused delay. The judge was subsequently admonished publicly. The Commission staff provided all the litigation services in these proceedings.

D. Personnel Functions and Structure

The Commission itself is composed of 11 uncompensated members, four of whom are appointed by the Governor, four of whom are appointed by the leaders of the Legislature, and three of whom are appointed by the Chief Judge of the Court of Appeals. The Commission members meet once every six to eight weeks for one or two full days and are on call for consultation. At least one member or a referee must be present each time a judge is examined under oath during an investigation; a quorum must be present for the scheduled meetings at which the Commission reviews and/or decides pending matters.

The Commission elects its own Chair from among its members for a renewable two-year term and hires an Administrator to run the agency, pursuant to statute. The Commission, pursuant to rule, also designates a Clerk to assist it in disciplinary cases, since it would be a conflict for the Administrator (who serves as prosecutor) to do so.

The Administrator of the Commission is an attorney, employed full-time, responsible for hiring and directing staff and for overseeing the day-to-day operations of the agency and both its legal/investigative and administrative activities.

The staff, which is full time, falls into four general categories:

1. **The legal and investigative staff** in each of the Commission's three offices reports to a Deputy Administrator in that office. With the exception of the Clerk of the Commission, all attorneys on the Commission staff handle investigations and hearings, with assistance from investigators.

2. **The administrative staff** is divided into two groups. One is responsible for the Commission's records-keeping, files, preparation of materials for Commission meetings, and annual report preparation and distribution, as well as various case-related responsibilities such as processing and summarizing the 1900 or so incoming complaints per year and providing assistance and information to complainants and others. The other group is responsible for functions including preparation of the annual budget request and cash disbursement plan; payroll processing; classification and compensation research; accounts payable accounting; employee travel reimbursement; employee benefits processing; cash advance accounting; internal accounting and personnel controls; maintenance of accounting and personnel records; selection and implementation of payroll and accounting computer systems; management of vehicle fleet; purchasing; reconciliation of accounts; etc.

3. **The support staff**, i.e. secretaries, administrative assistants, clerks and an IT specialist, provides essential IT technology, typing, filing, reception and miscellaneous support functions. In the 1980's this category included law students hired in the summer to perform research tasks for the regular staff and to assist in some administrative, investigative and trial preparation duties. Because of budgetary constraints, the practice of hiring law students was suspended in the 1990's, although we have periodically had the services legal interns who have earned academic credit for their work at the Commission or whose funding was underwritten by a "pro bono" sponsor.

4. **The Clerk of the Commission** reports independently to the 11 Commission members on those matters in which by rule or law the Commission may not be assisted by the Administrator or his staff, such as deciding motions, drafting opinions, rendering determinations, etc. Although an attorney, he or she is not involved in investigating or preparing cases for prosecution.

Referees: In addition to the regular staff, the Commission calls upon a panel of 62 referees (retired judges or prominent attorneys), who are independent of staff as required by law and preside over those matters that, after investigation, proceed to formal hearings. Referees work on a per diem basis, as needed, at $250 a day, which is less than the compensation received by referees in other agencies.

E. Geographic Organization

The Commission has offices in three cities: New York (principal office), Albany and Rochester. Having geographic coverage is critical to being able to serve all citizens of the state because many of the state's judges are in remote locations considerably distant from any major city. Investigations in these remote locations are already more difficult than those in major metropolitan areas, as travel is more time consuming and court may be held in places other than a courthouse, since not all municipalities provide court facilities to their local justices. Our three offices render the courts and complainants in each of the state's four judicial departments more accessible to the Commission and the Commission more accessible to the courts and complainants. All three offices were expanded in 2008 to accommodate the increase in staff made possible by the Legislature's increase in the Commission's budget. In New York City and Rochester, our existing offices have been expanded into contiguous space. In Albany, our office has been relocated from the Hampton Plaza on State Street to the Corning Tower.

III. WORKLOAD AND RESULTS

Commission workload is a function of the number of complaints we receive; the size and structure of the state's judiciary; and the size, seriousness and complexity of matters being investigated or heard (tried). In 2009, the Commission received 1,855 complaints against judges and investigated 257 of them. Investigations and formal proceedings were also continued in 208 matters commenced but not completed prior to 2009. These numbers are expected to remain constant, if not increase. As of September 15, 2010, the number of new complaints received was approximately 1,420.

Commission workload is also a function of the size and structure of the state's judiciary. Of the state's approximately 3,500 judges, approximately 1,200 preside in courts of record located in readily accessible cities and county seats. The remaining 2,300 – 66% – are part-time town and village court justices. Many are from remote parts of the state; some hold court in their local business places or homes because there is no available court facility. Such physical limitations make investigation of complaints against these judges more difficult and time-consuming.

There is no way to distinguish or prioritize the significance of complaints against full-time higher-court judges versus part-time town and village justices. Part-time town and village justices do not have to be lawyers. Indeed, approximately 1,800 of them – constituting 78% of the town and village justices and 52% of the entire state judiciary – are not lawyers. Yet these justices are part of the state unified court system, subject to the same statewide rules governing judicial conduct, as are full-time judges. They wield considerable power in both civil and criminal matters. Most citizens will have their only experience in a court before one of the state's part-time justices. Complaints against them must be treated individually on the merits, the same as complaints against full-time judges.

Another factor in workload is the nature of the complaints and resulting investigations. A complaint alleging a single instance of rudeness will generally require much less investigation than one alleging a series of financial improprieties. Review of a transcript and several interviews may wrap up the former. Detailed analysis and auditing of records, in addition to interviews, would be required in the latter. On occasion, investigation of a complaint concerning a single incident of misconduct may disclose a wider pattern of misbehavior, triggering a broader investigation.

In addition to conducting full-fledged investigations, the Commission staff conducts an "initial review and inquiry" on approximately 400 complaints a year (in 2009 the number was 471) before the complaints are presented to the Commission for its decision on whether to authorize an investigation. The "initial review and inquiry" may entail witness interviews and analysis of trial transcripts or other court or public records.

While investigations and initial review and inquiries – entailing interviews, research and summaries of the inquiry to the Commission – can be time-consuming, hearings (full trials) produce considerable additional work and take months to complete. Hearings are authorized only if the results of an investigation so warrant, and involve trial preparation, the hearing itself, and preparation of a transcript, legal memoranda to the referee, legal memoranda to the Commission, etc., all of which may be reviewed by the Court of Appeals at the judge's request after the Commission makes its decision.

During 1997, a significant amount of our legal and investigative resources were focused upon one extremely large, complex matter, which reduced the resources available to prepare other hearings and pursue new complaints. Therefore, as anticipated, fewer hearings were held in subsequent years, but this trend was reversed as our staff and resources increased. From an average of five (5) hearings each year in the late 1990's and early 2000's, there were nine (9) hearings in 2008, four (4) in 2009 and six (6) to date in 2010. A large number of cases have been resolved by stipulation, in part because it would have been impossible for staff to have hearings in every matter without a significant decline in the use of resources for conducting investigations and completing those matters expeditiously.

Workload has increased not just for attorneys and investigators, but for other staff as well. For example, since 1990, as part of a state initiative toward electronic transcription services, staff has largely taken on the task of preparing transcripts of hearings and investigative testimony, made from electronic recording equipment on site, doing work that was previously performed by court reporting services. That process has placed further burdens upon secretarial, clerical and administrative personnel.

Our business procedures have also become more complex over time, but the Commission's finance staff has kept pace with all internal controls and audit requirements, having consistently scored the highest grades available in performance measures evaluated by the State Comptroller's Office as to payroll, petty cash management, procurement procedures, etc.

The Commission will continue to pursue its goal of effectively discharging its constitutional mandate to investigate and discipline unethical judicial conduct and improving the quality and administration of justice in New York State. Among its priorities: (1) To clear two "old" matters apiece per year per lawyer, so that if the number of new matters remains relatively constant, the backlog will continue its downward trend. From 2007, when the Commission's resources were expanded for the first time in decades, to present, the backlog of pending matters has been reduced from 275 to 198, or 28%. The Commission will continue to pursue its goal of reducing it to be the lowest in the Commission's history. (2) Promptly processing and "staying ahead" of new incoming complaints. (3) Implementing a system of follow-up on discipline imposed by the Commission on judges, to insure compliance with ethical mandates by those shown to have violated them. (4) Contributing in a significant way to the education and training of judges and judicial candidates. (5) Better acquainting the public with the Commission's mandate and work, both as reassurance that judges are being held accountable for their behavior and to assist citizens in recognizing unethical conduct and reporting it so that appropriate remedial action may be undertaken.

The related strategic plan includes: (1) Maintaining staff at the level needed to handle the heavy caseload. (2) Continuing to increase the number of Commission meeting-days, from approximately 10 to between 12 and 16, to process the increased number of cases made ready for disposition. (3) Continuing to implement a technology plan developed with assistance from the Office of Court Administration, to facilitate more efficient handling of the substantial caseload and keep the backlog from reappearing. (4) Continuing to make senior staff available to education, training and public awareness events, to improve the quality of judicial conduct and ultimately reduce the number of legitimate complaints that arise.

IV. FINANCIAL NEEDS

A. Personal Service

The agency is authorized for fifty five (55) FTEs. However, in FY 2008-09, in consultation with DOB and in furtherance of achieving savings, the Commission's Administrator agreed to defer the hiring of four (4) staff, effectively reducing the number of FTEs to fifty-one (51).

In FY 2009-10, the Commission's FTEs reached forty-eight (48), with three (3) vacant positions. In FY 2010-11, the Commission deferred filling three additional (3) positions when the employees depart for other opportunities and abolished one (1) position due to the employee's participation in the State's Retirement Incentive Program. At present, 44 positions are filled, *i.e.* 20% less than the FTE allotment of 55.

1. Personal Service (Regular)

In recognition of an economic downturn that will require sacrifices throughout government, the Commission will voluntarily institute significant economies in the coming fiscal year. The Administrator plans to continue the indefinite deferral of 5 positions, fill 1 position early in the fiscal year, fill 3 positions later in the fiscal year and keep 2 position vacant into the next fiscal year if possible.

An agency-prepared schedule entitled "Recap of Personal Service Cost Estimates Budget Year 2011-2012" has been generated to document the projected personal service cost of **$4,093,000 at 48 FTEs**. The base of this projection is the current FY ending cost estimate of $3,806,504, which includes obligatory FY 2010-11 salary increases of $217,327 that have yet to be paid. The requested amount also includes obligatory performance advance and longevity payments for eligible staff for FY 2011-2012 (totaling $50,287), mandated location pay (totaling $70,060), and funds to phase in hiring of 4 vacant positions as indicated above (totaling $152,649). In total, the funds for regular personal service for 48 FTEs should be $4,073,000.

As in the past, no calculation for a turnover adjustment has been incorporated into the Personal Service figures. Where possible due to turnover, replacement hires will be phased in and efforts will be made to replace departing staff with lower-salaried successors.

2. Personal Service (Temporary)

The request for Personal Service Temporary (PST) on the attached "Recap of Personal Service Cost Estimates" is $20,000. Primarily, it will cover per diem expenses for referees, who preside over formal hearings and are compensated at $250 a day.

3. PS Recap

In total, the Recap of Personal Service Cost Estimates for FY 2011-2012 is $4,093,000, which is the same as the PS appropriation of the current year and reflects only the mandated performance advances authorized by the Legislature.

B. <u>Non-Personal Service</u>

A consistent effort has been made for the past two years to achieve all possible savings in NPS spending. Faced with mandated increases in certain expenses (such as rent), the Administrator is nevertheless requesting no increase in the agency's NPS budget of $1,291,000, which will require further sacrifice in FY 2011-12. The agency plans to offset those mandated increases by again deferring certain items (such as a 6-figure case-management system, PC replacements, etc.) and continuing its hawkish vigilance over spending.

NPS Categories	2010-11 Approved Appropriation	2011-12 Requested Appropriation	Change
Supplies & Materials	55,000	51,000	-4,000
Travel	103,000	100,000	-3,000
Contractual Services	1,058,000	1,085,000	+27,000
Equipment	97,000	55,000	-42,000
TOTAL NPS	1,313,000	1,291,000	-22,000

Adjusted NPS Appropriation for FY 2010-11 was actually $1,291,000

1. Supplies and Materials

This includes General Office Supplies and Publications. The Commission projected that a small amount of savings would be generated by using more online procurement but it would be offset by inflation. Thus, there would be slight decrease in General Office Supplies.

2. Travel

This category includes all travel expenses of staff, Commission members and referees. The Commission staff has put considerable effort into managing business travel more efficiently for years. Although inflation will add to travel costs in the next fiscal year, it is projected to be offset by savings the Commission will continue to generate in other areas.

3. Contractual Services

This broad category includes the following:

Real Estate	$915,900	Postage & Shipping	$12,000
Equipment Rental	$20,000	OGS Charge-back	$4,150
Vehicles	$22,000	Telecommunications	$14,000
Utilities	$33,000	Books/Publications	$5,000
Professional Services	$14,700	Other/Miscellaneous	$44,250

The Real Estate cost for FY 2011-2012 will be higher than the current year due to a contractual increase in annual rent. Utility expenses will also increase due to inflation.

The Vehicle Leasing and Maintenance cost for FY 2011 -2012 would be slightly higher than the current year due to an unavoidable vehicle replacement. In FY 2010-2011, when the Commission reduced the size of its fleet from 9 to 8, it kept a more than 6-year-old vehicle. For safety and security reasons, this vehicle must be replaced in FY 2011-2012. Instead of purchasing a new vehicle at a cost of $20,000, the Commission will lease a vehicle at a cost of $3,000 annually. This replacement would also result in lower maintenance and repair costs. In addition, the Commission will continue to monitor the use of all vehicles to minimize repair and operational costs and to extend the useful life and safety of all its cars.

The cost for Equipment Rental and Maintenance should remain constant, since no significant changes are projected.

Funds for professional services, which covers the cost of a State contracted vendor for document imaging, indexing and filing, will remain relatively constant, with only a slight increase attributable to staff training.

The Telecommunication costs will be flat in FY 2011-2012. In FY 2008-09, the Commission replaced its regular/conventional phone service (provided by outside vendors for a fee) with IP phone service that, after initial implementation/installation, is free. This has resulted in significant billing decreases from commercial vendors and in OGS Charge-Back vouchers. The funds projected here will be used for wireless phone service (*e.g.* BlackBerry devices for senior staff), back-up internet service, and standard commercial phone lines for the agency fax machines, which cannot be accommodated on the IP phones.

Postage and Shipping cost is projected to be reduced in FY 2011-12 because the Commission will use more e-document alternatives. Significant savings will be achieved by eliminating the mailing of hundreds of annual reports with an announcement of its availability online. More savings are also projected in OGS Charge-back, which includes the cost of the State run courier service.

Books/Publications and Other/Miscellaneous services are projected relatively "flat," but for inflation.

The funds requested for all the other items in this category have been adjusted upward for inflation and downward for anticipated savings or for reclassification.

4. Equipment & Furniture

The normal replacement of aging or malfunctioning equipment and/or furniture is still anticipated and will cost around $25,000. Replacement of half of the agency's aging computer equipment is planned and estimated at $30,000.

Hence, the amount requested here for FY 2011-2012 is $55,000 in total.

5. NPS Recap

In total we request funding for Non Personal Services in the amount of $1,291,000, *i.e.* the same as the agency's NPS appropriation for FY 2010-11.

C. Conclusion

The total (PS and NPS) fund request for FY 2011-2012 is the same as last year – $5,384,000. This includes (1) a flat PS budget request of $4,093,000, *i.e.* the same amount appropriated by the Legislature to the Commission for FY 2010-11, to meet standard/mandated salary advances for existing staff, without adding to the agency's overall staffing number of 48, which is 13% lower than the agency's authorized FTE allotment; and (2) a flat NPS budget request of $1,291,000. (The requested budget is $22,000 lower than the amount appropriated by the Legislature for FY 2010-11 but the same as the reduced, adjusted NPS appropriation to which the agency agreed mid-year.)

Overall, the Commission's "flat" budget request for FY 2011-12 meets the savings goals encouraged by Governor and Budget Director. Although not a gubernatorial agency, the Commission voluntarily meets these goals in recognition of the financial realities constraining all of state government.

Complete schedules are attached.

New York State
Division of the Budget
All Funds Budget Request FY 2011-2012
Agency Summary
Recapitulation of Current Year Adjusted Appropriations and Requested Changes for the Next Fiscal Year

Agency: NYS Commission on Judicial Conduct

(A) Appropriation Category/Fund Type	(B) Adjusted Appropriations 2010-11	(C) Requested Change	(D) Total Request (Column B+C) 2011-12
State Operations			
General Fund	5,384,000	0	5,384,000
Special Revenue - Federal	0	0	0
Special Revenue - Other	0	0	0
Enterprise	0	0	0
Internal Service	0	0	0
Private Purpose Trust	0	0	0
Subtotal	5,384,000	0	5,384,000
Aid to Localities			
General Fund	0	0	0
Special Revenue - Federal	0	0	0
Special Revenue - Other	0	0	0
Enterprise	0	0	0
Subtotal	0	0	0
Capital Projects			
Capital Projects Fund	0	0	0
Special Revenue - Other	0	0	0
Enterprise	0	0	0
Internal Service	0	0	0
Subtotal	0	0	0
Debt Service			0
Agency Total	5,384,000	0	5,384,000

New York State
Division of the Budget
All Funds Budget Request FY 2011-2012
Program Recapitulation
of Current Year Adjusted Appropriations
and Requested Changes for the Next Fiscal Year

Agency: JUDICIAL COMMISSION

Category: JUDICIAL CONDUCT

(A) Program/Fund Type	(B) Adjusted Appropriations 2010-2011	(C) Requested Change	(D) Total Request (Column B+C) 2011-2012
Program			
General Fund	5,384,000	0	5,384,000
Special Revenue - Federal			0
Special Revenue - Other			0
Enterprise			0
Internal Service			0
Private Purpose Trust			0
Program Total	5,384,000	0	5,384,000
Program			
General Fund			0
Special Revenue - Federal			0
Special Revenue - Other			0
Enterprise			0
Internal Service			0
Private Purpose Trust			0
Program Total	0	0	0
Program			
General Fund			0
Special Revenue - Federal			0
Special Revenue - Other			0
Enterprise			0
Internal Service			0
Private Purpose Trust			0
Program Total	0	0	0
All Program Recapitulation			
Program	5,384,000		5,384,000
Program			0
Program			0
Agency Total	5,384,000	0	5,384,000

STATISTICAL TABULATION

New York State
Division of the Budget
All Funds Budget Request FY 2011-2012
State Operations and Aid to Localities
Recapitulation of Current Year Adjusted and and Requested New Year Appropriations

Agency: JUDICIAL COMMISSION
Program: JUDICIAL CONDUCT
Division/Institution:

Fund Type: GENERAL
Fund: STATE PURPOSES
Account: 21080

(A) Object and Subobject of Appropriation/Aid Purpose	(B) Adjusted Appropriations 2010-11	(C) Change	(D) Requested Appropriations (Column B+C) 2011-12
State Operations			
Personal Service			0
Personal Service -- Regular	4,073,000	0	4,073,000
Temporary Service	20,000	0	20,000
Holiday/Overtime Compensation	0		0
Total PS	4,093,000	0	4,093,000
Nonpersonal Service			
Supplies and Materials	51,000	0	51,000
Travel	100,000	0	100,000
Contractual Services	1,085,000	0	1,085,000
Equipment	55,000	0	55,000
Fringe Benefits	0		0
Indirect Costs	0		0
Total NPS	1,291,000	0	1,291,000
Maintenance Undistributed			
Personal Service -- Regular			0
Temporary Service			0
Holiday/Overtime Compensation			0
Supplies and Materials			0
Travel			0
Contractual Services			0
Equipment			0
Fringe Benefits			0
Indirect Costs			0
Total MU	0	0	0
Total State Operations	5,384,000	0	5,384,000
Aid to Localities			
Purpose:			
--			0
--			0
--			0
--			0
--			0
Total Aid to Localities	0	0	0
Grand Total SO and ATL	5,384,000	0	5,384,000

Commission on Judicial Conduct: FY 2011-2012 Total Service Cost Projection

Categories		2010-2011 Request	2010-2011 Approved	2011-2012 Request	Compared to 20010-11 Approved
PS	Salary	$3,919,700	$4,073,000	$4,080,000	$7,000
	Temp	$25,000	$20,000	$13,000	-$7,000
	Add *	$226,300			$0
Total		**$4,171,000**	**$4,093,000**	**$4,093,000**	**$0**
Non-PS	Supplies	$61,000	$55,000,	$51,000	-$4,000
	Travel	$103,000	$103,000	$100,000	-$3,000
	Contractual	$1,054,000	$1,058,000	$1,085,000	$27,000
	Equipment	$95,000	$97,000	$55,000	-$42,000
Total		**$1,313,000**	**$1,313,000**	**$1,291,000**	**-$22,000**
Agency Sum		**$5,484,000.00**	**$5,406,000.00**	**$5,384,000.00**	**-$22,000.00**

Recap of Personal Service Cost Estimates
Budget Year 2011- 2012, Annual & Non-Annual Salaried Positions
Estimates From Pay Period 2010-PP11

Department: 21-Miscellaneous Boards and Commissions
Agency: 21080-Judicial Commissions

Fund: 003 - State Operations Account
Account: 00-State Purposes Account
Program: D850-Judicial Conduct Program

LINE NO	DESCRIPTOR	NO. OF POSITIONS FTE (A)	NEXT FISCAL YR ESTIMATE (B)
	Annual-Salaried Personal Service; Current Fiscal Year (CFY) Ending Estimate		
1	Filled Annual-Salaried Positions; CFY	44.000	3,806,504
	Adjustments to Current Year Ending Estimate		
2	General Salary Increases; Next Fiscal Year (NFY) (Including NS)		
3	Performance Advances & Step Increases; NFY (Excl. most NS, M8 & SG38)		50,287
4	Longevity Comp & Longevity Increases; NFY (Excl. most NS, M8 & SG38)		
5	SUNY Discretionary Increases; NFY		
6	Annualization of Current Fiscal Year Increases		
7	*Subtotal -- Annual-Salaried Positions (lines 1 through 6)*	44.000	3,856,791
	Other Compensation		
8	Geographic Differential		
9	Inconvenience Pay (Irregular Intermittent Pay Below)		
10	Location & Supplemental Location Pay	26.000	70,060
11	Premium Pay In Lieu of Overtime		
12	Pre-Shift Briefing, Command, Expanded Duty Pay, Marine Off Road Enforcement, Facility Security Supervisor Pay, Security Enforcement Differential & Expertise Duty Pay		
13	Shift Differential		
14	Taxable Maintenance & Clothing and Uniform Allowance		
15	**Sub-Subtotal - Other Compensation (8 through 14)**		70,060
16	*Subtotal -- Annual-Salaried Positions (lines 7 and 15)*	44.000	3,926,851
	Average FTE (A-FTE) Adjustment		
17	FTE Financed From: Annual: 49 MU(s):0 Suballocation(s):0 Total:49	48.000	
18	Average Salary: (18B) = (49,724+74,241+57,209*2+3020*2)/4		60,351
19	Default A-FTE Adjustment: (19B) = Average Salary (18B) X FTE Adjustment (19A) X 0.6+1307	4.000	146,149
20	*Subtotal -- Annual-Salaried Positions (Including A-FTE Adjustment) (lines 16 and 19)*	48.000	4,073,000
	Additions to Annual-Salaried Position Projections		
21	M/C (Graded & NS), PEF & DC-37 Merit Awards		
22	Performance Awards (For Graded & NS Items)		
23	Advances & Longevities from NS (Excluding Trainees) Listing	44.000	
24	Advances from NS (Trainee) Listing		
25	Irregular Intermittent Inconvenience Pay		
26	Overtime Compensation		
27	Hazardous Duty Pay		
28	Holiday Pay		
29	Leave & Overtime Accrual Payments Adjustment		
30	Miscellaneous		
31	**Sub-Subtotal - Additions (21 through 30)**		0
32	*Subtotal -- Annual-Salaried Positions (lines 20 and 31)*	48.000	4,073,000
	Subtractions from Annual-Salaried Position Projections		
33	Maintenance Undistributed		
34	Suballocations From Other Agency(s)		
35	35B = Turnover Adjustment Factor (TAF) X 20B (see Instructions for TAF calculation)		
36	Miscellaneous		
37	**Sub-Subtotal - Subtractions (33 through 36)**		0
38	*Total -- Annual-Salaried Positions (line 32 minus line 37)*	48.000	4,073,000
	Compensation for Nonannual-Salaried Employees		
39	Regular (example: hourly)		20,000
40	Overtime		
41	Extra Service Compensation		
42	Hazardous Duty Pay		
43	Holiday Pay		
44	Miscellaneous (Additions or Reductions)		
45	*Total -- Nonannual-Salaried Positions (lines 39 through 44)*		20,000
46	*Grand Total -- Estimated Personal Service For NFY (lines 38 and 45)*	48.000	4,093,000

NYS Commission on Judicial Conduct PS Recap for FY 2011-2012: 21080 Grouped

TITEL CODE	TITLE	FTE	BU	SG							
A	B	C	D	E	ANNUAL F1	OTHER F2	TOTAL F3	ANNUAL G1	OTHER G2	TOTAL G3	H
Department: 21	Miscellaneous Boards and Con	####									
Fund: 003	State Purposes Account	001									
Program: D850	Judicial Conduct Program										
Position Pool ID											
25 01300	SENR CLERK	1	79	600	$48,846	$3,029	$51,875	$50,508	$3,020	$53,528	$1,654
32 99761	INFORMATION SPECIALIST	1	79	600	$78,065	$3,029	$81,094	$80,979	$3,020	$83,999	$2,905
93 02244	CHF ADMIN OFFICER	1	79	600	$111,601	$3,029	$114,630	$111,267	$3,020	$114,287	-$343
95 19055	PUBLIC INFO OFFICER	1	79	600	$78,065	$3,029	$81,094	$80,978	$3,020	$83,998	$2,905
95 20181	EXECUTIVE SECRETARY	1	79	600	$70,487	$3,029	$73,516	$70,277	$3,020	$73,297	-$220
95 21001	ADMR	1	79	600	$157,182	$3,029	$160,211	$156,711	$3,020	$159,731	-$480
95 21005	ADMNV ASSNT	1	79	600	$70,487	$3,029	$73,516	$70,277	$3,020	$73,297	-$220
95 21027	SENR ADMNV ASSNT	3	79	600	$198,585	$6,258	$204,843	$204,074	$6,240	$210,314	$5,471
95 21030	CLERK OF COMMISSION	1	79	600	$146,112	$3,029	$149,141	$145,674	$3,020	$148,694	-$447
95 21036	SENR INVESTIGATOR	2	79	600	$160,575	$200	$160,775	$162,850	$200	$163,050	$2,274
95 21037	SENR ATTORNEY	4	79	600	$484,287	$6,058	$490,345	$487,349	$6,040	$493,389	$3,044
95 21038	DEPY ADMINISTRATOR	4	79	600	$604,180	$3,229	$607,409	$602,367	$3,220	$605,587	-$1,822
95 21041	ASST ADMIN OFFICER	4	79	600	$228,379	$6,058	$234,437	$235,927	$6,040	$241,967	$7,530
95 21042	STAFF ATTORNEY I	1	79	600	$72,000	$0	$72,000	$74,539	$0	$74,539	$2,539
95 21043	STAFF ATTORNEY II	7	79	600	$670,821	$12,116	$682,937	$679,283	$12,080	$691,363	$8,425
95 21049	SECY II	4	79	600	$169,917	$6,058	$175,975	$176,078	$6,040	$182,118	$6,144
95 21050	INVESTIGATOR I	2	79	600	$135,528	$3,029	$138,557	$136,931	$3,020	$139,951	$1,393
95 21051	INVESTIGATOR II	4	79	600	$209,784	$0	$209,784	$219,456	$0	$219,456	$9,671
95 21053	ADMNV FIN & PERS OFFR	1	79	600	$111,601	$3,029	$114,630	$111,267	$3,020	$114,287	-$343
	PPID Totals	44			$3,806,504	$70,267	$3,876,771	$3,856,791	$70,060	$3,926,851	$50,080
	CC Totals	44			$3,806,504	$70,267	$3,876,771	$3,856,791	$70,060	$3,926,851	$50,080
	Program Totals	44			$3,806,504	$70,267	$3,876,771	$3,856,791	$70,060	$3,926,851	$50,080
											Cummulative
95 21051	Investigator I	1	79	600				$46,704	$3,020	$49,724	$3,976,575
95 21043	Staff Attorney II	1	79	600				$74,241	$0	$74,241	$4,050,816
95 21050	Investigator II	1	79	600				$57,209	$0	$57,209	$4,108,025
95 21050	Investigator II	1	79	600				$57,209	$0	$57,209	$4,165,234
	Sub Total							$235,362	$3,020	$238,382	
2010-11 Factor =	1.000998997						**Grand Total**	$4,092,154	$73,080	$4,165,234	
2011-12 Factor =	0.997999774								(After FY 2010-11 Adjustment)		

Commission on Judicial Conduct: 2011-2012 Non-Personal Service Cost Projection

Categories	2010-2011 Request	2010-2011 Approved	2011-2012 Request
Supplies & Materials	**$61,000**	**$55,000**	**$51,000**
Travel	**$103,000**	**$103,000**	**$100,000**
Contractual Services	**$1,054,000**	**$1,058,000**	**$1,085,000**
Equipment Rental	$23,000	$19,000	$20,000
Car (Leased & State Owned)	$20,300	$20,000	$22,000
Utility	$33,000	$30,000	$33,000
Real Estate	$889,000	$875,000	$915,900
Postage and Shipping	$15,000	$16,000	$12,000
Others/Misc.	$23,000	$40,000	$35,250
Professional Service	$5,000	$5,000	$13,000
IT Service	$8,000	$7,000	$1,700
Books & Pulication	$5,000	$7,000	$5,000
Telephone	$15,500	$17,000	$14,000
OGS Charge Back	$8,200	$14,000	$4,150
Food	$9,000	$8,000	$9,000
Equipment	**$75,000**	**$97,000**	**$55,000**
Office $ IT Equipment	$73,000	$73,000	$52,000
Office Furniture	$2,000	$2,000	$3,000
Vehicles	**$20,000**	**$0**	**$0**
Total NPS	**$1,315,000**	**$1,313,000**	**$1,291,000**

Scheduel of Annual Salaried Positions

COMMISSION ON JUDICIAL CONDUC Cost Center 620004

Item No.	Title	(03/31/2010)	Not Exceed 4/1/2010
0001	ADMR	$150,986	$157,025
0002	DEPY ADMINISTRATOR	$145,090	$150,894
0009	DEPY ADMINISTRATOR	$145,090	$150,894
0010	SENR ATTORNEY	$118,410	$123,146
0011	SENR ATTORNEY	$122,256	$127,146
0012	SENR ATTORNEY	$106,120	$114,626
0013	SENR ATTORNEY	$110,217	$118,886
0014	STAFF ATTORNEY II	$79,800	$86,490
0016	STAFF ATTORNEY I	$66,507	$71,928
0019	SENR INVESTIGATOR	$71,815	$77,446
0020	INVESTIGATOR I	$43,434	$46,985
0021	INVESTIGATOR II	Vacant	$43,359
0022	INVESTIGATOR II	Vacant	Vacant
0023	INVESTIGATOR II	$53,356	$57,553
0025	INVESTIGATOR I	$48,664	$52,423
0028	SENR ADMNV ASSNT	$67,709	$70,417
0029	SENR ADMNV ASSNT	$66,217	$70,417
0030	SENR ADMNV ASSNT	$66,217	$70,417
0032	ADMNV FIN & PERS OFFR	$103,474	$111,490
0034	SECY II	$38,796	$42,019
0035	SECY II	$37,189	$40,348
0036	SECY II	$38,796	Vacant
0038	SENR ADMNV ASSNT	$53,356	$57,553
0042	ASST ADMIN OFFICER	$55,340	$59,616
0047	SENR CLERK	$45,177	$48,797
0060	DEPY ADMINISTRATOR	$145,090	$150,894
0061	STAFF ATTORNEY II	$84,853	$91,745
0062	STAFF ATTORNEY II	$96,617	$100,482
0063	STAFF ATTORNEY I	Vacant	Vacant
0064	EXECUTIVE SECRETARY	$67,709	$70,417
0065	INFORMATION SPECIALIST	$71,955	$77,987
0078	INVESTIGATOR II	$41,691	Vacant
0079	INVESTIGATOR II	$57,323	$61,678
0084*	ASST ADMIN OFFICER	$51,374	Vacant
0089	DEPY ADMINISTRATOR	$145,090	$150,894
0090	CLERK OF COMMISSION	$140,352	$145,966
0091	STAFF ATTORNEY II	$96,617	$100,482
0092	STAFF ATTORNEY II	$96,617	$100,482
0093	STAFF ATTORNEY II	$94,693	$100,482
0094	STAFF ATTORNEY II	$83,164	$89,988
0095	INVESTIGATOR II	Vacant	Vacant
0096	SENR INVESTIGATOR	$79,778	$82,969
0097	SENR INVESTIGATOR	$79,383	$82,969
0098	SENR INVESTIGATOR	$66,507	Vacant
0100	PUBLIC INFO OFFICER	$71,954	$77,987
0101	CHF ADMIN OFFICER	$103,474	$111,490
0102	SECY II	$40,403	$43,690
0103	SECY II	$40,403	$43,690
0104	ASST ADMIN OFFICER	$51,374	$55,491
0105	ASST ADMIN OFFICER	$53,356	$57,553
0107	ASST ADMIN OFFICER	$51,374	$55,491
		$3,745,165	$3,802,704

* Position # 0084 was abolished on 09/01/2010.

Approved ______________________ Date ______________