"*Graft kings: What Shelly Silver's trial reveals about government*"
New York Post, November 8, 2015 (By Kyle Smith)

CJA's e-mail to Kyle Smith, sent *via* NY Post website, November 12, 2015, 7 a.m.

Excellent advice! "Every time Albany announces its annual budget, you should be studying it as carefully as you'd study your ex's face at the class reunion."

Our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA) has not only been "studying" the budget, but challenging it. This includes by a criminal complaint we filed with US Attorney Bharara in April 2013 against the Governor, Attorney General, Comptroller, and Legislature for their "grand larceny of the public fisc" -- and by three lawsuits, from 2012 onward, including a citizen-taxpayer action, now unfolding in Albany, addressed to the "slush fund" legislative and judiciary budgets and the unconstitutional behind-closed-doors three-men-in-a-room deals that substitute for legitimate process. All are accessible from the prominent center hyperlinks on CJA's homepage, www.judgewatch.org.

For your convenience, here's the direct link to the webpage of our April 2013 complaint to Bharara -- as it will give you immediate perspective on his current nickel-and-dime, small-change prosecutions of Silver and Skelos: http://www.judgewatch.org/web-pages/judicial-compensation/corruption-complaint-to-us-attorney-bharara2.htm.

I look forward to speaking with you personally and am available to be interviewed.

Thank you.

Elena Sassower, Director
Center for Judicial Accountability, Inc. (CJA)
914-421-1200

UNSHACKLE UPSTATE

http://www.unshackleupstate.com/contact
11:23 a.m. November 12, 2015

Are you aware that the belatedly-established Commission on Legislative, Judicial, and Executive Compensation has scheduled its one and only hearing on judicial compensation for November 30th in Manhattan. No hearings on judicial compensation in any location that would be more convenient to those anywhere upstate -- Albany, Syracuse, Rochester, Buffalo, etc.

Our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA) has taken the lead in challenging the Commission -- and its prospective pay raise recommendations. See our website, www.judgewatch.org -- and its prominent hyperlink: "NO PAY RAISES FOR NEW YORK'S CORRUPT PUBLIC OFFICERS: The Money Belongs to Their Victims!".

Please furnish me with an e-mail address to which I can send you ALERTS about what's happening -- and call me so that we can discuss UNSCHACKLE UPSTATE'S positions on these issues and other important statewide issues involving government integrity and taxpayer dollars.

Thank you.

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The Commission on Legislative, Judicial and Executive Commission – like its predecessor, the 2011 Commission on Judicial Compensation – is required, by statute, to "take into consideration all appropriate factors". In 2011, CJA took the position that systemic judicial corruption, involving supervisory and appellate levels and encompassing the Commission on Judicial Conduct and the court-controlled attorney disciplinary system, was an "appropriate factor", disentitling the Judiciary to ANY pay raises. Indeed, we took the further position, which we demonstrated by an analysis of the New York State Constitution and the Court of Appeals' February 23, 2010 decision in the judge's judicial pay raise lawsuits that propelled the statute creating the Commission on Judicial Compensation, that it would be UNCONSTITUTIONAL for the Commission to recommend judicial pay raises, absent a determination that mechanisms were in place and functioning to remove corrupt and incompetent judges.

Neither the Commission on Judicial Compensation – nor by anyone else – ever denied or disputed the correctness of these two positions, the first of which we stated even before the Commission on Judicial Compensation was fully appointed and operational and the second which we stated and reiterated well before it rendered its August 29, 2011 Final Report. These positions were focally repeated in our October 27, 2011 Opposition Report, and embodied in the second cause of action of our 2012 declaratory judgment action, CJA v. Cuomo I, which – as a consequence of judicial misconduct, including at supervisory levels, stalled in New York County. No one ever denied or disputed the correctness of these positions. Instead, they all simply ignored what we said – reflective of their knowledge that what we said was correct.

What was correct then, is correct now – and your threshold determination is whether you can lawfully and constitutionally recommend increases in judicial compensation to a judiciary that is systemically, pervasively corrupt, at every level, and whose judges "throw cases" by decisions that are judicial frauds, falsifying or obliterating the material facts and disregarding mandatory, black-letter law, so as to deny anything ressembling justice.

systemic judicial corruption, involving supervisory and appellate levels, including the Commission on Judicial Conduct and court-controlled attorney disciplinary system is an "appropriate factor". .

ruling, threshold, that issue – and examining the systemic corruption. And

: "NO PAY RAISES FOR NYS JUDGES WHO CORRUPT JUSTICE. THE MONEY BELONGS TO THE VICTIMS". And, once again, as in 2011, CJA is mobilizing citizen-opposition.This Commission is required by statute to take into consideration Systemic judicial corruption, involving supervisory and appellate levels, and involving the Commission on Judicial Conduct and court-controlled attorney disciplinary system, is an appropriate factor for the Commission's

Disqualification

Barry Cozier –
His disqualification rests on his corruption, in 2003-2005, when he was an Appellate Division, Second Department Justice, appointed by Appellate Division, Second Department Presiding Justice Prudenti to membership on her "Committee to Review the Procedures of the Committees on Character and Fitness and the Grievance Committees of the Appellate Division, Second Judicial Department" – and also a member of Chief Judge Kaye's Commission to Promote Public Confidence in Judicial Elections. Under a coverletter dated November 13, 2003, I hand-delivered to his Westchester County Office, the case file evidence dispositive of the unconstitutionality of New York's attorney disciplinary law, *as written and applied* – and of its use to retaliate against my mother for whistle-blowing on the manipulation of elective judgeships, requesting that he ensure that it was furnished to the members of the Committees on which he sat. Case file exposed the corruption of his fellow .

Show why attorney discipline cannot be reposed in New York's judiciary – because it is dishonest. Rendered a cover-up report

Cover-up report, concealing the corruption of the court-controlled attorney disciplinary system – about which I requested to testify and

testified, furnishing evidence in full substantiation. Indeed, my testimony – both written and oral – was all about the documentary evidence that the Commission would have to confront if it was going to do any kind of methodologically-sound examination of the attorney disciplinary system. .

Not only does the Report confront none of the evidence I furnished as to the corruption of the attorney disciplinary system, it conceals that I ever asserted that the attorney disciplinary system is corrupt – and that others, likewise, had asserted and furnished evidence. Thus, in its section "The Commission's Work" (pp. 29-35), the Report states: "Dozens of comments were received and reviewed." (at p.31) and "A total of 31 individual witnesses appeared at the hearings and approximately 50 interested parties submitted written comment." (at p. 32). However, neither in this section – nor elsewhere in the Report – is corruption identified as having been a subject of either comment or testimony.[1]

Tellingly, the Report does not purport that the referred-to potential legal malpractice claims were not also legitimate attorney misconduct complaints, in alleging and/or reflecting violations of court-adopted rules of attorney conduct.

. Other than

The closesto identifying anything what those comments and ame to what

It does not identify anything about these written comments, except in a footnote

Thus,

e allegations of my testimony – or of anyone else who had testified or who had requested to testify – that the, as to which that evidence both That corruption is established by evidence – and such was presented by my testimony, with my written statement identifying four categories of evidence:

"(1) the casefiles of grievance committee disciplinary proceedings against attorneys…;

(2) the casefiles of lawsuits against grievance committees, the Appellate Divisions, and the State brought by attorneys challenging disciplinary proceedings and discipline against them…;

(3) the records of attorney misconduct complaints, filed with grievance committees, and rejected as failing to allege misconduct or dismissed on other grounds, without requiring an answer from the complained-against attorneys;

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[1] The closest reference – and it is not at all close – is the referencing among the "[recurring topics at the hearings and in written submissions] "an apparent crisis in confidence with at least some members of the public, who view the discipline system as it now exists as insular and designed more for the protection of attorneys than the protection of consumers."(p. 32). Other than that a footnote purports that "A considerable number of the comments received by the Commission dealt with complaints which, if true, could form the basis for a claim of legal malpractice." This same footnote – footnote 48 -- then elaborates on the difference between misconduct and malpractice, identifying that they are "not necessarily mutually exclusive nor mutually inclusive" – and, conspicuously not purporting that the referred-to comments and complaints it had received were not also legitimate attorney misconduct complaints.

The Commission finds it advisable to briefly address misconduct vis-à-vis malpractice, beginning with the acknowledgment that those two concepts are not necessarily mutually exclusive nor mutually inclusive: legal malpractice may well include professional misconduct, professional misconduct may well give rise to a parallel complaint of malpractice. On the other hand, malpractice and misconduct, while perhaps parallel, are different issues. Quite simply, attorney malpractice is a failure to exercise ordinary skill and knowledge, where the negligence results in damages to a client. By contrast, attorney misconduct is the failure to comply with the rules of conduct adopted by the courts. This Commission's focus was exclusively on attorney misconduct, and, more specifically, the process from the initiation of a complaint through a finding of misconduct through the imposition of a sanction."

(4) the casefiles of lawsuits against grievance committees brought by complainants whose complaints have been dumped."

And, in testifying I handed up all four categories of documentary evidence

The entirety of what it states as to my testimony:

p. 32: "A total of 31 individual witnesses appeared at the hearings and approximately 50 interested parties submitted written comment."

"Recurrent topics at the hearings and in written submissions included… and an apparent crisis in confidence with at least some members of the public, who view the discipline system as it now exists as insular and designed more for the protection of attorneys than the protection of consumers…"
ANALYSIS

Conflict of Interest:

Insiders with sufficient knowledge, information, and documentation – writing as if they are outsiders, with no greater knowledge than the public – and without documents.

hose report is crafted as if they are outsiders Judiciary's own review – no impediment to its opening up the confidential files of its grievance committees and of its appellate divisions so that they might be examined by the Commissioners.

Moreover, most of the Commissioners are either currently or previously participants in the attorney disciplinary process:
Of the 41 members, 9 are or were Appellate Division justices (Prudenti, Cozier, Catterson, Cohen, Kavanagh, Lindley, Mazzarelli, Nardelli, Santucci, Skelos) – and, as such, responsible for authorizing disciplinary proceedings, deciding discovery and dismissal motions made by the complained-against attorneys, affirming/disaffirming referee reports, and denying motions for leave to appeal. One is a former Court of Appeals judge – who decided motions by disciplined attorneys seeking appeals by right – and by leave.

11 are or were members of the grievance committees (Besunder, Cerrachio, Connors, DiMartino, Fischman, Gravante, Johs, McDonald, Ruderman, Williams, Yeboah, including two present chairs (Connors, Ruderman) a present vice-chair (Johs) and a former chair (Besunder);

1 is a chair of a committees on character and fitness (Johson), and 1 is a member of a committee on character and fitness (Thorsen) ;

5 were or are chief counsels, deputy chief counsels, or special counsels at the grievance committees (Duffy, Fischman, Guido, Hamilton, Lieberman), 2 are currently high-level appellate division staff with responsibility for attorney disciplinary matters (Guido, Morton):

Other relationships: Gillers' wife, Barbara Gillers was first deputy counsel at the DDC, under Lieberman – and terminated with him (February 11, 1998: Disciplinary Process Revamped)

In other words, they are or have been key participants in the attorney disciplinary processes and evidence-based findings that the attorney disciplinary system is dysfunctional, politicized, and corrupt would implicate them, in some cases directly and pivotally.

have the personal knowledge to deny or dispute a great deal of personal knowledge

author of disciplinary decisions, including decisions denying appellate review to disciplined attorneys

disciplinary insiders or any of whom, moreover, are currently either were

The Commission's Report is unsupported by any finding -- Its essential recommendation are frauds upon the public, achieved by obliterating any mention of the corruption of attorney discipline, championed by our non-partisan, non-profit citizens' organization, Center for Judicial Accountability, Inc. (CJA), and all the facts, law, and legal argument presented in support.

The report conceals it – and makes no findings – reflective of the Commissioners' knowledge that findings would

Executive Summary (pp. 1-4):

Chief Judge Lippman created the Commission "to conduct a comprehensive review of New York's attorney disciplinary system to determine what is working well, what can work better and to offer recommendations to enhance the efficiency and effectiveness of New York's attorney disciplinary process". Charge is slanted – on the one hand it is to be a "comprehensive review", yet it is put in terms of ascertaining "what is working well, what can work better", with its recommendations "to enhance…efficiency and effectiveness" – in other words presuming a functioning that simply needs to be improved.

Executive Summary furnishes no findings of the Commission's "comprehensive review", only the recommendations – from which findings are inferable. As to these recommendations, it purports them to be "After rigorous deliberation, three public hearings in different regions of the state and input from a myriad of stakeholders" – who it identifies as "legal consumers, lawyers, bar associations, affinity and specialized bar groups, advocates and others"

Statewide uniform rules and procedures governing the processing of disciplinary matters at both the investigatory and adjudicatory levels, from intake through final disposition…This recommendation is of the highest priority and a firm deadline for adoption should be established"

REPORT:

I. Introduction (pp. 5-12)

Purporting that principal purpose of attorney disciplinary process is "as a consumer protection measure" – citing 40-year old Court of Appeals decision: Levy v. Association of the Bar of New York.

p. 6:

"…the Commission sought to address the broad question of whether New York's system of attorney discipline adequately protects the consuming public and the administration of justice, promotes the integrity and reputation of the bar and the public's confidence in the legal system, encourages adherence to high ethical standards and discourages misconduct – of if we can do better. To put it simply, we can indeed do better and we can make **a functional system** more efficient, more transparent, more responsive, more consistent and more credible with the public at large."

In other words, it starts out with the assertion that attorney disciplinary system is "functional" – and the entire report is geared to that fiction: improving the existing system without exposing its sham, corrupt, and unconstitutional nature.

It starts out by noting the anomalousness of New York's attorney disciplinary system – using the word

"unique[]", rather than anomalous, to describe that New York alone – among the 50 states -- does not have "a central body responsible for attorney oversight", but, rather, manages professional conduct "independently by the four departments of the Appellate Division of State Supreme Court, each with its own distinctive nomenclature and rules". Yet neither here nor elsewhere in the report does it pose and obvious question – which it certainly does not answer – as to WHY New York should be "unique"? – this because doing so would reveal the corruption and entrenchment of interests by the courts, which could have readily achieved uniformity had it chosen to do so, at any time.

As to the purported "distinctive…rules", such should have been qualified by the word implementing or procedural – because, in fact, they the four Appellate Divisions and committees are governed by the same rules – a fact identified at p. 8, which states: "Each Department, while bound by the same rules, operates independently, applying its own procedures." The referred-to "same rules" are e the New York Rules of Professional Conduct – published as Part 1200 of the Joint Rules of the Appellate Divisions.

pp. 6-8 then furnish a sentence or two for each of the four Appellate Division departments, as to their geographic jurisdiction, the differing names given to their disciplinary committees, the sections within 22 NYCRR within which their separate procedural disciplinary rules appear – as well as the web addresses for the rules. From these web addresses, it is evident that only the First and Third Department's post their procedural disciplinary rules on their websites. However, neither here – nor elsewhere – does the Report identify that the Second and Fourth Departments do not post their rules – or an explanation as to why this should be so.

These sentences also furnish, for the Second, Third, and Fourth Departments, commentary as to their procedural disciplinary rules - unsupported by annotating rule reference:

> For the Second Department, the commentary is: "In the Second Department, each Grievance Committee investigates misconduct complaints. Each Committee has the authority to serve charges and conduct a hearing or it can ask the Appellate Division to institute formal disciplinary proceedings."
>
> For the Third Department, the commentary is: "the investigative duties are executed by the professional staff of the Committee under its supervision…to conduct investigations."
>
> For the Fourth Department, the commentary is: "Investigations are conducted by the Committees and their legal staff."

What is the meaning of this commentary? Is the meaning that the committees of the Second Department do the investigations, not any staff? That in the Third Department, investigation is only done by professional staff supervised by the Committee? That in the Fourth Department investigations are jointly conducted by the committees and legal staff? And what constitutes investigation? Are all complaints, in each Department, investigated?

With no explanation whatever, the report then introduces a further word "screen", which it also does not define, stating: (p. 8):

> "The separate disciplinary bodies in the four Departments screen and investigate the thousands of complaints that are filed each year alleging an array of attorney misconduct from neglect of client

> matters and misappropriation of funds, to dishonesty and deceit in matters before the courts, and criminal behavior. Consistently, more than 90 percent of the complaints are dismissed.[fn.6]"

The annotating footnote 6 for this "more than 90 percent" dismissal rate does not reference any Judiciary source – not Appellate Division annual reports, nor the Judiciary's annual reports. Rather, without explanation, it states: "See the annual reports of the New York State Bar Association Committee on Professional Discipline (https://www.nysba.org/copdannualreports/)." In other words, impliedly, this information is not available from the Judiciary and Appellate Division annual reports, but what these annual reports furnish on the subject – or even that they exist – is not disclosed by the Report.

As for this "more than 90 percent of the complaints" that are dismissed, the Report offers not the slightest qualitative assessment – let alone the most basic information – as, for instance, the grounds upon which they were made, by whom the dismissals were made, the explanations given to complainants, if any, review procedures for these dismissals, if any – and their efficacy. Instead, the Report blithely moves on to the less than 10 percent of disciplinary complaints that result in discipline. As to these it states:

> "Others are resolved at the committee level when the misconduct does not warrant formal action by the court. But hundreds do annually result in formal disciplinary proceedings. Following these proceedings, each Department may issue sanctions ranging from public censure to suspension from the practice of law, to disbarment."

Here, too, there is no qualitative assessment as to how these less than 10% of complaints are handled, be it individually or by comparison with other complaints. Instead, the Report shifts to an assertion:

> "Each Department, while bound by the same rules, operates independently, applying its own procedures. To this day, the state lacks a single definition on what constitutes professional misconduct.[fn.7]"

In fact, New York does not lack "a single definition on what constitutes professional misconduct"– and the annotating footnote 7 reflects this, stating: "Although the language varies, the departments generally define professional misconduct the same way." The footnote then provides only a single example of variation in the definition of professional misconduct, *to wit*, "the First Department adds a paragraph to define misconduct by law firms". However, this would appear to be irrelevant as the Rules of Professional Conduct, to which all four departments are "bound", expressly includes law firm misconduct. The Report does not reveal this – nor address whether, as applied, the failure to include law firms in the rules of the three other Appellate Divisions means they do not impose law firm discipline; or whether, by virtue of the fact that it is part of the First Department rules, there is greater prosecution of law firms than in the other departments.

The Report then lists 11 examples of the "innumerable procedural inconsistencies" of the four Department's procedural rules, each example listed without citation to the specific rules.

In addition to repeating the example cited in footnote 7:

> "The First Department specifically provides for law firm discipline; the other three departments to not"

which, as stated, may have no significance, is an example this example:

> "Complaints in the First Department can be dismissed after review of the chief attorney's recommendation by a single attorney member of the Disciplinary Committee. In the Second Department, a majority vote of the entire Grievance Committee is required. The Third Department's Committee on Professional Standards makes all dismissal decisions. And in the Fourth Department, the chief counsel or his/her designee can dismiss a charge after consulting with the Grievance Committee chair." (at p. 9)

This is false as to the Second and Third Departments – and as to the Fourth Department is seemingly erroneous in referring to dismissal of "a charge", rather than "a complaint"[2].

The unidentified rule of the Second Department, pertaining to dismissal of complaints would appear to be 691.4(e). It states:

> "Upon receipt…of a specific complaint of professional misconduct, any such committee may, after preliminary investigation and upon a majority vote of the full committee: (1) dismiss the complaint and so advise the complainant and the attorney".

The catch is that "only if the complaint is deemed to be of "professional misconduct" is "a majority vote of the full committee" necessary. Indeed, the Second Department's own website makes explicit that the Committee has nothing to do with complaints that, purportedly, do "not involve professional misconduct":

> "How Are Complaints Processed?
> Upon receipt of a complaint, it is examined by a staff attorney at the grievance committee to evaluate whether or not it is a matter that the committee can or should investigate….
>
> The staff attorney may conclude that a complaint describes conduct that, even if true, does not violate a provision of the Rules of Professional Conduct (22 NYCRR part 1200), and <u>therefore does not involve professional misconduct</u>. On occasion, an otherwise valid complaint may not be suitable for investigation due to other contributing factors. In such cases, <u>the staff attorney will notify the complainant in writing and explain the reasons why the committee is unable to be of assistance</u>."

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[2] The Fourth Department's website has no explanation of its procedural rules, which, additionally, are not posted. Its Rule 1022.19(d)(2) states:

"After an investigation of a complaint and consultation with the appropriate committee chairperson, the chief attorney or designated staff attorney may:

(i) dismiss a complaint as unfounded by letter to the complainant and subject attorney";

A complaint determined to be "unfounded" after investigation is not the same as a complaint which purportedly does not set forth misconduct warranting investigation.

As for the Third Department, its website does not explicate its procedural rules. However, apparent from its Rule 806.4(b) and (c) is that only investigated complaints are dismissed by its Committee and that it is the chief attorney who determines whether a complaint alleges professional misconduct requiring investigation.

> (b) Investigation by chief attorney. Before initiating an investigation of a specific complaint against an attorney, the chief attorney shall determine whether the allegations, if true, are sufficient to establish a charge of professional misconduct. …
>
> (c) Action by committee. (1) If, after an investigation, the committee determines that no action is warranted, the complaint shall be dismissed and the complainant and the attorney shall be so notified in writing….

After this list of 11 examples of "procedural inconsistencies" in the rules of the four Departments, the Report by asserting that "obvious questions" are raised by the "fragmentation" and "regional disparities" in attorney discipline: "

> "Will the same or similar conduct in one region result in the same or similar discipline in another region, or are there unacceptable disparities in the way punishment is meted out by the Appellate Division departments? Are consumers better protected in some areas and in some types of grievances in one region than another?"

It then transmogrifies these "obvious questions" and calls it "confusion", stating:

> "That confusion is exacerbated by the fact that disciplinary decisions are frequently terse and lacking even minimal detail that would enable the public to understand why a particular sanction was appropriate in a particular case. With so little information it is impossible to know whether the seemingly light sanction is defensible."

This is deceitful. Firstly, more than 90% -- so it is not the subject of decision. Second,

A, Legal Authority pp. 12-13

In this paltry section, the Commission falsifies the jurisdiction of Court of Appeals to absolve it of responsibility. Quoting a 100 year old Court of Appeals' decision – *In re Flannery*, 212 N.Y. 610 (1914) – it implies that the Court of Appeals is without jurisdiction, except as to "the single question whether the finding of guilt has any evidence to sustain it", further implying that this decision interprets Judiciary Law §90(8), whose language it also quotes.

Judiciary Law §90(8) reads:

> "Any petitioner or respondent in a disciplinary proceeding against an attorney or counsellor-at-law under this section, including a bar association or any other corporation or association, shall have the right to appeal to the court of appeals from

> a final order of any appellate division in such proceeding upon questions of law involved therein, subject to the limitations prescribed by section three of article six of the constitution of this state."

The Commission does not discuss the "limitations prescribed by section three of article six of the constitution of this state", to which the statute refers[3]. Instead, it baldly asserts in a final sentence:

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3 Article VII, Section 3 reads:

> a. The jurisdiction of the court of appeals shall be limited to the review of questions of law except where the judgment is of death, or where the appellate division, on reversing or modifying a final or interlocutory judgment in an action or a final or interlocutory order in a special proceeding, finds new facts and a final judgment or a final order pursuant thereto is entered; but the right to appeal shall not depend upon the amount involved.
>
> b. Appeals to the court of appeals may be taken in the classes of cases hereafter enumerated in this section;
>
> In criminal cases, directly from a court of original jurisdiction where the judgment is of death, and in other criminal cases from an appellate division or otherwise as the legislature may from time to time provide.
>
> In civil cases and proceedings as follows:
>
> (1) As of right, from a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding wherein is directly involved the construction of the constitution of the state or of the United States, or where one or more of the justices of the appellate division dissents from the decision of the court, or where the judgment or order is one of reversal or modification.
>
> (2) As of right, from a judgment or order of a court of record of original jurisdiction which finally determines an action or special proceeding where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court.
>
> (3) As of right, from an order of the appellate division granting a new trial in an action or a new hearing in a special proceeding where the appellant stipulates that, upon affirmance, judgment absolute or final order shall be rendered against him or her.
>
> (4) From a determination of the appellate division of the supreme court in any department, other than a judgment or order which finally determines an action or special proceeding, where the appellate division allows the same and certifies that one or more questions of law have arisen which, in its opinion, ought to be reviewed by the court of appeals, but in such case the appeal shall bring up for review only the question or questions so certified; and the court of appeals shall certify to the appellate division its determination upon such question or questions.
>
> (5) From an order of the appellate division of the supreme court in any department, in a proceeding instituted by or against one or more public officers or a board, commission or other body of public officers or a court or tribunal, other than an order which finally determines such proceeding, where the court of appeals shall allow the same upon the ground that, in its opinion, a question of law is involved which ought to be reviewed by it, and without regard to the availability of appeal by stipulation for final order absolute.

> "In addition to §90, the state constitution limits the jurisdiction of the Court of Appeals in discipline matters to review of questions of law."

For this proposition, it cites "Art. VI, section 3(a) – in complete disregard of Judiciary Law §90(8) which does not limit the Court's jurisdiction to subdivision a of Article VI, section 3.

That the Commission's presentation as to the Court of Appeals' jurisdiction is false may be seen from its failure to discuss the basis of the Court's taking jurisdiction in those attorney disciplinary cases it has reviewed – let alone the basis for refusing to take jurisdiction in cases it has not reviewed.

For example, just a couple of pages later – at p. 17 – the Report identifies *Matter of Padilla*, 67 N.Y.2d 440 (1986) and *Matter of Russakoff*, 79 N.Y. 2d 520 (1992), as authorizing interim suspension in very limited circumstances, as provided by "Each department's rules". Padilla is actually two cases, brought by two interimly suspended attorneys – Padilla and Gray. Russakoff was brought by interimly suspended attorney Rusakoff. Neither Padilla and Gray nor Russakoff involved final orders. In each of these cases the Court of Appeals accepted jurisdiction not as of right, but by the granting of motions for leave to appeal. Likewise in *Matter of Nuey*, wherein the Court of Appeals recognized that there is no 4

> (6) From a judgment or order entered upon the decision of an appellate division of the supreme court which finally determines an action or special proceeding but which is not appealable under paragraph (1) of this subdivision where the appellate division or the court of appeals shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals. Such an appeal may be allowed upon application (a) to the appellate division, and in case of refusal, to the court of appeals, or (b) directly to the court of appeals. Such an appeal shall be allowed when required in the interest of substantial justice.
>
> (7) No appeal shall be taken to the court of appeals from a judgment or order entered upon the decision of an appellate division of the supreme court in any civil case or proceeding where the appeal to the appellate division was from a judgment or order entered in an appeal from another court, including an appellate or special term of the supreme court, unless the construction of the constitution of the state or of the United States is directly involved therein, or unless the appellate division of the supreme court shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals.
>
> (8) The legislature may abolish an appeal to the court of appeals as of right in any or all of the cases or classes of cases specified in paragraph (1) of this subdivision wherein no question involving the construction of the constitution of the state or of the United States is directly involved, provided, however, that appeals in any such case or class of cases shall thereupon be governed by paragraph (6) of this subdivision.
>
> (9) The court of appeals shall adopt and from time to time may amend a rule to permit the court to answer questions of New York law certified to it by the Supreme Court of the United States, a court of appeals of the United States or an appellate court of last resort of another state, which may be determinative of the cause then pending in the certifying court and which in the opinion of the certifying court are not controlled by precedent in the decisions of the courts of New York.

In any event, the Commission does not flag Judiciary Law 90 as being at all problematic in impeding the Court of Appeals from discharging its function of unifying divergence between the Departments.

B. The Purpose of Discipline (pp. 13-16)

How many angels can dance on the head of a pin. Upshot is that it purports that court rulings "strongly suggest" that the "primary purpose of the attorney disciplinary system" is protecting the public.

C. The Matter of Delay (p. 16)

D. Uniformity in Interim Suspensions and the Relationship to Delay" (p. 17)

The Commission purports that "Each department's rules provide for the possibility of interim suspension in very limited circumstances, as authorized by *Matter of Padilla*, 67 N.Y.2d 440 (1986), and *Matter of Russakoff*, 79 N.Y.2d 520 (1992). It does not identify what those "very limited circumstances" are, *to wit*, admissions under oath or other uncontroverted evidence immediately threatening the public interest – or that each of the department's interim suspension rules, 22 NYCRR 603.4[e], 691.4[1], 806.4[f], 1022.20[e], were promulgated as a result of the Court of Appeals' decision in *Matter of Padilla*, which essentially tracked its holding, or that in *Russakoff* the Court of Appeals indicated that those interim suspension rules were all constitutionally infirm for failing to provide for a prompt post-suspension hearing – yet that the Second, Third, and Fourth Departments have still not amended their

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"Review of Appellate Division disciplinary orders by the New York Court of Appeals is circumscribed and rare. Pursuant to Judiciary Law, section 90(8), the Court of Appeals may only review "issues of law," subject to the provisions of the New York Constitution governing Court of Appeals jurisdiction.9 Thus, an appeal may be taken as of right from a judgment or order of an Appellate Division that finally determines an action or proceeding, but only if construction of a provision of the New York Constitution or U.S. Constitution is directly implicated, or where there is a dissent from one or more justices of an Appellate Division.10

Otherwise, and far more commonly, pursuant to CPLR §5602(a)(1), an appeal may be taken to the Court of Appeals by permission of either the Appellate Division or the Court of Appeals, and only from an order of an Appellate Division that finally determines the matter and is not appealable as of right.11 One cannot seek leave simultaneously from an Appellate Division and the Court of Appeals.12 Lawyers seeking leave to appeal must conform their application to the procedures laid out in the local rules of the Appellate Division from which permission is requested, or pursuant to the rules of the Court of Appeals regarding leave applications, and must make any such application within 30 days of entry of the final order.

…

The Court of Appeals does not have the authority to review facts unless there has been an abuse of discretion as a matter of law.13 Nor will it consider arguments concerning the severity of a disciplinary sanction unless the sanction constitutes an abuse of discretion as a matter of law.14 (To the author's knowledge, the Court of Appeals has never modified or reversed a lower court's finding of fact or disciplinary sanction.)

…"

See also "the Glasso case" http://nylegalethics.attorney/the-galasso-case-and-the-duty-of-supervision/

Matter of Galasso, 19 N.Y.3d 688, 954 N.Y.S.2d 784 (2012)

https://casetext.com/case/matter-of-padilla-4

interim suspension rules consistent therewith, a full 23 years later. This concealment is notwithstanding Commissioner Lieberman's knowledge of all these facts, about which he has written – "*Attorney Discipline System: Does it Meet 'Due Process Requirements?*", August 31, 2012.

Nor does the Commission identify the salient fact that these interim suspension rules are all unauthorized by Judiciary Law §90. Indeed, Judiciary Law §90 authorizes only the interim suspension of attorneys convicted of "serious crimes"[5] – and the Commission's reference thereto and to the Appellate Division's power to "set aside an interim suspension under §90 – conceals that no such statutory authority exists for the interim suspensions that the Court of Appeals decided in *Russakoff*, *Padilla* – and, prior thereto, in *Matter of Nuey*.

Certainly, does not address any challenge to these interim suspension rules –

…

> "Interim suspensions are public, but they are not regularly reported in commercial databases, so there is no easy way to identify the frequency with which an interim suspension is imposed or set aside in each department of the Appellate Division. Consequently, it is unclear whether the practice of interim suspensions or relief from them is uniform among the departments."

This is a deceit. Irrespective of the meaning of "commercial databases", it is easy to identify the frequency with which an Appellate Division imposes interim suspensions – or sets them aside. They are public – and the Commission could readily obtain them from the Appellate Divisions and grievance committees, each having records and data bases, electronic and paper. None of this is furnished, however.

Moreover, the information as to interimly-suspended lawyers is already compiled in the annual reports of the New York State Bar Association's Committee on Professional Discipline, whose lists are presumably from the required filings of grievance committees to the Appellate Divisions, and which summarize the disciplinary decisions rendered each year. This includes the most recent annual report of the State Bar Committee on Professional Discipline, for 2012 – cited and quoted at pages 22-23 – and whose membership roster includes four members of the Commission: Sarah Jo Hamilton, who was the Committee Chair, Harvey Besunder, Hal Lieberman, and Glenn Lau-Kee. Yet none of the information available therein pertaining to the interim suspension of attorneys is furnished by the Commission's Reportabout interimly-suspended attorneys from that

p. 17 "E. ABA Model Rules for Lawyer Disciplinary Enforcement"

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[5] "Judiciary Law 90(4) f. Any attorney and counsellor-at-law convicted of a serious crime, as defined in paragraph d of this subdivision, whether by plea of guilty or nolo contendere or from a verdict after trial or otherwise, shall be suspended upon the receipt by the appellate division of the supreme court of the record of such conviction until a final order is made pursuant to paragraph g of this subdivision.

Upon good cause shown the appellate division of the supreme court may, upon application of the attorney or on its own motion, set aside such suspension when it appears consistent with the maintenance of the integrity and honor of the profession, the protection of the public and the interest of justice.

g. Upon a judgment of conviction against an attorney becoming final the appellate division of the supreme court shall order the attorney to show cause why a final order of suspension, censure or removal from office should not be made."

The Commission states that the ABA Model Rules of Lawyer Disciplinary Enforcement, adopted by its House of Delegates in 1989 and amended in 1993, 1999, and 2002 "include best practices covering the recommended structure of attorney discipline systems, the imposition of sanctions, and procedural matters" – but that New York never adopted the rules. In so-stating, the Commission conceals that there was no bar to New York's judiciary, which controls the attorney disciplinary system, from taking steps to adopt and incorporate its provisions, including legislatively.

p. 19: "II. Recent History of Attorney Discipline in New York"

This section is filled with concealment, beginning with its first paragraph and its annotating footnote 24:

> "Over the years, New York's attorney disciplinary system has been roundly criticized as fragmented, inconsistent, lacking in transparency and ineffective in fulfilling its primary role in shielding consumers from unscrupulous or incompetent attorneys – in part because the process works so slowly. The issue has been the focus of a myriad of reports, studies, articles and legislative hearings. [Fn.23]

This is the least of the criticism lodged against New York's attorney disciplinary system. The real criticism – which it cannot survive – is that is politicized, corrupt, and unconstitutional – and that such criticism comes from those with direct, first-hand experience and substantiating evidentiary proof: lawyers who have been the subject of its proceedings, complainants whose filed attorney misconduct complaints have been ignored or dumped, and various insiders.

Indeed, nothing better exemplifies the Commission's cover-up of this criticism than its annotating footnote 23:

> "In 2009, the Senate Ethics Committee and Senate Judiciary Committee held hearings on the manner in which grievances against lawyers and judges are handled by their respective disciplinary watchdogs. At one of the hearings in Albany, more than two dozen witnesses complained about the process. See Satashenko, Joe, 'Grievances Against Lawyer, Judge Discipline Panels Aired at Capital,' *New York Law Journal*, June 9, 2009."

Concealed is what the witnesses at the 2009 hearings were complaining about – and that transcripts and videos of their testimony was available to the Commission. Indeed, the only explanation for the Commission referencing the Law Journal article for the first hearing, rather than furnishing links to the transcripts and videos of that hearing and the subsequent hearing – which I had provided – is because the serious and substantial nature of the testimony would thereby be accessible to all. Certainly, too, for the Commission to purport that hearings were held – but not to identify that they were aborted, without investigation, without findings, without any committee report – when such was the subject of both written and oral testimony to the Commission – is a material deceit.

The next paragraph purports that "A 1985 report of the New York State Bar Association's Committee on Professional Discipline provides a helpful background on the New York State attorney disciplinary process."

Tellingly, the Commission does not facilitate review of this "helpful background" as its annotating footnote 24 furnishes no link to the report, on which it bases a large portion of this section, so-reflected by five further footnotes citing its pages[6] By contrast, the Commission does furnish a link for the ABA's 1970's "Clark Report" – which additionally it posts on its own Resource Page.[7] This follows a pattern: the Commission does not furnish links to referred-to documents that would most directly describe issues pertaining to New York's attorney disciplinary system.

According to the Commission, the ABA's 1970 "Clark Report" "inspired" the State Bar's 1985 report. Yet it furnishes absolutely NO information about the 1985 Report. Indeed, comparison of the Commission's Report with the 1985 State Bar report exposes that the Commission's presentation of history is not only superficial, but utterly skewed, distorted, and deceitful – and exposes the methodologically flawed fashion in which the Commission operated.

Thus, although the Commission does correctly states that, in 1972, the "Clark Report" led to the creation of the New York State Committee on Disciplinary Enforcement, which was called the 'Christ Committee', it removes any explication of who and what this official-sounding entity was. This, notwithstanding it is identified in the 1985 State Bar Report as consisting of "distinguished judges from each department of the Appellate Division, as well as lawyer practitioners". The entirety of what the Commission says about it is that:

> "In 1972, the Christ Committee submitted a comprehensive report to the Judicial Conference calling for standardized and uniform procedural rules and regulations, adoption of the Code of Professional Responsibility, professional staffs, the maintenance of permanent records and other reforms. It did not, however, find any advantage in stripping the Appellate Division departments of their professional discipline jurisdiction and transferring that authority to the Court of Appeals."

Omitted is why the Christ Committee did not find "any advantage" in moving to a unitary system vested in Court of

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6 (1) the 1972 "comprehensive report" of the New York State Committee on Disciplinary Enforcement, called the "Christ Committee", presented to the Judicial Conference, "calling for standardized and uniform procedural rules and regulations, adoption of the Code of Professional Responsibility, professional staffs, the maintenance of permanent records and other reforms. It did not, however, find any advantage in stripping the Appellate Division departments of their professional discipline jurisdiction and transferring that authority to the Court of Appeals";

(2) the 1981 invitation extended by First Appellate Division Presiding Justice Murphy and Court of Appeals Chief Judge Cooke to the ABA's Committee on Professional Discipline to conduct an evaluation of New York's attorney disciplinary system;

(3)the ABA Committee's two reports in December 1982 "recommending a total dismantling of the current structure, to be replaced by a statewide court of discipline, a statewide administrative body, hearing committees and staff";

(4) the 1983 rejection of the ABA committee recommendations by the New York State Bar Association's Committee on Professional Discipline which expressed concern that the ABA model "would establish a new bureaucracy with what our Committee believes would be a politicization of the disciplinary system."

(5) the separate opposition reports to the ABA committee recommendations by the Brooklyn Bar Association, the Association of the Bar of the City of New York, and the New York County Lawyers' Association.

7 Reflecting the slipshod editing of the Report is that the immediately following footnote 26, gives the ABA weblink for the same report, whose full name it repeats.

Appeals notwithstanding it twice appears on page 3 of the 1985 State Bar report – the page cited by Commission's footnote 27. That reason – which could not have been more germane to the Commission's own recommendation – was that the Christ Committee, in addition to calling for uniform rules, was calling for "a vehicle for consultation and exchange of information among the four departments" and, therefore, saw:

> "no significant advantage to be gained by removing this jurisdiction from the four Appellate Divisions where Section 90 of the Judiciary Law now places it, particularly so if the committee's proposed uniform rules and its recommendations for interdepartmental coordination and communication in the areas of procedure and policy are implemented."

According to the 1985 State Bar report "Essentially, all of the [Christ] Committee's proposals were adopted and implemented by each department of the Appellate Division". This, however, is dropped from the Commission report. Instead, it jumps to "Eight years later", when Presiding Justice of the Appellate Division, First Department Francis T. Murphy, invited the ABA's Standing Committee on Professional Discipline to evaluate the disciplinary system in that department, with Court of Appeals Judge Lawrence Cooke, in 1981, extending the invitation to include the other three departments. The comparable reference to this in the 1985 State Bar's report is that these invitations were "After about eight (8) years of operation under the Christ Committee disciplinary system" – again reinforcing that the Christ Committee reforms were adopted and implemented.

In other words, the Commission conceals why, with the adoption of the Christ Committee reforms – which it does not disclose – problems continued with the attorney disciplinary system – and whether and to what extent these were the same or different problems.

The Commission then devotes three skimpy sentences to what ensued:

> "Pursuant to those invitations, in December 1982 the ABA Committee issued two reports, recommending a total dismantling of the current structure, to be replaced by a statewide court of discipline, a statewide administrative body, hearing committees and staff.[fn29] Those recommendations were rejected in 1983 by the New York State Bar Association's Committee on Professional Discipline, which expressed concern that the ABA model 'would establish a new bureaucracy with what our Committee believes would be a politicization of the disciplinary system.'[fn.30] In addition, the Brooklyn Bar Association, what was then the Association of the Bar of the City of New York and the New York County Lawyers Association issued separate reports, all opposing the ABA recommendation.[fn.31]"

From the clipped quote, it is impossible to understand why the State Bar's Committee on Professional Discipline would deem a statewide court of discipline and statewide administrative body with hearing committees and staff to "be a politicization of the disciplinary system" – especially because of the quote from the "Clark Report" at the outset of the section that:

> "A disciplinary system controlled on a statewide basis, with jurisdiction vested solely in the state's highest court and a single disciplinary agency with members distributed throughout the state provides the greatest degree of structural impartiality. Close personal relationships between accused attorneys and those who are to judge the charges against them are more likely to be avoided. A centralized disciplinary structure, moreover, provides uniformity in disciplinary enforcement

throughout the state since only a single court and a single disciplinary agency are involved in the process.[fn.26]"

A larger quote of what the State Bar's Committee on Professional Discipline had to say – which was in a 1983 report –
appears in the 1985 State Bar report – and it gives critical further explication of the State Bar position – and, presumably, that of the Brooklyn, City, and County Lawyers' bar associations.

> "The proposed ABA system would establish a new bureaucracy with what our Committee believes would be a politization of the disciplinary system. In fact, the system surely would cost substantially more than the present system, where the volunteer involvement of attorneys reduces the costs substantially. Furthermore, we believe the proposed structure would result in substantially more delay because disciplinary counsel would have to deal with the minor matters now disposed of on the local level, and the statewide board would have to review each decision of the local hearing panel. It would not guarantee that lawyer discipline would be funded more adequately. Our concern, of course, is that there is no guarantee that the proposed ABA system would address whatever problems exist, because, in fact, the ABA Report does not evaluate substantively the current operations of the disciplinary system."

Indeed, the State Bar's 1985 Report added the following essential explication – and, in so doing, explained its own origin, purpose, and recommendations – all entirely omitted by the Commission:

> "In reaching this conclusion, the Committee [on Professional Discipline] noted in its preliminary report that the ABA's Report's approach was to make an assessment of the degree to which the disciplinary system in the State of New York conformed to the 'Standards for Lawyer Discipline and Disciplinary Proceedings' (Lawyer's Standards'), adopted by the American Bar Association in 1979 and amended in 1982. Accordingly, its evaluation was not addressed to the effectiveness of the New York State Disciplinary System.
>
> The Committee concluded that an evaluation of our Lawyer Disciplinary System must be made, not by comparing it to the theoretical Lawyer's Standards, but rather, by an analytical and empirical study of its operations. No such study had been made since the time that the recommendations of the Christ Committee were put into effect by the four judicial departments. The Committee, therefore, recommended that it undertake a comprehensive study of the state of lawyer discipline in New York. The Committee felt that only in this fashion could a determination be made as to any improvements required in the present system.
>
> The Executive Committee of the New York State Bar Association approved the recommendation of the Committee and directed it to undertake a substantive evaluation of the Lawyer Disciplinary System. The Committee has completed that evaluation.
>
> The Committee proposes that the current system not be discarded but rather that changes and additions be made to make it more responsive and more efficient."

In other words, and completely unidentified by the Commission, is that the State Bar's 1985 Report was the culmination of "an analytical and empirical study of [the] operations of New York's attorney disciplinary system", written to substantiate its preliminary 1983 report rejection of the ABA recommendations for "a new disciplinary court with a centralized administration, a statewide disciplinary board with statewide chief counsel, more

subordinate local disciplinary counsel and the substitution of large numbers of three-person hearing committees for the current Grievance system." – and that it made its own recommendations for improving the then current grievance system. Having concealed essentially everything about the 1985 Report, other than that it provides "helpful background", the Commission also does not identify what its recommendations had been – and what became of them, most importantly, a "Statewide Disciplinary Coordinating Board".

The answer to that is at page 1 of the State Bar's Report, 10 years later, in 1995:

A decade has passed since this Committee completed its comprehensive study of the attorney disciplinary system in New York State. The study concluded with the submission of a report to NYSBA's House of Delegates in June 1985 that indicated significant regional disparities in the quality and degree of professional discipline, proposed adoption of certain procedural changes and recommend7d the creation of a "Statewide Disciplinary Coordinating Board" to achieve greater uniformity among the four departments of the Appellate Division..

> "The proposed Statewide Disciplinary Coordinating Committee was never created and no action was taken on the other recommendations, including a proposal that uniform rules be adopted for all four departments of the Appellate Division. Part of the difficulty in gaining widespread support for the recommendations contained in the 1985 report may be attributable to the Association's profound dissatisfaction with one of the report's key proposals: that New York State move to a system of public discipline. The debate in NYSBA' s House came to focus on that proposal almost to the exclusion of everything else; and, although the balance of the report was approved, approval of the balance seemed like an afterthought. The overall reaction to the report remained generally negative, and little attention was paid to issues other than maintaining the confidentiality of disciplinary proceedings."

The Commission then wizzes past 29 years, stating "In the subsequent decades, various studies and reports critiqued various aspects of the attorney disciplinary process in New York. One of the more recent critiques, authored by Professor Stephen Gillers (a member of this Commission[fn32])…was published in 2014..." The Commission offers no annotating footnote with specifics as to either the "studies and reports" or the "aspects of the attorney disciplinary process in New York" they critiqued.

It thus skips over the 1995 report:

> "The vast majority of the matters coming to the attention of staff counsel, in all departments, are dismissed. A large proportion of these matters are dismissed as 'FSC' ('failure to state a complaint' that is legally cognizable as professional misconduct even if true) by staff counsel acting alone, without the participation of any committee member." (at p. 10)
>
> "In each department, the inspection team found that a substantial number of grievances were resolved without notifying the respondent attorney or undertaking

> any investigation. These files were closed because staff counsel found that the grievances did not allege facts which, if true, would constitute professional misconduct or because they did not involve persons who were subject to the jurisdiction of any disciplinary committee in New York State. Among these files, the inspection team found a number of instances in which it believed that some investigation might have been warranted…
> By virtue of the large number of files that are closed at this early stage (accounting for 60% of the files inspected in two of the eight offices and averaging 45% across the State) and to reduce the possibility that some files will be closed without sufficient investigation, it was also suggested that consideration should be given to developing a procedure to require one or more committee members to review staff counsel's recommendation before closing a file." (p. 31-32)

Pp. 49-50 resources

p. 58 dismissal for fialing to state a complaint

different model – what was response.

"Gillers' examination of hundreds of disciplinary opinions from the four departments imply there are stark differences in the seriousness with which these courts regard the same misconduct, at least when measured by the sanctions they impose…."

Quote at pp. 22-23 – largely verbatim from 1995 State Bar Report pp. 11-14

p. 25: III. Recent Efforts at Reform

This section contains no analysis:

There have been various recent efforts to reform, revise or update the attorney disciplinary process in New York State. Those efforts, many of which necessitated legislative action, did not result in meaningful change."

The Commission does not define "recent"; gives a most truncated description of "efforts" and does not explain why they did not result in "meaningful change", other than that many "necessitated legislative action" and as to the legislative action does not identify why such was not forthcoming.

Indeed, the section is almost entirely about reform of confidentiality provision of Judiciary Law 90(10):

a 1992 report of the City Bar's Committee on Professional Discipline, echoing another report of the Committee from a decade earlier, that confidentiality should be lifted upon the filing of formal charges.

in 1995 the New York State Bar Association's Task Force on the Profession "proposed a similar reform",

in 1996 the Chief Judge's Committee on the Profession and the Courts "followed suit".

in 1999, the Chief Judge's Committee to Promote Public Trust and Confidence in the Legal System "supported openness;

in 2000, a special committee of the State Bar "did the same"

Since 1992, the ABA has supported open disciplinary hearings, "through its Commission on Evaluation of Disciplinary Enforcement", quoting the McKay Commission

However, tucked within this recitation is the following sentence:

> "Also in 1995, the New York State Bar Association's Committee on Professional Discipline (issued after the committee was granted extraordinary behind-the-scenes access to sealed cases and the operations of the grievance committees) found that despite the lack of uniformity, underfund in and delays, the system was essentially working well.[fn41]".

Does not identify what the connection is between this single sentence and opening the attorney disciplinary system at the formal proceedings stage. The connection is

Nor does it explain the connection to uniform standards – as in the further sentence:

> "At its annual January meeting in 2002, the State Bar debated a proposal that would have opened disciplinary records to the public once a prima facie case was established – on the condition that the four departments of the Appellate Division adopt uniform standards. But the bar declined to vote on the proposal and instead urged the Appellate Division to formulate statewide rules. That never happened.[fn42]"

No explanation as to why the Appellate Divisions' response to the State Bar's urging was not to formulate statewide rules. Rather, it ends with assertion that "New York has, thus far, turned a deaf ear to the ABA's recommendations" (at p. 26) and a quote from Gillers' article, "…If there were statewide standards, or if the New York courts all used the ABA standards, the New York Appellate Division courts might come closer to imposing substantially the same sanction in similar circumstances throughout the state. Today, they are not." (at p. 27)

p. 29: IV. The Commission's Work

Commission or its subgroups met periodically (some meetings were conducted via teleconference) to formulate its plan to fulfill the Chief Judge's mandate." – meeting with Deputy Director of ABA's Center for Professional Responsibility and with a member of the ABA Standing Committee on Professional Discipline. – provided with "broad national perspective on attorney discipline, offering insight into how New York's system differs from those of other states and how it compares to what the ABA would consider a model system."

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fn41 The annotating footnote 41 reads: "See 'Lawyer Discipline in New York,' a Feb. 10, 1995 report of the New York State Bar Association's Committee on Professional Discipline". However, no link is furnished to the report so that it might be seen.

--------- follow-up letter (p. 30)

A. **Initial Steps (pp. 29-30)**, consisting of Committee or its subgroups meeting periodically "to formulate its plan to fulfill the Chief Judge's mandate" – only plan – hearing from ABA at one of its meetings

B. **Public Outreach (pp. 30-31)** – states that it made a "concerted effort", as a result of which "Dozens of comments were received and reviewed." It furnishes no information as to when it commenced its "public outreach" efforts – and, in fact.

C. --It furnishes no information about any of these "Dozens of comments", other than in an annotating footnote – its 48. It there states that "considerable number of the comments…dealt with complaints which, if true, could form the basis for a claim of legal malpractice." Rather than furnish any example – or even clarify whether by use of the word "complaints", it is implying that the commenters had filed attorney misconduct complaints with the grievance committees, it purports to "find[] it advisable to briefly address" the relationship between misconduct and malpractice. It thereby infers, but does not state, that the commenters did not understand the difference, including by its final sentence: "The Commission's focus was exclusively on attorney misconduct and, more specifically, the process from the initiation of a complaint through a finding of misconduct through the imposition of a sanction."

D. **Public Hearings (pp**. 31-35) It states that its notice of public hearing "which listed the date and location of the hearings, was released on June 25, 2015". Conceals that it required "

"Testimony at the hearing was somewhat constricted by time constraints" – However, the time constraints were all self-imposed, could have extended the hearings, as it did in New York

It then purports that
p. 31 "Dozens of comments were received and reviewed." Fn. 48 – "A considerable number of the comments received by the Commission dealt with complaints which, if true, could form the basis for a claim of legal malpractice. The Commission finds it advisable to briefly address misconduct vis-à-vis malpractice, beginning with the acknowledgment that those two concepts are not necessarily mutually exclusive nor mutually inclusive: legal malpractice may well include professional misconduct, professional misconduct may well give rise to a parallel complaint of malpractice. On the other hand, malpractice and misconduct, while perhaps parallel, are different issues. Quite simply, attorney malpractice is a failure to exercise ordinary skill and knowledge, where the negligence results in damages to a client. By contrast, attorney misconduct is the failure to comply with the rules of conduct adopted by the courts. This Commission's focus was exclusively on attorney misconduct, and, more specifically, the process from the initiation of a complaint through a finding of misconduct through the imposition of a sanction."

p. 32: "A total of 31 individual witnesses appeared at the hearings and approximately 50 interested parties submitted written comment."

"Recurrent topics at the hearings and in written submissions included… and an apparent crisis in confidence with at least some members of the public, who view the discipline system as it now exists as insular and designed more for the protection of attorneys than the protection of consumers…"

p. 37: V. Report on the Subcommittee on Uniformity and Fairness"

•Co-chairs: **Professor Stephen Gillers, Robert P. Guido, Esq.** and Peter J. Johnson, Jr., Esq.
•Members: Lance Clarke, Esq., Hon. Jeffrey Cohen, John P. Connors, Esq., Rita DiMartino, Vincent Doyle, Esq., Donna England, Esq.,Nicholas Gravante, Esq., Sarah Jo Hamilton, Esq., Samantha Holbrook, Esq., **Glenn Lau-Kee, Esq**., Hal Lieberman, Esq., William T. McDonald, **Sean Michael Morton, Esq.**, Hon. Fred Santucci, Eun Chong Thorsen, Esq., **Mark Zauderer, Esq.**

p. 38: "Uniformity and Fairness in Procedure" – single paragraph -- "The procedural disparities in the current system are described in a prior section of this report and documented in the follow-up letter from Ms. Rosen and Ms. Cohen

1 We note that under the Judiciary Law any lawyer and petitioner can appeal an Appellate Division ruling to the Court of Appea0ls, but otherwise the Appellate Division opinions are final."

p. 6: implementing some of the recommendations made below may be very difficult because in New York, unlike most jurisdictions, the legislature has involvement in the promulgation of rules relating to the disciplinary process and the Presiding Judges maintain authority for the Departments under the current rules

- Exhibit C: Appeal Following Hearing
- o
- Appeal procedures vary widely by Department. However, pursuant to N.Y. Jud. Law §90(8) respondents or petitioners have the right to appeal all final Appellate Division orders to the Court of Appeals.

p. 38: "Uniformity and Fairness in Sanctions": "On this prong of its analysis, the Subcommittee began its inquiry questioning whether there is in fact a lack of uniformity in sanctions. Because there is a dearth of data and because public disciplinary opinions often lack even basic detail, the subcommittee was left largely with anecdotal evidence of disparity.

VI. Report of the Subcommittee on Enhancing Efficiency" (pp. 49-60)

A. Methodology -- considered hearing testimony and written submissions, as well as data collected from four Appellate Divisions concerning matters resulting in public discipline for three year period from 2012 to 2014.

B. "Summary of Evidence" (p. 50) -- refers to hearing testimony and submissions being "much of them anecdotal" and "largely anecdotal" – and that "consequently" "the subcommittee considered data received from the Clerks of the Appellate division and Chief Counsels to the disciplinary committees with respect to a total of 458 disciplinary matters that resulted in a final order of public discipline…entered between 2012 through 2014. – to enable average time estimates.

p. 52 "Because several witnesses testified that the disciplinary authorities lacked adequate staffing and funding and that increased staffing or funding may enhance the efficiency of the disciplinary process the Subcommittee evaluated the staffing levels of the disciplinary committees compared to the average number of matters processed by the committees during the time period from 2012 through 2014 and the total number of attorneys under the jurisdiction of those committees. Other than the number of attorneys under the jurisdiction of the committees, the Subcommittee obtained the relevant data from the annual reports filed by the disciplinary committees with the OCA." –

p. 53: sets this forth in a "Table B" entitled "Data from Annual Reports of the Committees" – does not identify what year annual report. Nor does the Commission identify where the Committee's own "Annual Reports" might be found

p. 54:

"D. Issue 2: Potential Causes of Undue Delay" –

"Inadequate resources for the disciplinary authorities. Testimony and comments reviewed by the Subcommittee suggest that all of the disciplinary committees are understaffed, both in terms of number of investigators and attorneys. It is apparent that caseloads far exceed the ability of the attorneys and investigators to process claims quickly." Does not identify whose testimony and comments so-suggested.

"Lack of actual or perceived discretion to dispose of complaints that lack merit. Although the Second, Third and Fourth Departments reject approximately 30 to 50 percent of disciplinary complaints as failing to state a claim, in the First Department the rejection rate is only 9 percent. This indicates that the disciplinary authorities in the First Department may want to reevaluate the process by which complaints are evaluated and either rejected or referred for further action."

"Inefficiencies in the disciplinary process. Aside from inadequate resources afforded to the disciplinary committees, the most common concern raised in the hearing testimony was procedural impediments to the efficient resolution of disciplinary complaints…."

"E. Conclusion (p. 56-:

"Based on the evidence submitted to the Commission, research and analysis conducted by the members of the Subcommittee, and their own personal experience with the disciplinary process, the Subcommittee on Enhancing Efficiency makes the following recommendations:

"Additional funding and staffing must be made available to the disciplinary committees…The disciplinary committees are not able to improve their efficiency in the handling of disciplinary cases without additional staff and resources." (p. 57)

"The Appellate Division should adopt uniform procedures to be followed by the grievance committees in examining new maters, including uniform circumstances under which the Chief Counsels to the grievance committees may dismiss a disciplinary complaint before an investigation is conducted by the committee. Such

circumstances may include when a committee lacks jurisdiction over the complaint or when the complaint, even if accepted as true, fails to allege professional misconduct by the attorney."

VI. Report of the Subcommittee on Transparency and Access" --
At initial meeting, topics identified as requiring study and members divided into groups to research and report back at later meeting

"Conclusion: "…Engaging the public in the process can only serve to advance that fundamental and important goal that underlies the system of attorney discipline. Accordingly, the Subcommittee recommends that New York join the vast majority of United States jurisdictions which permit public access to disciplinary proceedings> 67

p. 71: "Whether to open the disciplinary process to the public and, if so, when and how, was the first issue debated by the Commission and proved to be the most difficult and divisive."

Written Statement of Elena Ruth Sassower
Furnished to the Commission on Statewide Attorney Discipline
at its August 11, 2015 Hearing, Manhattan, New York

My presentation here today is about all this documentary evidence on which your "top to bottom", "comprehensive" review must rest.

Six and a half years ago, I had planned to give similar testimony at the December 16, 2009 hearing that then Senate Judiciary Committee Chairman John Sampson was holding on the attorney disciplinary system and Commission on Judicial Conduct. That hearing was cancelled – and not rescheduled. As for the devastating testimony and documents that witnesses had presented to Senator Sampson at two prior hearings, on June 8, 2009 and September 24, 2009, the Senate Judiciary Committee undertook no investigation, made no findings, and rendered no committee report – reflective of its knowledge that to do so would spell the end of attorney discipline, reposed in the judiciary – and of the Commission on Judicial Conduct, as currently exists.

Just as Senator Sampson's 2009 hearings on attorney discipline and the Commission on Judicial Conduct were largely triggered by my advocacy before him in January and February 2009, so the hearings of this Commission, announced on its website that went live on or about June 25, 2015, were largely prompted by my inquiries and advocacy in the weeks preceding.

By these hearings and the Commission's website, former Chief Administrative Judge Prudenti and now Chair Cozier are to be commended for bringing this Commission out from "under the radar", which is where it had been operating – and for scrapping the August 1, 2015 date for the

Commission's report to Chief Judge Lippman, identified in the OCA's March 30, 2015 press release announcing the appointment of the Commission's members.

In my e-mail requesting to testify at today's hearing, I stated that the statement I had drafted for the aborted December 16, 2009 hearing[8] was "no less germane and methodologically-sound today than six years ago" – and I offered it and the mountain of casefile and other primary source evidence to which it referred as "the requisite prepared statement or…detailed outline of [my] proposed testimony" – further stating that such "establishes RESOUNDINGLY and scandalously, that New York's attorney disciplinary system is corrupt, unconstitutional, and utilized by the court system to retaliate against judicial whistle-blowing attorneys, while 'protecting' unethical and corrupt attorneys and the bar associations."

Here presented is that dispositive casefile evidence – beginning with my mother's 1995 cert petition to the U.S. Supreme Court. The cert petition is identified on the first page of the December 16, 2009 statement, which sets forth its "Question Presented":

> "Whether New York's attorney disciplinary law is unconstitutional, *as written and as applied*:
>
> 1. where an attorney can be immediately, indefinitely, and unconditionally suspended from the practice of law by an interim order, without findings, reasons, notice of charges, a pre-suspension hearing, or a post-suspension hearing…
>
> 2. where a disciplined attorney has no absolute right of judicial review, either by direct appeal or by the codified common law writs;
>
> 3. where adjudicative and prosecutorial functions are wholly under the control of the courts, enabling them to retaliate against attorneys who are judicial whistle-blowers;
>
> 4. where disciplinary proceedings: (a) do not comply with the court's own disciplinary rules; (b) are commenced by ex parte applications, without notice or opportunity to be heard; (c) deny the accused attorney all discovery rights, including access to the very documents on which the proceedings purport to be based; (d) do not rest on sworn complaints; (e) do not rest on an accusatory instrument or are asserted 'on information and belief', not based on any probable cause finding of guilt."

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[8] Consistent with the final paragraph of the December 16, 2009 statement (at p. 17), I handed up a copy of the statement to the Commission on Judicial Compensation when I testified before it at its July 20, 2011 hearing – and thereafter annexed it as Exhibit F-2 to CJA's October 27, 2011 Opposition to the Commission's August 29, 2011 Final Report.

What is your judgment on the subject? Here is a complete copy of the record underlying that cert petition from which you can verify the facts recited by the "Question Presented" and in the cert petition.

Here is the record of the subsequent disciplinary proceedings. All told, from beginning to end, 27 Appellate Division decision/orders – virtually all making dispositions without reasons, or findings – and utterly insupportable and fraudulent upon comparison with the record. And here's the record in the Court of Appeals. My mother made six attempts for its review, by leave and by right, all denied by its standard boiler-plate. These six attempts are summarized by my mother's March 6, 2007 statement in opposition to Senate confirmation of Chief Judge Judith Kaye's reappointment – and here it is.

And here is my mother's 1998 cert petition to the U.S. Supreme Court, identified on the second page of my December 16, 2009 statement. The underlying record is here.

Alas, I am only now beginning to chronicle my father's herculean fight for his law license and the rule of law. Last month I requisitioned his disciplinary file from the Appellate Division, Second Department, which is bringing it out from storage. Consequently, it will also be accessible for your review, in addition to my own. Suffice to quote from my father's jurisdictional statement in support of his appeal of the disbarment order to the Court of Appeals. He stated: "Appellant was Denied Due Process…Denied Equal Protection of the Law…Denied the Right to Show Double Jeopardy".

The foregoing gives context to Professor Gillers' last year's law review article "*Lowering the Bar: How Lawyer Discipline in New York Fails to Protect the Public*", with its devastating critique of Appellate Division decisions disciplining attorneys. Its recommendation:

> "the New York courts should authorize a study of the state's disciplinary process and performance, including decisions that state law makes secret and which, therefore, outside researchers like me cannot evaluate" (at p. 490),

doubtless gave rise to Chief Judge Lippman's establishment of this Commission, to which he appointed Professor Gillers. Perhaps this is the Professor's reward for an article that for all its power, only skims the surface, never going beyond the face of Appellate Division attorney disciplinary decisions to where the greater problem – and unabashed corruption – lies. Surely Professor Gillers could have delved into the underlying attorney disciplinary casefiles, especially for those decisions he found most questionable and lacking in relevant information, since – as he knows – Judiciary Law §90(10) makes "the records and documents" of publicly-disciplined attorneys "public records" And, of course, attorneys, such as my parents, disbarred and suspended by Appellate Division decisions within the 1982-2008 range he "selectively" reviewed (at p. 488), would have readily furnished him with such access and information as he required to assess the situation – one far more grave than his conclusion: "the lawyer disciplinary system in New York is deficient in design and operation" (p. 489).

Likewise in reaching his further conclusion "as to the need for a statewide body that can bring consistency to sanctioning decisions" (at p. 489), Professor Gillers completely disregards that New

York has, in fact, such a body – the Court of Appeals – to which disciplined attorneys, such as my parents, raise constitutional arguments, including of disparate treatment and invidiousness. Instead, and without offering even a statistic as to the number of disciplined attorneys who seek Court of Appeals' review in any given year – or how many attorney disciplinary cases the Court of Appeals accepts, Professor Gillers writes, in a footnote: "An appellate division's choice of sanction is final. The jurisdiction of the New York Court of Appeals, the state's highest court, is limited to appeals raising questions of law. N.Y. Jud. Law §90(8)." (p. 489, fn. 9). In other words, he absolves the Court of Appeals of any responsibility for the facial inadequacy of Appellate Division decisions and lack of uniformity and consistency between and within the four Judicial Departments with respect to attorney discipline – also concealing throughout his article that these present questions of constitutional magnitude.

Mind you, on July 28th, at this Commission's first hearing at the Court of Appeals, I popped into the Clerk's Office and discovered a "Guide For Counsel in Cases to be Argued before the Court of Appeals". Its second sentence reads: "The Court was established to articulate Statewide principles of law in the context of deciding particular lawsuits."

Time does not permit me to do more than hand-up the kind of case file evidence and record of grievance committee complaints that Professor Gillers' scholarship lacks – and that this Commission's report to the Chief Judge must confront, with findings of fact and conclusions of law, if it is to overcome the appearance and actuality of its interest, being comprised virtually entirely of attorney disciplinary insiders and those with undisclosed relationships with such insiders, as, for instance, Professor Gillers, whose wife served as the First Department Disciplinary Committee's First Deputy Chief Counsel (1989-1998).

To facilitate the Commission's fidelity to evidence, I will be creating a webpage for the Commission on CJA's website, www.judgewatch.org, posting the evidence it has received from CJA and so many others. It will be accessible *via* the left sidebar panel "Searching for Champions – NYS", bringing up a link for the Unified Court System – Office of Court Administration.

NYC Panel:

- *Hon. Barry Cozier, presiding*
- *Hon. Peter Skelos*
- *Prof. Stephen Gillers*
- *Robert P. Guido, Esq.*
- *Peter James Johnson Jr., Esq.*
- *Devika Kewalramani, Esq.*
- *Mark C. Zauderer, Esq.*
- *Sean Morton, Esq.*

Those who adjudicate should not perform, or supervise those who perform, the investigative and prosecutorial functions. Likewise, those who perform the investigative and prosecutorial functions should not perform adjudicative functions and should not advise or supervise those who exercise adjudicative responsibilities.

1 We note that under the Judiciary Law any lawyer and petitioner can appeal an Appellate Division ruling to the Court of Appeals, but otherwise the Appellate Division opinions are final.

"…implementing some of the recommendations made below may be verydifficult because in New York, unlike most jurisdictions, the legislature has involvement in the promulgation of rules relating to the disciplinary process and the Presiding Judges maintain authority for the Departments under the current rules."

We next strongly recommend that New York move to a statewide disciplinary system that consists of a unitary agency with separate investigative/prosecutorial and adjudicative functions within that agency. As noted above, this recommendation is consistent with national practice and with the MRLDE….

Appendix C – detailed summary of inconsistencies evident from the face of the four sets of Departmental Rules

 Law firm discipline exists
Process for Dismissal after Initial Screening
o Only the First Department seems to address this process in a web posting and briefly in the Rules, but not in any detail. See, http://www.courts.state.ny.us/courts/AD1/Committees&Programs/DDC/Complaint%20Brochure.pdf.
- Who Approves the Dismissal of Complaints
o In the First Department the Rule specifies that a lawyer member of the Grievance Committee, designated by First Department Committee chairperson, reviews Chief Counsel's dismissal recommendations and approves or modifies that recommendation to dismiss a complaint. The Rule in the Second Department requires a majority vote of the full Grievance Committee. In the Third Department, the Committee on Professional Standards makes the determination to dismiss. In the Fourth Department, the Chief Counsel or a designated staff attorney, in consultation with the appropriate Attorney Grievance Committee Chairperson may dismiss the complaint.

- Appeal Following Hearing
o Appeal procedures vary widely by Department. However, pursuant to N.Y. Jud. Law §90(8) respondents or petitioners have the right to appeal all final Appellate Division orders to the Court of Appeals.
 In the First Department, a hearing panel

The Advisory Committee on Criminal Law and Procedure, one of the standing advisory committees established by the Chief Administrator of the Courts pursuant to section 212(1)(q) of the Judiciary Law, annually recommends to the Chief Administrative Judge legislative proposals in the area of criminal law and procedure that may be incorporated in the Chief Administrative Judge's legislative program. The Committee makes its recommendations on the basis of its own studies, examination of decisional law and proposals received from bench and bar. The Committee maintains a liaison with the New York State Judicial Conference, bar associations and legislative committees, and other state agencies. In addition to recommending its own annual legislative program, the Committee reviews and comments on other pending legislative measures concerning criminal law and procedure.
In this 2015 Report, the Committee recommends 8 new measures for enactment by the Legislature. Also included are 11 measures previously submitted that remain on the Committee's active legislative agenda. Finally, the Committee provides summaries of 50 previously endorsed proposals which were not passed by one or both house of the legislature, but which continue to be

of interest to the Committee.

http://www.nycourts.gov/admin/supportunits.shtml#su7

Judiciary Law §210. Administrative officers of the unified court system. 1. The chief judge of the court of appeals shall be the chief judge of the state of New York and shall be the chief judicial officer of the unified court system.

2. The administrative board of the courts shall consist of the chief judge, who shall serve as chairman, and the presiding justices of the appellate divisions of the supreme court. The members of the administrative board shall serve without compensation but shall be entitled to reimbursement for expenses actually and necessarily incurred by them in the performance of their duties.

3. The chief judge shall appoint, with the advice and consent of the administrative board, a chief administrator of the courts who shall serve at his pleasure. The chief administrator may be a judge or justice of the unified court system, in which event he shall be called the chief administrative judge of the courts, and he shall have all the functions, powers and duties of the chief administrator. He shall receive an annual salary to be fixed by the chief judge within the amount made available therefor by appropriation and he shall be entitled to reimbursement for expenses actually and necessarily incurred by him in the performance of his duties.

§ 211. Administrative functions of the chief judge of the court of appeals. 1. The chief judge, after consultation with the administrative board, shall establish standards and administrative policies for general application to the unified court system throughout the state, including but not limited to standards and administrative policies relating to:

(a) The dispatch of judicial business, the designation of administrative judges, hours of court, assignment of terms and judges, transfer of judges and causes among the courts of the unified court system, the assignment and reassignment of administrative functions performed by judicial and nonjudicial personnel, the need for additional judicial or nonjudicial personnel, and the publication of judicial opinions.

(b) The adoption, amendment, recission and implementation of rules and orders regulating practice and procedure in the courts, subject to the reserved power of the legislature provided for in section thirty of article six of the constitution.

(c) The form and preparation of the itemized estimates of the annual financial needs of the unified court system.

(d) Personnel practices affecting nonjudicial personnel including: title structure, job definition, classification, qualifications, appointments, promotions, transfers, leaves of absence, resignations and reinstatements, performance ratings, removal, sick leaves, vacations and time allowances. Statewide standards and policies concerning personnel practices relating to nonjudicial personnel shall be consistent with the civil service law, and shall be promulgated after a public hearing at which affected nonjudicial employees or their representatives shall have the opportunity to submit criticisms, objections and suggestions relating to the proposed standards and policies.

(e) Administrative methods and systems of the unified court system.

(f) The form, content, maintenance and disposition of court records.

(g) Fiscal, accounting and auditing practices, the collection of fines and fees, and the custody and disposition of court funds.

(g-1) A system of internal control for the unified court system, pursuant to article seven-D of this chapter.

(h) The purchase, distribution and allocation of equipment and supplies.

* (l) The examination of the operation of the courts and the state of their dockets and the investigation of criticisms and recommendations.

* NB Repealed September 1, 2017

2. The chief judge shall submit such standards and administrative policies to the court of appeals, together with the recommendations, if any, of the administrative board. Such standards and administrative policies shall be promulgated by the chief judge after approval by the court of appeals.

Judiciary Law 212:

(f) Make recommendations to the legislature and the governor for laws and programs to improve the administration of justice and the operation of the unified court system; and, with respect to any bill proposing law which is likely to have a substantial and direct effect upon the unified court system, prepare a judicial impact statement upon written request of the chairman of the standing committee of the senate or assembly to which the bill has been referred or upon his own initiative. The statement shall be submitted as soon as practicable to the chairman of the appropriate committee and contain, to the extent feasible and relevant, the chief administrator's projections of the impact of the proposed law on the functioning of the courts and related agencies of the unified court system, including: (i) administration; (ii) caseload; (iii) personnel; (iv) procedure; (v) revenues; (vi) expenses; (vii) physical facilities; and (viii) such additional considerations as may be requested by the committee chairman, or included by the chief administrator.

…

(h) Hold hearings and conduct investigations. The chief administrator may issue a subpoena requiring a person to attend before him and be examined under oath with reference to any aspect of the unified court system, and require the production of books or papers with reference thereto.

(i) Adopt, amend and rescind all rules and orders necessary to execute the functions of his office.

(j) Collect, compile and publish statistics and other data with respect to the unified court system and submit annually, on or before the fifteenth day of March, to the legislature and the governor a report of his activities and the state of the unified court system during the preceding year.

(k) Require all personnel of the unified court system, county clerks and law enforcement officers to furnish any information and statistical data as will enable him to execute the functions of his office.

(l) Request and receive from any court or agency of the state or any political subdivision thereof such assistance, information and data as will enable him to execute the functions of his office.

(m) Undertake research, studies and analyses of the administration and operation of the unified court system including, but not limited to, the organization, budget, jurisdiction, procedure, and administrative, clerical, fiscal and personnel practices thereof.

(q) Create advisory committees to assist him in the execution of the functions of his office.

(r) Establish educational programs, seminars and institutes for the judicial and nonjudicial personnel of the unified court system.

(s) Delegate to any deputy, assistant, court or administrative judge, administrative functions, powers and duties possessed by him.

(t) Do all other things necessary and convenient to carry out his functions, powers and duties.

§213. Functions of the administrative board of the courts. 1. The administrative board shall consult with the chief judge with respect to the establishment of administrative standards and policies for general application throughout the state, in accordance with section twenty-eight of article six of the constitution.

2. The administrative board shall have the powers of advice and consent with respect to: (a) the appointment of a chief administrator of the courts, as provided in section twenty-eight of article six of the constitution; and (b) pursuant to the provisions

of section thirty of article six of the constitution, the adoption of rules regulating practice and procedure in the courts by the chief administrator as authorized by law.

3. The administrative board shall have such other consultative functions as may be required by the chief judge.

§ 214. Judicial conference of the state of New York. 1. The judicial conference of the state of New York is hereby continued. It shall consist of the chief judge of the court of appeals who shall serve as chairman, the presiding justice of the appellate division of each judicial department, one trial justice of the supreme court from each of the state's four judicial departments, one judge each of the court of claims, the county court, the surrogate's court, the family court, the civil court of the city of New York, the criminal court of the city of New York, one judge of a city court outside the city of New York, one judge of a district court, one justice of a town or village court, and from each judicial department, one member of the bar of this state.

2. The chief judge of the court of appeals and the presiding justices of the appellate divisions shall be members of the judicial conference during their respective terms of office. The other members shall be chosen by the judges of the courts on which they sit, except that the administrative board of the courts shall appoint the members of the bar, and the justice from a town or village court.

3. The term of members of the judicial conference shall be for two years, except as otherwise provided in subdivision two of this section. Members shall be eligible for reappointment to the conference. A vacancy occurring otherwise than by expiration of term shall be filled in the same manner as an original appointment for the unexpired term. A member shall not receive any compensation for serving on the judicial conference but shall be allowed his actual and necessary expenses incurred in the performance of his duties as a member.

4. The chairmen and the ranking minority members of each of the committees on judiciary and on codes of the senate and assembly shall be ex officio members of the judicial conference.

§ 214-a. Functions of the judicial conference. The judicial conference shall:

1. study and recommend changes in laws, statutes and rules relating to civil, criminal and family law practice which, in its opinion, will promote simplicity in procedure, the just determination of cases and controversies, and the elimination of unjustifiable expense and delay in litigation in the unified court system; and

2. advise the chief administrator with respect to the establishment of educational programs, seminars and institutes for the judicial and nonjudicial personnel of the unified court system; and

3. consult with the chief judge and the chief administrator, as they may require, with respect to the administration and operation of the unified court system.

§ 215. Special provisions applicable to appropriations made to the judiciary in the legislature and judiciary budget. 1. The amount appropriated for any program within a major purpose within the schedule of appropriations made to the judiciary in any fiscal year in the legislature and judiciary budget for such year may be increased or decreased by interchange with any other program within that major purpose with the approval of the chief administrator of the courts who shall file such approval with the department of audit and control and copies thereof with the senate finance committee and the assembly ways and means committee except that the total amount appropriated for any major purpose may not be increased or decreased by more than the aggregate of five percent of the first five million dollars, four percent of the second five million dollars and three percent of amounts in excess of ten million dollars of an appropriation for the major purpose. The allocation of maintenance undistributed appropriations made for later distribution to major purposes contained within a schedule shall not be deemed to be part of such total increase or decrease.

2. Notwithstanding any other provision of law, monies appropriated to the judiciary in any fiscal year in the legislature and judiciary budget for such year may be used in part to reimburse state-paid judges and justices, except those of city courts outside the city of New York, for transportation and travel expenses in accordance with section two

hundred twenty-two of this chapter; provided, however, such reimbursement may be up to but not in excess of such maximum amount per day as the chief administrator shall prescribe by rule.

§ 219-a. The New York state judicial institute. 1. There shall be established a New York state judicial institute (hereinafter referred to in this section as the "institute"). This institute shall serve as a continuing statewide center for the provision of education, training and research facilities for all judges and justices of the unified court system.