

THE ASSOCIATION OF THE BAR  
OF THE CITY OF NEW YORK  
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Statement

May 10, 1996

The Association of the Bar of the City of New York has studied the question of when the proceedings of the Commission on Judicial Conduct should be opened to the public. After careful consideration, and review of the Commission's statute, procedures, performance, and other states' experience, the Association's Executive Committee has concluded that the Commission's proceedings should be open from the time a Formal Complaint is brought.

Currently, Commission proceedings are confidential from the initial filing of the complaint, through the investigation, the decision as to whether to bring a Formal Complaint, and the hearing that ensues after a formal complaint is brought. Only after this process, when the Commission makes a determination that a judge should be admonished, censured, removed or retired, and transmits its determination to the Chief Judge of the Court of Appeals, are the findings, conclusions and record of the case made public.

The Association believes that it is appropriate to open the proceedings after a Formal Complaint is brought, as that is the time when the Commission has carefully investigated the complaint and found that the circumstances warrant the bringing of charges. The overwhelming majority of complaints, including those which have little substance to them, are dismissed or otherwise handled confidentially in the early stages of the Commission's work. In 1994, for example, 1,438 complaints were filed, yet only 21 formal complaints were brought. It is these matters that the public has the strongest interest in knowing, an interest that more than balances the privacy concerns of judges.

Opening the proceedings at the Formal Complaint stage will raise the level of public confidence in the judicial discipline process. The public will have the facts available, and can monitor disciplinary proceedings. This would serve to diminish suspicions that the process favors individual judges at the expense of the public interest.

We also believe that opening the process may result in protecting judges from unwarranted attacks. Making the

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proceedings public, including the facts and circumstances of the complaint, will counter the use of innuendo and inaccuracy in the media.

The Association has long urged that lawyer discipline proceedings, now confidential until the sanction is determined, also be opened at an earlier stage -- the finding of probable cause to bring misconduct charges. We see no reason why this reasoning should not be extended to the judiciary. A finding of probable cause is analogous to the filing of a Formal Complaint in cases of judicial misconduct. While there is always concern that lawyers and judges not be tarred with unfair criticism, it is vital for the public to know of lawyers and judges whose actions are of such concern as to warrant formal charges, and to know the outcome of those charges.

We note that the Commission on Judicial Conduct has long advocated the change we propose. In addition, the judicial discipline process in over half the states provides for making proceedings public upon the bringing of charges.

In taking this position, the Association expresses no view on any specific piece of legislation. Rather, we are focusing on the principle of an open disciplinary process, and of assuring that the public as well as the judiciary is well served by a process that it can see.