

## Don't weaken commission's ability to discipline bad judges

Judges have enormous power to affect people's lives. Most judges use their power responsibly. Some judges, however, abuse their power, and when they do, they are subject to discipline. Every state has an agency that investigates and prosecutes cases of judicial misconduct. In New York, judicial discipline is enforced by an 11-member Commission on Judicial Conduct, composed of lawyers, judges and members of the public. The commission has been the subject of an acrimonious debate recently over claims by two lawyers' groups that the commission is unfair to judges.

The claim is absurd; if anything, the commission bends over backward to be fair.

### Few judges faulted

In its 33-year existence, the commission has received some 60,000 complaints against judges, investigates only a fraction of these complaints, and has imposed some type of discipline — removal, suspension, admonishment, or censure — in a little over 700 cases, or to put it another way, has exonerated judges in about 99.99 percent of the cases. Here are some of the cases that the commission reviewed in recent years.

- A judge who repeatedly cursed at defendants and jailed them without bail or trial stated: "I just follow my own common sense and to hell with the law."
- A judge said "good boy" when a man who wanted to file a lawsuit made an insulting comment about Jews.
- A judge refused to issue an order of protection against the husband of a mother of four who police said choked her, kicked her and threatened to kill her, and the judge later told his court clerk, "Every woman needs a good pounding now and then."
- A judge talked at length from the bench about how a decoration on a woman's T-shirt made him think of a male sex organ, and when courtroom spectators laughed, said delightedly, "I'm bringing down the house."
- A judge who was driving drunk led the police on a

half-mile car chase and when pulled over asked for "professional courtesy."


### Law group stumbled

Having observed the work of the commission closely for many years, I've been impressed by the commission's fairness, professionalism, and respect for the judiciary.

That is why I was taken aback by the recent report of the New York County Lawyers Association, approved in large part by the New York State Bar Association, recommending significant changes in the way the commission handles complaints against judges. Among these recommendations are to raise the standard of proof to convict a judge of misconduct, allow judges to interrogate investigators and witnesses well before any decision to hold a hearing, to separate the investigation and trial function of the commission, and to require the commission's investigators to "accord judges the highest degree of respect." These recommendations are expected to be taken up by the New York Legislature, and possibly enacted into law.

Ironically, however, one issue involving the conduct of judicial disciplinary proceedings was not mentioned by either the county lawyers group or the state bar association. Despite the fact that most states require judicial disciplinary proceedings to be open to the public, proceedings in New York have always been secret, unless the judge wants them opened, and judges have almost never asked for openness.

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The State Magistrates Association, representing 2,200 town and village justices who have been the subject of most misconduct investigations, believes that opening misconduct hearings would be "inappropriate and unnecessary."

### Object to secrecy

However, given the harsh criticism by the two bar groups of the work of the commission, it would seem more appropriate and necessary than ever to open the commission's proceedings to public view. Secret disciplinary proceedings against judges do not inspire the public's trust or confidence in the operation of the system of justice, especially when judges are accused of abusing their power.

Secret commission proceedings promote cynicism and distrust over whether judges are being treated fairly, or given special treatment. If the bar groups really believe that judges are being treated unfairly, one way to ensure that the proceedings against judges are being conducted fairly would be for these groups to support legislation requiring that the commission's proceedings be open to the public.

**The writer, a regular contributor on justice issues, teaches law at Pace Law School.**

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