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A Push to Open Hearings in Judge-Misconduct Cases

By WILLIAM GLABERSON

As it has done periodically for years, the New York State Legislature will consider a proposal this year to open secret judicial-discipline hearings to the public. Some supporters of the measure predict that it will get more attention this time than it has in decades.

Judicial-discipline hearings are public in 35 states. But the proceedings of the New York State Commission on Judicial Conduct have been secret under state law for more than 30 years. Many judges insist that keeping them closed is essential.

But the commission, which is fighting claims by a Manhattan lawyers' group that it has been unfair to judges, will make opening its hearings a top legislative priority, said its administrator, Robert H. Tembeckjian. With a new focus in Albany on government ethics reform, Mr. Tembeckjian said, "The time is also right to open the process of disciplining judges."

The Manhattan lawyers' group, the New York County Lawyers' Association, persuaded the New York State Bar Association last week to call for changes in state law that it said would make commission proceedings fairer to judges. But the Manhattan group did not mention making the hearings public in its sweeping proposal to restructure the commission, give judges earlier notice of charges and limit the scope of investigations. Most of those charges are based on complaints from litigants, lawyers and other judges.

John L. Sampson, the leader of the Democratic State Senate minority, said that he would reintroduce legislation to open the hearings. Mr. Sampson, who proposed a similar bill last year, said that it was even more necessary now because of the recent criticism of the judicial conduct commission. He said open hearings would foster confidence in the procedures for policing judges, adding, "Who will watch the watchers?"

The 11-member commission, which includes lawyers, judges and members of the public, has held hearings in secret since a change in New York law in 1978. Previously, judges defended themselves against misconduct charges in public.

In interviews, several judges defended the current law. Leland G. DeGrasse, an appellate judge in Manhattan, said judges were frequently cleared of allegations. "I don't think the judges who are exonerated in that fashion should have to work with a cloud hanging over their head," Justice DeGrasse said.

H. John Kramer, the president of the largest association of judges in the state, the State Magistrates Association, said it would be "inappropriate and unnecessary" to open misconduct hearings. The magistrates association represents the 2,200 town and village justices across the state, who have often been subjects of misconduct investigations.

Justice Kramer, a part-time judge in Sullivan County, said that some of the commission's disciplinary rulings eventually became public. "If it's significant enough, the public's going to know," Justice Kramer said. "If it's insignificant, they don't need to know."

But Dennis R. Hawkins, the executive director of the Committee for Modern Courts, said that from the public's perspective, opening the hearings would increase trust in the legal system. The Committee for Modern Courts is an advocacy group founded in 1955 that says that one of its goals is to increase public trust in New York courts.

When a judge's misconduct hearing is held in secret, Mr. Hawkins said, "there is this continuing mystery of what exactly happened, and that undermines confidence in the system."

When the commission decides to admonish, censure or remove a judge, it issues a public decision. Under the proposal approved by the state bar association, the commission would have the added power to suspend judges instead of removing them.

Nationally, it has been widely accepted in many states, including California, Connecticut, New Jersey and Georgia, that proceedings against judges should be open, said Cynthia Gray, the director of the Center for Judicial Ethics at the American Judicature Society, which studies court issues and favors open disciplinary hearings.

"It is a fundamental principle of the United States justice system that proceedings be open," Ms. Gray said, "and I think judges are proud of that when they are presiding over proceedings involving other people."

Last year, the commission removed one judge, a Family Court judge in Saratoga County. It publicly disciplined 15 judges, including 11 part-time town and village justices, many of whom are not lawyers.

Under the law that took effect in 1978, judges are permitted to agree to have hearings

against them opened to the public. According to the commission, of 750 hearings held over those 33 years, only 10 judges have opened their hearings.