

# CENTER *for* JUDICIAL ACCOUNTABILITY, INC.

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BY FAX AND MAIL: 212-949-8864 (9 pages)

April 12, 2002

Jean Savanyu, Records Access Officer  
New York State Commission on Judicial Conduct  
801 Second Avenue  
New York, New York 10017

RE: Request to Inspect & Copy Records

Dear Ms. Savanyu:

Pursuant to the Freedom of Information Law (F.O.I.L) [Public Officers Law, Article VI] and 22 NYCRR §7001 *et seq.*, request is made to inspect and copy:

1. publicly-available records pertaining to “recommendations that the Commission has made to the Legislature and the court system over the years, identifying various issues as to which the Commission perceived a need for changes in the law or court-promulgated rules, or for clarification of existing rules”. To assist you, enclosed is a copy of pages 69-72 of the Commission’s 1995 Annual Report describing some of the “dozens of recommendations” made as of that date. Please consider this to be a request for all recommendations made “to the governor, the legislature, and the chief judge of the court of appeals”, pursuant to Judiciary Law §42.4, excluding Annual Reports;
2. publicly-available records in the Commission’s possession pertaining to amendments to the Chief Administrator’s Rules Governing Judicial Conduct, effective January 1, 1996, upon approval of the Court of Appeals – and, in particular, §100.3(D)(1) & (2) “requir[ing] a judge to report misconduct by lawyers and judges when there is evidence of a ‘substantial likelihood’ of a ‘substantial violation’ of a rule”. To assist you, enclosed is a copy of the summary of amendments, published in the Commission’s 1996 Annual Report;

3. publicly-available records in the Commission's possession pertaining to the "Housing Court Disciplinary Committee", including those relating to its history, membership, rules of procedure, annual reports, and/or statistical information regarding complaints received. To assist you, enclosed is a copy of the published announcement of such "Housing Court Disciplinary Committee", as it appeared in the June 24, 1994 New York Law Journal, stating that it would be "modeled after the State Commission on Judicial Conduct";
4. publicly-available records in the Commission's possession pertaining to any other mechanism to dispose of judicial misconduct complaints against housing court judges, including Commission recommendations with respect thereto.

Pursuant to F.O.I.L. [Public Officers Law §89.3] and 22 NYCRR §7001.6, your response is required within five business days of receipt of this written request.

Thank you.

Yours for a quality judiciary,



ELENA RUTH SASSOWER, Coordinator  
Center for Judicial Accountability, Inc. (CJA)

Enclosures

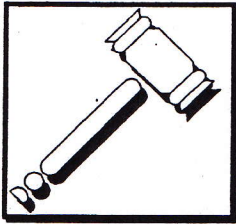




## **Recommendations Made to the Legislature and the Court System**

The Commission has made dozens of recommendations to the Legislature and the court system over the years, identifying various issues as to which the Commission perceived a need for changes in the law or court-promulgated rules, or for clarification of existing rules. These issues were identified on the basis of the repetitive nature of some of the complaints the Commission was investigating. \*

Many of the Commission's recommendations have been effectuated. Inevitably, some have not. In the following sections, some of the recommendations made over the Commission's 20-year history are briefly identified.



## **Recommendations Adopted in Whole or in Part**

Both the Legislature and the Office of Court Administration have acted favorably on a number of important recommendations made by the Commission, as follows.

*Ethics Training for Judges.* The Commission recommended that the training programs run by the Office of Court Administration for newly-elected judges, as well as its continuing education programs for incumbent judges, include substantial attention to the judiciary's ethical obligations and the judicial disciplinary system. Such training is now offered in virtually every OCA training and education program, with representatives of the Commission and the Advisory Committee on Judicial Ethics making formal presentations and otherwise participating in the process.

*Expanded Methods of Dispute Resolution.* The Commission recommended that the court system devise ways in which the overburdening caseload might be reduced, particularly in civil cases of lesser magnitude. Today, former judges serve as judicial hearing officers to assist the courts in settling cases for which such dispositions seem appropriate and likely, and there has been an increasing reliance on private dispute resolution organizations which aim to resolve civil conflicts before the parties resort to the courts.

*Advisory Opinions.* The Commission, which does not issue advisory opinions, recommended that the court system provide such a service to judges. In 1987, the Advisory Committee on Judicial Ethics was created, providing written advisory opinions to judges on written request. The Committee publishes its opinions in redacted form at least once a year.



*Political Activity.* Over the years, the Commission has made numerous recommendations with respect to the various rules on political activity by judges and court employees, several of which have been acted upon. Prior to 1986, some of the applicable rules were unclear, and the Commission recommended clarification so that they could be more easily understood and enforced.

*Permanent Commission.* When the State Constitution was amended in 1978 to expand the Commission's authority, the Commission participated in the drafting of legislation and in developing procedures which fairly and effectively implemented the constitutional mandate, and which have withstood close scrutiny in the years since.

*Fiduciary Appointments.* The Commission recommended a change in the procedures whereby judges, with unfettered discretion, awarded lucrative fiduciary appointments (such as receiverships or guardianships), and thereafter approved generous fees, to particular attorneys. Now, among other things, the court system requires individuals who wish to be considered for such appointments to apply to the Chief Administrator of the Courts for a place on a list of approved fiduciaries; if a judge appoints someone who is better qualified than those on the list, the reasons and the appointee's qualifications must be put on the record; any fee exceeding \$2,500 must be justified in writing by the judge; and no fiduciary can receive more than one appointment per 12-month-period where the fee is expected to be greater than \$5,000.

*Financial Disclosure.* The Commission recommended as early as 1975 that judges and other ranking representatives of the court system be required to file annual financial disclosure reports. Such forms are now filed with the Ethics Commission for the Unified Court System.

*Abolition of Certain City-Justice Courts.* The Commission recommended the abolition of such courts as the City-Justice Court of Yonkers, which was jurisdictionally duplicative of the local city court and which paid its judges based upon the amount of fines and other fees they collected from defendants. The court was abolished.

*Improved Personnel Records.* The Commission recommended that court personnel records be improved and more easily retrievable by investigative agencies which have legitimate access to them. The Office of Court Administration over the years has implemented an impressive computerized records system which encompasses not only personnel records but case-tracking, fiduciary appointments and other important areas.

*Clarification of Charitable Fund-Raising Rules.* The Commission recommended clarification of certain aspects of the rule prohibiting judges from raising funds for charitable organizations. The rule, which *inter alia* prohibits a judge from being a speaker or honoree at a

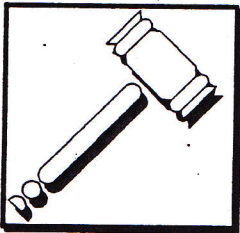


charitable organization's fund-raising event, was amended to permit such activity at a bar association or law school event.

*Improved Training for Part-Time Town and Village Justices.* The Commission has recommended several additions which have been incorporated in the training offered to town and village justices. For example, training is now mandatory for all town and village justices, including those with law degrees. Training now includes emphasis on such issues as (1) the public nature of arraignments and other court proceedings, (2) the obligation of the judge to prepare minutes for cases on appeal, (3) the obligation of the judge not only to advise defendants of certain fundamental rights but also to take affirmative steps to effectuate those rights, such as the right to counsel, the right to assigned counsel for the indigent, and bail in applicable cases, and (4) appropriate versus inappropriate reductions of speeding and other motor vehicle charges.

*Judges Serving as Fiduciaries.* The Commission recommended clarification of the rule pertaining to a judge serving as fiduciary to a friend or relative. Section 100.5(d) of the Rules on Judicial Conduct permits a judge to serve as a fiduciary for a member of his or her family, with "family" defined as a "spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship." As to serving as a fiduciary for a non-family member, such service is limited to those with whom the judge "has maintained a longstanding personal relationship of trust and confidence, and then, only if such service will not interfere with the proper performance of judicial duties;" moreover, the judge must first obtain approval from the Chief Administrator of the Courts to serve in such non-family situations.

*Prohibiting Business Activity by Full-Time City Court Judges.* The Commission recommended the closing of an apparent loophole in Section 100.5 of the Rules on Judicial Conduct, which prohibited most full-time judges from actively engaging in business activity but omitted certain city courts from the list of courts to which the rule applied. The rule was amended to prohibit such activity by any full-time judge, regardless of court.



### Recommendations Not Yet Adopted

The Legislature and the court system have not yet considered several important recommendations made by the Commission, as follows.

*Public Hearings.* The Commission has recommended that its formal disciplinary charges and hearings be public. At present, disciplinary proceedings are made



public only upon a waiver of confidentiality by the judge, or after the Commission has rendered a determination that a judge be admonished, censured, removed or retired. Such a change would require legislation. The Commission recommends that confidentiality continue to apply to investigations.

*Suspension as a Discipline.* The Commission has recommended that, in addition to rendering determinations of admonition, censure, removal and retirement, its authority be expanded to permit the sanction of suspension. Prior to 1978, the Commission in fact had the authority to suspend a judge for misconduct for up to six months.

*Post-Resignation Jurisdiction.* The Commission has recommended that its authority to file a removal determination up to 120 days after a judge's resignation be expanded, given the statutory and due process impediments to finishing all but already nearly-ended proceedings within 120 days. The Commission recommended that it be permitted to conclude an investigation and file charges within six months of resignation, to conclude formal disciplinary proceedings in whatever time is required, and that post-resignation determinations not be limited to removal.

*Judges Serving as Election Commissioners.* Part-time judges may serve as election commissioners pursuant to law. The Commission has recommended that the Election Law be amended to prohibit judges from serving as election commissioners, which impedes the judge's obligations of independence, impartiality and non-partisanship. Election commissioners are filled on the recommendation of political parties and appear to place the judge in the position of defending his or her party's interests. (See the more detailed discussion of this subject in the Special Topics section of this Annual Report.)

*Recording All Proceedings in Town and Village Courts.* The Commission has recommended that all proceedings in town and village courts be recorded. The absence of recordings or transcriptions often creates problems in criminal cases – defendants may be incarcerated without a reliable record of the proceedings, or their rights may not be properly explicated – and in civil cases which are appealed. An inexpensive tape recorder would serve to maintain records of court proceedings.

*Uniform Guidelines for Assigned Counsel.* The Commission has recommended that the vastly disparate practices in New York State's 62 counties with respect to assigned counsel to the indigent be made uniform and updated to reflect the economic realities of the 1990s. (See the more detailed discussion of this subject in the Special Topics section of this Annual Report.)





**Amendments to the  
Rules on Judicial Conduct**

Effective January 1, 1996, new Rules on Judicial Conduct went into effect, upon approval of the Court of Appeals. In addition to certain substantive changes, the Rules were reorganized and renumbered. The full text is appended to this Report. Among the new provisions are the following.

<u>RULE NUMBER</u>	<u>SUBSTANCE OF NEW PROVISION</u>
100.2(D)	Prohibits membership by a judge in any organization which practices invidious discrimination
100.3(B)(4)	Requires a judge to perform judicial duties without bias or prejudice
100.3(B)(5)	Requires a judge to require lawyers to refrain from manifesting bias or prejudice in the judge's court
100.3(B)(6)(a)-(e)	Authorizes certain <i>ex parte</i> communications
100.3(B)(7)	Requires a judge to dispose of all judicial matters "promptly, efficiently and fairly"
100.3(B)(8)	Prohibits a judge from making public comments about a pending or impending matter in any court within the United States
100.3(B)(9)	Prohibits a judge from criticizing or commending jurors for their verdict
100.3(B)(10)	Prohibits a judge from disclosing or using non-public information acquired in a judicial capacity
100.3(C)(1) & (2)	Require a judge and judge's staff to avoid bias or prejudice in the course of discharging administrative responsibilities
* 100.3(D)(1)&(2)	Require a judge to report misconduct by lawyers and judges when there is evidence of a "substantial likelihood" of a "substantial violation" of a rule

<u>RULE NUMBER</u>	<u>SUBSTANCE OF NEW PROVISION</u>
100.3(E)(1)(f)	Allows a judge to eliminate a personal or family financial conflict of interest that would otherwise require disqualification by disposing of the interest
100.4(C)(3)(b)	Clarifies the limitations on a judge's civic and charitable activities with respect to fund-raising; permits a judge to accept an unadvertised award at an organization's fund-raising event
100.4(D)(2)&(3)(b)	Provides that a judge may hold and manage family investments, including real estate
100.4(D)(5)	Relaxes the restrictions on gifts or loans to judges and increases the threshold on reporting such gifts or loans to \$150
100.5(A)	Revises the rules on political activity; requires a judge or candidate for judicial office to maintain certain standards of conduct; prohibits inappropriate campaign pledges; permits comment in response to personal attacks
100.5(C)	Requires a judge to prohibit his or her staff from engaging in certain political activity, such as contributing more than \$500 a year to political campaigns





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## S NEWS

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**Chief Administrative Judge E. Leo Milonas** this week named the seven members of the newly created Housing Court Disciplinary Committee that will consider complaints against City Housing Court judges. The disciplinary committee will function like the State Commission on Judicial Conduct and recommend whether a judge be admonished, sanctioned or removed from office. The final decision rests with Judge Milonas. A list of panel members appears on page 2.

6/24/94

## 7 Named to Committee On Judicial Discipline

**FIVE PRESENT** and former judges were among seven members appointed this week to a newly created Housing Court Disciplinary Committee that will consider complaints against City Housing Court judges.

The members named by Chief Administrative Judge E. Leo Milonas are Manhattan Supreme Court Justice Fern Fisher-Brandveen; Appellate Division Justices Myriam J. Altman of the Second Department and David Ross of the First Department; former Supreme Court Justices Fred W. Egert and Supreme Court Justice Maurice Harbater; former Housing Court Clerk James E. Morton; and Consolidated Edison attorney Kenneth Standard.

The panel will be modeled after the State Commission on Judicial Conduct and either dismiss complaints or recommend that a Housing Court judge be admonished, sanctioned or removed from office. Judge Milonas will have to approve any disciplinary measures.