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State judicial system is accountable to public

Top jurist addresses issues raised in series

By **JUDITH S. KAYE**, Special to the Times Union
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As the state's chief judge, I have naturally followed with interest the Times Union's editorials on judicial misconduct. I would like to address some of the issues raised.

First, like every other member of the public -- including judges -- I am deeply distressed whenever I learn that a judge has betrayed the oath of office. Of course, not every complaint about a judge shows unfitness requiring removal. But when charges of misconduct have merit, no one more than New York's hard-working judiciary wants to see prompt, appropriate measures taken, so that the courts maintain the respect of the public that they need and deserve to have.

Second, as the editorials recognize, both the procedures for disciplining a judge -- who is appointed or elected for a term of years -- and the funding for the Commission on Judicial Conduct are set by the legislative and executive branches. While I would quarrel with several of your statistics and examples, I agree that adequate funding for the commission resolution of misconduct complaints, and I therefore support it.

I cannot, however, agree that the tort law should be enlarged to allow damage suits against judges for their official acts, as this proposal threatens the essential quality of judicial independence in decision making. Not unlike the protection of the First Amendment for the press, this protection for public officials assures that they can act fearlessly and vigorously in the performance of their duties.

Greater openness in the disciplinary process -- both for judges and for lawyers -- is surely desirable. I have long supported legislation that would make judicial and attorney discipline proceedings public from the time a complaint has been investigated and formal charges

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are filed. Opening the proceedings at that point virtually eliminates the risk of undue publicity for baseless complaints. Such legislation would bring New York into line with the of other states. And it would give the public greater confidence in the entire process.

Regrettably, with rare exception, courts are in the news only when the news is negative, so the public gets a skewed picture of us. Now that I have your attention, I'd like to fill out some of the picture.

I start with the fact that New York state courts are among the busiest in the entire nation. Amazingly, our 1,221 state-paid judges resolve well over 3 million cases a year. The 2,300 local town and village justices, mainly non-lawyers, bring that number to more than 4 million annually. The cases run the gamut of difficult human problems -- criminal matters, personal injuries, property damage, broken contracts, constitutional issues, family issues and claims against and involving government.

Our objective is to resolve each case fairly and efficiently. Overwhelmingly, New York judges are people of talent, dedication and integrity, and they do an outstanding job with astronomical case dockets -- resolving disputes, protecting rights and punishing wrongs. I think that is an important context for your editorials.

In addition to our primary focus on the fair and efficient resolution of cases, always the New York courts look for innovative ways to better serve the public. I offer a few examples:

- **Jury reform.** Not all that long ago, the average term of jury service in New York was two weeks at least, with callbacks every two years like clockwork. Today, typically, jury service is one day or one trial, with minimums of four years between callbacks. All exemptions have been abolished, more equitably distributing the benefits and the burdens of this prized democratic institution.
- **Drug courts.** We now have drug treatment courts in 29 counties, including Albany, to halt the costly ineffective recycling of low-level nonviolent drug offenders through the courts. Since this program began, there have been 13,500 offenders in the drug treatment courts. These courts work. They have now been initiated for juveniles -- an especially vulnerable population -- as well as for substance-abusing parents at risk of losing their children to foster care limbo.
- **Family matters.** There are many ongoing programs to better serve families in court, including 32 children's centers that last year saw 51,000 children, Model Family Courts in Erie and New York counties that speed permanent placement of children, and matrimonial reforms to improve the processing of those cases.

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- Commercial courts. Albany will soon join Erie, Monroe, Nassau, Westchester and New York counties with its own commercial division to better serve business litigants, whose complex matters are too often backlogged, delaying court dockets generally.
- Domestic violence courts. Responding to the scourge of domestic violence, we have for the past several years piloted special domestic violence courts that sensibly attempt to prevent recurring violence. Only months ago, we launched integrated domestic violence courts, to better serve families who today are whipsawed among several trial courts. We hope that the clear benefits of these courts will at long last spark reform of New York's archaic trial structure.

How are the courts accountable to the public? By fairly and effectively resolving cases before us. By looking for ways to do better. By maintaining open courts -- including even family courts -- that invite the public to see and learn about its justice system. Do we have problems? Of course we do. No human institution is perfect. The point is, we try to face up to our problems, and address them.

Finally, while Sept. 11 is unforgettable for many reasons, one is especially relevant. On that fateful morning, my colleagues and I conferred and decided immediately -- almost instinctively -- that the New York courts, including the trial courts in lower Manhattan, should continue their operations. This was an attack on American values, including the rule of law, and we would not capitulate to terrorists by closing the courts.

It was one thing for us to reach that decision, and quite another for the judges, court personnel, lawyers and jurors to implement it. But they did. They were magnificent in meeting the extraordinary challenges of those extraordinary times. This was, I believe, a shining hour for the New York courts and lawyers, not missing a beat in their service to the public, showing the world the high value we place on our system of justice.

As we work to improve all of our institutions, including the courts, let's not lose sight of the great resource we have.

Judith S. Kaye is New York state's chief judge.

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