

Ch. 691 LAWS OF NEW YORK 1976

5. The commission may establish and designate three-member panels. Any such panel may exercise all the functions, powers and duties of the commission as provided in sections forty-two and forty-three unless otherwise directed by the commission; provided however, that no such panel is or may be authorized to confer immunity in accordance with section 50.20 of the criminal procedure law.

6. ~~Six~~ Five members of the commission shall constitute a quorum of the commission and the concurrence of five members of the commission shall be necessary for any action taken ~~or determination rendered~~ pursuant to paragraphs four through eight of section forty-three. Two members of a three-member panel of the commission shall constitute a quorum of the panel and the concurrence of two members of the panel shall be necessary for any action taken ~~or determination rendered~~.

7. The commission shall appoint and at pleasure may remove an administrator who shall be an attorney. The administrator of the commission may appoint such deputies, assistants, counsel, investigators and other officers and employees as he may deem necessary, prescribe their powers and duties, fix their compensation and provide for reimbursement of their expenses within the amounts appropriated therefor.

§ 42. Functions, powers and duties

The commission shall have the following functions, powers and duties:

1. Conduct hearings and investigations, administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of any books, records, documents or other evidence that it may deem relevant or material to an investigation; and the commission may designate any of its members or any member of its staff to exercise any such powers except that hearings shall be conducted before at least two commission members.

2. Confer immunity when the commission deems it necessary and proper in accordance with section 50.20 of the criminal procedure law; provided, however, that at least forty-eight hours prior written notice of the commission's intention to confer such immunity is given the attorney general and the appropriate district attorney.

3. Request and receive from any court, department, division, board, bureau, commission, or other agency of the state or political subdivision thereof or any public authority such assistance, information and data as will enable it properly to carry out its functions, powers and duties.

4. Make an annual report to the governor, the legislature and the chief judge of the court of appeals of its work; provided, however, that such report shall be subject to the confidentiality requirements of section forty-four.

5. Adopt, promulgate, amend and rescind rules and procedures necessary to carry out the provisions and purposes of this article. All such rules and procedures shall be filed in the office of the state administrator and the secretary of state.

6. Do all other things necessary and convenient to carry out its functions, powers and duties expressly set forth in this article.

§ 43. Complaint, investigation, hearing and disposition

1. The commission shall receive a complaint against any judge with respect to his qualifications, conduct, fitness to perform, or the performance of his official duties. A complaint shall be in writing and signed by the complainant and if directed by the commission shall be verified unless the commission shall otherwise direct. Upon receipt of a complaint (a) the commission shall conduct an investigation of the complaint; or (b) the commission may dismiss the complaint if it deter-

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Changes or additions in text are indicated by underline

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mines that the complaint on its face lacks merit. If the complaint is dismissed, the commission shall so notify the complainant. If the commission shall have required the appearance of the judge involved before it, the commission shall also notify the judge of such dismissal.

2. The commission may, on its own motion, initiate an investigation of a judge with respect to his qualifications, conduct, fitness to perform or the performance of his official duties. Prior to initiating any such investigation, the commission shall file as part of its record a written complaint, signed by the administrator of the commission, which complaint shall serve as the basis for such investigation.

3. In the course of an investigation, the commission may require the appearance of the judge involved before it, in which event the judge shall be notified in writing of his required appearance either personally at least three days prior to such appearance or by certified mail, return receipt requested, at least five days prior to such appearance and a copy of the complaint shall be served upon the judge at the time of such notification. The judge shall have the right to be represented by counsel during any and all stages of the investigation at which his appearance is required and to present evidentiary data and material relevant to the complaint. Suggestions and recommendations may be made to the judge with respect to his conduct and the performance of his official duties, and a transcript shall be made and kept with respect to the statement made to the judge and his response thereto all proceedings at which testimony or statements under oath of any party or witness shall be taken. Such transcript shall be confidential except as otherwise permitted by section forty-four.

4. If in the course of or after an investigation, the commission determines that it is appropriate to render an admonition to a judge, it may do so with or without a hearing. A copy of such admonition shall be given to the judge.

4. 5. If in the course of an investigation, the commission determines that a hearing is warranted it may shall direct that a formal written complaint signed and verified either by the person making the complaint or by the administrator of the commission be drawn and that a hearing be held with respect to such complaint. The judge involved shall be given at least ten days' personal notice of the hearing and a copy of the complaint shall be served upon him at the time of such notification notified in writing of the date of the hearing either personally at least ten days prior to such hearing, or by certified mail, return receipt requested, at least twelve days prior to such hearing and a copy of the complaint shall be served upon him at the time of such notification. If The judge may, and if directed by the commission, the judge shall, file with the commission within a time specified an answer in writing to the complaint. The complainant may be notified of the hearing and unless he shall be subpoenaed as a witness by the judge, his presence thereat shall be within the discretion of the commission. The hearing shall not be public unless the judge involved shall so demand in writing. At the hearing the commission may take the testimony of witnesses and receive evidentiary data and material relevant to the complaint. The judge may shall have the right to be represented by counsel during any and all stages of the hearing and shall have the right to call and cross-examine

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