

STATE OF NEW YORK

3996

1983-1984 Regular Sessions

IN ASSEMBLY

February 23, 1983

Introduced by M. of A. WEPRIN, M. H. HILLER --(at request of the Governor) -- read once and referred to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to candidates for chief judge or associate judge of the court of appeals

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Sections forty-five, sixty-three, sixty-four and sixty-six
2 of the judiciary law, as added by chapter one hundred fifty-six of the
3 laws of nineteen hundred seventy-eight, are amended to read as follows:
4 § 45. Confidentiality of records. Except as hereinafter provided,
5 all complaints, correspondence, commission proceedings and transcripts
6 thereof, other papers and data and records of the commission shall be
7 confidential and shall not be made available to any person except pur-
8 suant to section forty-four of this article. The commission and its
9 designated staff personnel shall have access to confidential material in
10 the performance of their powers and duties. If the judge who is the
11 subject of a complaint so requests in writing, copies of the complaint,
12 the transcripts of hearings by the commission thereon, if any, and the
13 dispositive action of the commission with respect to the complaint, such
14 copies with any reference to the identity of any person who did not par-
15 ticipate at any such hearing suitably deleted therefrom, except the sub-
16 ject judge or complainant, shall be made available for inspection and
17 copying to the public, or to any person, agency or body designated by
18 such judge.

19 Notwithstanding any provision in this section, the commission shall
20 provide to the commission on judicial nomination established by article
21 three-A of this chapter, the governor and the temporary president of the
22 senate and the chairman of the senate judiciary committee when the ad-
23 vice and consent of the senate is required, any information requested by
24 the commission on judicial nomination concerning an applicant for the
25 court of appeals, provided that the applicant consents to disclosure.

EXPLANATION--Matter in *italics* (underscoring) is new; matter in brackets
[] is old law to be omitted.

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1 § 63. Functions of the commission. 1. The commission shall consider
2 and evaluate the qualifications of candidates for appointment to the of-
3 fices of chief judge and associate judge of the court of appeals and, as
4 a vacancy occurs in any such office, shall recommend to the governor
5 persons who by their character, temperament, professional aptitude and
6 experience are well qualified to hold such judicial office.

7 2. (a) In recognition of the unique responsibilities of the chief
8 judge of the court of appeals for policies of judicial administration,
9 for a vacancy in the office of chief judge the commission shall recom-
10 mend to the governor seven persons.

11 (b) For a vacancy in the office of associate judge, the commission
12 shall recommend to the governor at least three persons and not more than
13 [five] ~~seven~~ persons. Should more than one vacancy exist at the same
14 time in the office of associate judge, the number of persons recommended
15 by the commission to the governor shall be at least three plus one addi-
16 tional person for each vacancy in such office, and not more than [five]
17 ~~seven~~ plus one additional person for each vacancy in such office. The
18 commission shall endeavor to recommend the maximum number of nominees
19 permitted by law.

20 (c) Should vacancies exist in the offices of chief judge and associate
21 judge at the same time, the commission shall recommend for the office of
22 associate judge the number of persons as provided in paragraph (b) of
23 this subdivision, provided, however, that in addition thereto the com-
24 mission may also recommend for associate judge any of the persons who
25 have been recommended to the governor for the office of chief judge.

26 3. A recommendation to the governor shall require the concurrence of
27 [eight members] a majority of the commission. The recommendations to the
28 governor shall be transmitted to the governor in a single written report
29 which shall be released to the public by the commission at the time it
30 is submitted to the governor. The report shall be in writing, signed
31 only by the chairman, and shall include the commission's findings relat-
32 ing to the character, temperament, professional aptitude, experience,
33 qualifications and fitness for office of each candidate who is recom-
34 mended to the governor.

35 4. No person shall be recommended to the governor who has not con-
36 sented to be a candidate, who has not been personally interviewed by a
37 quorum of the membership of the commission, and who has not filed a
38 financial statement with the commission, on a form to be prescribed by
39 the commission. The financial statement shall consist of a sworn state-
40 ment of the person's assets, liabilities and sources of income, and any
41 other relevant financial information which the commission may require.
42 The commission shall transmit to the governor the financial statement
43 filed by each person who is recommended. The governor shall make avail-
44 able to the public the financial statement filed by the person who is ap-
45 pointed to fill a vacancy. The financial statements filed by all other
46 persons recommended to the governor, but not appointed by him, shall be
47 confidential.

48 § 64. Additional functions of the commission. The commission shall
49 have the following functions, powers and duties:

50 1. Establish procedures to assure that persons who may be well quali-
51 fied for appointment to the court of appeals, other than those who have
52 requested consideration or who have been recommended for consideration
53 by others, are encouraged to agree to be considered by the commission.

54 2. Conduct investigations, administer oaths or affirmations, subpoena
55 witnesses and compel their attendance, examine them under oath or af-

A. 3996

3

1 firmation and require the production of any books, records, documents or
2 other evidence that it may deem relevant or material to its evaluation
3 of candidates.

4 3. Require from any court, department, division, board, bureau, com-
5 mission, or other agency of the state or political subdivision thereof
6 or any public authority such assistance, information and data, as will
7 enable it properly to evaluate the qualifications of candidates, subject
8 to any absolute judicial or executive privilege, where one exists.
9 Notwithstanding any other provision of law, the commission, with the
10 consent of the applicant, shall be entitled to require from the commis-
11 sion on judicial conduct all information in its possession concerning
12 the applicant.

13 4. Require the appearance of any candidate before it and interview
14 any person concerning the qualifications of any candidate.

15 5. Communicate with the governor concerning the qualifications of any
16 person whom it has recommended to the governor, and communicate with the
17 senate concerning the qualifications of the person appointed by the
18 governor.

19 6. The commission may appoint, and at pleasure remove, a counsel and
20 such other staff as it may require from time to time, and prescribe
21 their powers and duties. The commission shall fix the compensation of
22 its staff and provide for reimbursement of their expenses within the
23 amounts appropriated by law.

24 7. Do all other things necessary and convenient to carry out its
25 functions pursuant to this article.

26 § 66. Confidentiality of proceedings and records. 1. All communica-
27 tions to the commission, and its proceedings, and all applications, cor-
28 respondence, interviews, transcripts, reports and all other papers,
29 files and records of the commission shall be confidential and privileged
30 and, except for the purposes of article two hundred ten of the penal
31 law, shall not be made available to any person except as otherwise
32 provided in this article.

33 2. The governor shall have access to all papers and information
34 relating to persons recommended to him by the commission. The senate
35 shall have access to all papers and information relating to the person
36 appointed by the governor to fill a vacancy. All information that is
37 not publicly disclosed in accordance with subdivisions three and four of
38 section sixty-three of this article, or disclosed in connection with the
39 senate's confirmation of the appointment, shall remain confidential and
40 privileged, except for the purposes of article two hundred ten of the
41 penal law.

42 3. [The] Neither the members of the commission nor its staff shall
43 [not] publicly divulge the names of, or any information concerning, any
44 candidate except as otherwise provided in this article.

45 § 2. This act shall take effect immediately.