

STATEMENT OF
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TO THE

JOINT LEGISLATIVE BUDGET COMMITTEE HEARING
ON THE
2021-22 EXECUTIVE BUDGET



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(By Video)
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Executive Summary

Imagination and sacrifice are required throughout government in these stressful pandemic times, as state agencies endeavor to meet their constitutional responsibilities in challenging circumstances. The Commission on Judicial Conduct (CJC) met that challenge in 2020, rendering 24 public disciplines – more than any other year in over a decade – despite having to shift to an agency-wide work-from-home protocol.

We did so notwithstanding that our full-time staff of 39 is as small as we've had since 2007, when our employees numbered 51, a reality imposed by a “flat” budget of \$6,026,000. Yet because of the fiscal impact of the ongoing pandemic, we are requesting that same dollar amount for the coming fiscal year, even though we need more resources.

As a small agency, our contractually mandated costs, such as rent and employee benefits, comprise a significant and annually increasing part of our budget. To meet such rising costs, we will continue to economize by deferring the replacement of departing staff or obsolete equipment. We will also strive to spend less than our full appropriation, recognizing the financial stress all of state government is facing.

Background

CJC is created in the Constitution to enforce judicial ethics by investigating and disciplining judges for misconduct. Since 1978, we have handled over 57,000 complaints and publicly disciplined 886 judges.¹

To avoid the obvious conflict of our funding being controlled by the very judiciary we discipline, our budget has been submitted to the Legislature by the Executive since 1978. However, CJC is not an Executive agency reporting to the Governor. We do strive for a collaborative relationship with the Division of Budget (DOB), as do other constitutionally independent entities such as the Office of the Attorney General, the Office of the State Comptroller and the Judicial Branch.

I am pleased to report that the Governor endorses our approach in this year's Executive Budget and has proposed the \$6,026,000 appropriation we requested.

CJC's Record of Accomplishment in 2020

As it became clear in early 2020 that a novel coronavirus was going to disrupt business-as-usual dramatically, CJC prepared a contingency plan that went into effect in early March. Among other things:

¹ From its inception in 1978 through December 31, 2020, CJC has rendered 175 removals from office, 97 stipulated resignations and 613 public reprimands. However, these numbers should not lead to the misimpression of a judiciary run amok. While 1.5% of our complaints result in discipline, the vast majority – 98.5% – are dismissed after individualized analysis or inquiry. In this way, we enhance the independence of the judiciary by absorbing criticism that would otherwise be directed at them, and by absolving them where appropriate and freeing them to call their cases as they see them.

- VPN accounts were activated for all staff, providing for remote electronic access to our agency network.
- Accounts for electronic postage, faxes and other services were instituted or upgraded.
- Agency laptops were distributed for remote use, and administrative staff were provided with printer/scanners to facilitate remote communications.
- Electronic platforms were initiated for Commission meetings, video conferencing, depositions, hearings and other agency business that ordinarily would have occurred in person.

The results were dramatic, due in large part to the dedicated and professional efforts of our staff and the dedication of our Commission members:

- We processed over 1,500 new complaints.
- We conducted over 315 initial reviews and inquiries.
- We initiated 120 full-fledged investigations.
- We removed or effectuated the permanent resignation of 11 judges, publicly censured 9, publicly admonished 4 and confidentially cautioned 34.
- We reduced our caseload of pending matters by 23%, from 231 pending at year end in 2019 to 177 as of December 31, 2020.
- We successfully defended two removal decisions that were appealed to the Court of Appeals: a judge who denigrated women in judicial proceedings by referring to them with the “c word” and other pejoratives,² and a judge who *inter alia* failed to report or pay taxes on thousands of dollars in extra-judicial income.³

² <http://cjc.ny.gov/Determinations/S/Senzer.htm>

³ <http://cjc.ny.gov/Determinations/M/Miller.Richard.2.htm>

Prudent Budgeting and a Responsible Funding Request

This year, CJC and the Governor agree that, due to the serious economic stress caused by the coronavirus pandemic, CJC would do its part by asking for a “flat” budget, rather than proposing the increase it would otherwise need to maintain its operations at status quo. CJC has committed to do its best to spend less than its appropriation.

We are, of course, no stranger to fiscal constraints. For a number of years, despite rising fixed costs, we operated within a virtually flat budget. Our \$5.4 million budget in 2010-11, compounded annually at 2%, would be worth about \$6.7 million 2021-22, *i.e.* \$1.3 million more overall and \$700,000 more than we are actually requesting. The consequences of this funding shortfall have been pronounced over the years, as our staff of full-time employees (FTEs) has dropped from 51 to 39, and we have made other economies such as reducing transcription services, canceling cellphones and decreasing the size of our agency fleet.⁴

All of these savings in prior years were used to cover mandated increases in costs and, to the extent possible, redirected toward new necessities. For example, with our increasing reliance on IT – *e.g.* conducting virtual rather than in-person proceedings, scanning and emailing documents rather than photocopying and

⁴ To put the matter into greater perspective, consider that in 1978, when we had a caseload of 641 complaints a year, we supported a staff of 63 on a budget of \$1.644 million.

mailing them – we must pay to upgrade our computers and other equipment when their warranties expire and keep our annual software licenses up to date. Our annual IT costs run around \$40,000 more than a decade ago, but as we have no reserves, something else must be cut so we can cover it.

CJC's Constitutional Status

CJC is created in the Judiciary Article of the Constitution, and its operating authority is in the Judiciary Law.⁵ The 11 CJC members are appointed by leaders of the judicial, legislative and executive branches, but no one appoints a controlling number, and CJC itself elects a Chair and designates a full-time Administrator/Counsel as chief executive officer.⁶ (Commission members serve without compensation.)

To avoid an obvious conflict, our funding is not controlled by the judiciary or the Office of Court Administration (OCA). It comes from the Legislature on recommendation of the Governor in the Executive Budget.

In the past, the Legislature has been most receptive, having supplemented the Executive's recommendation four times since FY 2007-08.⁷ This year, CJC

⁵ Article 6, Section 22, of the Constitution, and Article 2-A, Sections 40-48, of the Judiciary Law.

⁶ CJC is comprised of four judges, five lawyers and two non-lawyers. The Governor appoints four members, the Chief Judge appoints three, and one each is appointed by the Assembly Speaker and Minority Leader, the Senate President Pro Tem and Senate Minority Leader. No branch appoints a controlling number; CJC elects its own Chair and designates a full-time Administrator/Counsel.

⁷ In 2007, after two decades of chronic underfunding, the Legislature held hearings and increased CJC's budget from \$2.8 million to \$4.8 million. Thrice since then, the Legislature supplemented the Executive's recommendation, twice by \$100,000, and two years ago by \$330,000.

and the Executive are in agreement that a “flat” budget request is prudent in light of the pandemic-generated fiscal crisis.

Conclusion

CJC is doing its part to save money during this pandemic crisis, operating on overdrive to meet its constitutional responsibilities. I am proud of our accomplishments in this uniquely challenging environment and, as always, I appreciate the warm reception and thoughtful consideration you always give me.

SELECTED BUDGET FIGURES: 1978 TO PRESENT

Fiscal Year	Annual Budget ¹	New Complaints ²	Prelim Inquiries	New Investigations	Pending Year End	Public Dispositions	Full-Time Staff
1978	1.6m	641	N.A.	170	324	24	63
1988	2.2m	1109	N.A.	200	141	14	41
1996	1.7m	1490	492	192	172	15	20
2006	2.8m	1500	375	267	275	14	28
2007	4.8m	1711	413	192	238	27	51
2008	5.3m	1923	354	262	208	21	49
2017	5.6m	2143	605	148	173	16	41
2018	5.7m	2000	505	167	206	19	38
2019	6.0m	1944	505	149	231	13	39
2020	6.0m	1504 ³	318	120	177 ⁴	24	39

¹ Budget figures are rounded off; budget figures are fiscal year (Apr 1 – Mar 31).

² Complaint figures are calendar year (Jan 1 – Dec 31).

³ The decrease in complaints from 2019 to 2020 is likely due to the fact that the courts were closed for a substantial part of the year due to the coronavirus pandemic. At the same time, the number of matters pending at year’s end decreased 23%, even with staffing at its lowest level in 13 years, because there was more time to devote to such matters.

⁴ See fn 3.