



JUDICIAL SECTION

2022 -2023 Officers

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Dear President Wallach:

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The Judicial Section has received and considered the Report Regarding Suspension as a Mode of Judicial Discipline drafted by the Committee on Procedures for Judicial Discipline (Committee). The Committee adopted a proposal to support an amendment to Article VI, section 22 of the New York State Constitution that will authorize the New York Court of Appeals to suspend a judge without pay on an interim basis for an indeterminate period of time. The proposed constitutional amendment also authorizes the New York State Commission on Judicial Conduct (CJC) to impose a suspension, without pay, as a final disposition in a judicial disciplinary action.

The Judicial Section **opposes** the proposed constitutional amendment in its entirety.

A. The Judicial Section of NYSBA opposes the proposed constitutional amendment that expands the power of the Court of Appeals to suspend a judge without pay for ill-defined conduct and for an indeterminate period of time.

First, the constitution already authorizes the Court of Appeals to suspend a judge without pay when the judge is charged with a crime punishable as a felony. Art. VI, § 22 (f) and (g).

Second, the language in the proposed expansion of power is vague and ambiguous:

- (i) It authorizes the Court of Appeals to suspend a judge without pay “*pending a determination*” by the CJC for the removal, suspension or retirement of a judge. When is a determination by the CJC pending? Does it begin the moment a complaint is filed? If

so, as historically demonstrated, a judge under investigation could be denied pay for months, if not years, before any allegations are proven, let alone explored.

(ii) It authorizes the Court of Appeals to suspend a judge without pay “*upon receipt of sufficient evidence* demonstrating that a judge or justice poses a **substantial threat of serious harm** to the public or to the *administration of justice*.” “Receipt” of evidence by whom? The CJC? The judge? What is “evidence?” What constitutes “sufficient evidence?” What constitutes a “substantial threat?” What is meant by “serious harm?” What is a substantial “threat to the administration of justice?”

Third, the proposed constitutional amendment affords no due process protections to a judge against whom any disciplinary allegation has been lodged prior to suspension without pay. Thus, a judge merely accused of wrongdoing could be deprived of all compensation without first having an opportunity to be heard, an opportunity to challenge any evidence presented against the judge, or indeed without any of the other procedural safeguards afforded private citizens or other public servants.

Fourth, the proposed constitutional amendment contains no provision protecting the privacy of judges under investigation. Where suspension is imposed, allegations against a judge necessarily will become public, causing great embarrassment and irreparable harm to the judge and his or her reputation, based on untested and unproven allegations.

Fifth, the proposed constitutional amendment does not provide a mechanism for expungement of any suspension in the event the judge is cleared of any allegations of misconduct, dereliction of duties or a threat to the administration of justice.

Sixth, the proposed constitutional amendment does not provide for the judge to receive back pay for the period of suspension upon a determination clearing the judge of any wrongdoing or upon imposition of a lesser sanction like admonishment or censure.

Seventh, the proposed constitutional amendment contains no provision for the employment security of the judge’s chambers staff during any interim suspension.

Eighth, the proposed constitutional amendment provides insufficient justification for suspension, without pay, as opposed to a temporary administrative reassignment. If the goal of suspension pending a CJC determination is to remove a judge from performing his or her regular duties, the proposed constitutional amendment is unnecessary. The Administrative Judge in each judicial district has existing authority to “reassign” a sitting judge or justice who is the subject of potential disciplinary action. The Administrative Judge also may prohibit the judge under investigation from presiding over some or all pending matters and from entering all court facilities, including the judge’s own chambers.

Ninth, the proposed constitutional amendment grants the Court of Appeals, the ultimate arbiter, power to deprive a judge of any compensation, for an *indefinite* period of time, before any allegation of misconduct is proven, let alone explored. Investigations by the Judicial Conduct Commission are lengthy, at times taking years to complete.

Thus, under the proposed constitutional amendment, a suspended judge could be deprived of compensation for many months or years. An indefinite suspension of pay without any proof of wrongdoing would have a devastating financial impact on a judge and his or her family, and the judge might have no choice but to resign.

B. The Judicial Section also opposes that portion of the proposed constitutional amendment that seeks to authorize suspension without pay for up to six months as a final remedy.

The amendment, as proposed, contains no guidelines or parameters for when that punishment would be appropriate. The CJC has authority to admonish or censure judges for “lesser” offenses, and it is hard to imagine a circumstance where suspension for six months would ever be an appropriate remedy. If a judge has engaged in conduct that warrants suspension without pay for up to six months, most certainly the judge would no longer be able to serve with the requisite honor and respect.

For all these reasons, we urge the NYSBA House of Delegates to vote against the proposed constitutional amendment.

Very Truly Yours,

Hon. Joanne D. Quiñones
Presiding Member
NYSBA Judicial Section