

“Acting” Judges and the Problem of Judicial Independence

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Articolul descrie autoritatea judecătorilor temporari în temeiul legii și procesul de desemnare a acestora pentru Curtea Supremă. El clarifică apoi diverse preocupări referitoare la independența judecătorească ridicate de către instituția judecătorilor temporari și, în cele din urmă, recomandă modalități de abordare a acestor preocupări.

Spre deosebire de judecătorii aleși, judecătorii temporari sunt selectați printr-un proces administrativ puțin transparent și pot fi îndepărtați de la Curtea Supremă în orice moment. Amândoi acești factori reprezintă amenințări îngrijorătoare la adresa independenței lor.



I. Introduction

As Alexander Hamilton noted, the judiciary “is in continual jeopardy of being overpowered, awed, or influenced and]... nothing can contribute so much to its firmness and independence as permanency in office.”¹⁴⁵ This maxim is enshrined in the United States Constitution, which guarantees life-long job security for judges, conditioned only on “good behavior.”¹⁴⁶ Contemporary threats to

the independence of American judges have drawn critical comment from a variety of observers. Justice Sandra Day O’Connor, for example, has been especially active in urging greater vigilance¹⁴⁷. In this spirit we describe and critique New York’s under-examined practice of using “Acting” Supreme Court Justices. These are judges who are temporarily appointed to the Supreme Court of the State of New York, the state’s trial court of general jurisdiction, and who, as the “Acting” title denotes, do not enjoy

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¹⁴⁵ THE FEDERALIST NO. 78 (Alexander Hamilton).

¹⁴⁶ U.S. CONST. art. III, § 1.

¹⁴⁷ Maggie Barron, *O’Connor and Breyer on Judicial Independence*, BRENNAN CENTER FOR JUSTICE, Apr. 9, 2008, http://www.brennancenter.org/blog/archives/oconnor_breyer_on_judicial_independence/.

significant job security in their Supreme Court judgeships. While we focus here on the “Acting” judiciary of New York that state is not alone in using temporary judges and much of what we offer is relevant to other jurisdictions¹⁴⁸.

New York’s Supreme Court Justices do not have life tenure, but, instead, are elected to fixed, fourteen year terms¹⁴⁹. While this system falls short of the Hamiltonian ideal, Supreme Court Justices enjoy reasonably lengthy terms in office and are protected from removal by the state Constitution. The Constitution also permits the temporary elevation of judges serving on courts of inferior jurisdiction to the Supreme Court.¹⁵⁰ These judges are referred to as Acting Supreme Court Justices (“Acting Justices”). While serving on the Supreme Court, Acting Justices possess the same “powers, duties, and jurisdiction” as their elected peers¹⁵¹, and they also receive the same salary as elected Justices¹⁵². In 2008, forty-four percent of the Supreme Court Justices in New York City were serving under acting appointments¹⁵³. Unlike elected Justices, Acting Justices are selected through an administrative process with little transparency and may be removed from their Supreme Court judgeships at any time. Both of these factors pose worrisome threats to their independence.

This article will describe the legal authority for Acting Justices and the process by which these Justices are chosen for assignment to the Supreme Court. It will then elucidate various judicial independence¹⁵⁴ concerns raised by the Acting Justices institution and, finally, recommend ways of addressing those concerns.

II. Legal Authority

The Constitution authorizes the temporary assignment to the Supreme Court of judges from any of six trial courts of inferior jurisdiction: the Court of Claims, the New York City Criminal and Civil Courts, the Family Court, the County Court, and the Surrogate’s Court¹⁵⁵. Unlike the Supreme Court, which has “general original jurisdiction in law and equity,”¹⁵⁶ those courts have limited monetary jurisdiction, little if any equity power, and, of the six, only the County Court has jurisdiction over felony cases.¹⁵⁷

The Constitution requires that these temporary assignments be made by the Chief Administrator of the Courts (the “Chief Administrator”) “in accordance with standards and administrative policies” established by the Chief Judge of the State of New York (the “Chief Judge”).¹⁵⁸ The Chief Judge is

¹⁴⁸ Other states that use temporary judges include Arizona, Ariz. Rev. Stat. §§ 12-141, -145, Indiana, Ind. Code § 33-38-11-1, -11, Michigan, Mich. Comp. Laws § 600.306, and North Dakota, N.D. Cent. Code § 27-24-01.

¹⁴⁹ N.Y. CONST. art. VI, § 6(a).

¹⁵⁰ N.Y. CONST. art. VI, § 26(b)-(g).

¹⁵¹ N.Y. CONST. art. VI, § 26(k).

¹⁵² N.Y. JUD. CT. ACTS LAW § 224. In 2009, the annual salary of a Justice of the Supreme Court was \$136,700. N.Y. JUD. CT. ACTS LAW § 221-b.

¹⁵³ Leah Nelson, *When Selection Trumps Election*, JUDICIALREPORTS.COM, http://www.judicialreports.com/2008/07/when_selection_trumps_election.php#more.

¹⁵⁴ The phrase “judicial independence” will be used to refer to the freedom of judges to decide cases without undue concern for their own personal interests, including tenure in office.

¹⁵⁵ N.Y. CONST. art. VI, § 26(b)-(g).

¹⁵⁶ N.Y. CONST. art. VI, § 7(a).

¹⁵⁷ STATE OF NEW YORK, ANNUAL REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS 8 n.2 (2006), available at <http://www.nycourts.gov/reports/annual/index.shtml>.

¹⁵⁸ N.Y. CONST. art. VI, §§ 26(i), 28(c).

appointed by the Governor with the advice and consent of the Senate to a fourteen year term¹⁵⁹. In addition to serving as a sitting judge on New York's highest court, the Court of Appeals, the Chief Judge also serves as the State's chief judicial officer¹⁶⁰. In that capacity, the Chief Judge appoints the Chief Administrator with the advice and consent of an administrative board comprised of the Presiding Justice of each of the State's judicial departments¹⁶¹. The Chief Administrator "serve[s] at the pleasure of the Chief Judge" and is tasked with "supervis[ing] the administration and operation" of New York's court system¹⁶².

As noted above, the Chief Administrator's power to appoint temporary judges is limited by the Constitutional requirement that appointments be made "in accordance with standards and administrative policies" promulgated by the Chief Judge. In *Morgenthau v. Cooke*¹⁶³, the Court of Appeals held that appointments made in the absence of such standards were invalid. In response, the Chief Judge issued the requisite rules governing the temporary assignment of judges¹⁶⁴. These rules offer general guidelines, described in section III, that govern all temporary assignments¹⁶⁵. In addition, the Chief

Judge delegated some rule-making authority to the Chief Administrator. For reasons to be discussed, that delegation is limited in that it expressly excludes the power to issue rules governing the temporary assignment of judges of the Court of Claims to the Supreme Court¹⁶⁶. The current rules of the Chief Judge and the Chief Administrator are attached as an appendix to this article.

III. Procedure

The Chief Administrator's power to make acting appointments must be exercised "with due regard for the courts from which and to which a temporary assignment is made and with due regard for the official and appropriate interests of the judge being assigned."¹⁶⁷ Acting appointments lasting twenty or fewer days are entrusted to the discretion of the Chief Administrator, but when an Acting Justice is needed for an assignment that exceeds twenty days, the Chief Administrator must consult with the Presiding Justice of the appellate division in need of the Acting Justice. Together, these two officials select the lower-court judge who will be assigned to the Supreme Court. If they are unable to agree, the Chief Judge makes the selection.

¹⁵⁹ N.Y. CONST. art. VI, § 2(a), (e).

¹⁶⁰ N.Y. CONST. art. VI, §§ 2(a), 28(a).

¹⁶¹ N.Y. CONST. art. VI, § 28(a). The Governor designates the Presiding Justice of each department. N.Y. CONST. art. VI, § 4(c).

¹⁶² N.Y. CONST. art. VI, § 28(a)-(b).

¹⁶³ 56 N.Y.2d 24 (1982).

¹⁶⁴ These rules are found at N.Y. COMP. CODES R. & REGS. tit 22, §§ 33.0-.1 [hereinafter 22 NYCRR].

¹⁶⁵ NYCRR § 33.0.

¹⁶⁶ See 22 NYCRR § 33.1, which provides that "all assignments to the Supreme Court of judges of courts of limited jurisdiction, other than the Court of Claims, shall be made pursuant to rules promulgated by the Chief Administrator." The Chief Administrator's rules, "Temporary Assignment of Judges to the Supreme Court," are found at 22 NYCRR §§ 121.1-.5.

¹⁶⁷ 22 NYCRR § 33.0.

There are additional procedures that apply to the assignment of all lower-court judges to the Supreme Court, except Court of Claims judges. With regard to non Court of Claims judges, an evaluatory panel, composed of four administrative judges¹⁶⁸, assists the selection process by “determin[ing] the capability of judges eligible for assignment” and issuing recommendations to the Chief Administrator¹⁶⁹. The evaluatory panel determines capability by considering the following subjective factors, “productivity,” “scholarship,” “temperament,” and “work ethic¹⁷⁰”, but seniority also plays an important, if informal, role in selecting Acting Justices. Joan Carey, the then Deputy Chief Administrative Judge for New York City, told a reporter that “seniority is pretty much the lynchpin” of the assignment process: “we obviously look at the [judge’s] scholarship and temperament,” but if “they’re all pretty much equal,” the longest serving judge will receive the temporary assignment. Once a non Court of Claims judge is temporarily assigned to the Supreme Court, she may serve an initial term lasting up to

four-months¹⁷¹.³³ Thereafter, she may be assigned to an unlimited number of additional terms lasting one year or less.

The reason that the qualifications for appointment set forth in Rule 121.2(b) do not apply to Court of Claims judges is that persons may be appointed to the Court of Claims with the understanding that they will be immediately elevated to the Supreme Court under acting assignments¹⁷². This first occurred in 1973 in response to The Emergency Dangerous Drug Control Act, which imposed stiff, mandatory penalties for certain violations of New York’s drug laws and restricted the use of plea bargaining in drug cases¹⁷³. The Supreme Court was seen as insufficiently staffed to handle the expected increase in felony drug prosecutions stemming from the Act¹⁷⁴. Rather than increasing the number of elected Supreme Court justices, which might have necessitated a Constitutional amendment¹⁷⁵, the Legislature and the Governor approved a statute authorizing the Governor to appoint up to sixty-eight new Court of Claims judges¹⁷⁶, “with the announced

¹⁶⁸ This panel is composed of the Deputy Chief Administrator for the Courts for the relevant geographic area, the Deputy Chief Administrator for Management Support, the Administrative Judge for Matrimonial Matters, and “the administrative judge of the court where the judge serves.” 22 NYCRR § 121.2(a). The Chief Administrator is empowered to alter the composition of this panel at her discretion. *Id.* The Chief Judge designates deputy chief administrators and administrative judges in consultation with the Presiding Justice of the appellate division in need of the administrative judge, but she may delegate this power to the Chief Administrator. 22 NYCRR § 1.1(e).

¹⁶⁹ 22 NYCRR § 121.2(a)-(b). A non Court of Claims judge is not eligible for an Acting Justice position lasting longer than twenty days until that judge “has served in a court of limited

jurisdiction for a period of two years.” 22 NYCRR § 121.2(c).

¹⁷⁰ 22 NYCRR § 121.2(b)(1)-(4). The evaluatory panel also considers any complaints filed against the non Court of Claims judge. 22 NYCRR § 121.2(b).

¹⁷¹ 22 NYCRR § 121.3.

¹⁷² *Taylor v. Sise*, 33 N.Y.2d 357 (1974) (upholding the Constitutionality of this practice).

¹⁷³ 1973 N.Y. Sess. Laws 371-406 (McKinney).

¹⁷⁴ *Taylor*, 33 N.Y.2d at 364.

¹⁷⁵ New York’s Constitution caps the number of Supreme Court Justices that may serve in each judicial district at one Justice per fifty-thousand residents. N.Y. CONST. art. VI, § 6(d).

¹⁷⁶ 1973 N.Y. Sess. Laws 1106 (McKinney).

purpose that they be [temporarily] assigned to sit in the Supreme Court.¹⁷⁷ The statute did not expressly require the new Court of Claims judges to be temporarily assigned to the Supreme Court, but court administrators soon complied with the stated legislative intent¹⁷⁸. By 1974 sixteen judges had been appointed to the Court of Claims and had been assigned to criminal parts of the Supreme Court¹⁷⁹. Similarly, the Legislature allowed the Governor to appoint additional Court of Claims judges in 1986, 1990, 1996, and 2005 with the same understanding¹⁸⁰. The Chief Judge has yet to promulgate administrative standards dictating either evaluatory panel review of Court of Claims judges or the length of Court of Claims judges' temporary assignments to the Supreme Court. By law, Court of Claims judges serve nine-year terms and may be appointed to additional terms.¹⁸¹

IV. Issues Created by the Assignment of Acting Justices

Judicial independence concerns are unavoidably inherent in any system using "temporary" judges to staff a court with powers as substantial as those of the Supreme Court of New York. The problem is compounded when the

process suffers from a lack of full transparency. Independence concerns are especially acute for a lower court judge assigned to be an Acting Justice of the Supreme Court. That judge enjoys better prospects for "permanent" advancement, greater prestige, better staff support, a case load that can include more interesting and important cases, and, possibly, an increased salary¹⁸². Needless to say, these are powerful incentives to retain the temporary assignment.

While the power to assign Acting Justices is to some extent diffuse, it rests primarily with the Chief Administrator and the Presiding Justice of the Appellate Division of the relevant locality¹⁸³. One former Acting Justice, interviewed for this article, said that experience convinced him/her that irrelevant personality conflicts affect the assignment process¹⁸⁴. The Chief Judge's level of involvement in assigning Acting Justices is unclear, but he or she has ultimate control over the assignment process. Not only does the Chief Judge have the final say on who is selected, but he or she also appoints the Chief Administrator, who serves at her "pleasure"¹⁸⁵. In turn, the Chief Administrator selects each of the administrative judges who sit on the evaluatory panel¹⁸⁶, which is tasked

¹⁷⁷ *Cullum v. O'Mara*, 350 N.Y.S.2d 162, 168 (N.Y. App. Div., 2d Dep't 1973), *aff'd, sub nom. Taylor v. Sise*, 33 N.Y.2d 357 (1974).

¹⁷⁸ *Id.* at 165-68.

¹⁷⁹ *Taylor, supra*, 33 N.Y.2d at 362.

¹⁸⁰ 1986 N.Y. Sess. Laws 2278 (McKinney); 1990 N.Y. Sess. Laws 651 (McKinney); 1996 N.Y. Sess. Laws 1786 (McKinney); 2005 N.Y. Sess. Laws 2138 (McKinney).

¹⁸¹ N.Y. CONST. art. VI, § 9.

¹⁸² In 2009, Supreme Court Justices and Court of Claims Judges earned an annual salary of \$136,700. N.Y. JUD. CT. ACTS LAW §

221-b-c. That same year, New York City Criminal and Civil Court Judges were paid \$125,600 per year. N.Y. JUD. CT. ACTS LAW § 221-g. Finally, the annual salary paid to County Court, Family Court, and Surrogate's Court Judges varies from county to county and, in 2009, ranged from \$119,800 to \$136,700. N.Y. JUD. CT. ACTS LAW § 221-d-f.

¹⁸³ See 22 NYCRR § 121.1.

¹⁸⁴ Interview with Anonymous New York State Judge, in New York, N.Y.

¹⁸⁵ N.Y. CONST. art. VI, § 28(a).

¹⁸⁶ N.Y. JUD. CT. ACTS LAW § 212(1)(d).

Judicial independence concerns are unavoidably inherent in any system using “temporary” judges to staff a court with powers as substantial as those of the Supreme Court of New York.

with “determin[ing] the capability of judges eligible for assignment [as Acting Justices]¹⁸⁷.” For these reasons, lower-court judges who aspire to Acting positions may feel pressure to please the Chief Judge, the Chief Administrator, and other judges involved in the assignment process.

Acting Justices do not enjoy significant job security in their Supreme Court judgeships. Subject to the agreement of the Chief Administrator and the Presiding Justice of the relevant appellate division, acting assignments of non Court of Claims judges may be terminated at any time¹⁸⁸. The lack of a rule controlling the termination of Court of Claims judges’ acting assignments suggests that these judges may also be returned to their original judgeships at any time. This extraordinary power threatens judicial independence: one Bronx judge stated that the Chief Administrator has used this control over demotion to intimidate Acting Justices into rushing the disposition of their cases¹⁸⁹.

The threat to judicial independence posed by the Chief Administrator’s demotion power is highlighted by comparing the demotion of Acting Justices with the removal of elected Supreme Court Justices. Unlike their acting peers, elected Supreme Court Justices serve fourteen-year terms¹⁹⁰. Furthermore, elected Justices can only be removed during these terms for cause, and their removal must be ordered by a concurrent resolution of both legislative houses that has been approved by two-thirds of the members of each house¹⁹¹.

The Chief Administrator’s and the Chief Judge’s powers are exercised in private, and the Chief Administrator does not publish basic information, including the total number of Acting Justices that serve on the Supreme Court during a given year or the names of the Acting Justices that were either elevated to the Supreme Court or returned to their lower court positions that year¹⁹². This lack of information deprives the bar and the public of an opportunity to evaluate the process of appointing Acting Justices. Finally, eligible lower court judges are not informed when an acting assignment becomes available, let alone allowed to apply for it¹⁹³.

The Governor of New York and the Mayor of New York City also threaten the judicial independence of certain Acting Justices by virtue of their appointive power over these judges.

¹⁸⁷ 22 NYCRR § 121.2(a)-(b).

¹⁸⁸ 22 NYCRR § 121.4.

¹⁸⁹ Juan Gonzalez, *Pols Rule Courtrooms: Acting Judges Owe Their Job to Pataki*, Rudy, N.Y. DAILY NEWS, Jan. 18, 2000, at 8.

¹⁹⁰ N.Y. CONST. art. VI, § 6(c).

¹⁹¹ N.Y. CONST. art. VI, § 23(a), (c).

¹⁹² See State of New York, *supra*.

¹⁹³ Telephone Interview with Elizabeth Hooks, New York Office of Court Administration (Oct. 9, 2008).

Family Court judges within the City of New York and New York City Criminal Court judges are appointed by the Mayor¹⁹⁴, and Court of Claims judges are appointed by the Governor¹⁹⁵. Being assigned to the Supreme Court does not free these judges from Executive control: if they are not re-appointed to their lower court seats, they are removed from the Supreme Court¹⁹⁶. This appointive process affords political officials power over Acting Justices that they do not possess over elected Justices.

V. Recommendations

Instead of permitting the use of Acting Justices, New York's Legislature should adjust the number of elected Supreme Court Justices in response to the needs of that court¹⁹⁷. New York's Constitution generally entrusts the power to select Supreme Court Justices to the electorate, not judicial administrators¹⁹⁸.⁶³ While the Constitution permits the temporary assignment of Acting Justices¹⁹⁹, the wide-spread use of this exception threatens to swallow the rule: as of 2008, forty-four percent of New York City's Supreme Court Justices were serving under acting

assignments. Doing away with Acting Justices would return the power to elect Supreme Court Justices, who preside over some of the State's most important cases, to the people of New York and would ensure that all Supreme Court Justices enjoy the same job security²⁰⁰.

Even if New York continues to use Acting Justices, changes are needed to increase the transparency and fairness of the system. When an Acting Justice position becomes available, the Chief Administrator should post the opening and allow eligible lower court judges to apply for that position. In addition, the Chief Administrator should annually publish relevant statistics relating to Acting Justices, including the total number of Acting Justices, the number of Acting Justices that came from each lower trial court, the names of new Acting Justices elevated that year, and the names of Acting Justices that were returned to their original judgeships during the year²⁰¹. Also, the Chief Judge should promulgate rules specifically addressing the temporary assignment of Court of Claims judges to the Supreme Court, including the process by which these judges may be removed from the Supreme Court. Lastly, if the Chief Administrator deci-

¹⁹⁴ N.Y. CONST. art. VI, §§ 13(a), 15(a).

¹⁹⁵ N.Y. CONST. art. VI, § 9.

¹⁹⁶ N.Y. CONST. art. VI, § 26(b), (f)-(g).

¹⁹⁷ New York's Constitution would need to be amended. The Special Commission on the Future of the New York State Courts, which was appointed by then Chief Judge Judith Kaye, called for the elimination of both the constitutional cap on the number of elected Supreme Court justices and the Acting Justice position. THE SPECIAL COMMISSION ON THE FUTURE OF THE NEW YORK STATE COURTS, A COURT SYSTEM FOR THE FUTURE: THE PROMISE OF COURT RESTRUCTURING IN NEW YORK

STATE 78-79 (2007), available at http://nycourts.gov/reports/courtsys-4future_2007.pdf.

¹⁹⁸ N.Y. CONST. art. VI, § 6(c).

¹⁹⁹ N.Y. CONST. art. VI, § 26(b)-(g).

²⁰⁰ Some reformers have proposed ending the election of Supreme Court Justices and, instead, having those Justices selected through a merit-based appointive system. *E.g.*, Victor A. Kovner, Op-Ed., *End Election of Judges*, N.Y. LAW JOURNAL, Mar. 18, 2009, § 1, at 6. Such an appointive system would not necessarily eliminate the need for Acting Justices.

²⁰¹ These statistics could be included in the ANNUAL REPORT OF THE CHIEF ADMINISTRATOR.

des to terminate an acting assignment, for a reason related to a judge's performance, as opposed to the court's staffing needs, the affected judge should receive at least rudimentary process, including a chance to hear the reason for his demotion as well as an opportunity to refute it before the proper administrator.

Appendix

Rules of the Chief Judge, Temporary Assignment of Justices and Judges, 22 NYCRR §§ 33.0-1.

Section 33.0 General.

Temporary assignments of judges and justices of the Unified Court System pursuant to article VI, section 26, of the Constitution shall be made by the Chief Administrator of the Courts, in his or her discretion, subject to the Constitution, art. VI, section 28, subdivision b, after determining the need therefor and the advisability thereof consistent with the objectives of the Unified Court System; provided, however, that such temporary assignments shall be made with due regard for the courts from which and to which a temporary assignment is made and with due regard for the official and appropriate interests of the judge being assigned. When made for a period in excess of 20 calendar days, such temporary assignments shall be made by the Chief Administrator in consultation and agreement with the presiding justices of the appropriate appellate divisions on behalf of their respective courts, provided further that if the Chief Administrator and a presiding justice are unable to agree, the matter shall be determined by the Chief Judge.

Section 33.1 Temporary assignment of judges to the Supreme Court.

In addition to the criteria set forth in section 33.0 of this Part, all assignments to the Supreme Court of judges of courts of limited jurisdiction, other than the Court of Claims, shall be made pursuant to rules promulgated by the Chief Administrator which shall provide for:

(a) minimum standards of judicial service as a prerequisite for consideration;

(b) recommendations by administrative judges, bar associations and others who may have knowledge of the capabilities of the judge under consideration; and

(c) limited terms of assignment and a procedure for evaluation of the qualifications of the judge prior to a designation or redesignation for temporary assignment.

Rules of the Chief Administrative Judge, Temporary Assignment of Judges to the Supreme Court, 22 NYCRR §§ 121.1-5.

Section 121.1 General

All temporary assignments of judges to the Supreme Court from a court of limited jurisdiction, other than the Court of Claims, or designations of eligibility for such assignments, shall be made by the Chief Administrator of the Courts, in his or her discretion, upon consultation with and agreement of the presiding justice of the appropriate Appellate Division, pursuant to Part 33 of the Rules of the Chief Judge and in accordance with the procedure set forth in this Part.

Section 121.2 Procedure for selection

(a) Selection of judges for temporary assignment pursuant to this Part shall

be made by the Chief Administrator upon recommendations from an evaluatory panel consisting of the appropriate Deputy Chief Administrator for the Courts within and without the City of New York, the Deputy Chief Administrator for Management Support, the Administrative Judge for Matrimonial Matters, and the administrative judge of the court where the judge serves. The Chief Administrator may alter the membership of the panel where circumstances require. The panel shall consider the need for judges to be assigned, the availability of judges for assignment and the capability of the judges eligible for assignment.

(b) In determining the capability of judges eligible for assignment, the evaluatory panel shall consult with administrative judges and with bar associations and other persons or groups as may be appropriate, and shall consider the following criteria with respect to each judge:

(1) productivity, including effective docket management and prompt case disposition;

(2) scholarship, including knowledge and understanding of substantive, procedural and evidentiary law of New York State, attentiveness to factual and legal issues before the court, application of judicial precedents and other appropriate sources of authority, and quality and clarity of written opinions;

(3) temperament, including the ability to deal patiently with and be courteous to all parties and participants; and

(4) work ethic, including punctuality, preparation and attentiveness, and meeting commitments on time and according to the rules of the court.

The panel also shall consider any complaints filed with court administrators.

(c) No judge shall be eligible for temporary assignment pursuant to this Part for a period in excess of 20 calendar days unless that judge has served in a court of limited jurisdiction for a period of two years.

(d) The Chief Administrator, upon consultation with and agreement of the Presiding Justice of the appropriate Appellate Division, may except a judge from all or part of the requirements of subdivision (b) of this section in determining the judge's eligibility for an assignment not in excess of 20 calendar days if the needs of the courts warrant such action.

Section 121.3 Terms of assignment

Temporary assignments shall be for terms of no greater than one year, provided that the initial assignment shall be for a term of no greater than four months. Where appropriate, the chief administrator may designate, pursuant to section 121.2 of this Part, a judge as eligible for being selected for temporary assignments over the course of a term of not more than one year. Judges shall be eligible for redesignation at the conclusion of a term pursuant to the procedure set forth in this section.

Section 121.4 Termination of assignment

The Chief Administrator, upon consultation with and agreement of the presiding justice of the appropriate appellate division, may terminate at any time any temporary assignment made pursuant to this Part.

Section 121.5 Effect of Discipline by Judicial Conduct Commission Absent

exceptional circumstances, as determined by the Chief Administrator upon consultation with and agreement of the Presiding Justice of the appropriate Appellate Division, no judge shall be eligible to sit as a temporarily assigned justice pursuant to this Part for a period of two years from the date of any order of the State Commission on Judicial Conduct that

directs that the judge be publicly admonished or censured.

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