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NEW YORK STATE ASSOCIATION  
OF CRIMINAL DEFENSE LAWYERS

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## Memo in Support

### A10805-A/S8815 – Amendments Proposed to the Current Commission on Prosecutorial Conduct

The New York State Association of Criminal Defense Lawyers (NYSACDL) urges the State Legislature to support A10805-A/S8815, the amendments proposed to the current Commission on Prosecutorial Conduct (CPC) law first passed in 2018 and amended in 2019 as part of a bipartisan effort. The amendments would completely rectify the unconstitutionality finding in *Soares v. State of New York*, namely that the separation of powers doctrine was violated by the inclusion of the Presiding Justices of the Appellate Division in the disciplinary framework. The amendments completely eliminate the role of the Presiding Justices.

The work of the CPC must commence. We are at a critical juncture in criminal justice reform in no small part brought about by ever-growing and endless wrongful convictions, a category of injustice of which NYS has been a leader for well over a decade. The CPC will bring to the process of prosecutorial conduct discipline a previously non-existent transparency and necessary accountability. The independent CPC will have the ability to investigate and make recommendations regarding specific instances of egregious conduct not only which results in wrongful convictions but also costly appellate reversals of trials which should never have been undertaken but for unexplainable prosecutorial errors and/or misconduct.

The recent groundbreaking report from the Innocence Project and the Brooklyn District Attorney's Office analyzing the first 25 wrongful convictions of the Conviction Review Unit reveals the painful truths which caused the Legislature to enact the CPC. Twenty four of the 25 exonerees were either Black and/or Latinx and, as a group, served 426 years in prison. Prosecutorial misconduct and/or serious error accounted for 84% of the 25 cases. In 40% of these cases there was a failure to disclose evidence to the defense by the police, prosecutors or both. One of the report's key conclusions: New York should allow the CPC to begin its important work.

The time for accountability has arrived.