J. Y. Interpretation No.396（February 2, 1996）*

ISSUE: Does the Public Functionaries Disciplinary Act violate Article 16 of the Constitution since it lacks an appellate system and cannot fully protect the people's right to initiate legal proceedings, and shall it therefore be amended accordingly?

RELEVANT LAWS:

Articles 16 and 82 of the Constitution（憲法第十六條、第八十二條）; J. Y. Interpretation Nos.162 and 243（司法院釋字第一六二號及第二四三號解釋）.

KEYWORDS:

disciplinary measures（懲戒處分）, disciplinary authority（懲戒機關）.**

HOLDING: Article 16 of the Constitution stipulates that the people have the right to initiate legal proceedings, and such right may be prescribed by the legislative authority taking into account the nature of each type of litigation case for the purpose of safeguarding the right of litigation under the judicial system. Where a public servant is subject to disciplinary measures for violation of law

解釋文：憲法第十六條規定人民有訴訟之權，惟保障訴訟權之審級制度，得由立法機關視各種訴訟案件之性質定之。公務員因公法上職務關係而有違法失職之行為，應受懲戒處分者，憲法明定為司法權之範圍；公務員懲戒委員會對懲戒案件之議決，公務員懲戒法雖規定為終局之決定，然尚不得因其未設通常上訴救濟制度，即謂與憲法第十六條有所違背。懲戒處分影響憲法上人

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whilst discharging his/her duties as public servant or for failure to discharge his/her duties properly as public servant, the disciplinary measures whereof are clearly stipulated by the Constitution to fall within the jurisdiction of the judiciary. Although the Public Functionaries Disciplinary Act provides that determination made by the Commission on the Disciplinary Sanctions of Functionaries shall be final as regards disciplinary cases, Article 16 of the Constitution shall not be considered violated where no ordinary appellate system of relief is created. Since the disciplinary measures affect the right to hold public office granted by the Constitution and the members of the disciplinary authority are judges as construed under the Constitution, according to Article 82 of the Constitution and the intent under this Yuan Interpretation No.162, the authority itself shall adopt the mechanism of a court and the determination of disciplinary cases shall comply with the principle of due process of law so as to provide sufficient procedural safeguards to the disciplined persons. For example, the systems of direct trial, oral arguments, cross-

民服公職之權利，懲戒機關之成員既屬憲法上之法官，依憲法第八十二條及本院釋字第一六二號解釋意旨，則其機關應採法院之體制，且懲戒案件之審議，亦應本正當法律程序之原則，對被付懲戒人予以充分之程序保障，例如採取直接審理、言詞辯論、對審及辯護制度，並予以被付懲戒人最後陳述之機會等，以貫徹憲法第十六條保障人民訴訟權之本旨。有關機關應就公務員懲戒機關之組織、名稱與懲戒程序，併予檢討修正。

examination, and defense may be adopted to provide the disciplined persons with a last opportunity to expound, etc., so as to implement the intent under Article 16 of the Constitution in relation to the safeguarding of the people's right to litigation. Review and amendment should be made by the relevant authorities with respect to the organization, name, and disciplinary procedure of the public servants' disciplinary authority.

REASONING: The right of the people to institute legal proceedings under Article 16 of the Constitution is an entitlement to systematic safeguard of relief which is available when their rights are violated. The actual content of such right can only be affected through stipulation of laws relating to the organization of courts and the litigation procedures by the legislative authorities. Since the safeguarding of the people's right to litigation lies at the core of the Constitution, and is a basic prerequisite for the right to litigation, any lack whereof shall conflict with the intent of Article 16 of the Constitution in relation to safeguarding of the people's right

解釋理由書：憲法第十六條所定人民之訴訟權，乃人民於其權利遭受侵害時，得訴請救濟之制度性保障，其具體內容，應由立法機關制定法院組織與訴訟程序有關之法律，始得實現。惟人民之訴訟權有其受憲法保障之核心領域，為訴訟權必備之基本內容，對其若有欠缺，即與憲法第十六條保障人民訴訟權之意旨不符。本院釋字第二四三號解釋所謂有權利即有救濟之法理，即在指明人民訴請法院救濟之權利為訴訟權保障之核心內容，不容剝奪。保障訴訟權之審級制度，得由立法機關視各種訴訟案件之性質定之。公務員因公法上職務關係而有違法失職之行為，應受懲戒處分者，憲法明定為司法權之範圍；公

to litigation. The general principle of law contained in this Yuan Interpretation No. 243, which provides that rights are accompanied with relief, aims to elucidate that the people cannot be deprived of the right to request relief from the court which lies at the heart of the safeguarding of the right to litigation. The judicial system with various proceedings which provides for the safeguarding of the right to litigation shall be established by the legislative authority having consideration of the nature of each type of litigation case. Where a public servant is subject to disciplinary measures for violation of law whilst discharging his/her duties as public servant, or for failure to discharge his/her duty properly as public servant, the disciplinary measures whereof are clearly stipulated by the Constitution to fall within the jurisdiction of the judiciary. Although the Public Functionaries Disciplinary Act provides that determination made by the Commission on the Disciplinary Sanctions of Functionaries shall be final as regards disciplinary cases, Article 16 of the Constitution shall not be considered violated where no ordinary appellate

務員懲戒委員會對懲戒案件之議決，公務員懲戒法雖規定為終局之決定，然尚不得因其未設通常上訴救濟制度，即謂與憲法第十六條有所違背。

system of relief is created.

Strictly speaking, the so-called judicial authority under the Constitution refers to the Judicial Yuan and the courts of law (including tribunals), and the officials exercising the judicial right are the grand justices and the judges. Disciplinary matters pertaining to the discipline of public servants by the Commission on the Disciplinary Sanctions of Functionaries fall within the ambit of the exercise of judicial rights and are exercised by the judges under the Constitution. Since the disciplinary measures affect the right to hold public office granted by the Constitution and the members of the disciplinary authority are judges as construed under the Constitution, according to Article 82 of the Constitution and the intent under this Yuan Interpretation No.162, the authority itself shall adopt the mechanism of a court and the determination of disciplinary cases shall comply with the principle of due process of law so as to provide sufficient procedural safeguards for the disciplined persons. For example, the systems of direct trial, oral arguments, cross- examina-

憲法所稱之司法機關，就其狹義而言，係指司法院及法院（包括法庭），而行使此項司法權之人員為大法官與法官。公務員懲戒委員會掌理公務員之懲戒事項，屬於司法權之行使，並由憲法上之法官為之。惟懲戒處分影響憲法上人民服公職之權利，懲戒機關之成員既屬憲法上之法官，依憲法第八十二條及本院釋字第一六二號解釋意旨，則其機關應採法院之體制，包括組織與名稱，且懲戒案件之審議，亦應本正當法律程序之原則，對被付懲戒人予以充分之程序保障，例如採取直接審理、言詞辯論、對審及辯護制度，並予以被付懲戒人最後陳述之機會等，以貫徹憲法第十六條保障人民訴訟權之本旨。有關機關應就公務員懲戒機關之組織、名稱與懲戒程序，併予檢討修正。

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