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RULES OF THE COMMITTEE ON JUDICIAL RESPONSIBILITY AND DISABILITY

ORDER ESTABLISHING COMMITTEE ON JUDICIAL RESPONSIBILITY AND DISABILITY.

All of the Justices concurring therein, it is hereby ORDERED, to be effective on July 5, 1978, as follows:

1. There is hereby established a Committee on Judicial Responsibility and Disability consisting of seven members appointed by the Supreme Judicial Court. Two members shall be either active or active retired justices of the Superior Court, active or active retired judges of the District Court, or active judges of probate. At no time shall the two judiciary members be members of the same court. Two members shall be attorneys at law admitted to practice in the State of Maine, and three members shall be representatives of the general public of the State of Maine and shall not be attorneys or members of the judiciary. The public and attorney members shall be appointed by the Supreme Judicial Court upon the recommendation of the Governor.

2. The term of each member shall be for six years, except that initial appointments shall be as follows in order to achieve staggered terms:

A. One judiciary member shall be appointed for a six-year term, and the other judiciary member shall be appointed for a four-year term;

B. One attorney member shall be appointed to a four-year term, and one attorney member shall be appointed to a two-year term;

C. One public member shall be appointed to a six-year term, the second public member shall be appointed to a four-year term, and the third public member shall be appointed to a two-year term;

D. No member shall serve more than one term in office, provided that the members appointed to serve two years or less of an initial or unexpired term shall not be considered to have served the equivalent of a term for purposes of this section.

2A. Alternate members shall be appointed by the Supreme Judicial Court, each for a term of six years as follows:

A. One alternate member who shall be either an active or an active retired justice of the Superior Court who shall serve whenever a member of the Committee from that Court has recused himself or is otherwise unavailable to participate in Committee action;

B. One alternate member who shall be a judge or an active retired judge of the District Court who shall serve whenever a member of the Committee from that Court has recused himself or is otherwise unavailable to participate in Committee action;

C. One alternate member who shall be an attorney at law admitted to practice in the State of Maine who shall serve whenever an attorney member has recused himself or is otherwise unable to participate in Committee action; and

D. One alternate member who shall be a representative of the general public of the State of Maine and not an attorney or a member of the judiciary who shall serve whenever a public member of the Committee has recused himself or is otherwise unable to participate in Committee actions.

3. The Committee may establish such offices, employ an Executive Secretary and counsel, and make arrangements for such secretarial and other assistance as the Committee shall reasonably require.

4. The Committee shall have an operating budget approved by the Chief Justice of the Supreme Judicial Court, and expenses of the Committee shall be paid from appropriations of funds to the Judicial Department through the budget of the state courts.

5. The Supreme Judicial Court shall appoint a chairperson of the Committee and, from time to time, the Committee may designate from its members a vice chairperson and secretary. A quorum of the Committee shall consist of five members, and no action shall be taken by the Committee except by vote of a majority of the full Committee.

5A. The Committee shall make public any rules of general applicability adopted by it for the conduct of its operations under this Order.

6. The Committee shall receive complaints concerning the performance or misconduct of any judge on the Supreme Judicial Court, the Superior Court, the District Court, the Probate Courts or the Administrative Court. The Committee shall make an initial assessment of a complaint based on its content and on any further information from the complainant or from court records of cases involved in the complaint. In special circumstances where the nature of the allegations suggests that prior notice to the person complained against might create a significant risk of compromising the Committee's ability to obtain information necessary to accurately assess the complaint, the Committee may conduct a preliminary investigation, but not involving the use of subpoena power, and designed, to the extent practical, to preserve the confidentiality of the complaint and of the preliminary investigation. Unless the complaint is dismissed on the basis of information from the complainant, from the court records, or from any preliminary investigation, the Committee or its designee shall communicate the complaint to the person complained against and shall provide such person with a copy of any written complaint. The person complained against shall have reasonable opportunity to respond. The Committee shall conduct such further investigation as it deems fit. At any stage of such further investigation the Committee shall have subpoena power and may require a person to appear or produce evidence before the Committee, or before its counsel or other designee as designated by the Committee through its chairperson, and to provide evidence under oath. If the Committee determines that the complaint is unfounded, the Committee shall dismiss the matter, notifying the person complained against and any complainant of its actions.

6A. After receipt of a complaint, the Committee may direct its Executive Secretary to seek informal correction of any judicial conduct or practice, which the Committee determines may create an appearance of judicial misconduct. Any recommendation from the Committee or its Executive Secretary may be directed to the Chief Justice or other appropriate official of the Judicial Department. A recommendation for informal correction may be made at any stage of the proceedings but shall not necessarily preclude further action on the complaint. The Committee may in its discretion inform the complainant of any action taken under this provision.

7. The Committee shall hold a hearing at the request of a majority of the members of the Committee or of the person whose conduct is being investigated. At such

hearing the person under investigation shall be entitled to counsel. The Committee shall have subpoena power, and every witness shall be sworn. The hearing shall be had before the Committee with a record.

8. All proceedings before the Committee shall be confidential, and no information shall be published by the Committee unless by order of the Supreme Judicial Court; except that:

(1) In connection with the consideration of the appointment of a person who is or has been a judge, the Committee shall provide information on any complaints made against that person and the Committee's disposition thereof, upon written request from the Governor or the Legislature's Joint Standing Committee on the Judiciary or other appropriate legislative committee, or from a United States governmental agency or official authorized to consider and act upon the nomination or appointment of persons to United States government positions.

(2) Upon request of the person whose conduct is being investigated, or by majority vote of the Committee, after giving that person an opportunity to express his views on the question, any hearing held pursuant to paragraph 7 of this order shall be public.

(3) Information may be provided to the Board of Overseers of the Bar, the Grievance Commission, and Bar Counsel in connection with matters within their jurisdiction.

(4) Unless otherwise provided by law, any person who is the subject of a complaint to the Committee may disclose at any time any information contained in the complaint.

9. If after the completion of the Committee's investigation and hearing, if any, the Committee determines (i) that the person under investigation has been convicted of a crime, the nature of which casts into doubt his continued willingness to conform his conduct to the Code of Judicial Conduct as applicable or (ii) that in fact the person has violated the Code as applicable and that the violation is of a serious nature so as to warrant formal disciplinary action, the Committee shall file a report of its findings with the Supreme Judicial Court together with a statement of the alleged charges, a recommendation as to action by the Court, the transcript of any hearing, and any exhibits considered by the Committee. Any further proceedings shall be before the Court.

10. If after completion of the Committee's investigation and hearing, if any, the Committee determines that the person under investigation is suffering from a disability which materially affects his or her ability to perform his or her duties as a judge, the Committee shall file a report of its findings with the Supreme Judicial Court, together with a recommendation as to action, the transcript of any hearing, and any exhibits considered by the Committee.

11. The Committee shall have no responsibility or authority with respect to retirement by reason of failing health initiated by the judge or on his or her behalf.

12. Members of the Committee and its staff shall be immune from liability for any conduct in the course of their official duties relating directly or indirectly to discipline and the rules of the Court and the Committee governing the Committee's operation and proceedings. In the absence of malice, a complainant and any witness shall be immune from liability based upon the filing of a complaint or the giving of any testimony in a proceeding before the Committee.

RULE 1.

RECEIPT AND REVIEW OF COMPLAINT; INVESTIGATION

A. Complaints of judicial misconduct and disability shall be made in writing and shall be signed by the complainant. Each complaint received shall be assigned a number and a docket, and receipt of the complaint shall be acknowledged.

B. The Committee shall consider each complaint received to determine whether it is of a type within the Committee's authority and whether it describes conduct that could constitute a violation of the Code of Judicial Conduct.

(i) If the Committee is unable to make that determination on the basis of the complaint alone it may, through its staff, obtain additional information from the complainant or from court records of proceedings related to the complaint. In special circumstances where the nature of the allegations suggests that prior notice to the person complained against might create a significant risk of compromising the Committee's ability to obtain information necessary to accurately assess the complaint, the Committee may conduct a preliminary investigation, but not involving the use of subpoena power, and designed, to the extent practical, to preserve the confidentiality of the complaint and the preliminary investigation.

(ii) If the Committee determines that a complaint is not of a type within the Committee's authority or that the complaint does not constitute judicial misconduct, it shall dismiss the complaint, notify the complainant of its decision, and notify the person complained against of the nature of the complaint and the Committee's decision. The Committee may also provide the person complained against with a copy of the complaint dismissed under sub-paragraphs (i) and (ii), and shall provide such a copy upon request unless the Committee determines that knowledge of the complaint or of the complainant's identity might interfere at that time with pending court proceedings or compromise future court proceedings, or would cause a significant risk of harm to the interests of the complainant or others involved in the complaint.

(iii) If the Committee determines that a complaint is within the Committee's authority and describes conduct that may constitute a violation of the Code of Judicial Conduct, it shall communicate the complaint to the person complained about by providing that person with a copy of the written complaint and shall request a written response. The Committee may conduct such investigation of the matter as it deems appropriate. If the Committee determines that the complaint is unfounded or frivolous or otherwise provides insufficient cause for further proceeding, it shall dismiss the complaint and notify the complainant and the person complained against of its decision. If the Committee determines that the complaint involves conduct that may constitute a violation of the Code of Judicial Conduct, but that the violation is not of a sufficiently serious nature as to warrant disciplinary action, it shall dismiss the complaint with a caution, and notify the complainant and the person complained against of its decision. The dismissal of a complaint with a caution shall not constitute discipline, and the person complained against need not report or disclose the matter in any inquiry with respect to the imposition of any disciplinary action.

(iv) The dismissal of any complaint by the Committee does not preclude later consideration of the matters involved in that complaint to the extent that they may evidence a pattern or practice of judicial misconduct, or are otherwise relevant to the consideration of any other complaint or matter properly before the Committee under these rules. A complaint dismissed by the Committee may be reconsidered if new information is received upon the basis of which the Committee determines that such reconsideration is necessary to fulfill the purposes of the judicial disciplinary process.

C. The Committee may initiate an investigation of a matter within its authority on its own motion.

RULE 2.
HEARING

A. The Committee shall hold a hearing at the request of a majority of its members or of the judge whose conduct is being investigated. Such hearing shall be had before the Committee with a record. The Committee shall have subpoena power, and every witness shall be sworn.

B. The Committee may engage counsel to present the matter before it. The judge shall be entitled to be present at the hearing, to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Both counsel may subpoena witnesses under the Committee's authority.

C. The Committee counsel shall issue to the judge a written notice containing a statement of alleged misconduct, including reference to any section of the Code of Judicial Conduct alleged to have been violated, or alleged disability. The notice shall state alleged facts upon which such charges are based. The Committee counsel shall make available to the judge all information concerning such charges as the Committee has acquired.

D. Within thirty days after receipt of notice, the judge shall file a written response setting forth any admission, denial, affirmative defense, or other matter upon which he intends to rely at the hearing.

E. Discovery shall be allowed under the Committee's direction upon request to and approval of the Committee.

F. Evidence shall be admitted if it is of a kind upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Committee shall be guided on evidentiary matters by the Maine Rules of Evidence.

G. The Chairman of the Committee or his designee may meet with counsel prior to hearing for the purpose of framing the issues, identifying areas of agreement, and otherwise simplifying the hearing.

H. After hearing a matter, the Committee shall decide whether it is satisfied by a preponderance of the evidence that:

(i) the judge has violated the Code of Judicial Conduct and that the violation is of such a serious nature as to warrant formal disciplinary action; or

(ii) the judge has been convicted of a crime the nature of which casts into doubt his continued willingness to conform his conduct to the Code of Judicial Conduct; or

(iii) the judge is suffering from a disability which materially affects his ability to perform his duties as a judge.

I. The Committee shall make findings of fact and shall draw conclusions of law. If the Committee decides that a charge has not been established, it shall dismiss the matter and provide written notice of its decision to the judge and any complainant. If the Committee decides that a charge has been established, it shall report its decision to the Supreme Judicial Court and shall provide to the judge and any complainant written notice of its decision to report to the Court.

RULE 3. REPORT TO THE SUPREME JUDICIAL COURT

A report to the Supreme Judicial Court shall include a statement of the alleged charges, a statement of the Committee's findings of fact and conclusions of law, and a recommendation of action by the Court. A copy of such report shall be provided to the judge. The report shall be accompanied by the complete record of the matter before the Committee including the transcript of any hearing and any exhibits considered by the Committee. Any further proceedings shall be before the Court.

RULE 4. ANCILLARY ORDERS

The Committee may make such orders as may be necessary in aid of its authority.

RULE 5. QUORUM; ALTERNATE MEMBERS

No action may be taken by the Committee except by a majority vote of the full Committee. Whenever a member of the Committee is unable to participate in Committee consideration of a complaint, the Committee may determine that the appropriate alternate member be notified and designated to participate in the consideration of that complaint. A quorum of the Committee shall consist of five members, including any alternate members designated to serve in lieu of a regular member.

**RULE 6.
CONFIDENTIALITY**

A. Except as otherwise provided by these rules or by order of the Supreme Judicial Court, all proceedings before the Committee shall be confidential and no information may be published by the Committee. All persons concerned with any matter before the Committee shall be requested to respect the confidentiality of Committee proceedings.

B. Any hearing held pursuant to Rule 2 of these rules shall be confidential except that it shall be public upon request of the person whose conduct is being investigated, or by majority vote of the Committee after giving that person an opportunity to express his views on the question. In determining whether a hearing shall be public the Committee will consider the public interest in access to information, the stage of the Committee's investigation into the matters to be heard, any special need to protect the confidentiality of witnesses or testimony in the particular proceedings, the presence in the proceedings of matters that are otherwise made confidential by law, the extent and nature of public awareness of the proceedings or their subject matter, and any special factors that may be relevant in the particular situation.

C. Unless otherwise provided by law, any person who is the subject of a complaint to the Committee may disclose at any time any information contained in the complaint.

**RULE 7. ANNUAL
REPORT**

The Committee shall report annually to the Supreme Judicial Court summarizing its activities.

**RULE 8.
AMENDMENT**

These rules are subject to revision by the Committee.

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