

**STATE OF MAINE
SUPREME JUDICIAL COURT**

2011

ANNUAL REPORT

of the

**COMMITTEE ON JUDICIAL RESPONSIBILITY
AND DISABILITY**

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I Establishment and Authority of the Committee

The Committee on Judicial Responsibility and Disability was created by an order of the Maine Supreme Judicial Court, effective July 5, 1978. Like similar organizations that exist in each of the fifty states and the District of Columbia, the Committee's mission is to receive and investigate complaints of misconduct against Maine judges, with the objective of enforcing high standards of conduct, as set forth in the Maine Code of Judicial Conduct, promulgated by the Supreme Judicial Court, effective April 1, 1974.

The Code is designed to insure the integrity and independence of Maine judges so that they can enforce the law fairly and impartially. Thus, for example, the Code provides that judges shall:

- Be competent and follow the law in making judicial decisions.
- Comply with and respect the law themselves.
- Avoid improper influence or the use of the judicial office for private interests.
- Avoid conflicts of interest in financial, political, and other matters.
- Disqualify themselves when their impartiality may reasonably be questioned.
- Avoid improper private communications intended to influence judicial action.
- Be courteous and maintain court order and decorum.
- Be prompt in properly performing their duties and require lawyers and other court officials to do the same.
- Give people the right to be heard.
- Abstain from commenting publicly on pending cases.

The Committee is not, however, an appellate court; it has no power to alter the decisions in the cases about which complaints are made. Similarly, simple disagreement with the merits of a judge's decision is not a basis for violation of the Code.

The Committee's authority extends to the seventy-six members of the Maine judiciary: the seven members of the Supreme Judicial Court, the seventeen members of the Superior Court,

the thirty-six members of the District Court, and the sixteen Probate Judges, plus any members of those courts who are serving as active retired judges.

II Composition of the Committee

The Committee is composed of seven members, all of whom serve for nonrenewable six year terms. Two of the members are judges (one each from the Superior and District Courts), two are lawyers, and three, including the chairperson, are members of the public. The Committee also has four alternate members (one Superior Court Justice, one District Court Judge, one lawyer and one public member), who regularly attend Committee meetings and vote when a regular member in that member's category is absent or is disqualified from participating in a particular complaint. The judicial members of the Committee are appointed by the Supreme Judicial Court, and the lawyer and public members are appointed by the Court upon the recommendation of the Governor. The Committee also employs a part-time Executive Director, who is a lawyer, and an Administrative Assistant.

III Committee Procedures

Pursuant to its procedures, contained in rules adopted by the Supreme Judicial Court effective August 11, 1978, the Committee receives complaints from anyone who believes that a judge may have violated the Code. The Committee holds a regular meeting every two months, at which it reviews all new and pending complaints. For a new complaint, the Committee must first determine whether the allegations, if true, would constitute a violation of the Code. Sometimes more information is needed from the complainant or from court records. If that information establishes that no violation of the Code occurred, the Committee will dismiss the complaint, and notify the complainant and the judge of that action. If the Committee does not dismiss the complaint, it will then refer the matter to the judge for response. Once the judge has responded, the Committee must then decide whether further investigation is required, in which case it may direct the Executive Secretary to conduct the investigation, or whether to hold an investigative hearing of its own, or both.

At the conclusion of the investigation stage, the Committee has three options. It can dismiss the complaint; it can report the judge to the Supreme Judicial Court for public disciplinary proceedings; or it can dismiss the complaint with a letter of caution to the judge, advising that his or her actions constituted a violation of the Code but that the violation was not serious enough to warrant reporting the judge to the Court. In such circumstances, however, the judge is advised that if future similar actions were to occur, the complaint may be revived for consideration of whether a pattern of conduct amounting to a violation had developed.

IV Procedures Before the Supreme Judicial Court

If a judge has been reported to the Supreme Judicial Court, the Court will either assign the matter to one of its justices if a hearing as to the truth of the Committee's allegations is required, or it will set the matter down for the submission of written briefs and public oral argument before the full Court. If the Court determines that the Committee has established a violation, it may publicly reprimand or censure the judge, impose a monetary forfeiture on the judge, and/or suspend the judge for a period of time, with or without pay. Under the Maine

Constitution, the Court has no authority to remove a judge. That authority is reserved to the Legislature, through the impeachment process.

V. Committee Role in Judicial Reappointment Process

The Committee has one other important function. In Maine, all judges (other than Probate judges, who are elected) are appointed by the Governor and confirmed by the Legislature for seven year terms. Consequently, the Committee's rules provide that the Committee advise the Governor of the nature and disposition of all complaints against a particular judge when that judge comes up for reappointment (or appointment to the position of Active Retired Judge) at the conclusion of his or her seven year term¹. This information may then be used by the Governor or the Legislature in determining whether the judge should serve an additional term.

VI Confidentiality

In order to protect the judge's reputation against unfounded complaints, as well as to protect the privacy of complainants and witnesses, all Committee proceedings are confidential until such time as the Committee determines to report a judge to the Supreme Judicial Court. At that point, all proceedings before the Court are public. The Committee's rules do provide, however, that a judge may, at any time, waive confidentiality.

VII Summary of Action Taken on Complaints

A. Summary of Dispositions

The Committee on Judicial Responsibility and Disability received 45 new complaints in 2011. It took dispositive Committee action on 36 complaints during that time, including 30 of the new complaints and five of the six complaints that had been pending at the end of 2010². The remaining complaint from 2010 was reported to the Supreme Judicial Court.

Thirty-two of these complaints were dismissed without referral to the judge, either because the facts described in the complaint were not of the kind that could constitute judicial misconduct, or because an examination of the court records or relevant transcripts established that no misconduct could have occurred. Three complaints were dismissed after having been

¹ In order to assure that the Governor and Legislature could be fully informed concerning past complaints and the Committee's disposition of them prior to the posting or confirmation of judges or former judges for judicial or other state positions, the Order Establishing the Committee was originally amended in 1983 to provide such information to the Governor or the Judiciary Committee. The provision was further amended effective May 13, 1993, to provide: "In connection with the consideration of 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." SJC Order, Paragraph 8(1).

² All of these complaints were dismissed at the first Committee meeting in 2011.

referred to the respective judges for their responses, all in cases where such a preliminary determination could not be made. All three complaints were received during 2011. In addition, there were five complaints that were referred to a judge in 2011 that were not resolved by the end of the year.

Fifteen complaints were thus pending at year's end. Six of these had been received after the Committee's last meeting of the year, leaving no opportunity for Committee consideration and action on them before the end of 2011. Of the fifteen complaints pending at year's end, eight were disposed of at the Committee's first meeting in 2012, six at the second meeting, and one at the third.

B. Context and Sources of the Complaints

A total of ten of the complaints disposed of in 2011 arose out of court proceedings involving domestic or family relations, including divorce cases (5), custody disputes (3), protection from abuse and harassment proceedings (2), and protective custody cases (0). Twelve complaints arose from criminal cases, four cases arose from contract cases, four from land use cases, two from small claims cases, two from landlord/tenant cases, and one each from probate and guardianship cases.

With regard to the courts out of which the complaints arose, eighteen (50%) of the matters disposed of by the Committee concerned judges of the District Court, where the overwhelming majority of individual proceedings occur; twelve (33%) involved the Superior Court; three (8%) involved the Probate Courts, and three (8%) involved the Supreme Judicial Court.

C. Timing of Complaint Dispositions

Of the thirty-two complaints that the Committee was able to resolve in 2011 without referral to the judge, twenty-three (72%) were resolved at the first meeting after the Committee's receipt of those complaints, seven (22%) were resolved at the second meeting, and one each (3%) were resolved at the third and fourth meetings..

Of the three complaints dismissed in 2011 that were referred to judges for their responses, all were dismissed at the first meeting following receipt of the judge's response.

Overall, 72% of all of the Committee's dispositions in 2011 were resolved at the first meeting, and 91% by the second. These statistics for 2011 are consistent with the pattern of dispositions for each year since 1988, the earliest year for which such calculations have been made. The Committee's goal, which it believes is reflected in these statistics, has been to consider each complaint promptly, to investigate and resolve each one as its own particular nature requires, and to do so as efficiently as can be done in a manner consistent with its responsibilities.

D. Referral to the Supreme Judicial Court

The Committee referred one complaint to the Supreme Judicial Court in 2011. In the Matter of Holmes, 2011 ME 119, 32 A.3d 2011.

VIII Other Committee Activities

A. Review of Committee Rules, Procedures and Policies

The Committee continued its on-going review and assessment of its policies and procedures, as described in earlier Annual Reports, and explored ways to make those policies and procedures, and the availability of the Committee's review process, more accurately and widely known by both the judiciary and the public as a whole. As part of this process, the Committee established in 2009 its own website, which can be found at www.jrd.maine.gov. In addition, in 2010, the Committee completed a review of the Code of Judicial Conduct with the objective of bringing the Code into compliance with the 2007 amendments to the American Bar Association Code of Judicial Conduct, and presented its proposed amendments to the Supreme Judicial Court in October, 2010.

B. Reporting Information Re Nominees

Under the provisions of the order establishing the Committee for furnishing information upon the written request of specified state or federal officials concerning the nomination of someone who has been a judge, the Committee responded to requests for information from the Governor's Office and/or the Joint Standing Committee on Judiciary with regard to four nominations in 2011.

IX Committee Membership

In 2011, the terms of District Court Member John V. Romei and Lawyer Member Malcolm L. Lyons, Esq. expired. District Court Judge Peter J. Goranites was appointed District Court Member and District Court Judge Patricia G. Worth was appointed Alternate District Court Member; Jennifer Ferguson, Esq. was appointed Lawyer Member and Robert E. Crowley, Esq. was appointed Alternate Lawyer Member; Jill P. Gordon was appointed Public Member to fill a preexisting vacancy and Jon P. Van Hoogenstyn was appointed Alternate Public Member.

X Conclusion

The Committee respectfully submits this annual report for 2011 to the Supreme Judicial Court pursuant to Rule 7 of the Rules of the Committee, and requests that the Court cause this report to be published and made available for general distribution in order to better inform the judiciary and the public concerning the nature, function and activity of the Committee.

Date: May 4, 2012

Craig A. McEwen
Chairperson

Committee Members and Staff

Members

Craig A. McEwen, Chairperson
Robert Moyer
Jill P. Gordon
Jennifer Ferguson, Esq.
Ronald D. Bourque, Esq.
Hon. Thomas E. Humphrey
Hon. Peter J. Goranites

Alternate Members

Jon P. Van Hoogenstyn
Robert E. Crowley, Esq.
Hon. Paul A. Fritzsche
Hon. Patricia G. Worth

Executive Secretary and Counsel

Cabanne Howard, Esq.

Administrative Assistant and Secretary

Arthur O. Brown III

Appendix**Disposition of Complaints****by the****Committee on Judicial Responsibility and Disability****2002 – 2011**

<u>Year</u>	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11
<u>New Complaints</u>	32	33	43	45	45	49	61	34	39	45
<u>Dispositive Action Taken By The Committee</u>	37	28	41	47	45	50	50	44	42	36
<u>Dismissed Without Referral</u>	29	26	34	36	35	45	41	36	30	32
<u>Dismissed After Initial Referral</u>	8	2	7	9	10	5	9	8	12	3
<u>Referred to the Supreme Judicial Court</u>	0	1 ³	0	2 ⁴	0	0	0	0	0	1 ⁵
<u>Pending at the End of the Year</u>	4	9	11	9	9	8	19	9	6	15

³ In Re Dunleavy, 838 A.2d 338, 2003 ME 124

⁴ In Re Nadeau, 914 A.2d 714, 2007 ME 21; 916 A.2d 200, 2007 ME 35

⁵ In the Matter of Holmes, 2011 ME 119, 32 A.3d 2011.