

**STATE OF MAINE
SUPREME JUDICIAL COURT**

2023

ANNUAL REPORT

of the

COMMITTEE ON JUDICIAL CONDUCT

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I Establishment and Authority of the Committee

The Committee on Judicial Responsibility and Disability (now the Committee on Judicial Conduct) 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 and family law magistrates, 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forth in the Maine Code of Judicial Conduct, promulgated by the Supreme Judicial Court, effective April 1, 1974, and repealed and replaced by the court, effective September 1, 2015.

The Code is designed to ensure 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 uphold and apply 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 all members of the Maine judiciary: the members of the Supreme Judicial Court, the members of the Superior Court, the members of the District Court, the Probate Judges the Family Law Magistrates, plus any members of those courts who are serving as active retired judges.

II Composition of the Committee

The Committee is composed of eight members, all of whom serve for nonrenewable six year terms. Three of the members are judges (one each from the Superior, District and Probate Courts), two are lawyers, and three, including the chairperson, are members of the public. The Committee also has five alternate members (one Superior Court Justice, one District Court Judge, one Probate 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 part-time Committee Counsel.

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 quarterly 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 a written response. Once the judge has responded, the Committee must then decide whether further investigation is required, in which case it may direct Committee Counsel 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 caution to the judge, advising that his or her actions may have 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. The Committee's rules

further provide that a dismissal with a caution does not constitute formal discipline, and the judge is therefore not required to report the matter if asked if s/he has ever been disciplined.

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, for example, publicly reprimand or censure the judge, impose a monetary forfeiture on the judge, and/or suspend the judge for a period, 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 shall 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 term. This information may then be used by the Governor or the Legislature in determining whether the judge should serve an additional term.

VI Confidentiality

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

In 2023, the Committee on Judicial Conduct received 41 new complaints. It took dispositive action on 54 complaints during that time, including 40 of the new complaints and the 14 complaints that were pending at the end of 2022.

Fifty-two of these complaints were dismissed without referral to the judge, either because the facts described in the complaint were not of a kind that could constitute judicial misconduct, or because an examination of the court records, relevant transcripts or audio recordings established that no misconduct occurred. One complaint was dismissed after referral to the judge, and no complaints were referred to the Supreme Judicial Court.

Fifteen complaints were pending at year's end. Fourteen of those complaints pending at year's end were disposed of at the Committee's first meeting in 2024.

B. Context and Sources of the Complaints

A total of 20 complaints (37%) of those disposed of in 2023 arose out of court proceedings involving domestic or family relations, including divorce and determination of parental rights cases, protection from abuse or harassment proceedings and child protection cases, 15 complaints (28%) arose out of criminal proceedings, 13 complaints (7%) arose from probate proceedings, 4 complaints (7%) arose out of mental health commitment proceedings, 3 complaints (6%) arose from property dispute proceedings, 2 complaints (4%) arose from personal injury case proceedings, 2 complaints (4%) arose from extra-judicial conduct and 1 complaint (1%) arose from a landlord tenant proceeding.

Regarding the courts out of which these complaints arose, 33 (61%) of the matters disposed of by the Committee concerned judges and family law magistrates of the District Court, where most individual proceedings occur; 13 (24%) involved the Superior Court and 8 (15%) involved the Probate Court.

C. Timing of Complaint Dispositions

Of the 52 complaints that the Committee dismissed in 2023 without referral, 50 (96%) were dismissed at the first meeting after the Committee's receipt of the complaints.

Two complaints were dismissed in 2023 after referral to the judge, and two were pursued by the Committee in 2024.

Overall, 53 (98%) of all of the Committee's dispositions in 2023 were dismissed at the first meeting, and 1 (2%) by the second meeting. 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. Dismissals With a Caution

The Committee dismissed two complaints with a caution in 2023.

E. Nature of Allegations

The 54 complaints dismissed by the Committee in 2023 contained 113 separate allegations. Eighty (70%) of these related to the merits of the judges' decisions, which are not violations of the Code; 13 (12%) consisted of claims of improper demeanor, 9 (7%) of the allegations contained allegations of fact which, upon investigation, proved unfounded, 4 (4%) alleged denial of the right to be heard, 3 (2%) of the allegations claimed an improper delay in resolving a matter, 2 (2%) of the allegations were claims of personal bias on behalf of a judge, 2 (2%) did not involve the actions of a judge and 1 (1%) involved an allegation of improper extra-judicial conduct of a judge.

F. Referral to the Supreme Judicial Court

No complaints were referred by the Committee to the Supreme Judicial Court in 2023.

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. The Committee's website may be found at www.cjc.maine.gov.

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 regarding 9 sitting judges.

C. Revision of Committee Procedures and Records

The Committee Chair, Committee Counsel and the Committee's administrative assistant have implemented new procedures for the intake and handling of complaints, communication with complainants, and the electronic transfer of Committee documents and information.

IX Committee Membership

In 2023, the Supreme Judicial Court appointed Justice Harold L. Stewart, II and Judge Deborah P. Cashman to the Committee. Cathy A. DeMerchant was appointed to serve as Chair of the Committee on Judicial Conduct for 2024.

X Conclusion

The Committee respectfully submits this annual report for 2023 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 to better inform the judiciary and the public concerning the nature, function and activity of the Committee.

Date: August 20, 2024

CADeMerchant

Cathy A. DeMerchant
Chairperson

Committee Members and Staff

Members

Cathy A. DeMerchant, Chair
Chuck Kruger
Kenneth W. Bowden
Hon. Andrew B. Benson
Hon. Margot Joly
Hon. Harold L. Stewart II
Kenneth I. Marass, Esq.
Stephen J. Schwartz, Esq.

Alternate Members

Hon. Philip G. Mohlar
Hon. Michael Dubois
Hon. Deborah Cashman
Ms. Kaylee J. Folster, Esq.
(Public member vacancy)

Committee Counsel

John A. McArdle, III, Esq.

Assistant to Committee Counsel

Lori Tremblay