

# MAINE STATE LEGISLATURE

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L.D. 1957

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
108TH LEGISLATURE  
SECOND REGULAR SESSION

(Filing No. H-1040)

HOUSE AMENDMENT "A" to "H.P. 1900, L.D. 1957, Bill, "AN ACT to Authorize the Supreme Judicial Court to Establish by Rule a Committee on Judicial Responsibility and Disability."

Amend the bill by striking out all of the title and inserting in its place the following:

'AN ACT to Establish a Judicial Qualifications Commission'

Further amend the bill by striking out everything after the enacting clause and inserting in its place the following:

'Sec. 1. 4 MRSA c. 27, is enacted to read:

CHAPTER 27

JUDICIAL QUALIFICATIONS

COMMISSION

§1201. Judicial Qualifications Commission

There is established a Judicial Qualifications Commission, hereafter in this chapter called the "commission" to investigate complaints about the judiciary and to discipline or remove judges. A judge shall be subject to discipline or removal for:

1. Certain convictions. Conviction of any crime for which a maximum term of imprisonment of one year or more may be imposed;

2. Code violation. Conduct constituting a violation of the code of judicial conduct or professional responsibility;

3. Permanent disability. Permanent physical or mental disability which seriously interferes with the performance of judicial duties;

4. Willful misconduct. Willful misconduct in office;

5. Failure to perform judicial duties. Willful and persistent failure to perform judicial duties;

6. Habitual intemperance. Habitual intemperance; or

7. Incompetence. Incompetence or other conduct prejudicial to the administration of justice.

§1202. Commission membership

1. Composition. The commission shall consist of 9 members appointed as follows:

A. The Supreme Judicial Court shall appoint one Justice of the Superior Court, one Judge of the District Court and one Judge of the Probate Court;

B. The Governor shall, subject to review by the Joint Standing Committee on the Judiciary and to confirmation by the Senate, appoint 2 members of the state bar; and

C. The Governor shall, subject to review by the Joint Standing Committee on the Judiciary and to confirmation by the Senate, appoint 4 members of the public.

2. Terms. Each member appointed shall serve a term of 6 years. Vacancies occurring on the commission shall be filled in the same manner as the initial appointment for the unexpired term. No member who has served 3 or more years may be reappointed to a consecutive term on the commission.

3. Initial appointments. Initial appointments to the commission shall be made as follows:

A. The Justice of the Superior Court shall be appointed for 6 years, the Judge of the District Court shall be appointed for 4 years and the Judge of the Probate Court shall be appointed for 2 years;

B. One member of the bar shall be appointed for 6 years and one for 3 years; and

C. One member of the public shall be appointed for 6 years, one for 5 years, one for 4 years and one for 2 years.

After the initial appointments, appointments shall be made in such a manner as to ensure that, insofar as practicable, all vacancies on the commission are filled.

4. Residence. No 2 members of the commission shall be residents of the same county.

5. Restrictions on members. No member shall hold an elective state office nor any office in a political party.

6. Per diem; reimbursements. Members not otherwise employed by any department of State Government shall receive per diem at the rate of \$25 per day and shall be reimbursed for their/expenses in the same manner as other state employees.

§1203. Procedures

The commission shall adopt the following procedures for disciplinary and removal proceedings.

1. Rules. The commission shall adopt and publish a body of rules governing its procedures. These rules shall be approved by the Supreme Judicial Court and published.

2. Due process rights. The commission shall ensure that each judge is given his due process rights, including, but not limited to, the right to counsel and the right to subpoena, produce and examine witnesses.

3. Standards of proof. The commission shall not recommend removal of a judge without clear and convincing evidence nor impose discipline without substantial evidence.

4. Enforceability. For purposes of discipline, the commission's decision shall be immediately enforceable unless there is an appeal to the Supreme Judicial Court.

5. Confidentiality. The commission's proceedings shall be confidential. A decision of the commission shall be made public only after the expiration of the appeal period or when a final decision is rendered by the Supreme Judicial Court.

6. Appeal. Any commission's decision may be appealed to the Supreme Judicial Court. The commission shall set a time limit for filing an appeal with the Supreme Judicial Court. Appeals from the Judicial Qualifications Commission shall be given the

highest priority by the Supreme Judicial Court and shall be heard without unnecessary delay.

7. Power to act on its own initiative. The commission shall have the power to act on its own initiative in investigating judicial conduct.

8. Limitation on member participation. A member of the commission may not participate in any proceeding involving a charge against himself, or in which he is involved, or involving a charge against a person who is related to him by blood or marriage or has a business or social relationship to a member which might, in fact or in appearance, render the member incapable to render an unbiased decision. In all such cases, the member should disqualify himself.

§ 1204. Complaints to commission; commission's action

Complaints about judicial conduct shall be submitted to the Administrative Office of the Courts. Upon receipt of a complaint, the administrative office shall refer the same to the Judicial Qualifications Commission. The complaint shall be reviewed by the commission and, if deemed preliminarily valid, the commission shall investigate the charges. If the investigation reveals that the allegations have substance;

1. Request for explanation. <sup>The commission shall</sup> Notify the judge under investigation of the charges involved and ask for an explanation. If the judge responds in a manner which satisfactorily explains the charges, the case may be closed;

2. Reprimand, If no satisfactory explanation is forthcoming, the judge may be reprimanded by the commission, which may accept a no-contest plea, together with assurances that the undesirable conduct will not be repeated;

3. Order full investigation. The commission shall order a full investigation as a preliminary step in securing discipline or removal of the judge complained against; or institute disciplinary action; or

4. Filing of charges for removal. If the judge is found guilty as charged, the commission shall take appropriate disciplinary action or shall file charges of removal with the Supreme Judicial Court for a full hearing and final action.

Sec. 2. Appropriation. The following funds shall be appropriated from the General Fund to carry out the purposes of this Act:

	<u>1978-1979</u>
JUDICIAL QUALIFICATIONS COMMISSION	
All Other	\$5,000'

Statement of Fact

The following sections of this  committee amendment embody the following recommendations of the Community Alliance, Inc. on L.D., 1957.

Section 1201. Maine statutory law provides that the Governor may appoint additional Justices of the Supreme Judicial Court or the Superior Court upon finding that a justice "is permanently and totally disabled by reason of physical or  mental incapacity and because thereof is unable to perform the duties of his office." Justices of these courts and judges of the District Court suffering from physical or mental infirmity may be retired early by their respective courts and receive full retirement benefits. The Maine Constitution provides that judges may be removed by impeachment or by

address of both Houses of the Legislature to the executive. Impeachment can occur only on the grounds of "misdemeanor in office."

In the past, most states have relied upon the constitutional processes of impeachment, recall and action by the courts themselves to cope with the problem of judicial misconduct. Studies have shown, however, that these methods are generally ineffective except where the improper conduct is so grave as to amount to a major public scandal. Under these traditional removal systems, there is no avenue whereby individual citizens can obtain a hearing of their grievances against judges.

Forty states have developed some procedure for removing judges from office if their conduct falls below the standards of competency and integrity that society has a right to expect from its judicial personnel. Two primary models are used. The first is based on the California approach. The California Judicial Conduct Commission is comprised of 9 members, 5 judges, 2 attorneys and 2 laypersons. The commission investigates complaints and recommends to the Supreme Court an appropriate action, e.g., removing a judge from the bench, withholding a judicial pension or determining that a judge should retire. The (second) type of judicial removal system is the Court on the Judiciary. It is a separate tribunal, not subordinate to any other court, made up almost exclusively of judges. The court has no investigatory powers but evaluates complaints brought by statutorily designated persons or bodies, such as the Attorney General or the Legislature, on the theory that these complainants will have performed the investigative function.



Section 1202. These recommendations are made to insure a balanced cross section of perspectives with regard to profession, politics and geography. In the <sup>Judicial</sup> qualifications commission, the majority of members would be professionals and the citizens feel this is necessary where a question of conduct is involved.

Section 1203. The first duty of the Judicial Qualifications Commission would be to promulgate rules covering its procedures. Certain guidelines, however, are suggested by the Community Alliance. These guidelines primarily deal with protections for judges who are being investigated, giving them due process rights, setting standards of proof, protecting confidentiality of proceedings and instituting the right to appeal a commission decision. Further, the commission is given the power to act on its own initiative to investigate conduct which has not been complained of but which appears to violate the standards set for judicial conduct.

Section 1204. Under Maine law, the State Court Administrator is given the duty of investigating complaints with respect to the operation of the courts. Therefore, to simplify the complaint process, all complaints could be filed with the Administrative Office of the Courts rather than establishing a separate authority to receive complaints about judges.

The commission would be empowered to conduct an investigation and would be given broad powers to fashion a remedy that includes both disciplinary action as well as the power to recommend removal.

HOUSE AMENDMENT "A" to H.P. 1900, L.D. 1957

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Filed by Ms. Clark of Freeport.

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