

# MAINE STATE LEGISLATURE

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SECOND REGULAR SESSION  
112TH MAINE LEGISLATURE

THE IMPEACHMENT AND ADDRESS  
STUDY SUBCOMMITTEE OF THE  
JUDICIARY COMMITTEE

JANUARY 1986

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# TABLE OF CONTENTS

	Page
PREFACE BY THE JUDICIARY COMMITTEE	i
PREFACE TO THE SUBCOMMITTEE REPORT	ii
SUMMARY RECOMMENDATIONS	1
INTRODUCTION	2
I. REMOVAL OF CIVIL OFFICERS	4
The Donahue Case	4
Civil Officers	5
Constitutional Officers	6
Judges	7
II. REVIEW OF IMPEACHMENT AND ADDRESS PROCEDURES	10
A Brief History	10
Address Procedures in Maine	11
The Moulton Case	13
Impeachment in Other States	15
III. RECOMMENDATIONS	17
CONCLUSION	28
FOOTNOTES	30

## PREFACE BY THE JUDICIARY COMMITTEE

The impeachment and address powers are two of the most important and sensitive powers possessed by the Legislature. The ability of the Legislature to address the Governor with a request for removal of a public official from office, or to remove the official through impeachment, represents the ultimate protection of the people of Maine from misconduct in public office.

The Impeachment and Address Study Subcommittee has worked diligently to illuminate the Legislature's understanding of its powers of impeachment and address. The Subcommittee's report presents a needed review of the history of impeachment and address in Maine, and valuable recommendations for procedures in impeachment and address proceedings. Should the Legislature again be faced with the question of removal of a public official from office, the report prepared by the Impeachment and Address Study Subcommittee will be of great assistance.

PREFACE  
TO THE SUBCOMMITTEE  
REPORT

The Impeachment and Address Study Subcommittee of the Joint Standing Committee on Judiciary of the 112th Maine Legislature conducted this study from October to December of 1985. Rep. Edward J. Kane, House chair of the Judiciary Committee, served as chair of the Subcommittee. Sen. Michael E. Carpenter, Senate chair of the Judiciary Committee, Rep. Rufus E. Stetson, Rep. Catharine K. Lebowitz, and Rep. Gary C. Cooper also served as Subcommittee members. Martha E. Freeman, legislative counsel to the Judiciary Committee, served as the Subcommittee's staff.

## SUMMARY RECOMMENDATIONS

1. The Subcommittee recommends that copies of this report be retained in the Law and Legislative Reference Library, the Office of the Secretary of the Senate, the Office of the Clerk of the House, and the Committee Room of the Joint Standing Committee on the Judiciary. The Subcommittee recommends amendment of the Joint Rules of the House and Senate to require reference by the Legislature to this report for guidance prior to the initiation of an address or impeachment proceeding.
2. The Subcommittee recommends that the Legislature review the procedures suggested in this report -- derived from Maine address proceedings and related Supreme Judicial Court cases -- when the removal of an officer of the State of Maine by address is sought.
3. The Subcommittee recommends that the Legislature review the procedures suggested in this report -- derived from other states' impeachment statutes and related address procedures -- when the removal of a civil officer of the State of Maine by impeachment is sought.

## INTRODUCTION

During the First Regular Session of the 112th Legislature, the Judiciary Committee heard LD 1248 which sought to create a commission to study procedures for exercising the Legislature's constitutional powers of impeachment and address. Under Article IX, section 5 of the Constitution of Maine, persons holding civil office may be removed from office by impeachment by the Legislature or by the Governor upon address by the Legislature.<sup>1</sup> The Constitution does not specify in detail procedures for the Legislature to follow in exercising its impeachment and address powers.<sup>2</sup>

The Judiciary Committee determined that a Subcommittee of its members could undertake the study proposed by LD 1248, and that the method of conducting impeachment and address proceedings was appropriate for review at the present time. The Committee agreed with President of the Senate Charles P. Pray, the sponsor of LD 1248, that an initial review of impeachment and address procedures undertaken during an active impeachment or address investigation could pose problems. Upon receipt of approval of its proposed study from the Legislative Council, the Impeachment and Address Study Subcommittee began the work which led to this report.

The following pages briefly present the relationship between the constitutional provisions for removal of civil officers by impeachment or address and statutory forms of removal of certain civil officers. The distinction between the disciplining of judges and the removal of judges is given special focus.

The next section of the report provides a brief history of the impeachment and address provisions in Maine, and the procedures which have developed under the address provisions through legislative action and case law. This section also highlights the impeachment provisions and experiences of a few other states.

The final section of the report presents recommendations for the conduct of address and impeachment proceedings in Maine.



## I. REMOVAL OF CIVIL OFFICERS

### The Donahue Case

In 1975, the Attorney General of Maine sought to remove the District Attorney of York County from office.<sup>3</sup> The Attorney General filed a complaint with the Governor and Executive Council seeking removal of the District Attorney under the authority of 30 M.R.S.A. §451. At that time, section 451 provided for removal of a District Attorney from office by the Governor and Council, after due notice and hearing, upon a finding that the District Attorney had violated any statute or was not performing his duties faithfully and efficiently.

The Governor propounded questions to the Supreme Judicial Court asking the Justices' opinion as to whether section 451 was constitutional given the Constitution's grant of the sole power of impeachment and address to the Legislature. In an Opinion of the Justices<sup>4</sup>, the Law Court responded that section 451 was constitutional. The Opinion states:

When the Constitution fixes the tenure of a civil office, it is beyond the power of the Legislature to affect that tenure. Persons holding such constitutional offices, therefore, may be removed only by methods authorized by the Constitution itself.... Insofar, then, as Section 5 of Article IX authorizes impeachment or address of the Legislature as methods for the removal of civil officers,

these are the exclusive methods for the removal of civil officers whose tenure is constitutionally established.

It does not follow, however, that the same principle governs as to civil offices the tenure of which is fixed by statute....

"Where an office is created by law, and one not contemplated, nor its tenure declared by the Constitution, but created by law solely for the public benefit, it may be regulated, limited, enlarged or terminated by law, as public exigency or policy may require."<sup>5</sup>

Thus, the determination whether a civil officer may be removed from office through a statutory procedure, or whether the officer may be removed only through the constitutional procedures of impeachment and address, is made based on whether the officer's tenure is established by statute or by the Constitution.<sup>6</sup>

#### Civil Officers

Any civil officer, that is any person who holds a non-military office of government, may be removed from office by impeachment or address proceedings.<sup>7</sup> Any civil officer who is not also a constitutional officer may also be removed from office in any other manner provided by law that accords with due process. For example, elected municipal officials in Maine may be removed from office by recall if the municipal charter contains a recall provision.<sup>8</sup> Many members of the executive branch of Maine government hold their offices at the pleasure of the Governor and may be removed from office by the Governor's direction to vacate.<sup>9</sup> If a statute provides a

The first paragraph of the Constitutional Officers section states that removal of a Legislator from office may only occur through impeachment or address. Article IV, part 3, section 4 of the Maine Constitution permits each house of the Legislature to expel a member by a two-thirds vote. An Opinion of the Justices, 7 Me. 483, 490 (1830), indicates that expulsion may be the only method of removal of a Legislator. Still, the language of Article IX, section 5 of the Maine Constitution indicates that every person holding any civil office may be removed by impeachment and that every person holding any office may be removed by address.

Maine. Legislature. Joint Standing Committee on the Judiciary. Impeachment and Address Study Subcommittee.

The impeachment and address study subcommittee of the Judiciary Committee. -- Augusta, Me. : The Subcommittee, 1986.

Please insert at page 6.

specific procedure for removal of a civil officer, the following of that procedure by the persons given the authority to remove that officer will result in removal.

For only one of the major civil offices in Maine does a specific statutory procedure for removal exist that differs from removal by impeachment or address. A District Attorney may be removed from office under 30 M.R.S.A. §455.<sup>10</sup> Under that section, the Justices of the Supreme Judicial Court have jurisdiction to remove a District Attorney from office, by majority vote of the Justices sitting, upon complaint filed by the Attorney General and after the prescribed notice and hearing. For the other major, nonconstitutional civil offices in Maine -- the State Auditor,<sup>11</sup> County Commissioners,<sup>12</sup> County Treasurers,<sup>13</sup> and Registers of Deeds<sup>14</sup> -- removal from office must now be by impeachment or address.<sup>15</sup> However, the Legislature could enact statutory removal procedures for these offices.

#### Constitutional Officers

For civil officers whose tenure is set by the Constitution, removal from office may only occur through impeachment or address. Constitutional officers include the Governor,<sup>16</sup> Legislators,<sup>17</sup> Judges,<sup>18</sup> the Attorney General,<sup>19</sup> the Secretary of State,<sup>20</sup> the State Treasurer,<sup>21</sup> Sheriffs,<sup>22</sup> and Registers of Probate.<sup>23</sup> The Constitution could be amended with regard to any of these officers to permit their

removal from office by some method other than impeachment or address; or it could be amended to remove any of these offices from the Constitution so that the tenures could be established by statute. In the latter case, any appropriate removal process could then be created by statute.

The offices of Judge of Probate and Register of Probate are treated uniquely by the Constitution. In 1967, the Constitution was amended to repeal Article VI, section 6, which establishes the terms of office of Judges and Registers of Probate, the repeal to be effective when the Legislature creates a probate court system having full-time judges.<sup>24</sup> Should this new probate court system come into being, Registers of Probate will no longer be constitutional offices, and statutory procedures for removal of officeholders from this office could be enacted. Full-time Probate Judges, if appointed by the Governor, would remain constitutional officers under Article VI, section 4 of the Maine Constitution.

#### Judges

In considerations of impeachment and address processes, attention frequently turns to procedures involved in the removal of a judge from office. Legislators are particularly sensitive to the responsibility they hold under the Constitution for monitoring the conduct of judges. Judgeships are appointed positions, in most cases for a term of seven years.<sup>25</sup> The only opportunity for a branch of government to

remove a judge from office, other than through impeachment or address, occurs after seven years of service, when the Governor may fail to reappoint, or the Senate may fail to confirm the reappointment of, a judge. As the Supreme Judicial Court has stated: "Lawless judicial conduct - the administration, in disregard of the law, of a personal brand of justice in which the judge becomes a law unto himself - is...threatening to the concept of government under law..."<sup>26</sup> Because of the significant role the Legislature plays in guarding the public from judicial misconduct, it is important for this report to clearly describe that role.

The Legislature has no power to discipline judges short of the power to remove a judge from office.<sup>27</sup> The power to discipline a judge is, under our State Constitution, an inherent power of the Supreme Judicial Court.<sup>28</sup> In an exercise of this authority, the Supreme Judicial Court, in 1974, promulgated the Code of Judicial Conduct<sup>29</sup> to establish minimum standards against which to measure the propriety of the conduct of Maine's judges. The Committee on Judicial Responsibility and Disability<sup>30</sup> acts as an investigative agency for the Supreme Judicial Court when charges of misconduct are made against a judge. The report of the Committee to the Court, upon completion of a misconduct investigation, acts as a charging document. The Committee must then prove to the Court its allegations, if any, that misconduct has occurred. In judging the appropriateness of a judge's actions, the Supreme Judicial Court looks to the

mandates of the Code of Judicial Conduct. For example, in determining whether a judge has been faithful to and maintained professional competence in the law, the Court applies an objective standard of whether a reasonably prudent and competent judge would, in all the circumstances of a given case, have concluded that the actions of the judge were both obviously and seriously wrong.<sup>31</sup> If the Court determines that the conduct complained of does meet this test, the Court then decides what sanctions to impose.<sup>32</sup>

The sanctions the Supreme Judicial Court may impose in disciplining a judge include suspension from the performance of judicial duties,<sup>33</sup> suspension without pay, and other monetary penalties.<sup>34</sup> However, the judicial branch does not have the power to remove a judge from office, thus vacating the office and making way for a new appointment to fill the vacancy. The authority to remove a judge is vested by the Maine Constitution in the Legislature through the impeachment power, and in the Legislature and Governor through the address power.<sup>35</sup>

## II. REVIEW OF IMPEACHMENT AND ADDRESS PROCEDURES

### A Brief History

Impeachment arose in Fourteenth Century England as a means for Parliament to remove the King's ministers and judges. Forty-six state constitutions and the United States Constitution contain impeachment provisions.<sup>36</sup> The impeachment provisions of the Maine Constitution were included in the original document adopted by the people in 1819.<sup>37</sup>

Few impeachments have occurred in the United States: only twelve impeachments of federal officials have ever been initiated, resulting in only four convictions; impeachment has been employed by states approximately fifty times.<sup>38</sup> Maine has never attempted to impeach a civil officer.<sup>39</sup>

Address procedures were first created by an act of the English Parliament in 1700. While the United States Constitution contains no address provision, the constitutions of twenty-eight states provide for removal of officials through address.<sup>40</sup>

Removal from office by address has occurred infrequently in the United States.<sup>41</sup> In Maine, address proceedings have been instituted against thirteen officeholders: one person, an



attorney of indeterminate office;<sup>42</sup> six sheriffs;<sup>43</sup> two  
county attorneys;<sup>44</sup> three judges;<sup>45</sup> and one State  
Treasurer.<sup>46</sup> No cases of address have arisen since 1940.<sup>47</sup>

#### Address Procedures in Maine

The most well-known Maine address proceedings occurred in 1856 and 1913. In 1856, Justice Woodbury Davis of the Supreme Judicial Court was removed from office by the Governor upon address of the Legislature. The misconduct for which he was removed concerned his failure to recognize as sheriff of Cumberland County a person installed in that office upon the removal of his predecessor.<sup>48</sup> Address proceedings were initiated against Justice Davis when the Governor delivered a message to the Legislature containing the information that Justice Davis would not recognize the new sheriff's authority. In a Resolve, the Senate set forth a statement of causes for the removal of Justice Davis from office, required that the statement be entered on the Journal of the Senate, required that the statement be served on Justice Davis, and set a time for Justice Davis to be admitted to a hearing in his defense. The Senate also informed the House of its action. By Joint Order, the Legislature established a Committee to recommend how the hearing should proceed. That Committee submitted a report of proposed procedures which were adopted by the House and Senate. The procedures required the Legislature to meet in Joint Convention for the hearing. The Joint Convention occurred, Justice Davis was heard by his attorneys, and the

Convention adjourned. An address for removal was adopted by the House and Senate and presented to the Governor. The next day, Justice Davis was removed from office.<sup>49</sup>

In 1913, Sheriff Lewis Moulton of Cumberland County was removed from office following address proceedings. The Governor, in a message to the Senate, described the failure of Sheriff Moulton to enforce the laws against the illegal sale of intoxicating liquor. Through a Resolve adopted by the Senate, the statement of causes for removal of Sheriff Moulton was entered on the Journal of the Senate, provision for service of the statement on the Sheriff was made, and a hearing time was set. An Order was also adopted creating a Committee to determine procedures for the hearing, directing the Secretary of the Senate to issue subpoenas, and providing counsel to the prosecution and defense. The Resolve and Order were sent to the House for concurrence. The Resolve was amended to add statements of causes for the removal of other sheriffs who had also allegedly failed to enforce the liquor laws. The House also adopted an order directed to the Governor requesting information in his possession concerning the alleged misconduct of the sheriffs. The Order from the Senate was amended to direct the Attorney General to act as prosecutor at the hearings. The Senate did not concur with the amendments of the Resolve and Order, though it did agree to seek information from the Governor: it voted to require a separate resolve for the

statement of causes against each sheriff, and to direct the Attorney General to present evidence, conduct the hearings, and engage outside legal assistance.<sup>50</sup>

The Legislature met in Joint Convention to hear the cases against and in defense of the sheriffs. At the first hearing, the Attorney General offered an opening statement to make it clear that he did not appear as a representative of the State, but at the request of the Legislature to assist them in preparing an orderly record of the evidence in the case. The rules governing the proceedings, derived from the report of the procedures committee and previously adopted, were then read. The hearing began with opening statements and proceeded to the taking of testimony. After Sheriff Moulton's hearing, the Convention adjourned and both the House and Senate adopted an address seeking his removal. Upon presentation of the address to the Governor, Sheriff Moulton was removed from office.<sup>51</sup>

#### The Moulton Case

Both Justice Davis and Sheriff Moulton complained to the Supreme Judicial Court about unconstitutionality in the manner in which they were removed from office. In Ex Parte Davis,<sup>52</sup> Justice Davis failed to have his complaints heard because the Supreme Judicial Court determined that the case was not before them in proper form, and the Court did not, therefore, have jurisdiction to decide the constitutional issues.

Sheriff Moulton, with the Davis case to guide him, did submit his constitutional challenge to his removal to the Supreme Judicial Court in proper form. In Moulton v. Scully,<sup>53</sup> the Court stated that Article IX, section 5 of the Maine Constitution requires only three things of the Legislature in address proceedings: to state the causes of removal and enter them on the journal of the House in which they originate; to serve notice on the person in office; and to admit him to a hearing.

The Court found the statement of causes against Sheriff Moulton to be sufficiently specific because the causes stated met the following standard:

They must be such as specifically relate to and affect the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public. They must be causes attaching to the qualifications of the officer, or his performance of his duties, showing that he is not a fit or proper person to hold the office.<sup>54</sup>

The Court held that address proceedings need not be conducted under the rules of procedure applicable to a court proceeding. The Legislature acquires jurisdiction in an address proceeding by doing the three things constitutionally required. Once it has taken the required actions, the conduct of the proceedings is left to its discretion. The Legislature's only accountability for the exercise of this discretion is to the people.<sup>55</sup>

Finally, the Court disagreed with Sheriff Moulton's arguments that impeachment was the sole method of removal in his case, and that the Resolve which commenced the address proceedings should have been adopted as emergency legislation.<sup>56</sup> The result of the Moulton case was Sheriff Moulton's inability to regain his office and an upholding of the constitutionality of the Legislature's conduct.

#### Impeachment in Other States

The impeachment provisions of the Maine Constitution contain little detail. A civil officer may be removed for misdemeanor in office.<sup>57</sup> The House has the sole power of impeachment.<sup>58</sup> The Senate has the sole power to try all impeachments, must speak an oath or affirmation before undertaking an impeachment trial, and must convict by a two-thirds vote of the members present. The judgment of the Senate may remove the person from office and may disqualify the person from holding another State office of honor, trust, or profit. A conviction or acquittal at an impeachment trial does not cause the person impeached to be immune from criminal prosecution.<sup>59</sup>

Since an impeachment has never been initiated in Maine, the Subcommittee turned to a review of federal impeachment provisions and the impeachment provisions of other states to locate more detailed procedures. Among the impeachment

provisions of the other jurisdictions reviewed, the Subcommittee found those of Arizona and New York to be the most helpful.<sup>60</sup>

Since no records of an impeachment proceeding exist in Maine, the Subcommittee examined accounts of Alaska's recent experience with an attempt to impeach its Governor. Alaska's impeachment provisions differ markedly from those of Maine.<sup>61</sup> Still, reports on Alaska's recent experience with impeachment provide insight into the highly charged atmosphere such a proceeding creates.<sup>62</sup>

### III. RECOMMENDATIONS

1. The Subcommittee recommends that copies of this report be retained in the Law and Legislative Reference Library, the Office of the Secretary of the Senate, the Office of the Clerk of the House, and the Committee Room of the Joint Standing Committee on the Judiciary. The Subcommittee recommends amendment of the Joint Rules of the House and Senate to require reference by the Legislature to this report for guidance prior to the initiation of an address or impeachment proceeding.

The Subcommittee believes that a central source of relevant general information must be available to legislators contemplating the institution of an address or impeachment action. The Subcommittee further believes that flexibility in the establishment of rules of procedure is important in each case of address or impeachment that might arise. The Subcommittee notes that the rules adopted in the address proceedings against Justice Davis differed from those adopted in similar proceedings against Sheriff Moulton. Perhaps the different times dictated the varied procedures. Perhaps the differences in the cases necessitated the establishment of distinct procedural rules. Whatever the reasons for the variations, the Subcommittee believes that the extremely sensitive nature of impeachment and address cases necessitates

the maintenance of flexibility in the creation of rules of procedure to govern the Legislature's actions. Therefore, the Subcommittee recommends against incorporation of procedures for address and impeachment proceedings into the Maine statutes or the rules of the Legislature.

However, the Subcommittee recognizes that every official whose removal from office is sought through impeachment or address is entitled to fair proceedings, with rules of procedure as fair as those applied in other similar cases. For this important reason, the Subcommittee recommends that the Legislature ensure that this report will be brought to the attention of and available to future Legislatures. In this way, any Legislature faced with the possibility of removal of an officeholder through impeachment or address will receive the same initial, basic guidance received by prior and future Legislatures.

2. The Subcommittee recommends that the Legislature proceed in the following manner when the removal of an officer of the State of Maine by address is sought:<sup>63</sup>

- a. Address proceedings are commenced by the introduction into the Senate or House of a Resolve in favor of adoption of an address to the Governor for removal of an officeholder. The Resolve must contain a statement of the causes for removal. The statement must be sufficiently specific, must pertain to causes which



affect the administration of the office, and must relate causes of a substantial nature directly affecting the public interest. The Resolve also sets a time for admitting the officeholder to a hearing in his defense, and requires a copy of the Resolve to be served on the officeholder.

- b. If the Resolve is adopted, it must be entered on the Journal of the house in which it originated. The Resolve may be sent to the other body for concurrence, but this is not constitutionally required. If the Resolve is sent to the other body, that body may amend it.
  
- c. The Resolve is accompanied by the introduction of a Joint Order into the house where the Resolve originated setting up a Committee to recommend rules of procedure. The Committee is of bipartisan composition, representing as nearly as possible the bipartisan composition of the house from which the members are chosen. The President of the Senate appoints three senators to the Committee; the Speaker of the House appoints ten representatives. The Order authorizes the Committee to hire legal counsel and other necessary assistants to aid the Committee and the Legislature with the address proceedings. The Order authorizes the Committee to summon witnesses to appear before it and at the hearing at which the

officeholder will present his or her defense, and to order the production of documents and things. The Order directs the Secretary of the Senate or Clerk of the House, depending on which body initiated the Resolve, to make or cause, without delay, personal service of the Resolve on the officeholder to be removed. If the officeholder cannot be found within the state, service may be made by publication. The Order directs the legislative officer to present a return of service to be noted on the record. The Order also sets the date by which the Committee must report recommended procedures to the Legislature.

d. The report of the procedures Committee is presented to the House and Senate prior to the time set for the address hearing. The report:

- 1) States that the hearing will be held in Joint Convention, states whether or not the Convention membership shall take an oath at the outset of the hearing, and restates the time set in the Resolve for the hearing;
- 2) States that the President of the Senate, or his designee from among the Convention membership if approved by majority vote of the Convention, or the Speaker of the House in the President's

absence, or his designee from among the Convention membership if approved by majority vote of the Convention, will preside at the hearing. The presiding officer determines questions of admissibility of evidence and other questions of law which arise, with that decision being final. The presiding officer may seek advice on these questions;

- 3) States whether or not:
  - a) the person sought to be removed from office shall be heard by himself and counsel, with the ability to admit other written testimony and evidence; or
  - b) both sides shall be heard by counsel and witnesses, with depositions admitted only if the deponent is unavailable;
- 4) States what rules of evidence shall apply;
- 5) States that no debate may be admitted in the Convention, and states how debate in the Senate and House on the adoption of the address is to be limited and ended;

- 6) States that no motion may be submitted, except a motion to recess to a time certain or to dissolve the Convention;
  - 7) States that no persons may be admitted to the floor during the Convention, except members, the officeholder sought to be removed, counsel, witnesses, press, officers of the Legislature, and others by order of the presiding officer. The presiding officer has the authority to maintain order on the floor by requiring any person to leave the floor at any time; and
  - 8) Recommends any other procedural rules the Committee chooses. The Senate and House may adopt the rules of procedure recommended by the Committee or may adopt an amended version of the suggested rules.
- e. When the Joint Convention assembles, the presiding officer makes an opening statement concerning the character of the Convention and how members are to conduct themselves. After evidence and argument are heard, the Convention dissolves.
- f. The House and Senate each vote on the adoption of an address to the Governor requesting the removal of the officeholder with a statement of causes for the

removal.. If each house adopts the address, the presiding officer of each body appoints members to a committee to lay the address before the Governor together with a transcript of the address proceedings.

- g. Both houses adopt a resolve for payment of expenses incurred by the Legislature on its address to the Governor.

3. The Subcommittee recommends that the Legislature proceed in the following manner when the removal of a civil officer of the State of Maine by impeachment is sought:<sup>64</sup>

- a. Impeachment is instituted in the House by Resolve. The House nominates and elects a five-member Committee to prepare the Articles of Impeachment, present them to the House for adoption, and present them to and prosecute them in the Senate. The membership of the Committee is bipartisan, reflecting as nearly as possible the bipartisan composition of the House. If a vacancy occurs in the Committee membership, the House elects a new member, or if the House has adjourned, the Speaker of the House appoints a new member. The House may employ legal, stenographic, clerical, and other assistants required by the Committee and fix their compensation.

- b. The Articles of Impeachment presented for adoption to the House by the Committee include a recommendation to the Senate as to whether the officeholder should continue the duties of his or her office until removed, or should discontinue the duties pending the outcome of the Senate trial.
  
- c. The Senate is the Court of Impeachment, with the President of the Senate presiding or, in his absence or upon his designation, another member of the Senate elected by the Senate.
  
- d. The Secretary of the Senate or other person elected by the Senate is the clerk of the Court of Impeachment, authorized to issue process and keep a record of the proceeding. Other officers of the Senate serve as officers of the Court.
  
- e. The Senate may employ legal, stenographic, clerical, and other assistants required and fix their compensation.
  
- f. After the Articles of Impeachment are presented to the Senate by the House, the Secretary of the Senate, or other person elected by the Senate to act as clerk of the Court of Impeachment, has the Articles served personally on the officeholder sought to be removed, or has them served by publication if the officeholder

cannot be found within the state. The Articles and notice of the time of trial in the Senate are to be served on the officeholder within ten days of the Senate's receipt of the Articles. Return of service is made and entered on the record.

- g. Upon receipt of the Articles of Impeachment, an Order is introduced in the Senate establishing a bipartisan Committee to recommend rules for the conduct of the impeachment trial. The Committee is composed of five members who reflect, as nearly as possible, the bipartisan composition of the Senate. The Committee is authorized to issue subpoenas and orders for production of documents and things. The Committee presents its recommendations to the Court of Impeachment when it convenes. A majority vote of the members present adopts, or amends, the suggested rules.
- h. The Senate convenes as a Court of Impeachment within forty-five days of the Articles being presented to it by the House.
- i. The members of the Senate sitting as a Court of Impeachment must be on oath or affirmation. The Senate, and House Committee preparing and prosecuting the Articles, receive compensation during the trial at the same rate as during a term of the Legislature.

- j. Officers of the Court receive the compensation they receive for attending Senate sessions. Officers executing process and court reporters receive their usual fees. Witnesses receive the compensation recommended by the rules Committee and approved by the Senate.
  
- k. At the convening of the Court of Impeachment, the defendant pleads guilty or not guilty to each Article of Impeachment, or chooses to remain silent on any Article. If the respondent remains silent, the Court enters a plea of not guilty to the pertinent Article on behalf of the defendant. If the defendant fails to appear, the Court may, upon proof of service, assign another day for the hearing or proceed without the defendant.
  
- l. The defendant may object to the sufficiency of the Articles prior to pleading. If a majority of the members of the Court who heard the argument does not vote to sustain the objection, the defendant may plead to the allegations, or may remain silent, and the trial proceeds.
  
- m. The presiding officer of the Court of Impeachment determines questions of admissibility of evidence and other questions of law which arise, with that decision



being final. The presiding officer may seek advice in making these decisions.

- n. A vote of conviction must be by a vote of two-thirds of the members present. The Court, by majority vote of those who voted for conviction, enters its judgment on the record. The judgment may remove the officeholder from office, or may remove him or her from office and disqualify the person from holding any other State office of honor, trust, or profit.

## CONCLUSION

The question of whether a public official should be removed from office will arise from time to time in Maine. If that officer's tenure is established by the Constitution, the officer's removal may only be secured by an exercise of the Legislature's power of impeachment or address. For other civil officers, the Legislature may establish a statutory removal procedure. The Legislature has created such a procedure for only one of Maine's major civil offices, that of District Attorney.

The Supreme Judicial Court has established a mechanism that it may use to discipline judges. Such discipline may include suspension, suspension without pay, and other monetary penalties. However, removal of a judge from office is, as with other constitutional officers, within the province of the Legislature.

Address proceedings have been instituted by the Legislature thirteen times. The last occurred in 1940. No impeachment has ever been initiated in Maine. Through the procedures used by the Legislature in address actions, opinions of the Supreme Judicial Court sought in two address cases, and impeachment procedures followed in other states, the Legislature may gain

guidance as to the procedures appropriate to a future impeachment or address in Maine.

In Moulton v. Scully,<sup>65</sup> Sheriff Moulton argued that the address brought against him should have been "regarded as judicial and governed by the established rules of law touching legal proceedings of a similar nature . . . ." <sup>66</sup> The Court disagreed, answering that the Legislature, acting on an address or impeachment, is a sovereign tribunal, governed only by the requirements of the Constitution's impeachment and address provisions. <sup>67</sup> Yet the Court, in the same opinion, later noted that, in acting as an impeaching or addressing body, the Legislature is exercising "powers somewhat akin to those of a judicial tribunal." <sup>68</sup>

In conducting an impeachment or address proceeding seeking the removal of a public official, the Legislature engages in a sensitive, serious undertaking. While the Legislature need not adhere to the letter of traditional rules of evidence and court procedure in address and impeachment cases, each such case must be accorded fair treatment. This report assists the Legislature in a uniform approach to impeachment and address proceedings.

## FOOTNOTES

1. Every person holding any civil office under this State, may be removed by impeachment, for misdemeanor in office; and every person holding any office, may be removed by the Governor on the address of both branches of the Legislature. But before such address shall pass either House, the causes of removal shall be stated and entered on the journal of the House in which it originated, and a copy thereof served on the person in office, that he may be admitted to a hearing in his defense.

ME. CONST. art. IX, §5.

2. See Moulton v. Scully, 111 ME. 428, 435 (1914); ME CONST. art. IV, pt. 1, §8; ME. CONST. art. IV, p. 2, §7; ME. CONST. art. IX, §5.
3. See newspaper clippings concerning District Attorney Donahue from the Portland Press Herald, Kennebec Journal, and Bangor Daily News, May 1975 - October 1975 in clipping file labelled "District Attorney" in the Law and Legislative Reference Library, State House, Augusta, Maine.
4. 343 A.2d 196 (Me. 1975).
5. Id. at 203.
6. District Attorney Donahue was not removed from office. The Governor and Executive Council held a hearing and voted 4-4 on the removal question, permitting the District Attorney to remain in office.
7. Article IX, section 5 of the Maine Constitution states that civil officers may be removed by impeachment and any officer may be removed by address. In 1823, the Legislature adopted an address to the Governor for removal of James M. Rogers, Esq. from "every civil and military office he holds under this State." Kendall Moody Dunbar, Executive and Legislative Departments, Maine, and Election Procedure, 1829-1903, part 4 (unpublished, in Law and Legislative Reference Library safe, State House, Augusta, Maine). No address proceeding since then has involved a military officer or referred to removal of an officer from civil and military office. The remainder of this report will discuss address solely in terms of civil officers.
8. See ME. REV. STAT. tit. 30, c. 201-A (West 1978).
9. See, e.g., ME. REV. STAT. tit. 12, §5011 (West 1981).

10. Section 455 was added by Public Law 1975, c. 771, §312-A. The tenure of a district attorney is set in 30 M.R.S.A. §451.
11. See ME. REV. STAT. tit. 5, §241 (West 1979).
12. Id. at tit. 30, §101 (West 1978).
13. Id. at §601 (West 1978).
14. Id. at tit. 33, §601 (West Supp. 1985).
15. A county having adopted a charter could provide for the recall of elected nonconstitutional officers in that charter.
16. See ME. CONST. art. V, pt. 1, §2.
17. Id. at art. IV, pt. 1, §2 and pt. 2, §1.
18. Id. at art. VI, §4 and §6.
19. Id. at art. IX, §11.
20. Id. at art. V, pt. 2, §1.
21. Id. at art. V, pt. 3, §1.
22. Id. at art. XI, §10.
23. Id. at art. VI, §6.
24. See the note at the end of Article VI, §6. Probate Judges currently perform judicial duties part-time.
25. ME. CONST. art. VI, §4. Probate Judges hold office for four years. Id. at §6. This section of the text speaks in terms of full-time, appointed judges.
26. In the Matter of Ross, 428 A.2d 858, 861 (Me. 1981).
27. 81-49 Op. Att'y. Gen. 3-4 (May 19, 1981).
28. In the Matter of Benoit, 487 A.2d 1158, 1170-71 (Me. 1985); In the Matter of Ross, 428 A.2d at 867-68.
29. ME. RULES OF COURT 769-72 (1985).
30. Id. at 777-82.
31. In the Matter of Benoit, 487 A.2d at 1162. Other standards to which a judge must conform under the Code of Judicial Conduct include behaving "at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary," and being "patient,

dignified, and courteous to litigants, jurors, witnesses, lawyers, and others...." Code of Judicial Conduct, Canon 2, subd. B and Canon 3, subd. A(3).

32. See In the Matter of Ross, 428 A.2d at 860-61 for further discussion of the process of bringing charges seeking disciplinary actions against a judge.
33. In the Matter of Ross, 428 A.2d at 868. Judge Ross argued that suspension amounted to removal from office and that this sanction was therefore beyond the power of the Court, since removal authority lies primarily with the Legislature. The Court distinguished suspension from removal. Id.
34. In the Matter of Benoit, 487 A.2d at 1172. "Judge Benoit argues that the compensation clause of article VI, section 2 of our constitution... prevents this court from ordering suspension without pay or imposing any other monetary sanction for judicial misconduct. We reject that argument." Id. (footnote omitted). Section 2 of Article VI states that a judge's compensation shall not be diminished during his or her term of office. The Court held that the compensation clause protects sitting judges from legislative reductions in pay, but does not preclude the Court imposing a monetary penalty in disciplining a judge. Id. at 1173. It should be noted that Judge Benoit was not expressly suspended without pay: he received a period of suspension from judicial duties and a monetary sanction of a set amount recoverable from his salary. Id. at 1174.
35. In the Matter of Ross, 428 A.2d at 867-68.
36. J. Chapman, Draft Maine Law Review comment on removal of judges 16 (1985) (unpublished, in Subcommittee files, Office of Policy and Legal Analysis, State House, Augusta, Maine).
37. Silsby, History of Statutory Law in the State of Maine, 1 ME. REV. STAT. 6 (West 1986).
38. Chapman, supra note 36.
39. Id. concerning no attempted impeachments of Maine judges. A search by the Subcommittee staff of the Maine Legislative Record revealed no reference to attempted impeachments of other civil officers.
40. Chapman, supra note 36, at 17-18.
41. Id. at 18.
42. Dunbar, supra note 7.

43. ME. LEG. RECORD 2118-19 (1913); ME. LEG. RECORD 262-63 (1912). In *Moulton v. Scully*, 111 Me. 428, 451 (1914), the Court refers to an address by the Legislature to the Governor in 1911 for removal of a public official. However, the index to the Maine Legislative Record for 1911 contains no reference to such a proceeding. Perhaps the Court was referring to the address occurring in 1912 concerning a sheriff, initiated by the 75th Legislature, which commenced in 1911.
44. ME. LEG. RECORD 2070 (1913); ME. LEG. RECORD 265 (1912).
45. Dunbar, supra note 7; ME. LEG. RECORD 952 (1907).
46. ME. LEG. RECORD 1 index (1940).
47. In 1940 the removal of the State Treasurer was sought for negligent performance of his duties. The address was not adopted by the Legislature. Id. at 265, 314.

For a research guide on Maine address proceedings see Edith L. Hary, Bibliography of Maine cases (unpublished, in Law and Legislative Reference Library vertical file under heading "Address, Maine," State House, Augusta, Maine.)

48. The removal of this predecessor from the office of sheriff resulted upon a change of Governors: the new Governor removed the existing Republican sheriffs from office and appointed Democrats in their place. In 1855, the voters of Maine adopted a constitutional amendment providing for the election of sheriffs; the office had previously been an appointed one. Justice Davis was asked by the removed Cumberland County Sheriff to rule on whether the constitutional amendment providing for election of sheriffs became effective prior to the new Governor's appointment of a new sheriff, thus barring his removal of the existing sheriff. Justice Davis ruled that the amendment became effective upon adoption by the people. Thus, in his opinion, the removed sheriff, and not the newly appointed sheriff, was the sheriff of Cumberland County. L. Cornish, The Removal of Judge Woodbury Davis, 4 ME. L. REV. 237, 238-240 (1911).
49. See Dunbar, supra note 7.
50. See ME. LEG. RECORD 1208-12, 1249-50, 1292-94, 1304-09, 1393-94, 1484-87, 1564-1605, 1613-77, 1691-1763, 1769-70, 1777-1804. Sheriff Ballou was the first of the sheriffs removed in 1913 to have an address hearing. Parts of the proceedings that apply to all the address proceedings undertaken in 1913 are printed in the Legislative Record under Ballou's name only. Certain of the above references, though couched in terms of Ballou, apply to Moulton also.
51. *Moulton v. Scully*, 111 Me. at 431.

52. 41 Me. 38 (1856).
53. 111 Me. 428 (1914).
54. Id. at 433.
55. Id. at 437.
56. Id. at 444-45, 446-51.
57. ME. CONST. art. IX, §5. Either address or impeachment proceedings may be used to remove from office for official misconduct. Moulton v. Scully, 111 Me. at 444-45. Whether an officer may be removed from office by address only for misconduct involving other than his or her official duties has not been examined by the Maine Supreme Judicial Court.
58. ME. CONST. art. IV, pt. 1, §8.
59. Id. at pt. 2, §7.
60. See ARIZ. CONST., art. VIII, pt. 2, §1 and §2; ARIZ. REV. STAT. ANN. §§38-311-22 (West 1974); N.Y. CONST. art. VI, §23 and §24; N.Y. JUDICIARY LAW §§240-48, §§415-28 (McKinney 1983).
61. In Alaska, a bill for impeachment, prepared by a Senate Rules Committee, is sent to the Senate for adoption. The House, with a State Supreme Court Justice presiding, conducts the impeachment trial. See ALASKA CONST. art. II, §20.
62. See articles in The New York Times, July 23, 1985 - Aug. 6, 1985.
63. These recommended procedures are derived primarily from the address proceedings and Supreme Judicial Court cases involving Justice Davis and Sheriff Moulton, supplemented by the Subcommittee's own ideas of appropriate procedures.
64. These recommended procedures are derived primarily from the Arizona and New York laws, related address procedures, and the Subcommittee's own ideas of appropriate procedures.
65. 111 Me. 428 (1914)
66. Id. at 437.
67. Id.
68. Id. at 447.

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