

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
ONE HUNDRED AND EIGHTH LEGISLATURE  
COMMITTEE ON JUDICIARY

December 6, 1977

John Martin, Chairman  
Legislative Council  
State House  
Augusta, Maine 04333

Dear Representative Martin:

Pursuant to legislative order No. 1730, the Joint Standing Committee on Judiciary submits the State of Maine Judicial Council report which the Committee has adopted. The report includes recommendations on judicial selection, discipline, disability and removal; a proposed court rule regarding a Judicial Responsibility and Disability Committee (Appendix A) and proposed Constitutional amendments and legislation (Appendix B.).

Sincerely,

A handwritten signature in cursive script, appearing to read 'Samuel W. Collins, Jr.'.

Sen. Samuel W. Collins, Jr.  
Senate Chairman

A handwritten signature in cursive script, appearing to read 'Richard A. Spencer'.

Rep. Richard A. Spencer  
House Chairman



Report of Judicial Council to 108th Legislature on  
Judicial Selection, Discipline and Disability

I. BACKGROUND

By Joint legislative order adopted on June 16, 1977,  
the 108th Legislature determined;

"The questions of a procedure for selection of  
nominees for judicial office, based on merit and of  
a procedure for independent, systematic review and  
discipline of judicial officers alleged or found  
to be unfit for continuing performance have become  
questions of increasing public concern".

In this Order the Legislature authorized the Judicial Council  
of Maine to examine these questions in depth and report its  
findings, together with final drafts of any proposed constitu-  
tional and statutory changes, to the Legislative Council by  
December 1, 1977. The Legislature further authorized and  
directed that a Subcommittee of the Joint Standing Committee  
on the Judiciary consisting of one senate member, two house  
members, and also two legislators not from the Judiciary  
Committee consult with the Judicial Council on this study.

As noted in the Legislative Order, the action of the  
Legislature was prompted by two bills, L.D. 1584 "An Act to  
Establish a Commission on Judicial Tenure and Disability" and  
L.D. 1680 "An Act to Establish a Judicial Qualifications  
Commission" which had been introduced into the regular session  
of the 108th Legislature. These bills were withdrawn upon  
passage of the study order.

At its June 24, 1977 regular meeting, the Judicial  
Council unanimously voted:

"That the Judicial Council accept the study order  
of the Legislature in the event that H. P. 1730  
becomes law, that it cooperate with the legislative  
designees and report to the Legislature by December

1, 1977 on the feasibility and form of the establishment of a Nominating Commission and a Discipline, Disability and Removal Commission (including constitutional and statutory changes) by December 1, 1977".

At the same meeting, the Chairman of the Judicial Council, Chief Justice Armand A. Dufresne, Jr., appointed a subcommittee of the Council to work on this subject matter. Members of that Subcommittee include:

Justice Charles A. Pomeroy, Chairman  
Dean Bert S. Prunty  
Miss Edith Hary  
Mrs. Sally Rand  
Justice David Roberts\*

Peter L. Murray, Executive Secretary of the Judicial Council was directed to serve as Secretary to this subcommittee.

The following were appointed by the Judiciary Committee as a subcommittee to work with the Judicial Council in accord with the terms of the Legislative Order:

Senator Theodore S. Curtis, Jr.  
Representative Philip R. Bennett, Jr.  
Representative Steven T. Hughes  
Representative Swift Tarbell, III  
Representative James E. Tierney

Representative Donald Carter and Senator Richard Hewes were appointed by the Speaker of the House of Representatives and the President of the Senate respectively to round out the legislative group.

Thomas Downing, Esquire, of the legislative staff coordinated with and assisted the Executive Secretary of the Judicial Council on all stages of the project.

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\*Justice Roberts' term on the Judicial Council expired in September, 1977. He was succeeded by Justice Ian MacInnis, who was appointed to the subcommittee in his place.

The Judicial Council subcommittee held its first meeting on September 1, 1977 at Portland. Invited to the meeting was Professor C. Douglas Hodgkin, President of Citizens for Modern Courts, a state-wide citizen's group interested in court reform and judicial administration. Prof. Hodgkin's group had developed a proposal for a merit judicial selection commission and he had testified in support of this proposal before the 108th Legislature in connection with L.D. 1680. Also invited to the meeting was Prof. Edward Schoenbaum, Sangamon State University, Springfield, Illinois. Mr. Schoenbaum is a national authority on judicial selection and judicial discipline, retirement and removal and was reporter to the ABA Standards subcommittee in this area. The recommendations of both Prof. Hodgkin and Prof. Schoenbaum were received and considered at this September 1 meeting.

On September 2, 1977, the Judicial Council subcommittee met with the legislative consultees in Augusta. For the purpose of this project, the Judicial Council subcommittee and the Legislative subcommittee informally constituted itself as a "commission" chaired by Justice Pomeroy. The matter was completely discussed. Prof. Hodgkin and Prof. Schoenbaum were also present at this meeting.

The results of these initial meetings were presented to the Judicial Council and discussed at a special meeting on September 23, 1977 in Augusta. The subcommittee was directed to continue its work and consult with and receive input from the judges of the various courts. Members of the subcommittee (including the legislative consultants) met with the

entire membership of the Maine District Court on September 30 and the Superior Court October 3. An evening meeting was had with the Supreme Judicial Court on October 5.

Following these meetings with the judges, the subcommittees met again as a "commission" on Tuesday, November 1, in Augusta to finalize proposed recommendations for the Judicial Council's meeting on Friday, November 4. Invited to the November 1 meeting was Kit Lunney, coordinator for the Community Alliance on Standards and Goals of Maine's Criminal Justice System. Ms. Lunney is working with several citizens committees interested in the administration of criminal justice in Maine specifically in the areas of court reform and administration. Her committees have been interested in judicial selection, discipline and removal and have adopted certain proposals for reform and legislation which were discussed at the November 1 meeting.

At its November 4, 1977 meeting, the Judicial Council as a whole reviewed the entire proceedings of the subcommittee and "commission", the various draft proposals from all sources were discussed, a further discussion was had with Ms. Lunney concerning the proposals of her groups and the recommendations set forth in this report were adopted by vote of the entire body.

## II. RECOMMENDATIONS

The Judicial Council recommends the following measures on judicial selection and discipline, disability and removal for the State of Maine:

1. Judicial Selection. The Judicial Council recommends

that the Governor establish, by executive order, a judicial selections committee to advise him in the exercise of his constitutional power and duty to appoint judges and justices to Maine's various courts. Proposals calling for the development of an exclusive list of proposed nominees by a commission were rejected as impairing the Governor's traditional constitutional powers to an excessive degree. Thus the powers of the proposed committee would be advisory only and the committee's recommendations would not be binding upon the Governor.

The following features are suggested for consideration by the Governor in establishing a judicial selection committee.

A. For each judicial vacancy, the committee would prepare and submit to the Governor its recommendations on the qualifications of potential appointees who had come to its attention. The recommendations would include names submitted by the Governor for committee screening as well as individuals who submitted their own names or were recommended to the committee by other persons.

B. The committee should include both attorneys and lay people all appointed by the Governor but should not include any member of the judiciary.

C. Committee members should be appointed for staggered terms to give some continuity but give the Governor adequate control over the composition of the committee.

D. No member of the committee should be appointed to a judicial office while serving as a member of the committee or for one year after service on the committee.



E. The committee would only be asked to submit names on new vacancies and would not evaluate candidates or become in any way involved with the re-appointment process. Only in the event that the Governor determined not to re-appoint a sitting judge or justice would the committee submit names for the vacancy thus created.

F. The committee should give wide publicity of vacancies and solicit applications and referrals of qualified individuals.

G. Each person would be investigated by the committee. A questionnaire would be sent to each proposed nominee requesting certain information and an indication of willingness to accept judicial appointment. The committee should carefully review each questionnaire, investigate the lawyer's professional reputation and conduct personal interviews in appropriate cases.

H. All actions and deliberations of the committee should be confidential.

I. Members of the committee should serve without compensation but be reimbursed for expenses.

J. This proposal would not require any constitutional amendment or statutory enactment.

K. This proposal would not in any way affect the present process of nomination by the Governor and subsequent confirmation by the Legislature.

2. Discipline, Disability and Removal. The Judicial Council recommends that the Maine Supreme Judicial Court, acting pursuant to specific enabling legislation and a con-

stitutional amendment, establish a judicial responsibility and disability committee. The purpose of the committee would be to receive, investigate, and make recommendations on allegations and complaints concerning judicial misconduct and disability for action by the Supreme Judicial Court. It was the strong view of the Council that this group should be entirely separate from the selection committee.

The Judicial Council believes that the Supreme Judicial Court may already have the inherent power to establish such a committee (as has been done in Massachusetts and New Hampshire) but recommends that specific enabling legislation be sought from the Legislature in accord with the long-standing practice followed in the case of Civil, Criminal, and Evidence Rules.

It would be also necessary that the Supreme Judicial Court be given the power to remove sitting judges and justices for misconduct in accord with such rules and regulations as the Court may adopt. Retirement for disability could be left to the present mechanism by vote of the court of which the judge is a member.

The Judicial Council recommends that the responsibility and disability commission be established and governed by a court rule in form similar to that presented to the Supreme Judicial Court simultaneously with this recommendation to the Legislature. The proposed rule is attached to this report as Appendix A.

A proposed constitutional amendment and enabling statute are attached hereto as Appendix B.

Under the terms of the proposed rule, the Maine Judicial Responsibility and Disability Committee would be composed of three (3) judges, two (2) lawyers, and two (2) non-lawyer citizens, all appointed by the Supreme Judicial Court. The Committee would elect its own chairperson and members of the Committee would serve staggered six (6) year terms without re-appointment. The Committee would have a central office located in the office of the Court Administrator for the receipt of complaints or information regarding a judge's disability or misconduct. The Committee would investigate all complaints, allegations, or information concerning a judge's misconduct or disability that came to its attention. In fact, experience in other jurisdictions indicates that over 90 per cent (90%) of the "complaints" that are filed with similar committees or commissions are frivolous, unfounded, or are substitutes for appeals by dissatisfied litigants.

The Committee would have appropriate administrative staff from the Office of the Court Administrator to assist it in its operations.

Upon receipt of any complaint or allegations, the judge involved would be informed and have an opportunity for explanation. If it is determined that the matter does not warrant further activity or where the judge voluntarily agrees to a disposition deemed appropriate by the Commission, the matter would be resolved within the Committee. At all times the judge under investigation would be entitled to counsel and, upon request, a hearing before the full Committee. If

after investigation and hearing before the full Committee, the Committee deems that action should be taken with respect to the discipline, retirement or removal of the judge under investigation, it would file a report of its investigation and recommendations, including any transcript of hearing or exhibits with the Supreme Judicial Court or, in the case of disability, with the court upon which the judge or justice involved sits.

Upon filing of the report of the Committee with the Court, the records of the Committee of the investigation would become public documents.

The Committee report would act as a formal charge before the Supreme Judicial Court and the Court would proceed to make its own investigation of the charges, including public hearing. After the investigation and hearing, the Supreme Judicial Court would have the power to remove a judge or justice, impose a fine, censure, or reprimand, on the grounds of:

A. Conviction of a crime, the nature of which throws into doubt the judge's continued willingness or ability to conform his conduct to the Code of Judicial Conduct; or

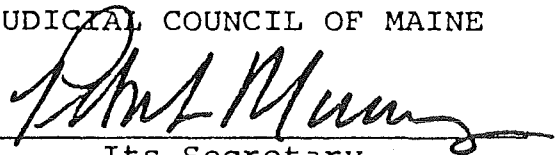
B. Any violation of the Code of Judicial Conduct.

The Judicial Council is convinced that the actions set forth and recommended in this report are desirable and that they should be undertaken without further delay.

Respectfully submitted,

JUDICIAL COUNCIL OF MAINE

By:

  
Its Secretary



## PROPOSED COURT RULE

## Judicial Responsibility and Disability Committee

Pursuant to Chapter \_\_\_\_\_ of the Public Laws of 1977  
( M.R.S.A. § \_\_\_\_\_ ) the Maine Supreme Judicial Court hereby promulgates the following rule establishing and governing its Committee on Judicial Responsibility and Disability.

1. There is hereby established a Committee on Judicial Responsibility and Disability consisting of seven (7) members appointed by the Supreme Judicial Court. One (1) member shall be an active or retired justice of the Maine Superior Court, one (1) an active or retired judge of the Maine District Court, one (1) a Probate Court judge, two (2) attorneys at law, and two (2) citizens not members of the Bar or Bench.

2. The terms of each member shall be for six (6) years, except to achieve staggered terms, initial appointment shall be as follows:

A. The Superior Court Justice shall be appointed to a six (6) year term;

B. The District Court Judge shall be appointed to a four (4) year term;

C. The Probate Court judge shall be appointed for a two (2) year term;

D. One (1) attorney member shall be appointed to a four (4) year term and one (1) attorney member shall be appointed to a two (2) year term;

E. One (1) citizen member shall be appointed to a four (4) year term and the other citizen member shall be appointed to a two (2) year term.

F. No member shall serve more than one (1) term in office provided that the members selected to serve less than two (2) 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.

3. The Committee shall have an office within the Office of the State Court Administrator. The Office of the State Court Administrator shall provide to the Committee such secretarial and other assistance as the Committee shall reasonably require. Expenses of the Committee shall be paid from appropriations of funds to the Judicial Department through the Budget of the State Courts.

4. The Committee may employ or appoint an Executive Secretary subject to the approval of the Chief Justice of the Supreme Judicial Court. The Committee may employ counsel.

5. A Committee shall elect from its members a chairperson and vice-chairperson. A quorum of the Committee shall consist of five (5) members and no action shall be taken by the Committee except by vote of a majority of the full Committee.

6. The Committee shall receive complaints, allegations, and information concerning the performance, misconduct, or disability of any judge on the Supreme Court, the Superior Court, the District Court, the Probate Courts, or the Administrative Court. Upon receipt of any complaint, allegations, or information, the Committee or its designee shall communicate the allegations or complaint to the person complained against and shall provide him with a copy of any written complaint. The person complained against shall have reasonable

opportunity to respond to the allegations. The Committee shall conduct such further investigation as it deems fit. If such further investigation discloses that the complaint or allegations are unfounded, the Committee may dismiss all charges, notifying any complainants of its actions.

7. The Committee may 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 will be confidential and no information will be published by the Committee unless by order of the Supreme Judicial Court prior to the filing of the Committee's recommendation with the Supreme Judicial Court.

9. If after the completion of the Committee's investigation, including hearing requested, the Committee determines that the person under investigation has been convicted of a crime, the nature of which casts into doubt the judge's continued willingness to conform his conduct to the Code of Judicial Conduct or in fact has violated the Code 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 and the recommendation as to action by the Court. Any further proceedings shall be before the Court.





RESOLUTION, Proposing an Amendment to the Constitution to Grant to the Supreme Judicial Court the Power to Remove a Judicial Officer from Office.

Be it enacted by the People of the State of Maine, as follows:

Constitutional amendment. RESOLVED: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Art. VI, §4, is amended to read:

Section 4. Tenure of judicial officers. All judicial officers shall hold their offices for the term of seven years from the time of their respective appointments (unless sooner removed by impeachment or by address of both branches of the Legislature to the executive or by the Supreme Judicial Court, and provided further that justices of the peace may be removed from office in such manner as the Legislature may provide); provided, however, that a judicial officer whose term of office has expired or who has reached mandatory retirement age, as provided by statute, may continue to hold office until the expiration of an additional period not to exceed six months or until his successor is appointed, whichever occurs first in time.

Constitution, Art. VI, §7, is enacted to read:

Section 7. Removal of judicial officers. The Supreme Judicial Court shall have the power and authority to remove from office any judicial officer including a judge of probate, under such terms as are provided by statute or by rule of court.

Constitutional referendum procedure; form of question; effective date. Resolved: That the city aldermen, town selectmen and plantation assessors of this State shall notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law holding a statewide election, at the next general election in the month of November or special statewide election on the Tuesday following the first Monday of November following the passage of this resolution, to vote upon the ratification of the amendment proposed in this resolution by voting upon the following question:

"Shall the Constitution be amended as proposed by a resolution of the Legislature to grant to the Supreme Judicial Court the power to remove judges and justices from office under terms that would be provided by statute or by rule of court, a power of judicial discipline that would be in addition to the existing powers of impeachment or address of the Legislature?"

The legal voters of each city, town and plantation shall vote by ballot on this question, and shall designate their choice by a cross or check mark placed within the corresponding square below the words "Yes" or "No." The ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and returns made to the Secretary of State in the same manner as votes for members of the Legislature. The Governor shall review the returns, and, if it appears that a majority of

the legal votes are in favor of the amendment, the Governor shall proclaim that fact without delay and the amendment shall become part of the Constitution on the date of the proclamation.

Secretary of State shall prepare ballots. Resolved: That the Secretary of State shall prepare and furnish to each city, town and plantation all ballots, returns and copies of this resolution necessary to carry out the purpose of this referendum.

#### STATEMENT OF FACT

This proposed constitutional amendment is one of the results of a study, authorized by the Legislature, of procedures for the nomination of judicial officers and for review of their conduct. The study was carried out by the Judicial Council in consultation with the Joint Standing Committee on Judiciary.

The amendment would grant to the Supreme Judicial Court the power to remove a judge or justice from office under terms authorized by statute or rule of court. A related bill resulting from the study would authorize the court to establish a committee to investigate and make recommendations to the court in these matters.

The power granted would be in addition to, and would not replace, the power of the Legislature to remove judicial officers by impeachment or by address of both branches to the Governor.

AN ACT to Authorize the Supreme Judicial Court to Establish by Rule a Committee on Judicial Responsibility and Disability

Be it enacted by the People of the State of Maine, as follows:

4 MRSA §9-B is enacted to read:

§9-B. Committee on Judicial Responsibility and Disability

The Supreme Judicial Court shall have the power and authority to prescribe, repeal, add to, amend or modify rules relating to a committee to receive complaints, make investigations and make recommendations to the Supreme Judicial Court in regard to discipline, disability, retirement or removal of justices of the Supreme Judicial Court and the Superior Court and judges of the District Court, the Probate Courts and the Administrative Court.

Statement of Fact

This bill is one of the results of a study, authorized by the Legislature, of procedures for the nomination of judicial officers and for review of their conduct. The study was carried out by the Judicial Council in consultation with the Joint Standing Committee on Judiciary.

The bill authorizes the Supreme Judicial Court to issue rules for the establishment of a committee to receive complaints, investigate and make recommendations to the court in regard to discipline, disability, retirement or removal of judges. Similar committees have been established in most other states and have been established by rule of court in a number of states, including New Hampshire and Massachusetts.