COMMITTEE ON JUDICIAL RESPONSIBILITY AND DISABILITY

1984

Annual Report to the

Supreme Judicial Court

of the

State of Maine

With a General Description of Maine's Judicial
Disciplinary Process and the Committee's Role Within It

January 1985

ANNUAL REPORT

AND SUMMARY OF THE COMMITTEE'S WORK

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I. JUDICIAL DISCIPLINE IN MAINE
THE FIRST SIX YEARS

On July 5, 1978, the Supreme Judicial Court created the Committee on Judicial Responsibility and Disability. That was the beginning in Maine of a regular process for inquiring into the conduct of state court judges. This section of the Report is an attempt to describe how that Committee's role fits into this process along with other governmental agencies both outside and within the Judicial Department.

Soon after its creation in 1978 the Committee met for the first time to adopt rules of procedure and to initiate investigations of complaints against judges which had been transmitted from the Supreme Court to the Committee. For more than six years the Committee has received and evaluated complaints of misconduct against the judges of this State. The Committee has investigated some matters on its own motion. One case has been prosecuted through the entire disciplinary process to judgment before the Supreme Judicial Court of Maine. Another case has resulted in a report to that Court recommending disciplinary action and was scheduled for briefing and argument as 1984 ended. Judges have retired in the context of the Committee's proceedings. The Committee has twice been confronted with legislative proposals affecting judicial discipline. The Committee's authority has been expanded to permit its cooperation with the Governor and the Legislature in evaluating renominees to the state courts and to permit the Committee to seek changes in judicial practices which might result in the appearance of judicial misconduct.

During this time the Committee has looked searchingly into the legal

basis of judicial discipline, the constitutional foundation of judicial-disciplinary powers, the constitutional role of the judiciary in our social order, ethical standards applicable to judges, and the function of a judicial-disciplinary organization. This report touches upon these and other issues in the hope of deepening understanding of the serious responsibility of disciplining judges for misconduct in office.

A. COMMITTEE ON JUDICIAL RESPONSIBILITY AND DISABILITY

1. Establishment of the Committee

The legal structure for imposing disciplinary sanctions on judges is found in two documents, a statute enacted by the 108th Legislature of the State of Maine and the Order of the Supreme Judicial Court establishing the Committee effective July 5, 1978. The statute is found in title 4 of the Maine Revised Statutes Annotated section 9-B. As approved by the Legislature on March 14, 1978, it 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.

This statute is a legislative recognition of the Supreme Judicial Court's power to create a judicial disciplinary committee. The Supreme Judicial Court requested and supported its enactment. This cooperation between the Legislature and the Supreme Court is not an isolated event. On numerous occasions when the Court was considering exercising its rule-making authority, the Court has gone

to the Legislature to request legislative recognition of its authority to act. Thus, the statute books of Maine contain legislative enactments recognizing the proper authority of the Court to prescribe rules on civil procedure, court records and abandoned property, criminal procedure, evidence, and judicial discipline. See 4 M.R.S.A. §§8, 8-A, 9, 9-A, 9-B. The Legislature's cooperation with the Court thus stands in a long tradition of mutual respect between these two great branches of government. [1]

For its, part, the Supreme Judicial Court promulgated its order entitled "Establishment of Committee on Judicial Responsibility and Disability." The Court directed that the Committee be composed of two judges from the lower courts, two attorneys, and three representatives of the general public. The Court gave the Committee the power to review and investigate complaints of judicial misconduct. The Committee was authorized to hold hearings on complaints which appear to have merit. The Committee is required to submit a report to the Supreme Judicial Court setting forth the Committee's findings and recommendation if

> the Committee determines (i) that the person under investigation has been convicted of a crime, the nature of which casts into doubt his continued willingness to conform his conduct to the Code of Judicial Conduct as applicable or (ii) that in fact the person has violated the Code as applicable and that the violation is of serious nature so as to warrant formal disciplinary action . . . .

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1. For a brief time the legislature had amended 4 M.R.S.A. §9-B and 39 M.R.S.A. §99-B to provide for Committee review of the timeliness of workers' compensation commissioners' decisions. P.L. 1979, c. 490. The operative provision for that review in 39 M.R.S.A. §99-B was subsequently repealed, P.L. 1983, c. 479, §22, thus avoiding any question concerning the violation of the separation of powers doctrine that would have been raised by legislation purporting to expand the jurisdiction of a committee created by and within the Judicial Department.

In cases of disability the Committee must file a similar report if

> the Committee determines that the person under investigation is suffering from a disability which materially affects his or her duties as a judge . . . .

Once the Committee submits a formal disciplinary or disability report to the Supreme Judicial Court, any further proceedings are before the Court. Ultimately the Committee's power is to commence proceedings on discipline or disability before the Supreme Judicial Court. In this sense, the Committee's role is analogous to the function of a grand jury: the Committee charges that a judge has violated his ethical obligations in a manner that is serious enough to warrant formal disciplinary action by the Supreme Judicial Court.

In keeping with the analogy to a grand jury, all proceedings before the Committee on Judicial Responsibility and Disability are confidential. The thought behind this rule of confidentiality is that it would be unnecessarily detrimental to the system of justice, and unfair to a judge to make public accusations of misconduct before the Committee has found the charges to be well-founded and serious enough to warrant trial by the Supreme Court. Once that decision has been made and the Committee submits its report to the Supreme Court, the Committee's charges become a matter of public record just like any other document filed with the Court, and the trial before the Court is also open to the public just like any other proceedings before the Court.

The rule of confidentiality has been controversial. The rule has been questioned by the press and some members of the Legislature. The Court engaged in a review of the confidentiality rule in 1983, inviting the views of the judges, the Judicial Council[2] and the Committee. That review led to the

2. The Judicial Council was established by the Legislature to make "a continuous study of the organization, rules and methods of procedure and practice of the judicial system of the State . . . ." See M.R.S.A. §451

modification, effective November 15, 1983, of the confidentiality of hearings before the Committee so that the Committee or the judge may request that the Committee hearing be public.

By further amendment, effective December 1, 1984, the Court provided for four alternate members of the Committee who will sit with the Committee to consider complaints from which a regular member has recused himself or is otherwise unavailable to participate.

2. The Code of Judicial Conduct

The ethical standards applicable to Maine judges are contained in a Code of Judicial Conduct. The Code sets standards for state court judges and thereby defines judicial misconduct. It constitutes the substantive law applied by the Committee on Judicial Responsibility and Disability. When the Committee receives a complaint against a judge, the first thing it does is look at the complaint to see whether the facts alleged appear to charge a violation of the Code of Judicial Conduct. Many complaints do not. Because courts must decide controversies between persons who cannot settle a matter between themselves, many litigants can be very unhappy with court decisions. They can believe, and believe deeply, that a judge's decision is wrong and may therefore see the judge's action as judicial misconduct. But such complaints are quite different from a charge that a judge has acted unethically.

The Code of Judicial Conduct contains seven "canons," rules which govern a judge's behavior both on and off the bench. The first three canons relate most directly to his judicial duties, and the standards are very high indeed:

> A Judge Should Uphold the Integrity and Independence of the Judiciary.
>
> A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities.

A Judge Should Perform the Duties of His Office Impartially and Diligently.

More specific provisions elaborate the meaning of each one of these canons. The last four canons govern a judge's activities outside his judicial duties regulating such matters as civic and charitable activities, compensation for extra-judicial activities, and political activities.

The Code of Judicial Conduct was promulgated by the Supreme Judicial Court in the exercise of the Court's inherent power to regulate and supervise the conduct of judges. The Code became effective on April 1, 1974. The Code applied from its inception to the justices of the Supreme Judicial Court and the Superior Court and to the judges of the District Court. Later, in response to suggestions from the Committee on Judicial Responsibility and Disability, the Court also applied the Code to active-retired justices and judges and to the judges of the Administrative Court. The Court ordered that the first three canons of the Code apply to judges of probate. The last four canons do not apply to probate judges because, under the system as presently constituted, they are part-time judges who are permitted to maintain law practices. Probate judges are the only part-time judges, as well as the only elected judges, in Maine.

The Code of Judicial Conduct is published in the Maine Reporter, which contains the orders and decisions of the Supreme Judicial Court, at volume 313-319 Atlantic 2d page xxxvii (1973-1974).

B. JUDICIAL DISCIPLINE AND THE CONSTITUTION

1. The Power of the State Legislature

The Committee's disciplinary procedures, which were established by the Supreme Court, are not the only method for responding to judicial misconduct in this State. The Constitution of the State of Maine governs the remedies for

judicial misconduct giving to the Legislature and the Governor, the political branches of government, the exclusive power to remove judges from office.

The Maine Constitution provides two alternative methods of removing a judge from office. They are called "impeachment" and "address." Removal from office by impeachment or address applies not only to judges but also to other constitutional officers of the State.

Impeachment is a process which is widely known because of the national upheaval of a decade ago. Impeachment procedures in Maine are similar to those of the federal government. The power to prefer charges of impeachment is committed by the Maine Constitution solely to the House of Representatives. See Maine Constitution, article IV, part 1, §8. The power to try a case of impeachment belongs exclusively to the Senate. Constitution of Maine, article IV, part II, §6. The standard for impeachment is "misdemeanor in office." Constitution of Maine, article IX, §5. Like other public officials, judges can be impeached. Constitution of Maine, article VI, §4, article IX, §5. But the only legitimate objectives of impeachment are removal and disqualification from office. The Constitution provides: "Their judgment, however, shall not extend farther than to removal from office, and disqualification to hold or enjoy any office of honor, trust or profit under this State." Constitution of Maine, article IV, part II, §6.

2. The Power of the Legislature and the Governor

Address is a second method available for removing a judge from office on account of misconduct. Like impeachment, the process of address is defined by the State Constitution:

> 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.

Officers whose tenure is fixed by the Constitution, which includes all judges, see Constitution of Maine, article VI, §4, may be removed from office only by the constitutional processes of impeachment or address. Opinion of the Justices, 343 A.2d 196, 203 (1975); In the Matter of Ross, 428 A.2d 858, 867-68 (1981). "The causes stated [for address] must be legal causes . . . . neither trivial nor capricious. They must be such as specially 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." Moulton v. Scully, 111 Me. 428, 433 (1914).

Impeachment and address are, then, the powers of the Legislature to remedy judicial misconduct in office: by bill of impeachment preferred by the House and conviction by the Senate, Constitution of Maine, article IV, part I, §8 and part II, §6, and by removal by the Governor upon address by both houses of the Legislature, Constitution of Maine, article IX, §5.

3. Power of the Governor with Legislative Confirmation

Sometimes overlooked as a remedy for judicial misconduct is the Governor's power over renominations. Unlike federal judges, judges in Maine are not appointed for life tenure. The Maine Constitution provides, "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 . . .). . . ." Constitution of Maine, article VI, §4. The power to nominate and renominate judges is given to the Governor. Constitution of Maine, article V, part 1, §8. If the Governor wishes to renominate a judge, he sends to the President of the Senate and the Speaker of the House of Representatives a written notice of the name of the person and the office to which he is nominated. 3 M.R.S.A. §151. The renomination of a judge is then reviewed by the Legislature's Committee on Judiciary which must confirm it by majority vote. Constitution of Maine, article V, part 1, §8; 3 M.R.S.A. §§151, 152. The renomination is then sent to the Senate and becomes final unless the Committee's decision is overturned by a two-thirds vote. Because Maine judges are subject to renomination every seven years, their records can be regularly and periodically reviewed by the Governor, the Joint Standing Committee on the Judiciary, and by the full Senate.

If the Governor decides not to reappoint a judge, then that decision effectively terminates a judge's judicial authority.[3] The Governor's discretion not to reappoint a judge is unfettered, without limit, and unreviewable by anyone. He can decline to reappoint on the basis, among others, of his assessment of a judge's qualifications, his performance in office, or misconduct.

4. Power of the Supreme Judicial Court

The summary above shows that a judge can be removed by the Senate or a

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3. The constitutional provision setting judges' terms of office at seven years does contain the following proviso: "provided, however, that a judicial officer whose term of office has expired . . . 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 of Maine, article VI, §4.

judge can be removed by concurrence of the Legislature and Governor or a judge's tenure can be terminated every seven years by the Governor or Legislature. What would be missing if these were the only remedies for judicial misconduct? What would be missing is the power to impose disciplinary sanctions short of removal from office. The Supreme Judicial Court has the power to impose disciplinary sanctions. That is where the role of the Committee on Judicial Responsibility and Disability comes in.

The Constitution of Maine separates the sovereign power of the state into three great branches of government, the Legislative, the Executive, and the Judicial Departments. The Supreme Judicial Court has said that "[f]rom this concept of separation of powers there is derived the inherent power of the Supreme Judicial Court":

> It is a fundamental principle of constitutional law that each department in our tri-partite scheme has, without any express grant, the inherent right to accomplish all objects necessarily within the orbit of that department when not expressly allocated to, or limited by the existence of a similar power in, one of the other departments. The inherent power of the Supreme Judicial Court, therefore, arises from the very fact that it is a court and connotes that which is essential to its existence and functioning as a court, [Board of Overseers of the Bar v. Lee, 422 A.2d 998, 1002 (Me. 1980).]

Thus, the power to regulate the conduct of judges is inherent in the "judicial power," which is committed to the Supreme Judicial Court by mandate of the Constitution: "As the only court established by our Constitution, it is incumbent upon the Supreme Judicial Court to exercise that part of the judicial power involved in prescribing the conduct of judges and imposing discipline upon them for misconduct." In re Ross, 428 A.2d 858, 868 (Me. 1981).

"[T]he power of the Supreme Judicial Court to discipline judges for misconduct finds its source in the Constitution's grant of judicial power to the

Court . . . ." Id. Pursuant to that inherent supervisory power over judges, the Court promulgated the Code of Judicial Conduct, which contains the ethical standards applicable to judges. Subsequently, the Court established the Committee on Judicial Responsibility and Disability to apply the Code to incidents of alleged misbehavior. The Court's constitutional authority to establish the Committee was legislatively recognized in 4 M.R.S.A. §9-B. While the Committee must evaluate complaints of judicial misconduct and can recommend disciplinary action to the Court, the Committee cannot itself impose discipline. That authority has not been delegated, if indeed it could be. The Court itself imposes discipline. The Committee's procedures constitute the regular mechanism for bringing the Court's inherent disciplinary powers into play in an individual case.

5. Separation of Powers

The legislative, executive, and judicial remedies for judicial misconduct described above are distinct and, by the Constitution, are to be kept separate. The doctrine of separation of powers is spelled out in the following provisions of the Constitution:

Article III

DISTRIBUTION OF POWERS

§1. Powers distributed

Section 1. The powers of this government shall be divided into three distinct departments, the legislative, executive and judicial.

§2. To be kept separate

Section 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the case herein [in the Constitution] expressly directed or permitted.

The meaning of the doctrine of separation of powers is illustrated by a case in which a person who had been removed from office by the process of address sought help from the courts. The Supreme Judicial Court held that the power to recommend removal is exclusively in the Legislature and cannot consistently with the doctrine of separation of powers be reviewed by the courts:

> [A]s a matter of constitutional interpretation, it may be said, after the Legislature has properly observed the jurisdictional facts, [cause, notice, and hearing], that, beyond this, all matters of procedure, specification and detail, are left necessarily to the discretion of the Legislature, as acts of sovereign power, as no other way has been prescribed by the Constitution. It could not originate in the courts, nor are the courts given either original or appellate jurisdiction. It must be initiated by the Legislature; be tried by the Legislature; and determined by the Legislature. [Moulton v. Scully, 111 Me. 428, 435 (1914).]

While such subtleties of constitutional law may sometimes seem obscure, rather than being an empty formalism the doctrine of separation of powers is an important part of our basic political system, and as such can rightfully be seen as a cornerstone of our liberty.[4] The powers of each branch of government to deal

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4. "Washington, in his Farewell Address, warned: "The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism." John Adams reasoned: "It is by balancing each of these three powers against the other two, that the efforts in human nature toward tyranny can alone be checked and restrained, and any degree of freedom preserved in the Constitution." Jefferson was of the same mind: "The concentrating of these in the same hand is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands and not by a single one; 173 despots would surely be as oppressive as one." Madison was equally emphatic: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny." No concept of government was so unanimously accepted by all statesmen whose genius brought into being the American nations as was the doctrine of the separation of government powers."

A.T. Vanderbilt, The Doctrine of the Separation of Powers and its Present-Day Significance 4 (1953) (footnotes omitted).

with judicial misconduct are ample enough without tinkering with those of a coordinate branch.

The unique role of the courts in construing and applying the Constitution and laws of this State requires a judiciary independent of political influence. Indeed, one of a judge's ethical obligations is to be "unswayed by partisan interests, public clamor, or fear of criticism." Code of Judicial Conduct, Canon 3.A.(1). To persons concerned with the rights of minorities, for instance, a moment's reflection will reveal why this is so. While judicial independence is not an absolute value, it is a fundamental one. It is protected by keeping judicial discipline -- short of offenses so serious as to merit removal from office -- within the judicial branch of government.

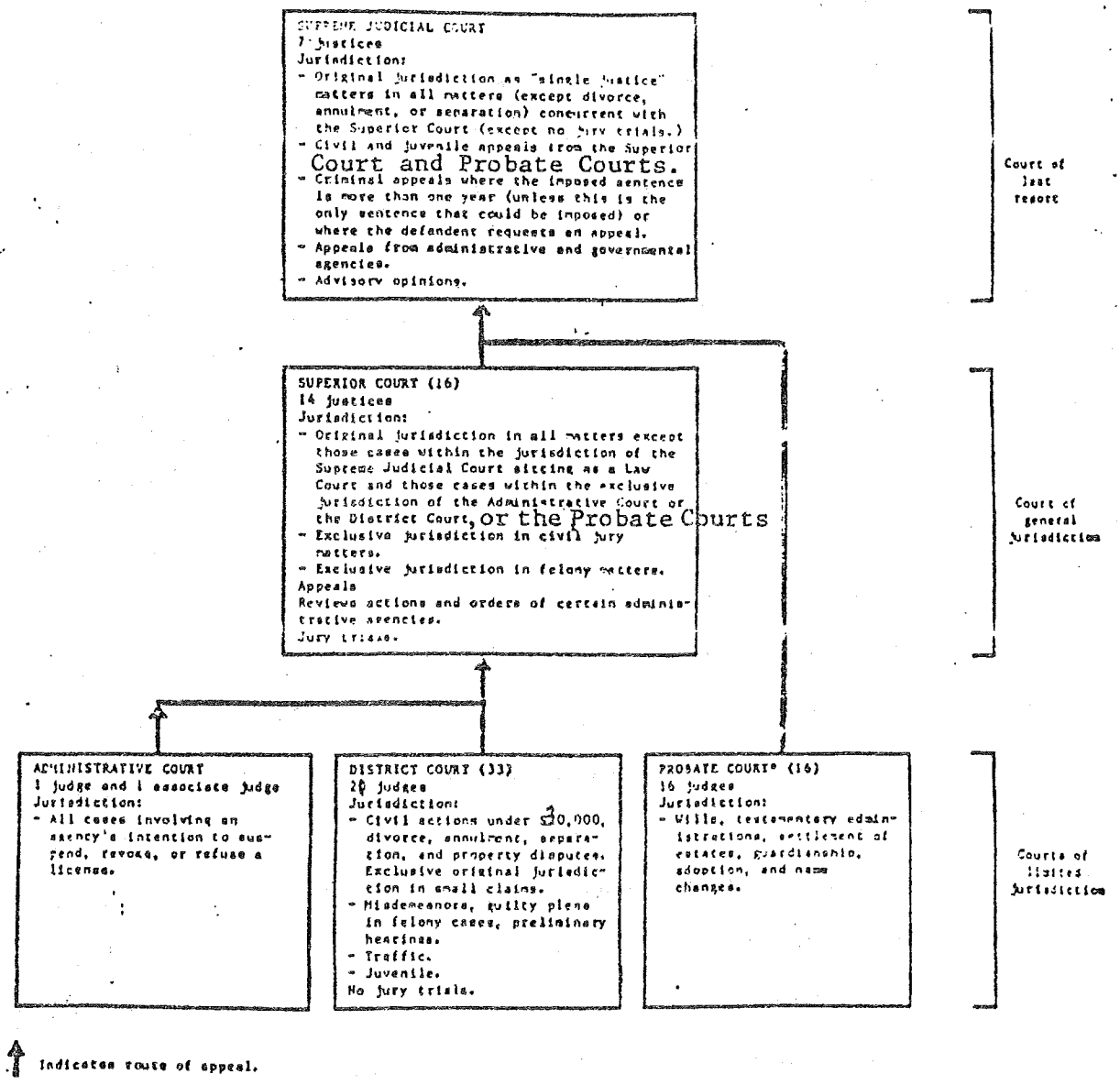
C. MAINE'S COURT SYSTEM

It is in a very real sense that courts exist to decide controversies among citizens who cannot resolve their differences peaceably among themselves. Even criminal cases are often resolved through plea-bargaining; and other cases which require a judicial act, like divorces, can largely be settled by agreement if the parties are willing. Maine has a free mediation service, set up by the courts, to help people settle their own differences. By the time people come to court, they are primed to believe in the justice of their own cause. Thus unlike mediators whose primary role is to seek and counsel compromise and adjustment, it is our courts that are ultimately called upon to decide those cases in which the parties cannot agree among themselves. Only half of the parties involved can prevail.

Maine has three levels in its court system. At the top is the Supreme Judicial Court, which is the court of last resort in the state judicial system.

Immediately below it is the Superior Court, which is the trial court of general jurisdiction. It can hear all matters triable by courts except those specifically assigned to other courts. All jury trials are held in the Superior Court. The District Court is the lower trial court. It hears lesser civil and criminal cases, small claims, traffic cases, and juvenile cases. Most family-related disputes are heard in the District Court, including 95 percent of all divorces with their attendant custody and property division problems, protection of children from abuse and protection of others from domestic violence. The Administrative Court hears matters involving an agency's licensing authority. The Probate Court deals primarily with guardianship and other protective proceedings, grants adoptions, hears petitions for name changes, and handles probate estates. In some instances there is concurrent subject matter jurisdiction between certain of these various courts. The following table outlines the Maine court system.

Figure 1: Maine court system



Adapted from: State Court Organization, U.S. Department of Justice, Washington D.C. GPO 1982

Maine has 46 judges, all appointed by the Governor subject to legislative confirmation for terms of seven years. There are also sixteen probate judges who currently are elected. The Supreme Court decided 480 cases in 1983, including 288 in which written opionions were issued. The Superior Court decided 16,687 cases; and the District Court 224,496 cases. By far the largest number of cases is handled in the District Court. Hence the largest number of citizens who are involved in judicial proceedings come before that court: 30,052 criminal cases; 6,990 cases of divorce, custody and related matters; 23,093 small claims cases; 12,781 civil cases; 51,813 criminal traffic cases; 3,325 juvenile matters; 1,954 family abuse cases; 4,349 money judgments; 722 mental health cases; and 89,417 civil violations and traffic infractions.

From these statistics it is easy to see why most complaints of Judicial misconduct come from the District Court. From these statistics and the nature of a court system for imposing decisions on those who cannot agree, it is understandable that many complaints involve dissatisfaction with judicial decisions that do not involve judicial misconduct. For while the Code of Judicial Conduct rightly sets high standards for our judges, the requirements of a workable system for peaceably resolving numerous and often bitter controversies demands a fully adequate leeway for exercising that discretion essential to the making of difficult determinations affecting the lives and fortunes of other people.

A proper judicial disciplinary system respects both interests. It demands the serious enforcement of high ethical standards, and respects the decision-making discretion essential to a practical system of human justice.

II. ANNUAL REPORT FOR 1984

A. Disciplinary Recommendation.

In the calendar year 1984 the Committee voted for the second time since its creation to submit a formal report to the Supreme Judicial Court with a recommendation for disciplinary action. On November 8, 1984 the Committee filed its report in In the Matter of the Hon. John W. Benoit, Jr., SJC Docket No. JUD-84-1. That report charged Judge Benoit with a disregard for the law and legal procedures in the determination of cases that came before him, in violation of the mandates of Canons 2.A and 3.A.(1) of the Code of Judicial Conduct that a judge "respect and comply with the law" and "be faithful to the law and maintain professional competence in it." The report charged that Judge Benoit's disregard for the law was evidenced by specified cases in which he had incarcerated persons when there was no legal authority to do so and denied stays of execution of judgment on sentence of imprisonment pending appeal in civil and criminal cases of persons legally entitled to such stays.

The matters that were the subject of the Committee's report arose from several complaints made to the Committee in writing between October 24, 1983 and April 13, 1984 and from information that came to the Committee's attention during the course of the Committee's investigation of those complaints. A letter had been sent to Judge Benoit on January 3, 1984, forwarding to him copies of those complaints that had been received at that time, and requesting his response under Rule 1.B.(iii) of the Committee's Rules. Judge Benoit responded by a letter dated January 25 and a supplemental response on February 27, 1984. On April 10, 1984 the Committee sent Judge Benoit a second letter under Committee Rule 1.B.(iii) forwarding to him information concerning the matters that had come

to the Committee's attention in the course of its investigation up to that point. This was followed on April 13 by a letter forwarding to Judge Benoit a newly received complaint concerning his imprisonment of two persons for non-payment of a debt. Judge Benoit responded to these two additional Rule 1.B.(iii) referrals with responses received by the Committee on April 18 and 24, 1984.

Also on April 10, 1984, and by a subsequent letter sent on May 14, 1984 dealing with the new matters, the Committee notified Judge Benoit of its determinations dismissing some of the matters and proceeding with charges on other matters within the complaints of which he had previously been notified under Committee Rule 1.B.(iii). Judge Benoit's formal Answer to the charges was received by the Committee on May 17 and June 27, 1984. A full evidentiary hearing was held before the Committee on those charges on September 13-14, 1984. At Judge Benoit's request the hearing was public, and the Committee therefore on August 30, 1984 made publicly available the Statement of Formal Charges and Responses.

Based upon the testimony and exhibits admitted into evidence at that hearing, and upon the pleadings before the Committee in those cases, the Committee determined that the charges against Judge Benoit had been established. The Committee recommended that the Court censure Judge Benoit for those violations, and that it suspend him from his judicial activities for two months as a disciplinary measure.

One member of the Committee, Judge L. Damon Scales, Jr., concurred in the Committee's report and recommendations as to three of the items but dissented as to two of the items and filed a minority report.

Another member of the Committee, Justice Morton A. Brody, took no part

in the Committee's consideration of the complaints because of his own direct involvement as a Superior Court Justice reviewing some of the matters as an appellate judge.

On November 9, 1984 the Supreme Judicial Court entered an order setting forth the procedures for its consideration of the matter. On November 21, after receiving memoranda from counsel for the Committee and for Judge Benoit, the Court entered an order for administrative suspension of Judge Benoit with pay pending the resolution of the Committee's charges. The Court set a schedule for simultaneous filing of briefs by noon January 11 and reply briefs due by noon on January 16 and set the argument for January 22, 1985. The Court also requested the parties to brief the question whether the Court had authority to suspend a judge without pay as a disciplinary matter.

B. Dispositions

The Committee determined the final disposition of twenty-one matters in 1984.[5] They covered a variety of kinds of complaints. Four were complaints of dissatisfaction with sentences in criminal cases (three complained that the sentences were too harsh and one that it was too lenient) and were dismissed since such allegations are matters of judicial discretion and raise no issues of judicial misconduct when the sentences are within the ranges allowed by law. Seven complaints involved litigants' dissatisfaction with the results of their cases (four having to do with divorce litigation and three with small claims matters) and were dismissed for similar reasons. A report that a judge had

5. The matters involved in the Supreme Judicial Court proceedings concerning Judge Benoit were still pending at the end of 1984 and so are not included in this number.

improperly imposed or defaulted defendants' bail was dismissed because the decisions involved were within a judge's lawful discretion. As has often been pointed out, this Committee is not a substitute for, or an additional layer of, appellate review.

Several complaints alleged conduct that would, if substantiated, constitute possibly serious violations of the Code of Judicial Conduct, but upon investigation turned out not to be true. One of these alleged personal favoritism by a judge in deciding a case. An extensive investigation by the Committee, however, found no evidence whatsoever to support the charge. A claim of discourteous or insensitive courtroom conduct by a judge was found to be unsubstantiated by listening to the tape recording of the proceedings. Investigation of a complaint that notice of a motion was not given to a party established that the omission was inadvertant and that the inadvertance was understandable in light of the circumstances of the case at the time; the complaint caused the judge to institute record-keeping procedures that would guard against the likelihood of future similar oversights.

Two complaints were dismissed because the facts did not allege any improper conduct and the complainants, upon request, did not furnish further facts to give any basis on which to proceed. Another "complaint" turned out to be essentially a request for information, which the Committee forwarded on to the appropriate court officials, who responded to the inquiry.

The rules governing the Committee provide that it may seek informal correction of any judicial practice or conduct that, while not necessarily constituting a violation of the Code, may create an appearance of judicial misconduct. The Committee used that approach in three cases during 1984. Two such

occasions were to call one judge's attention to the standing administrative order of the Chief Justice limiting the use of in-chamber proceedings, and in the case of another judge to require assurances of a regularized system for determining indigency under Me. R. Crim. P. 44(b).

The Committee had received a referral of a request for an advisory opion-ion concerning the propriety of the practice of law by part-time probate judges. While the Committee has no authority to render advisory opinions, and dismissed the complaint on that basis, it used its power for seeking informal correction to advise the Chief Justice that such a practice continues to create an appearance of impropriety in many people's minds, and to suggest the desirability that an appropriate mechanism be sought to resolve that problem. In this way the Committee was one factor leading to the current study of probate court structure by a committee of the Judicial Council.

Finally, the Committee received and determined a complaint concerning District Court Judge Earl J. Wahl's handling of two cases involving child abuse.[6] One was the case brought by Department of Human Services seeking protection from abuse for Garrianna Quinn; the other was a petition for the termination of parental rights brought by that Department in another case. In determining that there was no misconduct by Judge Wahl in either of these cases and therefore

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6. Proceedings of the Committee are confidential at least until a determination has been made that the allegations may in fact involve judicial misconduct and that a hearing before the Committee is called for, or unless otherwise ordered by the Supreme Judicial Court. In this case both the complainant and the judge requested that the Committee's determination of these matters be made public since the existence of the complaint had initially become public knowledge before it had been referred to the Committee. On this basis the Committee recommended to the Supreme Judicial Court that the parties to the complaint be released from any obligations of confidentiality concerning the Committee's determination. The Court granted the Committee's recommendation by an order effective January 25, 1985. (Docket No. SJC-109).

dismissing the complaint, the Committee reviewed the entire court files in both cases, the transcript of the May 11, 1982 hearing before Judge Wahl in the Quinn case, the transcripts of all hearings in the second case, and the Department of Human Services report on the Quinn case.

The Quinn case began with the filing of a petition for a Child Protection Order by the Department of Human Services on May 5, 1982. Judge Wahl entered a preliminary Child Protection Order on that same day and set a hearing for May 11, 1982. After that hearing, and by consent of all the parties, including the Department of Human Services, Judge Wahl granted custody of Garrianna Quinn to the Department of Human Services with provision for supervised visitation by the parents. The next contact that Judge Wahl had with the Quinn case was at a hearing held on December 10, 1982, at which the Department of Human Services in agreement with all of the parties including the guardian ad litem appointed to represent the child requested that the child be placed back with the mother. Judge Wahl at that time entered an order providing that temporary custody remain with the State, and that the child be placed in the family home with the mother, but on condition that the father maintain separate living quarters away from the child's residence. Judge Wahl's order also required that daily daytime supervision in the home be continued by the Department of Human Services.

Judge Wahl was not further involved in the Quinn case, although the Department of Human Services subsequently (on May 25, 1983) filed a motion to dismiss custody of the child to the mother. That motion was heard by another judge on June 28, 1983. All parties at that time agreed with the Department's request to return all custody to Garrianna Quinn's mother. The Department's unopposed motion was granted but Departmental supervision was ordered to continue for at least the next six months.

This review of the record and events in the Quinn case made clear that Judge Wahl bore no responsibility for Garrianna Quinn's subsequent tragic death. Both of the judges involved in the case were, if anything, more protective of the child's welfare than the Department or the other parties had asked them to be. The Committee concluded that Judge Wahl's role in this case was clearly proper and could in no way constitute judicial misconduct.

A careful study of the court record and the transcripts of hearings in the other case likewise revealed that Judge Wahl's September 28, 1982 order denying the Department of Human Services motion to terminate parental rights, and his November 3, 1982 order returning the child to her parents' custody were well within his decision-making discretion as a judge called upon to make the difficult determinations required in that case.

Nine matters were pending before the Committee at the beginning of 1984. Four of these were among the complaints concerning Judge Benoit that were eventually dealt with in the proceedings culminating in the Committee's Report to the Supreme Judicial Court on November 8, 1984 and discussed previously. The dispositions of the remaining complaints pending at the beginning of 1984 have been incorporated within this report.

Matters pending at the end of 1984 included those involving Judge Benoit, which were then scheduled for briefing and argument before the Supreme Judicial Court. Nine other complaints concerning judges had been filed or had come to the Committee's attention toward the end of the year and the Committee had thus not had an opportunity to take any action on them. Three of those complaints had not specified the name of any judge allegedly engaged in misconduct.

Of the remaining six complaints pending at the end of 1984, two complaints

were lacking sufficient information to indicate any misconduct and, after notice to the complainants, had not been further pursued by them. The investigation in one other complaint had just been completed and the matter was awaiting action at the Committee's January meeting. The three other pending matters were under active investigation at the close of the year.

C. Rule Change

As a result of the Committee's experience in considering the complaints against Judge Benoit, in which one of the members had to recuse himself because of his appellate role in reviewing some of the cases involved, the Committee proposed that the Supreme Judicial Court provide a method of alternate membership for such situations. The membership of the Committee is carefully designated to strike a balance between members of the general public, the judiciary, and the attorneys who practice before the state's judiciary. It seemed to the Committee members that provision should be made for maintaining that deliberately created balance in situations in which a regular member of the Committee was unable to participate for some reason.

In response to this suggestion, the Court entered an order effective December 1, 1984 providing for four alternate members, one each from the general public, the bar, the Superior Court, and the District Court. These alternates are designated to serve on the Committee whenever a regular member from their respective groups has recused himself or is otherwise unavailable to participate in Committee action.

III. CONCLUSION

The Committee respectfully submits this Report and review of its function and activities to the Supreme Judicial Court pursuant to Rule 7 of the Rules of the Committee. The Committee further requests that the Court cause this Report to be published and made available for general distribution in order to better inform the public concerning the nature, function and activity of the Committee. See Paragraph 8 of the Order for Establishment of the Committee on Judicial Responsibility and Disability, eff. July 5, 1978, as amended March 7, 1983, November 15, 1983 and December 1, 1984.

Patricia M. Collins
Chair

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Samuel W. Collins, Rockland
Justice G. Arthur Brennan, York
Judge Jack O. Smith, Ellsworth

* Alternate members were first appointed on January 2, 1985.