

STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT COMMITTEE

Robert O. Wilson, DDS, Chair
Wilfred L. Sanders, Jr., Esquire, V. Chair
The Honorable Gary R. Cassavechia

Mary E. Collins
The Honorable Steven M. Houran
The Honorable John A. Korbey
Rebecca C. Hutchinson
Thomas Moses
Lawrence W. O'Connell
Dana Zucker, Esquire



Robert T. Mittelholzer, Esquire
Executive Secretary
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February 18, 2015

Representative Robert Rowe, Chair, House Judiciary Committee
Legislative Office Building, Room 208
33 North State Street
Concord, NH 03301

RE: State of New Hampshire Judicial Conduct Committee
2014 Annual Report

Representative Rowe:

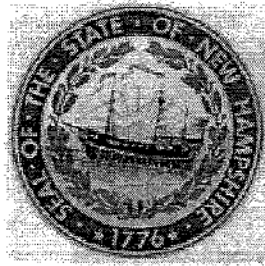
Pursuant to Rule 39 (8) of the New Hampshire Supreme Court, please find enclosed herewith a copy of the State of New Hampshire Judicial Conduct Committee's 2014 Annual Report summarizing its activities during the preceding calendar year.

Yours truly,


Robert T. Mittelholzer

RTM

THE STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT COMMITTEE



ANNUAL REPORT

2014

State of New Hampshire
Judicial Conduct Committee
Annual Report 2014

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COMMITTEE STATUS

The composition of the Judicial Conduct Committee changed significantly in 2014. Although public member and Committee Chair, Robert O. Wilson, DDS continued to serve as Committee Chair; attorney member and Vice Chair, Wilfred L. Sanders, Jr, Esq. continued to serve as the Committee's Vice Chair; Alternate Panel attorney member and Committee Chair, Jack P. Crisp, Jr., Esq. continued to serve as Chair of the Alternate Panel; and, Alternate Panel clerk member, Michael Scanlon, continued to serve as Vice Chair of the Alternate Panel, public members Susan Herney and Paul Mirski were succeeded by Mary E. Collins and Rebecca C. Hutchinson respectively at the conclusion of their terms. Public members Thomas Moses and William Hall's terms had also expired on July 1, 2014 but each continued and continues to serve in a holdover capacity until such time as their successor is appointed. The Alternate Panel remains in need of a public member gubernatorial appointee to replace Timothy Russell who resigned before his term expired.

At year's end, the members of the Judicial Conduct Committee were as follows:

<u>Member</u>	<u>Appointing Authority</u>	<u>End of Term</u>
Robert O. Wilson, Chair Public Member	Governor's Appointee	July 1, 2015
Wilfred L. Sanders, Jr., Vice Chair Attorney Member	Bar Association Appointee	July 1, 2015
The Honorable Gary Cassavechia Probate Court Representative	Supreme Court Appointee	July 1, 2015
William Hall Public Member	Bar Association Appointee	July 1, 2014
Mary E. Collins Public Member	Governor's Appointee	July 1, 2017
The Honorable John Korbey District Court Representative	Supreme Court Appointee	July 1, 2015
Rebecca C. Hutchinson Public Member	Speaker of the House Appointee	July 1, 2017
Thomas Moses Public Member	President of the Senate Appointee	July 1, 2014

The Honorable Steven Houran Superior Court Representative	Supreme Court Appointee	July 1, 2016
Lawrence O'Connell Public Member	Supreme Court Appointee	July 1, 2016
Dana Zucker Court Clerk Representative	Supreme Court Appointee	July 1, 2016

At year's end, the members of the Judicial Conduct Committee's Alternate Panel were as follows:

Jack Crisp, Esq., Chair Attorney Member	Bar Association Appointee	July 1, 2015
The Honorable James H. Leary District Court Representative	Supreme Court Appointee	July 1, 2015
Robert B. Flanders Public Member	Governor's Appointee	July 1, 2015
The Honorable Christina O'Neill Probate Court Representative	Supreme Court Appointee	July 1, 2015
The Honorable George Manias Superior Court Representative	Supreme Court Appointee	July 1, 2015
Larry Gilpin Public Member	Supreme Court Appointee	July 1, 2015
Open Public Member	Governor's Appointee	July 1, 2015

W. Michael Scanlon, Esq. Court Clerk Representative	Supreme Court Appointee	July 1, 2015
Daniel Botsford, MD Public Member	Bar Association Appointee	July 1, 2015
Andy Lietz Public Member	Speaker of the House Appointee	July 1, 2015
Bill Belvin Public Member	Senate President Appointee	July 1, 2015

Robert T. Mittelholzer remained as Executive Secretary throughout 2014.

REPORTS OF ALLEGED JUDICIAL MISCONDUCT REVIEWED AND/OR DISPOSED OF IN 2013

There were 12 reports filed in 2013 which were carried over into 2014.

There were 65 reports filed in 2014 with all of these reports docketed by the Committee for review. Parts of another 4 of these reports were ultimately not docketed and were dismissed by the Committee pursuant to Supreme Court Rule 40 (5) (d) because portions of these reports were either filed against a person who is not a “judge” as this term is defined under Supreme Court Rule 40 (2) or because elements of these reports otherwise failed to satisfy the requirements for docketing as set forth under Supreme Court Rule 40. 10 of the 12 reports docketed in 2013 and carried over to 2014 were resolved in 2014. As of March of 2015 there were 6 reports docketed in 2014 that were carried over into 2015.

SUPREME COURT

There were no reports docketed in 2014 naming one or more justices of the Supreme Court.

SUPERIOR COURT

There were 16 reports docketed in 2014 naming 16 individual judges.

CIRCUIT COURT - DISTRICT DIVISION

There were 17 reports docketed in 2014 naming 18 judges.

CIRCUIT COURT - FAMILY DIVISION

There were 22 reports docketed in 2014 naming 20 judges and 4 marital masters within the various family divisions.

CIRCUIT COURT - PROBATE DIVISION

There were 8 reports docketed in 2014 naming 8 judges.

MISCELLANEOUS

There were 3 reports docketed naming 4 clerks of court or deputy clerks and one report docketed involving a bail commissioner.

NOTE: The total number of “judges” (as this term is defined by Supreme Court Rule 40 (2)) recorded herein exceeds the number of reports docketed because a number of reports named more than one judge, marital master, clerk of court or deputy clerk.

DISPOSITIONS

Complaints:

Out of the 81 matters reviewed by the Committee in 2014 (65 docketed reports; 4 non-docketed reports; and, 12 matters held over from 2013), 5 reports were elevated by the Committee to the level of a “complaint” and were re-docketed as such requiring response by the judge complained against. These complaints are summarized below as follows:

Complaint I:

The first of these complaints was filed as a report in June of 2013 and was elevated by the Committee to the level of a complaint in August of 2013. This matter remains pending as of the date of this report.

Complaint II:

The second of these complaints was docketed as a Committee initiated inquiry pursuant to New Hampshire Supreme Court Rule 40 (6) in June of 2013 and was elevated by the Committee to the level of a complaint in August of 2013. This matter also remains pending as of the date of this report.

Complaint III:

The third of these complaints was docketed as a Committee initiated inquiry in August of 2013 and was elevated by the Committee to the level of a complaint in September of 2013.

Based upon the facts and circumstances surrounding the disclosure by the New Hampshire Supreme Court of certain comments made by a superior court judge at a number of meetings occurring in July of 2013; the Committee's own inquiry into this matter and pursuant to the judge's stipulated violation of Canon 1; Rule 1.2 of the Code of Judicial Conduct, the Committee publicly sanctioned the judge for his violation of Canon 1; Rule 1.2 by way of a Reprimand for his failure to avoid the appearance of impropriety by conduct in the form of words that may have been reasonably perceived as prejudiced or biased.

The Judicial Conduct Committee and the judge further stipulated that:

- 1- The judge had violated Canon 1; Rule 1.2 of the Code of Judicial Conduct, by creating the appearance of impropriety through the use of words which may have been reasonably interpreted to manifest bias or prejudice based upon gender;
- 2- The judge had retired from the bench and had not taken senior status;
- 3- The Committee has the authority and discretion to move forward with these proceedings notwithstanding the judge's retirement pursuant to In Re: Thayer, 761 A2d 1052; 145 NH 177 (NH 2000);
- 4- Although the Committee and the judge had agreed to resolve this investigation with the charging and chargeable finding relating only to creating the appearance of impropriety, the Committee's investigation revealed concerns related to gender bias, treatment of purported victims in sexual assault cases, and other potential concerns related to the judge's conduct while sitting as a judge.

5- The judge, while accepting the within articulated violation of the Code of Judicial Conduct by way of his failure to avoid the appearance of impropriety, denied any other potential violations;

6- The judge agreed that he would not serve in any judicial capacity in the future that is governed by the Code of Judicial Conduct; and,

7- If for any reason the judge did not honor this stipulation, the Committee reserved its right to file an additional complaint, if warranted, referencing conduct contained in the Reprimand or other conduct and to seek such additional remedies or other disposition as may be appropriate.

In light of the above, the Committee determined that it was not necessary to specifically address all the dispositional factors delineated in In re: Coffey's Case, 949 A.2d 102, 157 N.H. 156 (N.H. 2008). Consistent with the above paragraphs and with the consent of the judge, no formal discipline was sought or warranted and a Reprimand was issued pursuant to New Hampshire Supreme Court Rule 40 (8) (f).

The complete text of this Reprimand has been published on the Judicial Branch/Judicial Conduct Committee website and may be found at www.courts.nh.us .

Complaint IV:

The fourth of these complaints was docketed as a report in April of 2014 and elevated to the Committee to the level of a complaint in August of 2014. This matter remains pending as of the date of this report.

Complaint V:

The fifth of these complaints was docketed as a report in October of 2014 and elevated to the Committee to the level of a complaint in December of 2014. This matter also remains pending as of the date of this report.

NOTE: All decisions of the Committee are made pursuant to Supreme Court Rules 39 and 40 and may or may not be unanimous.

Reports:

10 of the reports carried over from 2013 were resolved in 2014 with 6 of these reports dismissed in whole or in part based upon either a finding of no judicial misconduct or for the lack of any showing of judicial misconduct and 6 of these reports dismissed in whole or in part on the grounds that the reports essentially related to rulings of the court and were, therefore, beyond the jurisdiction of the Committee pursuant to Supreme Court Rule 40 (5) (c) (1) (a). 2 of these matters were dismissed for having been filed outside of the two year period of limitations pursuant to Supreme Court Rule 40 (4) (c).

The ultimate dispositions of those reports filed in 2014 and resolved before March of 2015 were as follows:

25 reports were dismissed in whole or in part for either the lack of any showing of judicial misconduct or on a finding of no judicial misconduct.

46 reports were dismissed in whole or in part on the grounds that these reports or elements of these reports essentially related to rulings of the court which, in effect, were a substitute for appeal and, hence, beyond the jurisdiction of the Committee pursuant to Supreme Court Rule 40 (5) (c) (1) (a).

6 reports were dismissed on the basis of failure to allege facts which, even if true, would not be sufficient to support a finding of judicial misconduct pursuant to Supreme Court Rule 40(5) (c) (1).

4 reports were dismissed in whole or in part on the basis that the issue(s) raised had fallen outside of the Committee's two year period of limitation pursuant to Supreme Court Rule 40 (4)(c) (2).

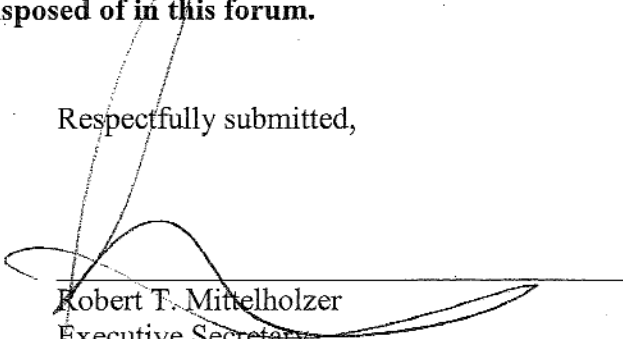
4 reports were dismissed in whole or in part on the grounds that certain of the individuals complained against were not "judges" within the meaning and context of Supreme Court Rule 40 (2) and hence not subject to the jurisdiction of the Judicial Conduct Committee.

One report was dismissed in whole or in part on the grounds that it was repetitive of a prior report pursuant to Supreme Court Rule 40 (5) (c) (1) (b).

NOTE: The total exceeds the number of reports docketed because a number of reports were dismissed by the Committee on alternate grounds such as relating to ruling(s) of the court and no indication of judicial misconduct. It should also be noted that while the number of reports filed against superior court judges and marital masters appears to be trending down in domestic relations cases, these numbers are simultaneously increasing in the family divisions as more such cases are disposed of in this forum.

Respectfully submitted,

February 12, 2015


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