

STATE OF MARYLAND
COMMISSION ON JUDICIAL DISABILITIES

ANNUAL REPORT
FOR
FISCAL YEAR 2019
(July 1, 2018 – June 30, 2019)

Submitted by:

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I. INTRODUCTION.

This Annual Report is prepared by the Maryland Commission on Judicial Disabilities (“Commission”) for submission to the Maryland Court of Appeals, pursuant to former Maryland Rule 18-402(g).

The Commission is the primary disciplinary body charged with investigating complaints that allege judicial misconduct or mental or physical disability of Maryland judicial officers, as empowered by the Maryland Constitution.

The work of the Commission plays a vital role in maintaining public confidence in, and preserving the integrity and impartiality of, the judiciary. The Commission, by providing a forum for citizens with complaints against judges, helps maintain the balance between judicial independence and public accountability. The Commission also helps to improve and strengthen the judiciary by creating a greater awareness among judges of proper judicial conduct.

The laws creating and governing the Commission’s work are as follows:

- Maryland Constitution, Art. IV, §§4A and 4B;
- Annotated Code of Maryland, Courts and Judicial Proceedings, §§13-401 through 13-403;
- Former Maryland Rules 18-401 through 18-409¹; and
- Maryland Code of Judicial Conduct, Maryland Rules, Title 18, Chapter 100.

Copies of the laws governing the Commission are available through the Commission’s website at www.mdcourts.gov/cjd/index.html.

II. HISTORY AND STRUCTURE OF THE COMMISSION.

The Commission was established by constitutional amendment in 1966 in response to a growing need for an independent body to assist in monitoring the conduct of Maryland’s judges. Subsequent constitutional amendments strengthened the Commission, clarified its powers, and added four additional members of the public to the Commission. The Constitution requires the Court of Appeals to adopt rules for the implementation and enforcement of the Commission’s powers and the practice and procedures before the Commission.

The Maryland Constitution, Art. IV, §4B(a)(1)(i) & (ii) & 2, gives the Commission the following specific powers to:

(i) Investigate complaints against any judge of the Court of Appeals, any intermediate courts of appeal, the circuit courts, the District Court of Maryland, or the orphans’ court; and

¹ The Maryland Court of Appeals issued an Order on May 15, 2019 adopting new Maryland Rules 18-401 to 18-442, the rules governing the Commission on Judicial Disabilities, effective on July 1, 2019.

(ii) Conduct hearings concerning such complaints, administer oaths and affirmations, issue process to compel the attendance of witnesses and the production of evidence, and require persons to testify and produce evidence by granting them immunity from prosecution or from penalty or forfeiture.

(iii) The Commission has the power to issue a reprimand and the power to recommend to the Court of Appeals the removal, censure, or other appropriate disciplining of a judge or, in an appropriate case, retirement.

Further, the Maryland Rules gave the Commission the authority to dismiss complaints (with or without a warning), issue private reprimands, enter into deferred discipline agreements with judges, and if the Commission “finds by clear and convincing evidence that the judge has a disability or has committed sanctionable conduct, it shall either issue a public reprimand for the sanctionable conduct or refer the matter to the Court of Appeals . . .” with the recommendation of the Commission as to the sanction to be imposed against the judge. All dismissals with warnings, private reprimands and deferred discipline agreements required the consent of the respondent judge.

The Commission Members consist of eleven (11) persons: three (3) representing judges, one (1) representing the appellate courts, one (1) representing the Circuit Courts, and one (1) representing the District Courts; three (3) lawyers, with each admitted to practice law in Maryland and having at least seven (7) years of experience; and five (5) members of the public, none of whom are active or retired judges, admitted to practice law in Maryland, or persons having a financial relationship with, or receive compensation from, a judge or lawyer licensed in Maryland. All Commission Members are appointed by the Governor, with the advice and consent of the State Senate, and are citizens and residents of Maryland. Membership is limited to two (2), four (4)-year terms, or, if initially appointed to fill a vacancy, for no more than a total of ten (10) years.

Effective July 1, 2007, the Court of Appeals established by Rule the Judicial Inquiry Board (“Board”), thereby creating a “two-tier” structure within the Commission. The Board consists of seven (7) persons: two (2) judges, two (2) lawyers, and three (3) public members who are not lawyers or judges. Board Members were appointed by the Commission members for a term of four (4) years. Membership was limited to two (2), four (4)-year terms, or, if initially appointed to fill a vacancy, for no more than a total of ten (10) years.

Complaints against Maryland judges are investigated by the Commission’s Investigative Counsel (“Investigative Counsel”). The Commission’s Judicial Inquiry Board (“Board”) received and reviewed the Investigative Counsel’s investigations, reports and recommendations and submitted its own reports and recommendations to the Commission Members. The Commission Members accepted or rejected the Board’s recommendations and took action consistent with the powers and authority granted to the Commission.

III. THE COMMISSION'S JURISDICTION - WHAT THE COMMISSION CAN AND CANNOT DO.

The Commission is authorized to investigate complaints only against judges of the Maryland Court of Appeals, Court of Special Appeals, Circuit Courts, District Courts, and Orphans' Courts, and any retired Maryland judge during the period that the retired judge has been approved to sit. The Commission:

1. Has no authority to investigate complaints against Magistrates (formerly masters), Examiners, Administrative Law Judges, Federal Judges, lawyers, police, court personnel, State's Attorneys, or Public Defenders.
2. Does not have appellate authority and therefore cannot review, reverse, change, or modify a legal decision or other court action taken by a judge;
3. Cannot affect the progress or outcome of a case; and
4. Cannot require a judge's recusal or disqualify a judge from presiding over a particular case.

Pursuant to former Maryland Rule 18-401, the only types of complaints that can be investigated by the Commission are those involving a Maryland Judge's alleged "sanctionable conduct" or "disability":

1. Sanctionable conduct is defined as:
 - misconduct while in office;
 - the persistent failure by a judge to perform the duties of the judge's office; or
 - "conduct prejudicial to the proper administration of justice"; or

A judge's violation of the binding obligations of the Maryland Code of Judicial Conduct promulgated by Title 18, Chapter 100 may constitute sanctionable conduct.

Sanctionable conduct does not include the following by a judge, unless the judge's conduct also involves "fraud or corrupt motive or raises a substantial question as to the judge's fitness for office":

- making an erroneous finding of fact;
- reaching an incorrect legal conclusion;
- misapplying the law; or

- failure to decide matters in a timely fashion, unless such failure is habitual.
2. Disability means a judge's mental or physical disability that:
- seriously interferes with the performance of a judge's duties and
 - is, or is likely to become, permanent.

IV. THE COMPLAINT PROCESS UNDER FORMER MARYLAND RULES.

Any individual, including a party or witness in a court case, lawyer, member of the public, judge, person who works for or assists the court, or other person, who has information that a Maryland judge may have committed "sanctionable conduct" or has a "disability", can file a complaint with the Commission; this individual is considered the "Complainant" and the judge is considered the "Respondent". The Complainant can download a complaint form from the Commission's website, receive a form from the Commission's office, or by preparing a letter with required information. (See the Commission's website at www.mdcourts.gov/cjd/complaint.html for details on filing a complaint.)

If the complaint meets the Commission's requirements, Investigative Counsel will open a file and send a letter to the complainant acknowledging receipt of the complaint and the procedure for investigating and processing the complaint. In addition, the Investigative Counsel may make an inquiry and open a file after receiving information from any source that indicates a judge may have committed sanctionable conduct or may have a disability.

Complaints and inquiries may be dismissed, prior to a preliminary investigation, if the "complaint [or inquiry] does not allege facts that, if true, would constitute a disability or sanctionable conduct and there are no reasonable grounds for a preliminary investigation." If the complaint is not dismissed, or an inquiry is completed without a dismissal, the Investigative Counsel conducted an investigation and thereafter reported to the Board the results of the investigation, including one of the following recommendations:

- dismiss the complaint and terminate the investigation, with or without a warning to the judge against future sanctionable conduct;
- enter into a private reprimand or a deferred discipline agreement with the judge;
- authorize a further investigation; or
- file charges against the judge.

Upon receiving the Investigative Counsel's report, including recommendation, the Board reviewed the report and recommendation and could authorize a further investigation,

or meet informally with the judge for the purpose of discussing an appropriate disposition. Upon completion of the foregoing, the Board prepared a report, including recommendation, to the Commission Members that included one of the following recommendations:

- dismiss the complaint and terminate the investigation, with or without a warning to the judge against future sanctionable conduct;
- enter a private reprimand or a deferred discipline agreement with the judge; or
- upon a determination of probable cause, the filing of charges.

The Commission Members could take action, with or without proceeding on charges, after reviewing the Board's report, including recommendation, and any objections filed by the judge or Investigative Counsel. If the Commission Members directed Investigative Counsel to file charges against the judge alleging that the judge committed sanctionable conduct or had a disability, the charges were served upon the judge and a hearing was scheduled as to the charges. Formal hearings are conducted in accord with the Maryland Rules of evidence.

If, after the hearing, the Commission Members found by clear and convincing evidence that the judge committed sanctionable conduct or had a disability, they could either issue a public reprimand for such sanctionable conduct or refer the case to the Court of Appeals with the Commission's recommendations as to disposition. The Court of Appeals can take any one of the following actions: "(1) impose the sanction recommended by the Commission or any other sanction permitted by law; (2) dismiss the proceeding; or (3) remand for further proceedings as specified in the order of remand."

V. CONFIDENTIALITY.

The complaint and all information and proceedings relating to the complaint, are confidential. Investigative Counsel's work product, Investigative Counsel's records not admitted into evidence before the Commission, the Commission's deliberations, and records of the Commission's deliberations are confidential.

After the respondent judge's filing of a response to charges alleging sanctionable conduct, or expiration of the response filing date, such charges and all subsequent proceedings before the Commission on such charges are not confidential and therefore open to the public. In addition, a respondent judge, by written waiver, may release confidential information at any time.

Charges alleging only that a judge has a disability, and all proceedings before the Commission on such charges, are confidential.

VI. MEMBERS AND STAFF.

COMMISSION MEMBERS

Judge Members:

Honorable Michael W. Reed, Chair- Appellate Judge position
Honorable Susan H. Hazlett, Vice-Chair- District Court position
Honorable Robert B. Kershaw- Circuit Court position

Attorney Members:

Arielle F. Hinton, Esquire
Richard M. Karceski, Esquire
Marisa A. Trasatti, Esquire

Public Members:

Virginia L. Fogle
Vernon Hawkins, Jr.
Kimberly A. Howell
Andrea M. Fulton Rhodes (appointed 3/20/19 to replace Susan J. Matlick)
Sally McLane Young Ridgely

JUDICIAL INQUIRY BOARD MEMBERS:

Judge Members:

Honorable Robert A. Greenberg, Chair
Honorable Brian Green

Attorney Members:

Kay N. Harding, Esquire
Kimberly Jones, Esquire

Public Members:

The Honorable William J. Boarman
Dr. Kenneth W. Eckmann
Susan R. Hoffmann

STAFF:

Director/Investigative Counsel: Tanya C. Bernstein, Esquire
Assistant Investigative Counsel: Derek A. Bayne, Esquire
Assistant Investigative Counsel: Tamara S. Dowd, Esquire (as of 6/19/19)
Administrative Assistant: Lisa R. Zinkand
Legal Assistant: Sarah P. Nicholson

Executive Secretary: Kendra Randall Jolivet, Esquire

VII. MEETINGS.

The Commission Members held eleven (11) regularly scheduled meetings in FY 2019.

The Board Members held eleven (11) regularly scheduled meetings in FY 2019.

VIII. SUMMARY OF COMMISSION ACTIVITY IN FY 2019.

During Fiscal Year 2019 (July 1, 2018 through June 30, 2019), the Commission opened files for Two Hundred Four (204) verified complaints.

Seven (7) complaints were filed by attorneys, twenty-eight (28) by inmates, five (5) by Investigative Counsel, and one hundred sixty-four (164) were filed by members of the general public.

Complaints against Circuit Court Judges totaled one hundred thirty-six (136); sixty-three (63) complaints were filed against District Court Judges; one (1) complaint was filed against a Court of Appeals Judge; three (3) complaints were filed against Court of Special Appeals Judges; and one (1) complaint was filed against an Orphans' Court Judge. There were seventeen (17) complaints against Senior Judges sitting in various jurisdictions.

The types of cases involved include:

- Family law matters (divorce, custody, visitation, protective orders, etc.)- forty-three (43) complaints;
- Criminal cases- forty-one (41) complaints;
- Other Civil cases - one-hundred fourteen (114) complaints; and
- Miscellaneous or Non-Courtroom related proceedings- six (6) complaints.

Charges were filed in two (2) cases. One matter was postponed by the Commission. A public hearing is being conducted in the second matter.

A Public Reprimand was issued by the Commission of a District Court judge in a public matter who failed to disclose prior discipline in an application for the Circuit Court.

Dismissals with warnings were issued when the Commission determined that sanctionable conduct that may have been committed by a judge would be sufficiently addressed by the issuance of a warning. The Commission issued five (5) dismissals with a warning involving the following:

- 1) A Circuit Court judge's demeanor was combative and condescending; there was also inappropriate consideration of evidence.
- 2) A Circuit Court judge made an inappropriate posting on social media during the election process.
- 3) A District Court judge made demeaning comments to litigants in a civil

matter.

- 4) A Senior judge sitting in a Circuit Court made demeaning comments to litigants in a family law matter.
- 5) A Senior judge sitting in a District Court made comments that could be construed as racially biased in a criminal matter.

The vast majority of complaints in Fiscal Year 2019, as in prior years, were dismissed because the allegations set forth in the complaints were either found to be unsubstantiated, or the conduct complained about did not constitute sanctionable conduct.

Additional matters involving the Commission in FY19 are summarized as follows:

-The Court of Appeals suspended a District Court judge for no less than six (6) months and imposed conditions for the judge to return to the bench post-suspension. The Commission had previously issued Amended Findings of Fact recommending a six (6) month suspension for the judge.

-The Court of Appeals denied a petition for a writ of certiorari in the appeal of a former Complainant requesting judicial review of the Commission's dismissal of a complaint.

- A Circuit Court denied a Complainant's action for Declaratory Judgment following the Commission's dismissal of a Complaint.

-The Commission modified the conditions of a Deferred Discipline Agreement where it continues to monitor a Circuit Court judge.

IX. COMPARISON CHARTS OF COMMISSION ACTIVITY.

The data included in the following charts is based on data from the Commission case files.

SOURCES OF ALL COMPLAINTS FILED WITH THE COMMISSION

Fiscal Year	Attorneys	Investigative Counsel Initiated Inquiries	Inmates	Judges	Public	Total
2000-2001	14	1	29	0	76	120
2001-2002	4	4	26	0	108	142
2002-2003	6	6	35	0	91	138
2003-2004	6	1	17	0	70	94
2004-2005	2	7	33	0	70	112
2005-2006	12	4	30	0	62	108
2006-2007	7	2	27	0	81	117
2007-2008	5	4	29	0	91	129
2008-2009	6	5	35	0	91	137
2009-2010	4	4	25	0	90	123
2010-2011	8	2	17	0	97	124
2011-2012	8	7	19	0	98	132
2012-2013	13	2	13	2	109	139
2013-2014	7	4	21	0	109	141
2014-2015	8	9	38	0	103	158
2015-2016	16	10	30	0	145	201
2016- 2017	11(4.7%)	13 (5%)	32 (14%)	10 (4.3%)	168 (72%)	234
2017-2018	8 (3.8 %)	5 (2.4%)	39 (18.5%)	0	159 (75.3%)	211
2018-2019	7	5	28	0	164	204

COMPLAINTS BY COURT

Fiscal Year	District Court Judges	Circuit Court Judges	Orphans' Court Judges	Court of Special Appeals Judges	Court of Appeals Judges	Other	Total
2000-2001	27	86	0	6	1	0	120
2001-2002	35	94	2	11	0	0	142
2002-2003	35	87	0	6	8	2	138
2003-2004	20	72	2	0	0	0	94
2004-2005	31	72	1	7	1	0	112
2005-2006	28	72	1	0	7	0	108
2006-2007	25	87	1	2	2	0	117
2007-2008	48	78	3	0	0	0	129
2008-2009	46	84	1	4	2	0	137
2009-2010	44	75	1	2	1	0	123
2010-2011	42	79	2	1	0	0	124
2011-2012	48	77	7	0	0	0	132
2012-2013	52	80	4	2	1	0	139
2013-2014	58	73	4	5	0	1	141
2014-2015	46	107	3	2	0	0	158
2015-2016	57	125	12	6	1	0	201
2016-2017	68	152	11	2	1	0	234
2017-2018	49	150	7	3	2	0	211
2018-2019	63	136	1	3	1	0	204

There were 113 District Court, 166 Circuit Court, 66 Orphans' Court, 15 Court of Special Appeals and 6 Court of Appeals Judges sitting in the Maryland Judiciary, and 20 vacancies, during FY19.

TYPES OF CASES INVOLVED

Fiscal Year	Family Law	Criminal Cases	Civil Cases	Other	Total
2000-2001	18	55	37	10	120
2001-2002	31	47	54	10	142
2002-2003	28	54	41	15	138
2003-2004	26	24	37	7	94
2004-2005	33	22	52	5	112
2005-2006	20	39	30	19	108
2006-2007	25	43	45	4	117
2007-2008	24	41	59	5	129
2008-2009	32	48	50	7	137
2009-2010	23	36	58	6	123
2010-2011	22	50	48	4	124
2011-2012	24	31	68	9	132
2012-2013	30	32	69	8	139
2013-2014	29	37	70	5	141
2014-2015	22	49	84	3	158
2015-2016	32	51	116	2	201
2016-2017	28	63	106	37	234
2017-2018	30	54	116	11	211
2018-2019	43	41	114	6	204

COMPLAINTS BY COUNTY

County	FY17	FY18	FY19
Allegany	1	4	2
Anne Arundel	33	27	10
Baltimore City	58	29	25
Baltimore County	17	10	21
Calvert	3	7	2
Caroline	0	4	1
Carroll	0	4	1
Cecil	3	1	9
Charles	3	2	4
Dorchester	2	3	1
Frederick	11	6	4
Garrett	0	0	0
Harford	11	14	13
Howard	12	11	12
Kent	2	1	1
Montgomery	15	25	28
Prince George's	41	45	48
Queen Anne's	1	2	1
Somerset	2	0	2
St. Mary's	9	4	2
Talbot	1	0	1
Washington	5	3	8
Wicomico	1	2	5
Worcester	1	0	0
Appellate	2	5	3
Total	234	211	204