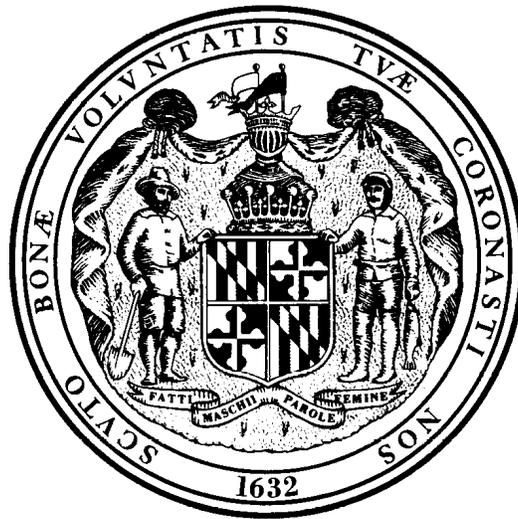


STATE OF MARYLAND
COMMISSION ON JUDICIAL DISABILITIES



ANNUAL REPORT
FOR
FISCAL YEAR 2009

100 Community Place
Crownsville, Maryland 21032
(410) 514-7044
www.mdcourts.gov/cjd/index.html

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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 Maryland Rule 16-804(g).

The Commission is the primary disciplinary body to investigate complaints of judicial misconduct and physical or mental incapacity 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 the proper judicial conduct.

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

- Maryland Constitution, Art. IV, Sections 4A and 4B
- Annotated Code of Maryland, Courts and Judicial Proceedings, Sections 13-401 through 13-403
- Maryland Rules 16-803 through 16-810
- Maryland Code of Judicial Conduct, Maryland Rule 16-813

Copies of the above laws are available on the Commission’s web site 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 judges. Subsequent constitutional amendments strengthened the Commission, clarified its powers, and added 4 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, Section 4B(a)(1)(i) & (ii) & 2, gives the Commission the following specific powers to:

- “[I]nvestigate complaints against any judges of the Court of Appeals, any intermediate courts of appeal, the circuit courts, the District Court of Maryland, or the orphans court.”

- 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.”
- “issue a reprimand.”
- “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 give the Commission the authority to dismiss complaints (with or without a warning), enter into private reprimand and deferred discipline agreements, 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.

Effective July 1, 2007, pursuant to the adoption of new Maryland Rules by the Court of Appeals, the Commission has a “two-tier” structure. Complaints against Maryland judges are investigated by the Commission’s Investigative Counsel (“Investigative Counsel”). The Commission’s Judicial Inquiry Board (“Board”) monitors and reviews the Investigative Counsel’s reports and recommendations and submits its own reports and recommendations to the Commission Members. The Commission Members accept or reject the Board’s recommendations and, in appropriate cases, hear and decide formal charges.

The Commission Members consist of eleven persons: three representing judges, one representing the appellate courts, one representing the Circuit Courts, and one representing the District Court; three lawyers with each having at least seven years experience; and five members of the public, who are not 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 reside in Maryland. Membership is limited to two, four-year terms, or, if initially appointed to fill a vacancy, for no more than ten years.

The Board consists of seven persons: two judges, two lawyers and three public Members who are not lawyers or judges. Board Members are appointed by the Commission Members, initially three Members have a term of four years and four Members have a term of two years.

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 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.

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" means:
 - "misconduct while in office, "
 - "persistent failure by a judge to perform the duties of the judge's office,"
 - "conduct prejudicial to the proper administration of justice,"
 - violation of the binding obligations of the Maryland Code of Judicial 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 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.

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 by completing a complaint form that can be downloaded from the Commission’s web site or received from the Commission’s office, or by preparing a letter with required information. (See the Commission’s web site at www.mdcourts.gov/cjd/index.html for details.)

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 open a file and make an inquiry 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 conducts an investigation and thereafter reports 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 and recommendation, the Board reviews the report and recommendation and may 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 prepares a report and recommendation to the Commission Members that includes 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, unless the Board determines there is a basis for private disposition under the standards of Rule 16-807."

The Commission Members can take action, with or without proceeding on charges, after reviewing the Board's report and recommendation and any objections filed by the judge. If the Commission Members direct their Investigative Counsel to file charges against the judge alleging that the judge committed sanctionable conduct or has a disability, the charges are served upon the judge and a public hearing is scheduled as to the charges. This is a formal hearing conducted in accordance with the rules of evidence.

If after the hearing the Commission Members find by clear and convincing evidence that the judge has committed sanctionable conduct or has a disability, they can either issue a public reprimand for such sanctionable conduct or refer the case to the Court of Appeals with a recommendation as to the sanction to be imposed. 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."

● **CONFIDENTIALITY.**

The complaint and all information and proceedings relating to the complaint, are confidential. The Investigative Counsel's work product and 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.

VI. MEMBERS AND STAFF.

COMMISSION MEMBERS

Judge Members:

Honorable Patrick L. Woodward, (Chair)
Honorable Nancy B. Shuger (Vice-Chair)
Honorable Robert A. Greenberg

Attorney Members:

Arielle Fougy Hinton, Esquire
Steven D. Silverman, Esquire
Vacant¹

Public Members:

William D. Berkshire
William D. Schmidt²
Susan J. Matlick
Patricia B. Pender
Samuel F. Saxton, Sr.

JUDICIAL INQUIRY BOARD MEMBERS:

Judge Members:

Honorable Marjorie L. Clagett, Chair
Honorable Neil E. Axel

Attorney Members:

Aileen E. Oliver, Esquire
Steven L. Tiedemann, Esquire

¹Mr. Shelton's maximum allowed ten years on the Commission ended on February 11, 2009. Julie R. Rubin, Esquire was appointed as an attorney Member by the Governor on August 17, 2009, to replace Mr. Shelton.

²Mr. Schmidt's term expired on December 31, 2008. Marcy Canavan was appointed to succeed Mr. Schmidt as a public Member by the Governor on August 17, 2009.

Public Members:

Dr. Brian H. Avin
Dr. Kevin Daniels
Doreen Rexroad

STAFF:

Investigative Counsel: Steven P. Lemmey, Esquire
Assistant Investigative Counsel: Elissa E. Goldfarb, Esquire
Executive Secretary: Gary J. Kolb, Esquire
Administrative Assistant: Lisa R. Zinkand

VII. MEETINGS.

The Commission Members held 11 regularly scheduled Meetings in FY 2009.

The Board Members held 10 regularly scheduled Meetings in FY 2009.

VIII. SUMMARY OF COMMISSION ACTIVITY IN FY 2009.

During Fiscal Year 2009, the Commission received 137 written complaints. Of the complaints, 16 lacked an affidavit, were outside of the Commission's jurisdiction, or did not otherwise meet the requirements of the Rules.

Six complaints were filed by practicing attorneys, 35 by inmates, and 5 were initiated by Investigative Counsel on his own initiative pursuant to Maryland Rule 16-805(d). The remaining 91 were filed by members of the general public.

Complaints against Circuit Court Judges totaled 84; 46 complaints were made against District Court Judges; 4 complaints were filed against Court of Special Appeals Judges; 2 complaints were filed against Court of Appeals Judges; and 1 complaint was filed against an Orphans' Court Judge.

The types of cases involved include family law matters (divorce, alimony custody, visitation, etc.) that prompted 32 complaints, criminal cases that prompted 48 complaints, and 50 complaints arose from civil cases. Seven complaints failed to fit in any of those categories.

During Fiscal Year 2009, the Commission issued six dismissals with a warning and one private reprimand that was made public with the agreement of the judge. The private reprimand made public case involved a District Court judge who entered a not guilty statement of facts which resulted in the judge being found guilty of violating Section 16-202(a) of the Environment Article, Annotated Code of Maryland

Thirty-four cases remained open at the end of Fiscal Year 2009,

The vast majority of complaints in Fiscal Year 2009 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.

IX. COMPARISON CHARTS OF COMMISSION ACTIVITY.

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

TYPE OF CASE INVOLVED

Fiscal Year	Domestic Cases	Criminal Cases	Civil Cases	Other
2000 - 2001	18	55	37	10
2001 - 2002	31	47	54	10
2002 - 2003	28	54	41	15
2003 - 2004	26	24	37	7
2004 - 2005	33	22	52	5
2005 - 2006	20	39	30	19
2006 - 2007	25	43	45	4
2007 - 2008	24	41	59	5
2008 - 2009	32	48	50	7

SOURCES OF ALL COMPLAINTS FILED WITH THE COMMISSION

Fiscal Year	Attorneys	Investigative Counsel Initiated Inquiries	Inmates	Judges	Public
2000 -2001	14	1	29	0	76
2001 -2002	4	4	26	0	1
2002 -2003	6	6	35	0	91
2003 -2004	6	1	17	0	70
2004 -2005	2	7	33	0	70
2005 -2006	12	4	30	0	62
2006 -2007	7	2	27	0	81
2007 -2008	5	4	29	0	91
2008 -2009	6	5	35	0	91

COMPLAINTS BY COURT

Fiscal Year	District Court Judges	Circuit Court Judges	Orphans' Court Judges	Court of Special Appeals Judges	Court of Appeals Judges	Others (Outside Commission's Jurisdiction)
2000 - 2001	27	86	0	6	1	0
2001 - 2002	35	94	2	11	0	0
2002 - 2003	35	87	0	6	8	2
2003 - 2004	20	72	2	0	0	0
2004 - 2005	31	72	1	7	1	0
2005 - 2006	28	72	1	0	7	0
2006 - 2007	25	87	1	2	2	0
2007 - 2008	48	78	3	0	0	0
2008 - 2009	46	84	1	4	2	0