

**THE STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT COMMITTEE**



**ANNUAL REPORT
2020**

**State of New Hampshire
Judicial Conduct Committee**

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COMMITTEE STATUS

The composition of the standing committee of the Judicial Conduct Committee changed somewhat in 2020 with Larry Gilpin being appointed in February of 2020 by the New Hampshire Supreme Court to succeed Edwin S. Underhill, III who resigned from the Committee prior to the expiration of his three-year term. The New Hampshire Supreme Court also appointed Judge Susan Carbon to succeed Judge Lucinda Sadler who had also resigned from the Committee pursuant to her retirement in December of 2020. Joelle Martin was appointed to the Committee by Speaker of the House, Stephen Shurtleff, for a three-year term succeeding Stephen L'Heureux and Thomas Eaton, Mary Collins and Ernest Goodno were each reappointed for an additional three-year term by Senate President Morse, Governor Sununu and the New Hampshire Bar Association respectively. Mary Collins continued to serve as Committee Chair and Jaye Rancourt continued to serve in her capacity as the Committee's Vice Chair.

The composition of the Alternate Panel of the Judicial Conduct Committee also changed somewhat in 2020 with Delton J. Record being appointed by the New Hampshire Supreme Court to succeed Larry Gilpin on the Alternate Panel following Mr. Gilpin's appointment to the standing committee and Judge Elizabeth Leonard's appointment by the New Hampshire Supreme Court to succeed Judge Carbon on the Alternate Panel following Judge Carbon's appointment to the standing committee.

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>
Mary E. Collins Public Member	Governor's Appointee	July 1, 2023
Attorney Jaye L. Rancourt Attorney Member	NH Bar Association Appointee	July 1, 2021
The Honorable James H. Leary Circuit Court Representative	Supreme Court Appointee	July 1, 2021
Ernest Goodno Public Member	NH Bar Association Appointee	July 1, 2023
Larry Gilpin Public Member	Supreme Court Appointee	July 1, 2022
The Honorable Susan B. Carbon Circuit Court Representative	Supreme Court Appointee	July 1, 2021

Joelle Martin Public Member	Speaker of the House Appointee	July 1, 2023
Thomas R. Eaton Public Member	Senate President Appointee	July 1, 2023
The Honorable Neals-Erik William Delker Superior Court Representative	Supreme Court Appointee	July 1, 2022
Alan K. Blake Public Member	Governor's Appointee	July 1, 2022
W. Michael Scanlon Court Clerk Representative	Supreme Court Appointee	July 1, 2022

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

Jack Crisp, Esq., Chair Attorney Member	NH Bar Association Appointee	July 1, 2021
The Honorable Elizabeth Leonard Circuit Court Representative	Supreme Court Appointee	July 1, 2021
Thomas J. Moses Public Member	Governor's Appointee	July 1, 2021
The Honorable Christina O'Neill Circuit Court Representative	Supreme Court Appointee	July 1, 2021
The Honorable James D. O'Neill, III Superior Court Representative	Supreme Court Appointee	July 1, 2021
Delton J. Record Public Member	Supreme Court Appointee	July 1, 2021
Francis J. "Chip" Moynihan Public Member	Governor's Appointee	July 1, 2021

Mary A. Barton Court Clerk Representative	Supreme Court Appointee	July 1, 2021
Thomas E. Buchanan Public Member	NH Bar Association Appointee	July 1, 2021
Andrew Lietz Public Member	Speaker of the House Appointee	July 1, 2021
Bill Belvin Public Member	Senate President Appointee	July 1, 2021

Robert T. Mittelholzer remained as Executive Secretary throughout 2020.

REPORTS OF ALLEGED JUDICIAL MISCONDUCT REVIEWED AND/OR DISPOSED OF IN 2020

There were 3 reports of alleged judicial misconduct filed in 2019 which were carried over into 2020.

There were 73 reports of alleged judicial misconduct filed in 2020 all which were docketed by the Committee for review. Of the 3 reports docketed in 2019 that were carried over to 2020, all but one of these reports were resolved in 2020.

SUPREME COURT

There were 2 reports of alleged judicial misconduct docketed in 2020 naming one or more justices of the Supreme Court.

SUPERIOR COURT

There were 15 reports of alleged judicial misconduct docketed in 2020 naming 18 judges.

CIRCUIT COURT - DISTRICT DIVISION

There were 10 reports of alleged judicial misconduct docketed in 2020 naming 11 judges.

CIRCUIT COURT - FAMILY DIVISION

There were 45 reports of alleged judicial misconduct docketed in 2020 naming 52 judges; 5 marital masters and 3 judicial referees within the various family divisions.

CIRCUIT COURT - PROBATE DIVISION

There was one report of alleged judicial misconduct docketed in 2020 naming one judge.

MISCELLANEOUS

There were 9 reports of alleged judicial misconduct docketed naming 12 clerks of court or deputy clerks and no reports docketed involving commissioners or other “judges” as this term is defined under New Hampshire Supreme Court Rule 40 (2).

NOTE: The total number of “judges” (as this term is defined by New Hampshire 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:

Of the 76 matters reviewed by the Committee in 2020, (73 docketed new reports and the 3 matters held over from 2019), 4 reports were elevated by the Committee to the level of a “complaint” and were re-docketed as such requiring a response by the judicial officer complained against.

Of these complaints, 2 such complaints were resolved in 2020 and 2 such complaints remain open as of the date of this submission. Those complaints resolved in 2020 are summarized below as follows:

Complaint I

The first of these complaints originated with a report filed and docketed in July of 2020, arose in the context of a family law matter and concerned a marital master.

In essence, the reporter alleged both an institutional and personal bias against him and discrimination (on the part of the master and others) based upon the reporter's ethnicity and country of origin which were directed against the reporter and his interests in the underlying family law matter.

The reporter alleged that at the initial hearing conducted before the marital master, allegations were made against the reporter by the reporter's ex-wife and opposing counsel such that the reporter posed a risk of fleeing the country with the parties' minor child and returning to his country of origin in Africa which lacked an extradition treaty with the United States. The reporter alleged that his spouse and opposing counsel advanced this and related allegedly xenophobic arguments in the hope that these arguments might be well-received by the Court and that the marital master, in entertaining such concerns, participated in a pattern of systemic bias and discrimination against the reporter. The reporter alleged that by so doing, the master had taken it upon himself to target the reporter and unfairly discriminate against him contrary to the Code of Judicial Conduct.

The reporter additionally alleged that he had been informed by the Clerk's office that the marital master had recused himself from the underlying action; that the reporter's case had been reassigned to another judge; and, that the reporter had received a copy of a scheduling order providing that a hearing had been rescheduled due to the recusal of the master. The reporter further alleged that he later received an Order signed by the master indicating that the master had indeed recused himself from the underlying case only to have the master re-appear in the case months later entering additional orders.

This report was elevated to the level of a complaint in September of 2020 by the Judicial Conduct Committee requiring the master to respond to each of the allegations raised therein.

The master responded to the allegations of this complaint in October of 2020 such that the master had disregarded the law; discriminated against the reporter based on national origin and potentially race; denied the reporter a hearing; and, participated in a "xenophobic report".

The master explained by way of this answer that the reporter had appealed a number of orders issued in the underlying action and that the New Hampshire Supreme Court had subsequently affirmed the master's order confirming that the master did not disregard any provision of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

The master further explained that at a temporary hearing over which he presided, counsel for the reporter's ex-spouse had raised a spurious issue with respect to the reporter's citizenship. The master indicated that the reporter's attorney informed the master that the reporter had

brought his passport to Court and that the reporter's attorney offered the document as evidence to refute the reporter's wife's allegation. The master confirmed that this document was provided to the master by the reporter's own attorney. The master indicated that the document was reviewed and returned and that at no time did the master enthusiastically or otherwise initiate a review of the reporter's passport.

The master also refuted the reporter's allegation that the master had denied the reporter a hearing pointing out that this allegation was not substantively addressed in the body of the complaint except by way of conclusory allegation.

Responding to the allegation that the master had participated in a "xenophobic report", the master explained that to the extent that the reporter was referring to the report of the Guardian ad Litem, it had always been the practice of the master not to interfere in any examination of a witness except where the examination tended towards the repetitive or irrelevant.

With respect to the recusal issue raised by the reporter, the master explained by way of his answer that in or about October of 2017 the reporter filed a pleading seeking to have the underlying case reassigned to another judicial officer. The master explained that he denied this motion rejecting the reporter's allegation that the master could not conduct a full and fair hearing. The master further explained, however, that upon his in own initiative he referred the matter to an administrative judge for reassignment. Thereafter a final order in this matter was appealed and remanded to the circuit court for further review. At the time of the remand the judicial officer to whom this case had been reassigned remained unavailable for judicial duty. The master explained that this judge's unavailability had adversely affected scheduling, writing orders and other judicial duties. As a new judge had not yet been assigned, the master explained that he remained the only judicial officer available to preside over the underlying matter. The master explained that the presiding judge of the circuit court had thereafter assigned the reporter's case back to the master.

The Judicial Conduct Committee opened a preliminary investigation of this complaint in November of 2020 and, following its preliminary investigation of this complaint, the Committee dismissed this complaint pursuant to New Hampshire Supreme Court Rule 40 (8) (f) (1) which provides in relevant part that, if upon conclusion of a preliminary investigation, the Committee determined that the alleged conduct does not constitute a violation of the Code of Judicial Conduct, the complaint shall be dismissed. The Committee further determined that there was no reasonable likelihood of a finding of judicial misconduct under the facts and circumstances of this matter.

Complaint II

The second of these complaints was filed and docketed in September of 2020.

Here the reporter alleged retaliation by the judge against the reporter for referring the reporter's former spouse to NH DCYF alleging neglect of the parties' child. The reporter further alleged that the judge erroneously ordered the reporter's incarceration for failure to comply with an order directing the payment of attorney's fees and, on another occasion, ordered the reporter's arrest without first providing the reporter with an opportunity to be heard.

This report was elevated to the level of a complaint pursuant to New Hampshire Supreme Court Rule 40 (7) (a) in November of 2020 so as to obtain an answer from the judge as to these allegations.

The judge responded to these allegations in November of 2020 indicating that the reporter was neither arrested nor incarcerated in May of 2019 pointing out that the Claremont Police Department had no record of an arrest of the reporter in 2019 but for an arrest on or about February 15, 2019. The judge additionally pointed out that the Sullivan County House of Correction also had no record of the reporter ever being incarcerated at that facility.

The judge indicated that he had issued final orders in the reporter's divorce and parenting matter further explaining that these orders were issued after a full and fair hearing where the reporter was represented by counsel and had an opportunity to present his case. The child support order was adopted and the reporter was ordered to pay attorney's fees based on a finding of contempt. Despite the court's orders, the reporter did not pay the fees and the reporter's ex-spouse was forced to file a motion to compel. The reporter did not comply and the reporter's ex-spouse was forced to file a contempt petition on or about January 30, 2019. An arrest warrant and \$300 cash bail issued on February 4, 2019 after the reporter was given five months to comply with the original order and after a fully litigated divorce hearing.

The judge further explained that the reporter was in fact arrested by the Claremont Police on or about February 15, 2019 on that arrest warrant but that the reporter was immediately bailed and released and was never sent to jail. The judge explained that the warrant was vacated as soon as bail was posted in the normal course. A hearing had been scheduled on the bail issue but was canceled after the reporter reached an agreement through counsel to pay the past due attorney's fees. The \$300 cash bail was ordered to be refunded to the reporter and was refunded on or about July 12, 2019.

As to the reporter's allegation that he received an order made without hearing threatening jail time, the judge explained that the reporter was referring to an order which issued after the reporter's ex-spouse was once again forced to file a motion for contempt on or about March 11, 2020 for the reporter's failure to pay child support. The judge explained that although the reporter claimed that he was not provided an opportunity to be heard, the reporter in fact had a full contested hearing which included child support as an issue. The child support order issued and was in effect when the judge issued the order on or about March 17, 2020.

The judge explained that the order which issued on March 17, 2020 gave the reporter 30 days to comply. No warrant ever issued as the reporter's counsel filed an appropriate motion and response. In any event, the judge explained that before a warrant would have issued, the

reporter's ex-spouse would have had to file another pleading indicating that the reporter had not complied and a hearing would have been scheduled.

The judge explained that the reporter had indeed been given a full and fair opportunity to be heard throughout the underlying matter as provided by the rules of procedure and consistent with the facts, the law and the judge's obligations under the Code of Judicial Conduct.

The Judicial Conduct Committee dismissed this complaint in January of 2021 on the bases that where alleged, the reporter's challenges to the Court's findings, rulings or decisions fell outside of the Committee's jurisdiction and, otherwise, for the lack of any showing of judicial misconduct with no reasonable likelihood of a finding of judicial misconduct.

Complaint III:

The third of these complaints remains pending as of the date of this submission.

Complaint IV:

The fourth of these complaints remains pending as of the date of this submission.

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

Reports:

Of the two the reports carried over from 2019 which were not elevated to the level of a complaint, each report was dismissed in 2020 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) and for the lack of any showing of judicial misconduct.

The ultimate dispositions of those reports filed in 2020 which were resolved before February of 2021 were as follows:

56 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.

44 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).

17 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).

6 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).

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

17 reports were dismissed in whole or in part on the grounds that these reports concerned the conduct of non-judicial officers falling outside the definition of "judge" as this term is presently defined under New Hampshire Supreme Court Rule 40 (2) (*a full-time or part-time judge of any court or division of the State of New Hampshire Judicial Branch; a full-time or part-time marital master; a referee or other master; and, when performing an adjudicatory function, a clerk of court or deputy clerk, including a register of probate or deputy register and anyone performing the duties of a clerk or register on an interim basis*).

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,

Robert T. Mittelholzer

February 12, 2020

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