

**STATE OF MARYLAND**  
**COMMISSION ON JUDICIAL DISABILITIES**

**ANNUAL REPORT**  
**FOR**  
**FISCAL YEAR 2017**  
**(July 1, 2016 – June 30, 2017)**

**Submitted by:**

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**[www.mdcourts.gov/cjd/index.html](http://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 18-402(g).

The Commission is the primary disciplinary body to investigate 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, Sections 4A and 4B;
- Annotated Code of Maryland, Courts and Judicial Proceedings, Sections 13-401 through 13-403;
- Maryland Rules 18-401 through 18-409; and
- Maryland Code of Judicial Conduct, Maryland Rules, Title 18, Chapter 100.

Copies of the above Maryland Constitution and Rules provisions are available on the Commission’s website at [www.mdcourts.gov/cjd/index.html](http://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 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, Section 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
- (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 give 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 a warning, private reprimands and deferred discipline agreements require the consent of the respondent judge.

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 Courts; three 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 are appointed by the Commission members for a term of four (4) years.

Complaints against Maryland judges are investigated by the Commission’s Investigative Counsel (“Investigative Counsel”). The Commission’s Judicial Inquiry Board (“Board”) receives and reviews the Investigative Counsel’s investigations, 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 take 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 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.**

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](http://www.mdcourts.gov/cjd/complaint.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 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 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, including 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, including 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.

The Commission Members can take action, with or without proceeding on charges, after reviewing the Board's report, including 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 hearing is scheduled as to the charges. This is a formal hearing conducted in accord with the Maryland 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 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. The 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:**

Vacant- Appellate Judge position (Judge Alexander Wright resigned in March 2017)

Honorable Susan H. Hazlett, Acting Chair

Honorable Robert B. Kershaw

#### **Attorney Members:**

Arielle F. Hinton, Esquire

Richard M. Karceski, Esquire  
Marisa A. Trasatti, Esquire

**Public Members:**

Virginia L. Fogle  
Vernon Hawkins, Jr.  
Susan R. Hoffmann (Term expired 12/31/16 but serving pending reappointment or successor)  
Susan J. Matlick  
Sally McLane Young Ridgely

**JUDICIAL INQUIRY BOARD MEMBERS:**

**Judge Members:**

Honorable Robert A. Greenberg, Chair  
Honorable Neil E. Axel

**Attorney Members:**

Kay N. Harding, Esquire (Appointed on 9/26/16 to complete a term ending on 6/30/19)  
Joseph A. Stevens, Esquire

**Public Members:**

The Honorable William J. Boarman  
Dr. Kenneth W. Eckmann  
Janet R. Scott, LCSW-C

**STAFF:**

Director/Investigative Counsel: Carol A. Crawford, Esquire  
Deputy Assistant Investigative Counsel: Tanya C. Bernstein, Esquire  
Assistant Investigative Counsel: Derek A. Bayne, Esquire  
Administrative Assistant: Lisa R. Zinkand  
Legal Assistant: Sarah P. Merillat

Executive Secretary: Kendra Randall Jolivet, Esquire (since May 2017)

**VII. MEETINGS.**

The Commission Members held eleven regularly scheduled Meetings in FY 2017.

The Board Members held twelve regularly scheduled Meetings in FY 2017.

**VIII. SUMMARY OF COMMISSION ACTIVITY IN FY 2017.**

During Fiscal Year 2017 (July 1, 2016 through June 30, 2017), the Commission opened files for 234 verified complaints.

Eleven (11) complaints were filed by attorneys, thirty-two (32) by inmates, thirteen (13) by Investigative Counsel, ten (10) by judges, and one hundred sixty-eight (168) were filed by members of the general public.



Complaints against Circuit Court Judges totaled one hundred fifty-two (152); sixty-eight (68) complaints were filed against District Court Judges; one (1) complaint was filed against a Court of Appeals Judge; two (2) complaints were filed against Court of Special Appeals Judges; and eleven (11) complaints were filed against Orphans' Court Judges.

The types of cases involved include: Family law matters (divorce, alimony custody, visitation, etc.) prompted twenty-eight (28) complaints; criminal cases prompted sixty-three (63) complaints; and one-hundred six (106) complaints arose from other civil cases. Thirty-seven (37) complaints did not fit in any case types. They can include matters that are non-courtroom related or miscellaneous proceedings.

Charges were filed in three (3) cases.

The Commission issued one (1) Public Reprimand involving the following:

- 1) A Circuit Court Judge used foul language and engaged in undignified, discourteous, and unprofessional conduct to an attorney appearing before the judge in a civil motions hearing. The judge failed to recuse herself in a subsequent Show Cause hearing in the same matter after admitting previously she was biased against the attorney. The Judge committed sanctionable conduct, as defined by Md. Rule 16-803(j)(1), by violating the Maryland Code of Judicial Conduct Rules 1.2, 2.2, 2.3, and 2.11. The Commission issued a Public Reprimand after conducting a hearing. This matter is currently being reviewed by the Court of Appeals.

The Commission entered into one (1) Public Consent Order, Agreement For Extension and Modification of Probation involving the following:

- 1) A Circuit Court Judge's demeanor was unprofessional and condescending and threatening to individuals appearing before her in criminal matters. The aforementioned incidents occurred while the judge was under a Consent Order issued by the Court of Appeals of Maryland, an Agreement for Discipline by Consent. The probation and monitoring of the judge were extended.

The Commission entered into one (1) Deferred Discipline Agreement involving the following:

- 1) A Circuit Court Judge's use of alcohol impaired carrying out his judicial responsibilities; there was sufficient evidence for the Commission to conclude the judge violated several Rules of the Maryland Code of Judicial Conduct. The judge and Commission entered into a Deferred Discipline Agreement to include the judge's required participation in treatment and an alcohol monitoring program.

Further, the Commission issued three (3) dismissals with a warning involving the following:

- 1) A Circuit Court Judge's demeanor was unprofessional and condescending to a party as well as the judge's refusal to permit the assistance of Mandarin Chinese interpreters as requested by the parties caused the Commission to determine that sanctionable conduct may have been committed; the conduct was sufficiently addressed by a warning.
- 2) A District Court Judge, presently retired and designated to sit statewide, was alleged to have engaged in sanctionable conduct with regard to advising a defendant that he would forfeit his right to request a "Probation Before Judgment" disposition if he did not enter a guilty plea.
- 3) A Circuit Court Judge signed an order for a District Court Emergency Evaluation Petition evaluation; the judge intervened at the request of and in an effort to assist his neighbor.

The vast majority of complaints in Fiscal Year 2016, 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. One (1) matter was dismissed by the Commission after the filing of Charges.

**IX. COMPARISON CHARTS OF COMMISSION ACTIVITY.**

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

**SOURCES OF ALL COMPLAINTS FILED WITH THE COMMISSION**

<b>Fiscal Year</b>	<b>Attorneys</b>	<b>Investigative Counsel Initiated Inquiries</b>	<b>Inmates</b>	<b>Judges</b>	<b>Public</b>	<b>Total</b>
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

## COMPLAINTS BY COURT

<b>Fiscal Year</b>	<b>District Court Judges</b>	<b>Circuit Court Judges</b>	<b>Orphans' Court Judges</b>	<b>Court of Special Appeals Judges</b>	<b>Court of Appeals Judges</b>	<b>Other</b>	<b>Total</b>
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(65%)	11	2	1	0	234

### 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

## COMPLAINTS BY COUNTY

<b>County</b>	<b>Fiscal Year 2017</b>
Allegany	1
Anne Arundel	33
Baltimore City	58
Baltimore County	17
Calvert	3
Carroll	0
Cecil	3
Charles	3
Dorchester	2
Frederick	11
Garrett	0
Harford	11
Howard	12
Kent	2
Montgomery	15
Prince George's	41
Queen Anne's	1
Somerset	2
St. Mary's	9
Talbot	1
Washington	5
Wicomico	1
Worcester	1
Appellate	2
<b>Total</b>	<b>234</b>