



May 16, 2025

Sen. Anne Carney, Chair
Rep. Amy Kuhn, Chair
Joint Standing Committee on Judiciary
Maine State Legislature
100 State House Station
Augusta, ME 04333

Re: *LD 1810, An Act to Formalize a Process for Reviewing the Conduct of Judges and Justices*

Dear Sen. Carney, Rep. Kuhn, and Members of the Judiciary Committee:

On behalf of the Board of Governors of the Maine State Bar Association, we write to provide comments *neither for nor against* LD 1810. While our Association does not take a formal position with regard to LD 1810, we believe the issue of reviewing, investigating, and resolving allegations of judicial misconduct are important and deserve more attention. Looking ahead, it may be appropriate for key stakeholders to meet and discuss ways to improve judicial oversight, and the Maine State Bar Association would welcome the opportunity to participate in such discussions.

About MSBA. The Maine State Bar Association is a statewide trade association chartered in 1891 by the Maine Legislature. The Association currently represents approximately 2,500 attorneys in the State in both public service and private practice. The Association maintains 28 separate sections covering nearly every field of law practiced in Maine, from Administrative Law to Workers' Compensation Law.

What does LD 1810 do? LD 1810 would create a new Commission on Judicial Conduct tasked with investigating complaints against judges and justices of the District, Superior, Probate, and Supreme Judicial Courts. The Commission would be comprised of nine members, six appointed by the Chief Justice of the Supreme Judicial Court – one Superior Court Justice, one District Court Judge, one Probate Court Judge, and three attorneys – and three individuals appointed by the Governor who are not members of the Maine Bar. The bill creates a formal procedure for the Commission to receive and investigate complaints of judicial misconduct, which includes a public hearing where the complainant and judge or justice are given the opportunity to be heard.

When the investigation and hearing process leads the Commission to conclude grounds for discipline exist, the Commission will refer the matter to the Supreme Judicial Court along with a recommended sanction and written decision supporting the conclusion. LD 1810 also contains the requirement that if the matter involves the conduct of an Associate Justice of the Supreme Judicial Court, the final resolution of the proceeding will be determined by the Chief Justice and a panel of District and Superior Court judges and justices, as opposed to the other members of the Supreme Judicial Court.

Discussion. In the context of nationwide threats to the rule of law and the Judiciary, LD 1810 addresses two issues that are critical to a functioning judicial system and ultimately a healthy democracy: (1) the need for an independent judiciary, free from improper influence of the Executive Branch, Legislative Branch, or other external actors; and (2) the need for an impartial judiciary that maintains the public trust. With this in mind, our Association observes that Maine's current system for reviewing allegations of judicial misconduct has opportunities to improve transparency and oversight of judicial conduct. LD 1810 attempts to address this perceived deficiency by establishing a regimented process for investigating a

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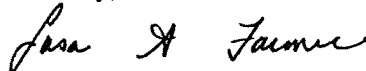
judge or justice accused of misconduct. Whether its particular process is the best process requires more thought and attention; however, the fact that LD 1810 needs more attention does not mean the conversation should end. To the contrary, we view this as the beginning of an important conversation.

To the extent LD 1810 constitutes an action by the Legislative Branch to direct the manner in which the Judicial Branch oversees the conduct of judges, LD 1810 raises important separation of powers issues -- including whether the legislatively created Commission contemplated by the bill would interfere with the independence of the Judiciary. However, the Legislature is not wholly devoid of having a role with regard to the Judicial Branch. For example, the Maine Senate is tasked with confirming the Governor's judicial appointees; the House of Representatives has the right to impeach a judge; and the Maine Senate has authority to convict and remove judges from the bench following an impeachment. However, LD 1810 raises questions short of impeachment and removal, including sanctioning of judges with regard to their conduct. It is this process, within the jurisdiction of the Maine Supreme Judicial Court, that requires more attention and transparency.

Although our Association generally supports the spirit behind LD 1810, namely bringing more transparency and clarity to the process of overseeing judicial conduct, we are not convinced that LD 1810 as drafted represents the right solution. For this reason, we would support the establishment of a working group of key stakeholders to review the issue, and the Maine State Bar Association would welcome the opportunity to participate in such a group.

Conclusion. We appreciate the opportunity to provide these comments regarding LD 1810 and urge the Committee to carefully consider strategies for ensuring the transparency and effectiveness of procedures for overseeing the conduct of Maine's judges. If you have additional questions or need any additional information, please do not hesitate to let us know.

Sincerely,



Susan Faunce

President, Board of Governors

cc: Angela Armstrong, Executive Director
Rachel Okun, Chair, MSBA Legislative Committee
James I. Cohen, Verrill Dana, LLP, Legislative counsel for MSBA