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Testimony of Rep. Adam Lee presenting

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

Before the Joint Standing Committee on Judiciary

Good morning, Senator Carney, Representative Kuhn and colleagues on the Judiciary Committee. As you know I'm Adam Lee and I represent House District 89, the hard-working people of downtown and New Auburn. I'm here today to introduce **LD 1810, An Act to Formalize a Process for Reviewing the Conduct of Judges and Justices**.

Maine's current Commission on Judicial Conduct is the product of a 1978 Order by the Maine Supreme Judicial Court. There is no statutory provision for its existence, nor legislative guidance as to its process, or the appointment of members. That makes Maine an outlier. Sometimes we're an outlier in a good way. This, from my perspective, is not one of those times. In proposing this bill, I don't mean to insinuate that the individuals who are on the present commission are not doing good and valuable work. However, as presently comprised, the Commission leaves wide-open questions of what to do with some ethics complaints.

Until recently, this had not been an issue. In fact, since the committee was formed in 1978, it has only made 17 disciplinary recommendations to the Supreme Court, despite receiving dozens of complaints a year. (The high court rendered discipline in 15 of those cases.) Since 1995, it has only recommended discipline for probate judges, who, unlike the rest of Maine's Judiciary, are part-time and elected by voters, not appointed by the governor.¹

But recently, an ethics complaint against one of our Law Court Justices has isolated some issues with our process. This was the first time a complaint to the Commission on Judicial Ethics resulted in the recommendation for discipline of a Law Court Justice to the Law Court. It's a unique situation, but one that should be predictable. However, as the Clerk for the Law Court noted, it was unfortunately a situation for which there are "no set rules."² I don't find that acceptable. This bill mirrors the process Massachusetts has had in place since 1978. Why did I choose Massachusetts? Historically, because we were once part of Massachusetts, our Judicial

¹ <https://themainemonitor.org/uncharted-recusal-territory/>

² *Id.*

Branch most resembles Massachusetts' up to and including naming its high court the Supreme Judicial Court.

I think this level of formalization and process will help us next time there's an issue and will ensure that we don't get caught flat-footed again. As to the present situation, if this statute were in place, and discipline of a Maine Supreme Court Justice were recommended by a majority of the Commission, Section 78 would be triggered. It provides that:

Associate Justices of the Supreme Judicial Court may not participate in the resolution of the proceeding. The Chief Justice of the Supreme Judicial Court shall identify, from among all Justices of the Superior Court and all Judges of the District Court, the six judges or justices with the most judicial experience and shall appoint those six judges or justices to serve in place of the associate justices.

I'm quite amenable to changes to the bill as drafted. Some components of it do not necessarily fit Maine. For instance, I don't believe that it makes sense to establish an Executive Director position to convene the Commission, given the much smaller volume of complaints received in Maine as compared to Massachusetts. To my knowledge, the present Commission operates with the support of the present Judicial Branch staff. I don't believe that it would need to change with the enactment of this legislation. I'm open to a host of other changes to the number of members, types of members, and many other aspects of the composition and scope of the commission. This bill is intended as a starting point for that discussion. Unsurprisingly, Massachusetts did not get it 100% correct, and I think, as usual, we in Maine can improve on their work product. But I wholeheartedly believe, and the recent conundrum proves that we need to formalize our process.

Thank you, I'm happy to answer any questions and I will be here for the work session and look forward to working with the Judicial Branch and any other interested parties to create a formalized process that we can all live with. I'll also note that I wouldn't hate it if we were to give this bill time for some work in the off session. It will establish an important process, and I want to make sure we get it right.

Resolve, Establishing the Commission to Study the Maine Judicial Discipline Process

Sec. 1. Commission established. Resolved: That the Commission to Study the Maine Judicial Discipline Process, referred to in this resolve as "the commission," is established.

Sec. 2. Commission membership. Resolved: That the commission consists of 11 members appointed as follows:

1. Four judges or justices of the Judicial Branch appointed by the Chief Justice, one from each of the Probate Court, District Court, Superior Court and Supreme Judicial Court;
2. Two members of the Maine Legislature who are the co-chairs of the Joint Committee on the Judiciary;
3. One member appointed by the Maine Bar Association;
4. One member appointed by the Maine Trial Lawyers Association;
5. One member appointed by the Governor as the representative of the Governor; and
5. Two members of the Public appointed by the Governor.

Sec. 3. Chairs. Resolved:

That the co-chairs of the commission shall be one of the appointed judges or justices chosen by the Chief Justice and the Senate co-chair of the Committee on the Judiciary

Sec. 4. Appointments; convening of commission. Resolved: That all appointments must be made no later than 30 days following the effective date of this resolve. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been completed. After appointment of all members, the co-chairs shall call and convene the first meeting of the commission. If 30 days or more after the effective date of this resolve a majority of but not all appointments have been made, the chairs may request authority, and the Legislative Council may grant authority for the commission to meet and conduct its business.

Sec. 5. Duties. Resolved: That, in conducting the study, the commission shall consider:

1. The existing rules of the Judicial Branch regarding Judicial Discipline for Maine judges and justices and whether they are adequate for the handling of Maine judicial discipline matters;
2. The American Bar Association's Model Rules of Judicial Discipline;
3. The rules of judicial discipline in other states with populations similar in size to that of Maine;
4. The need for rules for judicial discipline involving complaints against justices of the Maine Supreme Judicial Court
5. The need for rules of judicial discipline which will enhance public trust and respect for the Maine judicial system, including provisions for expedited treatment and conclusions of matters of judicial discipline.
6. Whether new rules for judicial discipline in Maine should be enacted by legislation or by order of the Maine Supreme Judicial Court.

Sec. 6. Staff assistance. Resolved: That the Judicial Branch shall provide necessary staffing services to the commission.

Sec. 7. Report. Resolved: That, no later than December 3, 2025, the commission shall submit a report that includes its findings and recommendations, including suggested legislation if any, for presentation to the Joint Standing Committee on the Judiciary. The Joint Standing Committee on the Judiciary is authorized to submit legislation related to the report to the Second Regular Session of the 132nd Legislature.