

STATE OF MARYLAND
COMMISSION ON JUDICIAL DISABILITIES

ANNUAL REPORT
FOR
FISCAL YEAR 2020
(July 1, 2019 – June 30, 2020)

Submitted by:

Maryland Commission on Judicial Disabilities
P. O. Box 340
Linthicum Heights, MD 21090-0340
(410) 694-9380
www.mdcourts.gov/cjd/index.html

TABLE OF CONTENTS

	Pages
I. INTRODUCTION	1
II. HISTORY AND STRUCTURE OF THE COMMISSION.....	1 - 3
III. THE COMMISSION’S JURISDICTION - WHAT THE COMMISSION CAN AND CANNOT DO	3 - 4
IV. THE COMPLAINT PROCESS	4 - 5
V. CONFIDENTIALITY	5 - 6
VI. MEMBERS AND STAFF	6
VII. MEETINGS	7
VIII. SUMMARY OF COMMISSION ACTIVITY IN FY 2020	7 - 8
IX. COMPARISON CHARTS OF COMMISSION ACTIVITY	9 - 12
1. CHART – SOURCES OF ALL COMPLAINTS FILED WITH THE COMMISSION	9
2. CHART – COMPLAINTS BY COURT	10
3. CHART – TYPES OF CASES INVOLVED.....	11
4. CHART- COMPLAINTS BY COUNTY.....	12

I. INTRODUCTION.

Pursuant to Maryland Rule 18-411(i), an Annual Report is prepared by the Maryland Commission on Judicial Disabilities (“Commission”) for submission to the Court of Appeals regarding the Commission’s operations, including statistical data with respect to complaints received and processed, subject to materials declared confidential under Maryland Rule 18-407. This report is publicly available in accord with Maryland Rule 18-407(c).

The Commission is the primary disciplinary body charged with investigating complaints that allege judicial misconduct, or disability/impairment (mental and/or physical) of Maryland’s 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 of proper judicial conduct.

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

- Maryland Constitution, Art. IV, §§4A and 4B;
- Annotated Code of Maryland, Courts and Judicial Proceedings, §§13-401 through 13-403;
- Maryland Rules 18-401 through 18-442¹; and
- Maryland Code of Judicial Conduct, Maryland Rules, Title 18, Chapter 100.

Copies of the laws governing the Commission are available through the Commission’s website 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’s 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.

¹ The Court of Appeals issued an Order on May 15, 2019 adopting new Maryland Rules 18-401 to 18-442, the rules governing the Commission on Judicial Disabilities which became effective on July 1, 2019. After the implementation of the Rules, the Commission found the need to submit proposed changes to Maryland Rules 18-404, 18-425, 18-427 and 18-437 to the Attorneys and Judges Subcommittee of the Maryland Rules Committee.

The Maryland Constitution, Art. IV, §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 letter of cautionary advice), issue reprimands, enter into conditional diversion agreements with judges, and if the Commission finds by clear and convincing evidence that the judge has a disability or impairment, or has committed sanctionable conduct, it shall refer the matter to the Court of Appeals. If the Commission finds the judge has committed sanctionable conduct and that dismissal, with or without a letter of cautionary advice, or a conditional diversion agreement is not appropriate but does not find that the judge has a disability or impairment, it shall either issue a reprimand to the judge, if the proceeding was conducted pursuant to Rule 18-427(b)(2)(A) or (B), or refer the matter to the Court of Appeals.

The Commission Members consist of eleven (11) persons: three (3) judges, one (1) from the appellate courts, one (1) from the Circuit Courts, and one (1) from the District Courts; three (3) 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 Court of Appeals for terms of up to four (4) years. Prior to July 1, 2019, Board members were appointed by the Commission and were 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.

Complaints against Maryland judges are investigated by the Commission’s Investigative Counsel (“Investigative Counsel”). The Board monitors the investigations

conducted by Investigative Counsel. The Board reviews investigative materials, reports and Investigative Counsel's recommendations before submitting its own reports and recommendations to the Commission Members in all matters except recommendations for dismissals without a letter of cautionary advice (which go directly to the Commission). The Commission Members accept or reject the Board's recommendations and act consistent with the powers and authority granted to the Commission. The Commission directly reviews and makes determinations regarding cases recommended for dismissal without a letter of cautionary advice in addition to matters previously reviewed by the Board.

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 18-402, the only types of complaints that can be investigated by the Commission are those involving a judge's alleged sanctionable conduct, disability or impairment. They are defined as follows:

1. **Sanctionable conduct** means 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. 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 mental or physical disability that seriously interferes with the performance of a judge's duties and is, or is likely to become, permanent.
 3. **Impairment or impaired** means a mental or physical condition, including an addiction, that has seriously interfered with the performance of a judge's duties but may be remediable and, if remedied, is not likely to become permanent.

IV. THE COMPLAINT PROCESS.

The complaint is a written communication under oath or supported by an affidavit alleging that a judge has a disability or impairment or has committed sanctionable conduct. 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, 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 providing a written communication with the required information.

Allegations may be dismissed, prior to investigation, if they do not allege facts which, if true, would constitute a disability, impairment, or sanctionable conduct, and therefore do not constitute a complaint. Investigative Counsel will open a file for each properly filed complaint, send a letter to Complainant acknowledging receipt of the complaint and explain 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 or impairment.

If the allegations are not dismissed, or an inquiry is completed without a dismissal, Investigative Counsel conducts an investigation and thereafter reports to the Board or Commission the results of the investigation, including one of the following recommendations:

- dismiss the complaint and terminate the investigation, with or without a letter of cautionary advice;
- reprimand;
- conditional diversion agreement;
- the filing of charges; or
- retirement of the judge based upon a finding of disability.

If the matter proceeds to the Board, upon receiving the Investigative Counsel's report,

including recommendation, the Board reviews the report and recommendation and could authorize a further investigation, or meet informally with the judge, including convening a peer review to confer regarding the complaint and options for the judge to consider. Upon completion of the foregoing, the Board prepares a report to the Commission, including its recommendation, with any of the following recommendations:

- dismiss the complaint and terminate the investigation, with or without a letter of cautionary advice;
- a conditional diversion agreement;
- a reprimand;
- retirement; or
- upon a determination of probable cause that the judge has a disability or impairment or has committed sanctionable conduct, the filing of charges.

The Commission Members review all matters coming from Investigative Counsel and the Board, and can take action, with or without proceeding on charges, after reviewing the reports, including recommendations, and any response filed by the judge. If the Commission Members direct Investigative Counsel to file charges against the judge alleging that the judge committed sanctionable conduct or has a disability or impairment, the charges are served upon the judge and a hearing scheduled as to the charges. Formal hearings are 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 committed sanctionable conduct or has a disability or impairment, the Commission will issue its findings and, if necessary, refer the case to the Court of Appeals with 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.

Except to the extent admitted into evidence before the Commission, the following matters are confidential: (A) Investigative Counsel's work product and, subject to Rules 18-422(b)(3)(A), 18-424(d)(3) and 18-433(c), reports prepared by Investigative Counsel not submitted to the Commission; (B) proceedings before the Board, including any peer review proceeding; (C) any materials reviewed by the Board during its proceedings that were not submitted to the Commission; (D) deliberations of the Board and Commission; and (E) records of the Board's and Commission's deliberations.

Charges alleging sanctionable conduct and all subsequent proceedings before the Commission on those charges are open to the public upon the first to occur of (A) the resignation or voluntary retirement of the judge, (B) the filing of a response by the judge to the charges, or (C) expiration of the time for filing a response. Charges alleging disability or

impairment and all proceedings before the Commission on them are confidential. Charges alleging only that a judge has a disability or impairment, and all proceedings before the Commission on such charges, are confidential.

VI. MEMBERS AND STAFF.

COMMISSION MEMBERS

Judge Members:

Honorable Michael W. Reed, Chair- Appellate Judge
Honorable Susan H. Hazlett, Vice-Chair- District Court
Honorable Robert B. Kershaw- Circuit Court

Attorney Members:

Richard M. Karceski, Esquire
David J. McManus, Jr., Esquire (replaced Arielle F. Hinton, Esquire in December 2019)
Marisa A. Trasatti, Esquire

Public Members:

Virginia L. Fogle
Vernon Hawkins, Jr.
Kimberly A. Howell
Andrea M. Fulton Rhodes
Sally McLane Young Ridgely

JUDICIAL INQUIRY BOARD MEMBERS:

Judge Members:

Honorable Robert A. Greenberg, Chair
Honorable Brian Green, Vice-Chair

Attorney Members:

Kay N. Harding, Esquire
Kimberly Jones, Esquire

Public Members:

The Honorable William J. Boarman
Dr. Kenneth W. Eckmann
The Honorable Susan R. Hoffmann

STAFF:

Director/Investigative Counsel: Tanya C. Bernstein, Esquire
Assistant Investigative Counsel: Derek A. Bayne, Esquire
Assistant Investigative Counsel: Tamara S. Dowd, Esquire
Administrative Assistant: Lisa R. Zinkand
Legal Assistant: Sarah P. Nicholson
Executive Secretary: Kendra Randall Jolivet, Esquire

VII. MEETINGS.

The Commission Members held twelve (12) regularly scheduled meetings in FY 2020.

The Board Members held eleven (11) regularly scheduled meetings in FY 2020.

VIII. SUMMARY OF COMMISSION ACTIVITY IN FY 2020.

During Fiscal Year 2020 (July 1, 2019 through June 30, 2020), the Commission opened files for One Hundred Ninety-Six (196) verified complaints.

Four (4) complaints were filed by attorneys, thirty-two (32) by inmates, eleven (11) by Investigative Counsel, and one hundred forty-nine (149) were filed by members of the general public.

Complaints against Circuit Court Judges totaled one hundred twenty-four (124); fifty (50) complaints were filed against District Court Judges; eight (8) complaints were filed against Court of Special Appeals Judges; two (2) complaints were filed against Court of Appeals judges; and twelve (12) complaints were filed against Orphans' Court Judges. There were twenty-eight (28) complaints against Senior Judges sitting in various jurisdictions and courts.

The types of cases involved include:

- Family law matters (divorce, custody, visitation, protective orders, etc.)- forty-three (43) complaints;
- Criminal cases- fifty-two (52) complaints;
- Other Civil cases- ninety-four (94) complaints;
- Sexual Harassment- one (1) complaint; and
- Miscellaneous or Non-Courtroom related proceedings- six (6) complaints.

Charges were filed in one (1) case in FY20 prior to the judge's voluntary retirement.

One public hearing was cancelled by the Commission due to an agreement for corrective or remedial action being reached.

A public hearing was completed in FY20 with the Commission recommending an additional three (3) month suspension of a judge previously serving a suspension of at least six (6) months with conditions imposed by the Court of Appeals.

A Private Reprimand (for a matter preceding the rules changes) was issued by the Commission of a District Court judge who engaged in *ex parte* communications with a litigant outside of the litigant's attorney regarding the matter before the court.

A Reprimand was issued by the Commission of an Orphans' Court judge who failed to pay taxes owed.

Dismissals with warnings were issued (prior to July 1, 2019) when the Commission determined that sanctionable conduct that may have been committed by a judge would be sufficiently addressed by the issuance of a warning. The Commission issued one (1) dismissal with a warning for a matter that preceded the rules changes involving a District Court judge who allowed a non-party to substantively participate in a hearing, including arguments and cross-examination of witnesses.

Under the current rules, the Commission issues Letters of Cautionary Advice. The Commission issued four (4) letters for the following matters:

- 1) A Circuit Court judge's reliance on a governmental agency's report to substitute for the testimony/participation of a party and insufficient efforts to ensure an incarcerated party had the opportunity to be present for domestic proceedings.
- 2) An Orphans' Court judge failed to accommodate a litigant with a disability and did not exercise control of a court employee to ensure the litigant was treated properly.
- 3) A Circuit Court judge exhibited bias against a female litigant in a domestic matter.
- 4) A Senior judge conducted an *ex parte* review of property which was the subject of litigation before the judge.

The vast majority of complaints in Fiscal Year 2020, 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.

Additional matters involving the Commission in FY20 are summarized as follows:

-A Circuit Court dismissed two (2) matters filed by a former Complainant requesting judicial review of the Commission's dismissal of complaints.

- The Court of Special Appeals heard arguments after a Complainant's actions for Declaratory Judgment and Judicial Review were dismissed by a Circuit Court, and appealed, following the Commission's dismissal of a Complaint. The Court's Opinion is pending.

-The Commission modified the conditions of a Deferred Discipline Agreement where it continues to monitor a Circuit Court judge.

The Board and Commission compiled a list of judges on every level of court to convene Peer Review panels, as promulgated by Maryland Rule 18-423(b). One (1) judge participated in the Peer Review panel process.

The Commission Chair, Investigative Counsel and Executive Secretary received positive feedback after visiting various courts educating judges on the new Rules governing judicial discipline.

**IX. COMPARISON CHARTS OF COMMISSION ACTIVITY.
SOURCES OF ALL COMPLAINTS FILED WITH THE COMMISSION**

Fiscal Year	Attorneys	Investigative Counsel Inquiries	Inmates	Judges	Public	Total
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	13	32	10	168	234
2017-2018	8	5	39	0	159	211
2018-2019	7	5	28	0	164	204
2019-2020	4	11	32	0	149	196

COMPLAINTS BY COURT

Fiscal Year	District Court Judges	Circuit Court Judges	Orphans' Court Judges	Court of Special Appeals Judges	Court of Appeals Judges	Other	Total
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	11	2	1	0	234
2017-2018	49	150	7	3	2	0	211
2018-2019	63	136	1	3	1	0	204
2019-2020	50	124	12	8	2	0	196

There were 120 District Court, 170 Circuit Court, 66 Orphans' Court, 14 Court of Special Appeals, and 7 Court of Appeals Judges sitting in the Maryland Judiciary, with 9 vacancies, during FY20.

TYPES OF CASES INVOLVED

Fiscal Year	Family Law	Criminal Cases	Civil Cases	Other	Sexual Harassment*	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
2017-2018	30	54	116	11		211
2018-2019	43	41	114	6		204
2019-2020	43	52	94	61	1	196

*Sexual Harassment complaints began to be compiled in FY20.

COMPLAINTS BY COUNTY

County	FY17	FY18	FY19	FY20
Allegany	1	4	2	7
Anne Arundel	33	27	10	13
Baltimore City	58	29	25	27
Baltimore County	17	10	21	22
Calvert	3	7	2	3
Caroline	0	4	1	0
Carroll	0	4	1	1
Cecil	3	1	9	7
Charles	3	2	4	2
Dorchester	2	3	1	0
Frederick	11	6	4	5
Garrett	0	0	0	0
Harford	11	14	13	15
Howard	12	11	12	5
Kent	2	1	1	0
Montgomery	15	25	28	27
Prince George's	41	45	48	36
Queen Anne's	1	2	1	1
Somerset	2	0	2	0
St. Mary's	9	4	2	3
Talbot	1	0	1	0
Washington	5	3	8	5
Wicomico	1	2	5	6
Worcester	1	0	0	1
Appellate	2	5	3	10
Total	234	211	204	196

The data included in the preceding charts was based on information from the Commission's case files.