



*State of Maryland  
Commission on Judicial  
Disabilities*

*Fiscal Year 2006 Annual Report*

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## COMMISSION ON JUDICIAL DISABILITIES

### Judge Members

The Honorable Sally D. Adkins, Chair  
Associate Judge  
Court of Special Appeals

The Honorable Marjorie L. Clagett<sup>1</sup>  
Associate Judge  
Circuit Court for Calvert County

The Honorable Nancy B. Shuger  
Associate Judge  
District Court for Baltimore City

The Honorable Robert A. Greenberg<sup>2</sup>  
Associate Judge  
Circuit Court for Montgomery County

### Attorney Members

Steven D. Silverman, Esquire  
Baltimore County

Aileen Oliver, Esquire  
Montgomery County

Paul D. Shelton, Esquire  
Howard County

### Public Members

William D. Berkshire  
Anne Arundel County

James L. Clarke  
Montgomery County

Patricia B. Pender  
Howard County

Samuel F. Saxton, Sr.  
Prince George's County

William D. Schmidt, Sr.  
Baltimore County

### Commission Staff

Steven P. Lemmey, Esquire  
Investigative Counsel

Elissa E. Goldfarb, Esquire  
Assistant Investigative Counsel

Gary J. Kolb  
Executive Secretary

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<sup>1</sup>Term expired 6/06

<sup>2</sup>Appointed 6/06

The diversity of Commission membership in terms of experience, county of residence, gender, race, and age has been a distinct benefit in analyzing and handling complaints in an evenhanded and thorough manner. Commission members attend regular monthly meetings and actively participate in deliberations regarding each complaint, bringing to the discussion a wide range of experience and common sense.

### **Staff**

In Fiscal Year 2006, the Commission staff included a full-time Investigative Counsel, a part-time Assistant Investigative Counsel, a part-time Executive Secretary, and a full-time Administrative Assistant. The Investigative Counsel and the Administrative Assistant positions are permanent positions within the Judiciary. All other Commission employees worked on a contractual basis. The Investigative Counsel, Assistant Investigative Counsel, and Executive Secretary are attorneys.

## **THE COMMISSION ON JUDICIAL DISABILITIES**

### **History and Structure**

The Maryland Commission on Judicial Disabilities was established by Constitutional Amendment in 1966 in response to a growing need for an independent body to assist in monitoring the conduct of 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 Commission now consists of three judges, one from the Court of Special Appeals, one from the Circuit Court, and one from the District Court; three lawyers with at least seven years experience and five members of the public. All Commission members are appointed by the Governor, and reside in different areas of Maryland. Membership is limited to two, four year terms.

The Commission on Judicial Disabilities serves the public and the Judiciary in various ways. Its primary function is to receive, investigate, and act on complaints against members of Maryland's Judiciary. The Commission's jurisdiction extends to all judges who are members of the Maryland Court of Appeals, Court of Special Appeals, Circuit Courts, District Courts, and Orphans' Courts. Pursuant to Maryland Rule 16-810, the Commission also supplies the district judicial nominating commissions with confidential information concerning actions taken other than dismissals or pending charges against those judges seeking nomination or appointment to other judicial offices.

The Commission members and staff continue to participate in judicial training and informational programs for judges, lawyers, and the public.

Numerous individuals write or call the Commission expressing dissatisfaction with a judge or with the outcome of a case or some judicial ruling. While some of these complaints may not come technically within the Commission's jurisdiction, the complainants are afforded an opportunity to express their feelings and frequently are informed, for the first time, of their right to appeal. Thus, the Commission, in an informal fashion, offers an ancillary, but vital, service to members of the public.

### **Procedure for Acting on Complaints**

Complaints filed with the Commission must be in writing and under affidavit, but no particular form is required. Pursuant to Maryland Rule 16-803(h), a complaint must be under affidavit and allege facts "indicating that a judge has a disability or has committed sanctionable conduct."

Each complaint receives a consecutive docket number by the calendar year in which it is received and numeric order of the complaint in that year. Each complaint is acknowledged by letter from Investigative Counsel explaining the investigation and processing of the complaint. (Maryland Rule 16-805(b)). Investigative Counsel may open a file and initiate an inquiry independently "upon receiving information from any source indicating that a judge has a disability or may have committed sanctionable conduct. (Maryland Rule 16-805(d)). Complaints opened by inquiry are investigated in the same manner as formal complaints.

On receipt of a complaint without an affidavit, Investigative Counsel notifies the complainant, in writing, about the necessity of filing an affidavit and supplies the complainant(s) with the proper language for the affidavit. If the affidavit is not received within 30 days of the date of notice, the Commission administratively closes the file. (Maryland Rule 16-805(a)).

Having received a complaint against a judge, Investigative Counsel must determine whether the complaint alleges facts that, if true, would constitute a disability or sanctionable conduct. (Maryland Rule 16-805(c)). If Investigative Counsel concludes that the case does not have such facial merit, the complaint is dismissed and the Investigative Counsel notifies the complainant and the Commission members of the dismissal. Otherwise, the Investigative Counsel has 90 days from the receipt of the complaint to complete a preliminary investigation. (Maryland Rule 16-805 (e)(5)). The Commission may extend the time period for a preliminary investigation for good cause for an additional 30 day period. (Maryland Rule 16-805(e)(5)). Once the Investigative Counsel proceeds with an investigation, the judge is entitled to notice of the complaint, the name of the complainant, the substance of the complaint and his or her rights under the rules. (Maryland Rule 16-805(e)(3)).

Information contained in complaints and gathered during the preliminary

investigation is confidential. (Maryland Rule 16-810(a)(2)).

Upon completion of the preliminary investigation, Investigative Counsel reports the results to the Commission and must recommend that one of four actions be taken:

(1) Dismissal of the Complaint with or without a warning. (Maryland Rule 16-807(a)).

Dismissal with a warning may be issued if the Commission determines that any sanctionable conduct that may have been committed by the judge will be sufficiently addressed by such a warning. A judge must, however, consent to the warning, and if the judge does not consent, the Commission has the choice to dismiss without a warning or proceed with public charges against the judge. (Maryland Rule 16-807 (a)(2)). A dismissal is issued if the evidence fails to show that the judge has a disability or has committed sanctionable conduct. Either form of dismissal, with or without a warning, does not constitute discipline. (Committee Note to Maryland Rule 16-807(a)(2)). Both the judge and the complainant are notified of the dismissal.

(2) Offering the judge a private reprimand (Maryland Rule 16-807(b)) or a deferred discipline agreement (Maryland Rule 16-807(c)).

Private reprimands are issued if the Commission finds that the sanctionable conduct was not so serious, offensive or repeated to warrant formal proceedings and only if the judge agrees to accept the reprimand and waive certain rights.

For sanctionable conduct not so serious, offensive or repeated to warrant formal proceedings, the judge may agree to enter into a deferred disciplinary agreement with the Commission. A deferred discipline agreement is appropriate when Commission members conclude the judge should take specific and remedial action including undergoing specific treatments, apologizing to the complainant, participating in educational programs, or working with a mentor judge, and the judge agrees to waive certain rights. Investigative Counsel then monitors the judge's compliance with the terms of the agreement. A judge's failure to comply with the terms of the agreement after written notice by Investigative Counsel may result in the Commission's revocation of the agreement and proceeding with other dispositions allowed by the rules. If Investigative Counsel notifies the Commission that the judge has satisfied the conditions of the agreement, however, the

Commission shall terminate the proceedings.

Complainants are notified of the issuance of the private reprimand or the deferred discipline agreement. Its contents are disclosed, however, only if the judge gives written consent.

(3) Proceeding with further investigation (Maryland Rule 16-806).

Upon the Commission's approval for further investigation, Investigative Counsel must notify the judge in writing and afford the judge the opportunity to file a written response to the complaint. The Commission may, for good cause, authorize the Investigative Counsel to issue a subpoena to compel the attendance of witnesses or the production of documents. Further investigation must be completed within 60 days of its authorization by the Commission, but the time period can be extended for good cause. All proceedings under this rule are confidential. (Maryland Rule 16-810 (a)(2)).

At the completion of the investigation, Investigative Counsel reports the results of the investigation to the Commission along with a recommendation that the complaint be dismissed, that an offer of private reprimand or deferred discipline agreement be issued, or that formal charges be filed against the judge.

(4) Issuing Charges.

Upon Investigative Counsel's recommendation and the Commission's finding of probable cause to believe that a judge has committed sanctionable conduct or has a disability, the Commission may direct Investigative Counsel to initiate proceedings against the judge by filing with the Commission charges of such sanctionable conduct or disability. The charges must (i) state the nature of the alleged disability or sanctionable conduct, including each Canon of Judicial Conduct allegedly violated by the judge; (ii) allege specific facts upon which the charges are based; and (iii) state the judge has the right to file a written response to the charges within 30 days of the judge's receipt of the charges.

The Commission notifies the judge of the time and place of hearing, at least 60 days before the hearing date. The Complainant is also notified, and a notice is placed in the *Maryland Register*. The hearing is public.

Based upon the evidence presented at the hearing, the Commission may, by a majority vote of the full Commission, dismiss the complaint, or based upon finding, by clear and convincing evidence, that the judge has committed sanctionable conduct or has a disability, issue a public reprimand or refer the case to the Court of Appeals with its recommendation as to sanctions.

The Court of Appeals may (i) impose the sanction recommended by the Commission or any other sanction permitted by law; (ii) dismiss the proceeding; (iii) or remand for further proceedings as specified.

**Matters resolved and matters pending at the end of the Fiscal Year 2006**

In Fiscal Year 2006, the Commission received numerous telephone calls. Callers are offered an opportunity to explain their grievances and are also informed about how to file a formal complaint. Callers are routinely sent a follow-up letter detailing the language and procedures necessary to file a formal complaint along with an explanation of the applicable confidentiality provisions of Maryland Rule 16-810.

During Fiscal Year 2006, the Commission received 108 written complaints. Of the 108 complaints, 6 lacked affidavits, were outside of the Commission's jurisdiction, or did not meet the requirements of the Rules.

Twelve complaints were filed by practicing attorneys, 30 by inmates, and 4 were initiated by Investigative Counsel on his own initiative pursuant to Maryland Rule 16-805(d). The remaining 62 were filed by members of the general public. Some complaints were directed simultaneously against more than one judge, and sometimes a single jurist was the subject of multiple complaints.

Complaints against Circuit Court Judges totaled 72; 28 complaints were made against District Court Judges; no complaints were filed against Court of Special Appeals Judges; 7 complaints were filed against Court of Appeals Judges; and 1 complaint was filed against an Orphans' Court Judge.

Litigation over family law matters (divorce, alimony custody, visitation, etc.) prompted 20 complaints, criminal cases (including traffic violations) prompted 39 complaints, and 30 arose from other civil litigation. Nineteen complaints failed to fit in any of those categories.

In the fiscal year ending June 30, 2006, the Commission issued one private reprimand and one dismissal with warning, both based on agreements with the respondent judges. The private reprimand involved an Orphans' Court Judge who served as the attorney for his family members in a contested court case. The dismissal with a warning involved a judge who delayed more than 4 years in issuing an opinion in a court case.

Twenty-four cases remained open at the end of the fiscal year, including the continuation of a deferred discipline agreement, pending further investigation or receipt of additional information.

The vast majority of complaints in Fiscal Year 2006 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.

**17 YEAR COMPARISON CHARTS**

The data included in these comparison charts is based on past Annual Reports of the Commission as well as case files. Prior to 1995, the records of the Commission were kept in a manner which did not allow for ease of distinction between complaints. Therefore, the Commission gleaned these figures from hand counting the complaints present in the files and comparing that number to statistics in past Reports of the Judiciary. Available information did not always contain the precise number of formal and miscellaneous complaints filed in a given year.<sup>3</sup>

Number of complaints filed for each fiscal year:<sup>4</sup> \*

1989-1990	1990-1991	1991-1992	1992-1993	1993-1994	1994-1995	1995-1996	1996-1997	1996-1997	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005	2005-2006
32	35	32	34	47	73	86	86	115	107	106	120	142	138	94	112	108

\* There was a particularly large increase in the number of complaints filed with the Commission in FY1995, concurrent with the adoption of the revised Commission rules by the Court of Appeals, effective September 1, 1995.

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<sup>3</sup>From 1995 to 1998, complaints that did not meet the affidavit requirement of Maryland Rule 16-803(d) were filed as miscellaneous complaints.

<sup>4</sup>This number should be noted within the following context: (1) according to the 2002 census, Maryland’s population was 5,458,137; (2) Maryland had approximately 338 judges during FY 2004, including Orphans’ Court Judges; and (3) the total number of cases filed in the Circuit Courts in FY 2003 was approximately 289,920; and (4) the total number of cases filed and processed in the District Courts in FY 2003 was approximately 2,179,114. (The purpose of these statistics is to illustrate examples of the volume of cases in Maryland Courts as a contextual aid.)

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Tiers of the Judiciary against which complaints were filed. (Total Complaints)

<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>Others (Outside of the Commission's Jurisdiction)</b>
1989 - 1990	7	21	2	0	0	0
1990 - 1991	11	26	0	0	0	0
1991 - 1992	6	23	2	0	0	0
1992 - 1993	11	19	1	0	0	0
1993 - 1994	12	27	2	0	0	0
1994 - 1995	20	32	1	0	0	0
1995 - 1996	30	87	1	1	0	10
1996 - 1997	39	87	2	0	0	5
1997 - 1998	16	112	10	5	2	0
1998 - 1999	24	106	1	1	1	1
1999 - 2000	20	80	4	0	0	2
2000 - 2001	27	86	0	6	1	0
2001 - 2002	34	94	2	11	0	0
2002 - 2003	35	87	0	6	8	2
2003 - 2004	20	72	2	0	0	0
2004 - 2005	31	72	1	7	1	0
2005 - 2006	28	72	1	0	7	0

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<sup>5</sup></b>
1989 - 1990	5	1	0	0	Remainder
1990 - 1991	7	2	0	0	Remainder
1991 - 1992	3	3	0	0	Remainder
1992 - 1993	5	2	0	2	Remainder
1993 - 1994	5	0	0	0	Remainder
1994 - 1995	9	0	7	0	Remainder
1995 - 1996	9	2	23	1	94
1996 - 1997	5	5	13	0	Remainder
1997 - 1998	7	4	35	2	97
1998 - 1999	15	0	21	0	99
1999 - 2000	7	3	15	0	81
2000 - 2001	14	1	29	0	76
2001 - 2002	4	4	26	0	108
2002 - 2003	6	6	35	0	91
2003 - 2004	6	1	17	0	70
2004 - 2005	2	7	33	0	70
2005 - 2006	12	4	30	0	62

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<sup>5</sup>The statistics in this column reflect the information contained in past Annual Reports of the Commission as well as case files from 1995 and 1996. The term "remainder" was used in past Annual Reports to denote the rest of the cases in a given survey.

Types of cases most frequently complained about. (Total number of complaints filed.)

<b>Fiscal Year</b>	<b>Domestic Cases</b>	<b>Criminal Cases</b>	<b>Civil Litigation</b>	<b>Other</b>
1989 - 1990	11	11	Remainder	
1990 - 1991	10	11	Remainder	
1991 - 1992	13	10	Remainder	
1992 - 1993	6	7	Remainder	
1993 - 1994	14	10	Remainder	
1994 - 1995	17	31	Remainder	
1995 - 1996	44	46	39	
1996 - 1997	26	54	41	
1997 - 1998	38	42	63	2
1998 - 1999	20	29	80	6
1999 - 2000	23	44	39	0
2000 - 2001	18	55	37	10
2001 - 2002	31	47	54	10
2002 - 2003	28	54	41	15
2003 - 2004	26	24	37	7
2004 - 2005	33	22	52	5
2005 - 2006	20	39	30	19