STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT
COMMITTEE

JC-25-079-C

IN RE: The Honorable Gordon J. MacDonald

SUMMARY REPORT OF PROCEEDINGS, FINDINGS AND RECOMMENDATIONS PURSUANT TO SUPREME COURT RULE 40(12)(d)

NOW COMES, the Judicial Conduct Committee and offers the following *Summary Report of Proceedings, Findings and Recommendations* pursuant to Supreme Court Rule 40(12)(d) as follows:

New Hampshire Supreme Court Rule 40(12)(d), *Dispositions Following Hearing,* provides in relevant part that:

> *Violation Warranting Formal Discipline.* If the Committee determines, by the affirmative vote of at least seven of its members, that the judge complained against has violated the Code of Judicial Conduct and that the violation is of a serious nature so as to warrant formal disciplinary action by the Supreme Court, the Committee shall prepare a summary report of the proceeding and of its findings which shall be filed in the public docket of the Committee. Such report shall include the recommendations of the Committee (if any) concerning the sanctions to be imposed. Any member who dissents from the determination of the Committee may prepare a minority opinion which shall be appended to the report of the Committee. A copy of the decision shall be sent to the judge and Committee's Hearing Counsel, and the Committee shall also notify the Supreme Court that a decision finding serious judicial misconduct has been docketed.

On September 8, 2026, former Chief Justice Gordon J. MacDonald (MacDonald) offered, and the Committee elected to resolve this matter by way of a *Stipulation and Agreement* thereby terminating these judicial conduct proceedings without a hearing. Justice MacDonald entered into this *Stipulation and Agreement,* with the advice of counsel, and entered the following pleas and waivers.

MacDonald acknowledged receipt of the JCC's complaint on or about March 30, 2026.

MacDonald acknowledged that he understood that he had a right to a public hearing to contest the allegations of the complaint pursuant to New Hampshire Supreme Court Rule 40(9), (10) and (11) and acknowledged that he further understood that a public hearing would have been scheduled on a Statement of Formal Charges. MacDonald signed the *Stipulation and Agreement* in lieu of this public hearing; waived his right to a public hearing under Rule 40; and agreed that the *Stipulation and Agreement* would serve as part of the official record of these proceedings.

MacDonald has admitted that he violated the following provisions of the Code of Judicial Conduct (Supreme Court Rule 38) as alleged below:

a. Chief Justice MacDonald, in violation of Canon 1, Rule 1.2, failed to act in a manner that promotes public confidence in the impartiality of the judiciary and failed to avoid the appearance of impropriety.

b. Chief Justice MacDonald, in violation of Canon 2, Rule 2.5(A), failed to perform his administrative duties competently and diligently in connection with the characterization, processing and public explanation of Dianne Martin's removal and reappointment, including by bypassing established Judicial Branch rules and procedures in extending her a position without the competitive, merit-based process required of other Judicial Branch employees.

c. Chief Justice MacDonald, in violation of Canon 2 Rule 2.13(A), failed to exercise the power of administrative appointment impartially and on the basis of merit, and failed to avoid favoritism with respect to the removal of Dianne Martin as Director of the Administrative Office of the Courts and appointment as Bar Counsel.

MacDonald will resign his judicial appointment as a justice of the New Hampshire Supreme Court, effective as of the date of the approval of the Stipulation and Agreement

MacDonald acknowledged that he understood and has agreed that he is responsible to reimburse the Administrative Office of the Courts (AOC) for the attorney's fees and expenses which the JCC incurred in the investigation, charging, and prosecutorial stages of this case pursuant to New Hampshire Supreme Court Rule 40(13-A), *Expenses Relating to Discipline Enforcement.*

MacDonald also acknowledged that he understood that as a result of his stipulation and agreement and the terms of the executed *Stipulation and Agreement,* the Committee would enter the finding, by clear and convincing evidence, that he had violated the provisions of the Code of Judicial Conduct as stated above and that the Committee would prepare a summary report of this proceeding and of its findings and recommendations (if any) concerning the sanctions to be imposed which would be filed in the public docket of the Committee and forwarded to the New Hampshire Supreme Court as required by New Hampshire Supreme Court Rule 40(12)(d).

MacDonald further agreed to waive any rights which he had to a *de novo* hearing in connection with this matter and acknowledged that the Committee's findings and disposition would be final pursuant to New Hampshire Supreme Court Rule 40(12)(d)(l) and (2).

MacDonald acknowledged that he has had the advice of counsel in connection with the preparation and execution of the *Stipulation and Agreement* and acknowledged that he understood both the terms and effect of such *Stipulation and Agreement* and that he executed the *Stipulation and Agreement* of his own free will.

The Committee and MacDonald agreed that upon execution of the *Stipulation and Agreement,* the Committee would enter a finding of violations of the Code of Judicial Conduct as stated therein by clear and convincing evidence and that, due to the factual circumstances, the Committee would refer this matter to the New Hampshire Supreme Court for consideration of the imposition of formal discipline under Supreme Court Rule 40(12)(d).

Timeline of Critical Events

On October 23, 2025, New Hampshire Public Radio Reporter Todd Bookman published an article titled, *In midst of budget crisis, an unusual move helped ally of NH Chief Justice collect $50K* (Exhibit A). In that article, Bookman detailed how Dianne Martin, who had been Director of the Administrative Office of the Court ("AOC"), was laid off from that position and rehired three days later as General Counsel for the Office of Bar Admissions. This resulted in a nearly $50,000 pay-out to Martin. On October 31, 2026, Chief Justice Gordon MacDonald and Associate Justices Patrick Donovan, Melissa County and Bryan Gould issued a joint statement in response to Bookman's article. (Exhibit B). This press release described a "comprehensive review of [the Judicial Branch's] administrative operations and costs" which had begun in early 2024. The press release stated, "As part of this reorganization, the Supreme Court decided to eliminate the position previously held by Ms. Martin." According to the press release, the layoff triggered payment of accrued leave and benefits to Martin. The justices went on to announce that Martin was rehired as General Counsel to the Office of Bar Admissions. The press release further states, "The Supreme Court decided to offer Ms. Martin the opportunity to transition into this critical position previously occupied by a recently retired attorney. . . ." The statement concluded, "The Court remains committed to responsible stewardship of public resources and to maintaining the effective administration of justice across the state."

Concerned about the accuracy of the representations in the press release and characterization and propriety of the Martin personnel decisions, the JCC voted to open a committee-initiated inquiry pursuant to New Hampshire Supreme Court Rule 40(6) at its next regularly-scheduled meeting on November 14, 2025. That rule authorizes the Committee to "initiate an inquiry concerning the conduct of any judge on its own motion, without a signed written report of alleged misconduct, upon any reasonable factual basis. No such inquiry shall be initiated by the committee except upon the affirmative vote of six or more members of the committee taken at a meeting thereof." At the same meeting the Committee voted to open a preliminary investigation into the circumstances described in Bookman's article and representations made in the Court's press release. See N.H. S.Ct. R. 40(2) (defining "inquiry: as, "A preliminary investigation begun by the committee on its own initiative to determine whether its findings should be docketed as a complaint."). Pursuant to Rule 40(6) the Committee voted to delay notification to any of the justices "to avoid possible compromise of the inquiry and any resulting investigation or for other good reason." Finally, the Committee appointed Attorney Philip Waystack as Committee Counsel to conduct the preliminary investigation.

Over the next several weeks Attorney Waystack conducted interviews and/or examinations under oath with a number of potential witnesses including Associate Justices Patrick Donovan and Melissa Countway, retired Associate Justice James Bassett, Superior Court Chief Judge Mark Howard, Circuit Court Administrative Judge Ellen Christo, retired Judge David King and several current and former AOC employees.

Independently the New Hampshire Department of Justice conducted an investigation to determine whether any criminal laws had been violated as a result of the personnel decisions relating to Dianne Martin. On November 25, 2025, it issued a report of its findings and concluding that there is "no reasonable suspicion to believe that further investigation would uncover actionable criminal conduct." (Exhibit C). The DOJ report observed, "While it would be reasonable to conclude that in certain respects human resources best practices were not followed during the series of events and transactions examined, DOJ does not have oversight authority over the judicial branch for such issues." Based on this, the DOJ closed its investigation and subsequently released its investigative materials in redacted form. Attorney Waystack obtained a copy of those investigative files as part of the committee-initiated inquiry and preliminary investigation.

During the interview with Justice Countway she declined to answer questions about personnel decisions relating to Martin without a protective order because of concern relating to the confidential nature of that information. Pursuant to Rule 40(3)(g), the Committee issued a protective order (Exhibit D) so that it could obtain "confidential or privileged information or documents relating to personnel decisions regarding Dianne Martin." "The contents of the statements or records" obtained pursuant to the protective order cannot "not be disclosed to any third party except to as necessary to investigate potential violations of the Code of Judicial Conduct." (Id. ¶5). "Statements, records, or the content thereafter may be used by the JCC to elevate the Committee-Initiated Inquiry to the level of a complaint and seek an answer from any judicial officer pursuant to Supreme Court Rule 40(7) and by the JCC and hearing counsel to prosecute any statement of formal charges issued by the JCC pursuant to New Hampshire Supreme Court Rule 40(9)." (Id. ¶6). However, if the JCC concludes its "Committee-Initiated Inquiry without initiation of statement of formal charges under Rule 40(9) statements and records disclosed pursuant to this protective order shall be sealed and will remain confidential." A number of witnesses, including Justices Donovan, Countway, and Bassett, Judge Howard, Judge Christo, and Judge Keating signed the protective order and provided records to Attorney Waystack.

Shortly after the interview with Justice Countway, Attorney Richard Lehmann contacted Attorney Waystack to inform him that, in addition to Justice Countway, he also represented MacDonald, Justice Donovan, and Justice Bryan Gould (hereinafter collectively the "Justices"). Attorney Lehmann proposed his own version of a protective order to Attorney Waystack. Sometime thereafter Attorney Lehmann filed an Emergency Motion for Protective Order and/or Injunction (hereinafter "Emergency Motion") (Exhibit E) with the JCC, requesting the Committee "issue a protective order, or in the alternative an injunction, prohibiting any of its members, its counsel, or any person acting on its behalf, from making any statement, public or private, to any person that could have the effect of disclosing the existence of the Rule 40(6) Committee-initiated inquiry . . . ." Emergency Motion at 1 (preamble). Attorney Waystack objected (Exhibit F) to the Justices' Emergency Motion. The Justices then filed a reply (Exhibit G). The JCC denied the request for an injunction (Exhibit H). It ruled that it intended to request permission pursuant to Rule 40(3) to make a public statement regarding its preliminary investigation.

Thereafter the Justices filed a motion to reconsider with the Committee and also a motion to disqualify Attorney Waystack. (Exhibits I & J). The Justices sought to remove Attorney Waystack, appoint new counsel, and prohibit Attorney Waystack from communicating with the Committee or new committee counsel about any investigation he had conducted to that point. Attorney Waystack objected to these pleadings too. (Exhibit K & L). The Committee denied the motions to reconsider and to disqualify Attorney Waystack. (Exhibits M & N).

Meanwhile, Attorney Waystack continued the preliminary investigation. Given the scope of the inquiry, the number of witnesses, and the volume of records, the Committee also hired Attorney Andrew Cotrupi to act as co-counsel with Attorney Waystack.

On March 30, 2026, the Committee voted unanimously to elevate the committee-initiated inquiry to the level of a Complaint against MacDonald pursuant to Rule 40(7)(b). It further voted to continue its preliminary investigation pursuant to Rule 40(8). The JCC sent the Complaint (Exhibit O) to MacDonald on that same date, and requested him to provide an answer pursuant to Rule 40(7)(c). Through his attorneys, MacDonald asked for an extension of time to file his Answer, which the Committee granted. See N.H. S.Ct. R. 40(7)(d). MacDonald provided the Committee his Answer with supporting documentation on June 16, 2026. (Exhibit P (filed with redactions). Attorneys Waystack and Cotrupi continued to investigate the allegations in the Complaint and MacDonald's Answer by interviewing witnesses, taking additional statements under oath, and gathering documents.

MacDonald requested permission to personally appear before the Committee to address the allegations in the Complaint. Cf. N.H. S.Ct. R. 40(6) (authorizing a judge to appear before the Committee before it issues a caution on a committee-initiated inquiry). The Committee accepted his invitation on certain conditions. MacDonald ultimately chose not to appear before the Committee. Instead, his lawyers filed a Motion for a Substitute

Supreme Court Panel, Motion to Stay, and Motion to Preserve. That motion sought to prevent the JCC from taking further action on the Complaint and to disqualify all of the judge-members of the JCC from further participation the investigation. Each of the judges issued written decisions concluding that they did not have a conflict of interest which prevented their continued participation in the investigation relating to the Dianne Martin matter. Attorney Waystack objected to MacDonald's motion. The JCC, without the judges participating, voted to deny MacDonald's motion to stay the investigation.

Thereafter, Attorney Waystack engaged in extended negotiations with counsel for MacDonald culminating in the *Stipulation and Agreement* and MacDonald's resignation. (Exhibit Q).

The Complaint accuses MacDonald of multiple serious violations of the Code of Judicial Conduct that are fundamentally at odds with the impartial administration of justice. The Committee's investigation uncovered evidence that MacDonald did not exercise impartial judgment with respect to the personnel decisions relating to Dianne Martin's removal as Director of the AOC and reappointment as Bar Counsel. He also did not follow established personnel rules in making those decisions. Finally, the press release issued by the Court on October 31, 2025, under MacDonald's leadership did not accurately portray the process for Martin's removal and rehire to a new position. It created the misimpression that her removal and rehire was part of a routine administrative reorganization of the AOC. The evidence established that there were long-standing and serious concerns about Martin's management of the AOC. As a result, the Committee finds there is clear and convincing evidence that MacDonald violated Canon 2 Rule 2.13(A), when he failed to exercise the power of administrative appointment impartially and on the basis of merit, and failed to avoid favoritism with respect to the personnel decisions relating to Dianne Martin. He also violated Canon 2, Rule 2.5(A), by failing to perform his administrative duties competently and diligently in connection with the characterization, processing and public explanation of Dianne Martin's removal and reappointment. Finally, these actions undermined the public confidence in the impartiality of the court and created an appearance of impropriety in violation of Canon 1, Rule 1.2.

The JCC is acutely mindful of the importance of public accountability for judges who hold a special position of responsibility and trust in our constitutional system of government. The New Hampshire Supreme Court has observed that there is significant value in the airing of official misconduct in public proceedings. "When members of the public are informed as to judicial misconduct, they are better able to recognize, report, and otherwise protect themselves against future instances of similar misconduct." *In re Thayer,* 145 N.H. 177, 181 (2000). Indeed, Part I, Article 8 of the New Hampshire Constitution enshrines this principle:

> All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. Government, therefore, should be open, accessible, accountable and responsive. To that end, the public's right of access to governmental proceedings and records shall not be unreasonably restricted. The public also has a right to an orderly, lawful, and accountable government. . .

In resolving this case by *Stipulation and Agreement,* the public is deprived of the full scope of transparency that would accompany an adversarial hearing. However, all legal settlements and plea agreements involve the balancing of competing interests. The JCC decided that conclusion of this case without a public hearing served the best interests of justice. In reaching that decision the JCC relied on two points in particular.

First, MacDonald does not contest any of the allegations, including the factual allegations, contained in the *Stipulation and Agreement.* Pursuant to the terms of the *Stipulation,* the JCC enters a finding that there is clear and convincing evidence that MacDonald violated each of the Canons of the Code of Judicial Conduct set forth in the Stipulation. In the view of the JCC, this fulfilled the constitutional mandate that "all magistrates" be "at all times accountable to [the people]."

Second, and perhaps more importantly, by entering into the *Stipulation* MacDonald agreed to resign his commission as a judge effective immediately. It is the Committee's understanding that a judge may only be removed from office through impeachment in the New

Hampshire Legislature or by the combined actions of the legislative and executive branches through the process of address. *See, e.g.,* N.H. Const. pt. II, arts. 17, 38, 73; *In re Mussman,* 112 N.H. 99, 100-101 (1972); *see generally In re Petition of Judicial Conduct Comm.,* 151 N.H. 123, 127 (2004). Thus, the harshest sanction the Supreme Court itself may impose is suspension without pay. *See generally Opinion of the Justices,* 140 N.H. 297,302 (1995). Even then, it remains unclear whether the Supreme Court has "the authority to effectively remove a judge by unconditionally suspending [him] for an indefinite period of time." *In re Coffey's Case,* 157 N.H. 156, 188 (2008).

As a result, even if this case had resulted in findings against MacDonald on all charges after a public hearing, the JCC could not have recommended the immediate termination of MacDonald's judicial commission as a sanction to be imposed by the Supreme Court. Indeed, it may have been many months before the New Hampshire Legislature would have acted on this, had it chosen to do so. Part I, Article 38 of the New Hampshire Constitution provides: "It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as impartial as the lot of humanity will admit." The JCC determined that if MacDonald were allowed to retain his judicial commission, even while suspended, it would run counter to these important constitutional principles. Thus, the certainty that he would no longer hold a position of public trust was of paramount concern to the JCC.

By highlighting these aspects of the case, the JCC does not mean to downplay any other violations of the Code of Judicial Conduct as alleged.

Besides repayment of attorney's fees and expenses which the JCC incurred in the investigation, charging, and prosecutorial stages of this case pursuant to New Hampshire Supreme Court Rule 40 (13-A), *Expenses Relating to Discipline Enforcement.* The Committee accordingly makes no additional recommendations to the Supreme Court with respect to sanctions.

The Judicial Conduct Committee, by

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John Mullen, Chair

Dated: September 9, 2026

STATE OF NEW HAMPSHIRE

JUDICIAL CONDUCT COMMITTEE

JC-25-079-C

JUDICIAL CONDUCT COMMITTEE'S EXHIBIT INDEX

Exhibit	Description
A.	10/23/25 NHPR Bookman Article
B.	Joint Supreme Court Statement to Bookman Article
C.	11/25/25 Attorney General's Report (press release)
D.	JCC Initiated Protective Order
E.	Atty. Lehmann's Emergency Motion for Protective Order
F.	JCC Objection to Emergency Motion for Protective Order (P.O.)
G.	Atty. Lehmann's Reply in Support of Motion for P.O.
H.	JCC Order on Lehmann's Motion for P.O.
I.	Atty. Lehmann's Motion to Reconsider Order on P.O.
J.	Atty. Lehmann's Motion to Disqualify Atty. Waystack
K.	Atty. Waystack's Objection to Motion to Reconsider Order on P.O.
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M.	JCC Order denying Atty. Lehmann's Motion to Reconsider
N.	JCC Order denying Atty. Lehmann's Motion to Disqualify
O.	Complaint JCC sent to Chief Justice MacDonald
P.	Chief Justice MacDonald's Response to JCC's Complaint
Q.	Stipulation and Agreement

EXHIBIT

A

In midst of budget crisis, an unusual move helped ally of NH Chief Justice collect $50K

New Hampshire Public Radio | By Todd Bookman

Published October 23, 2025 at 5:30 AM EDT

Earlier this year, Chief Justice Gordon MacDonald warned of layoffs and delayed trials due to tight budgets. But at the same time, according to a whistleblower, MacDonald helped orchestrate a nearly $50,000 payout for his former chief of staff.

When Gordon MacDonald was New Hampshire Attorney General, he tapped Dianne Martin, a lawyer at the Department of Justice, to serve as his chief of staff.

Two years later, when MacDonald became chief justice of the New Hampshire Supreme Court, Martin followed her former boss, taking a top job working for him as head of the court's administrative office.

In April of this year, Martin landed yet another high paying job under MacDonald: overseeing applications for those hoping to practice law in New Hampshire.

But instead of Martin transferring directly into that position, something strange took place. Martin was laid off from state government for two days, then immediately rehired.

While this 48-hour gap in Martin's employment may have seemed just a technicality — a bureaucratic blip — it was also lucrative. It allowed her to cash out unused sick and vacation time, and other benefits, for a total payment of nearly $50,000. Typically, state employees are only able to cash out their unused sick and vacation time when they retire or are laid off.

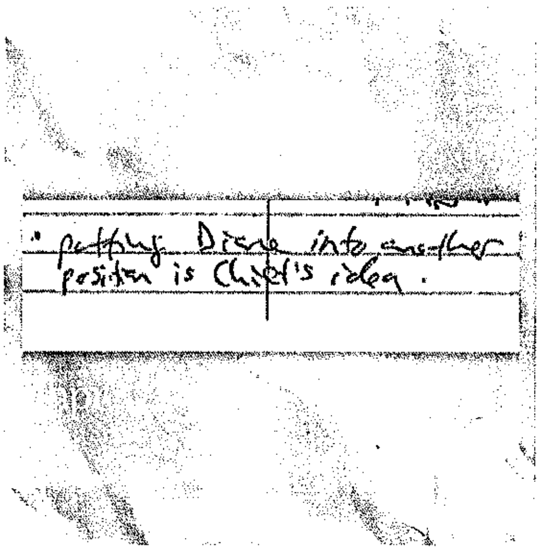
The payout came at a time when the New Hampshire judiciary was facing a budget crisis. In the same month that the payouts were made, the chief justice announced a hiring freeze, and warned of looming layoffs if state budget writers slashed any more funding.

The unusual personnel move — which NHPR confirmed through state payroll records, personnel files and at least one complaint made by a state employee — has not been previously made public. At least one whistleblower alleges the layoff and immediate rehiring was done at Martin's request, with the assistance of MacDonald. That person called it the "chief's idea."

NHPR sent a detailed list of questions to the New Hampshire Judicial Branch about the payments and whether MacDonald had any role in orchestrating Martin's personnel moves. A court spokesperson declined to answer specific questions, saying only that "the New Hampshire Supreme Court oversees all personnel decisions within the Judicial Branch and does not comment on any matters involving personnel."

The moves are raising questions among some in state government. New Hampshire state Rep. Ross Berry, a Republican from Weare, said the personnel maneuver was "concerning" and said he would support holding a legislative hearing to question judicial officials about Martin's payout.

"This isn't something that I think you can allow the courts to just handle themselves," said Berry. "You're talking about a significant amount of taxpayer money."



Record obtained through Right to Know request

A whistleblower alleges that Chief Justice Gordon MacDonald helped orchestrate a $50,000 payout to a top ally.

The 'chief's idea'?

While Martin's most recent job titles may sound obscure, she's in fact held two of the most important behind-the-scenes roles in the state Judicial Branch over the past year. As director of the Administrative Office of the Courts, she was responsible for running the business end of a sprawling court system — overseeing spending, human resources, communications, court security, IT, and more. In her current position, as head of the Office of Bar Admissions, she's in charge of the process by which new lawyers get approved to practice in the state.

While Martin has largely worked under the radar in these positions, her movement between the two roles is laid out in a series of internal personnel records and publicly available payroll figures.

After the New Hampshire Judicial Branch announced that Martin would no longer serve as director for the Administrative Office of the Courts, she was offered a new job overseeing the Office of Bar Admissions. Her offer letter for that position was dated March 27, with a proposed start date for the following week, at a salary of $154,109.

But instead of directly transitioning into that position, the Judicial Branch instead laid Martin off on April 1 — five days after she was offered the new job — according to a second letter obtained by NHPR. That letter refers to a "reorganization" within the judiciary and the abolishment of her position.

Then, she was rehired and began her new position on April 4.

The 48-hour layoff, lasting April 2 to April 3, cleared the way for Martin to cash out her unused sick and vacation time, which were valued at $43,548. She also received $6,307 in "termination pay," based on her length of employment at the Judicial Branch.

How we reported this story

We used multiple sources to ensure the accuracy of our reporting about the $50,000 payout and the moves that preceded it. That included publicly available government payroll records and internal personnel records that we verified with multiple people with experience working in state government. We also obtained records of a whistleblower's complaint about the transaction through a Right to Know request. We offered Judicial Branch officials the opportunity to respond to the facts reported in this story, which they declined.

Martin's shuffling between positions is highly unusual, according to four people with experience in human resources for New Hampshire state government who have reviewed the matter at NHPR's request. One described the chain of events that culminated in Martin cashing out her benefits only to immediately begin a new job with the same state agency as "suspicious." (NHPR is not quoting these people by name as they expressed concern about the potential ramifications of criticizing top state officials.)

The irregular transactions did not go unnoticed, though. One whistleblower was so concerned about the payouts to Martin that they notified a top personnel official with the New Hampshire Department of Administrative Services, which oversees the state's payroll processing.

Handwritten notes from that conversation obtained by NHPR through a public records request show that the employee believed that the moves were the "chief's idea," an apparent reference to MacDonald. "Chief wants to lay her off for a week and then rehire her into a new role," the whistleblower said.

The whistleblower — who declined to speak with NHPR for this story — alleged that Martin wouldn't agree to a straightforward transfer into the new job. "Dianne won't accept the transfer because she wants the layoff payout $," the whistleblower told the Department of Administrative Services official, who documented their conversation. The whistleblower's concerns were forwarded internally to other officials within that agency, but don't appear to have been shared with the New Hampshire Department of Justice.

When asked about any follow up made by state officials to the whistleblower's concerns, a lawyer for the Department of Administrative Services said "it would be improper for us to comment on the actions of another branch of government."

The Judicial Branch also did not respond to a series of questions about why Martin was laid off for two days and then rehired, or if the moves were coordinated by the chief justice.

It isn't clear if the maneuvers that resulted in Martin's payout violate any state laws or the judiciary's personnel rules, or if MacDonald's alleged involvement may run afoul of the state's Code of Judicial Conduct, which instructs judges to avoid even "the appearance of impropriety" in their actions.

A spokesperson for the Attorney General's office said the office had no comment on if it was aware of or currently investigating Martin's personnel moves or MacDonald's alleged involvement.

THE STATE OF NEW HAMPSHIRE
ADMINISTRATIVE OFFICE OF THE COURTS

HON. CHRISTOPHER M. KEATING
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ckeating@courts.state.nh.us

April 1, 2025

Dianne Martin
[redacted]

Dear Attorney Martin:

Your non-judicial position is being abolished as part of a reorganization. Effective close of business on April 1, 2025, you are being laid off pursuant to Personnel Rule 58. A layoff is non-prejudicial and non-disciplinary.

Your payout computation shall be as defined by the Personnel Rules, and shall include the following:

- Unused accrued annual leave; up to a maximum of fifty (50) days:
- Compensation for 50% of accumulated sick leave not to exceed sixty (60) days.
- Compensation for terminal pay for qualifying administrative /exempt employees.

Payouts will be processed in the April 18, 2025 check.

Your benefits will continue through April 30, 2025.

You can contact the Human Resources Department at humanresources@courts.state.nh.us should you have any questions about wages, benefits, personnel rules, or any other matter concerning this employment action. You are also welcome to contact me at [redacted] or ckeating@courts.state.nh.us.

Best Regards,

Hon. Christopher M. Keating
Interim Director
Administrative Office of the Courts

Before she began her new role as general counsel, Martin was laid off for 48 hours, allowing her to collect her unused sick and vacation benefits, totaling nearly $50,000.

Allies over the years

Over the past decade, Gordon MacDonald has ascended to the top position in New Hampshire's legal world. And for much of that time, Martin has worked closely with him.

MacDonald and Martin first became colleagues in 2017, when he was appointed by former Gov. Chris Sununu to serve as New Hampshire Attorney General. At the time, Martin was a lawyer at the Department of Justice assigned to the transportation and construction sector.

In 2019, MacDonald elevated Martin to serve as his chief of staff. The job came with more responsibilities for Martin, and a nearly $25,000 jump in pay. Martin would oversee day-to-day operations of the Department of Justice, including recruitment and retention of staff attorneys, as well as work on special projects.

Her time as chief of staff was brief, though. Later that year, Sununu nominated Martin to serve on the Public Utilities Commission, an influential state agency that in part oversees major utility expansions and electricity pricing.

During a public hearing on her nomination, officials from across state government praised Martin. In her opening remarks, she told the Executive Council that watching her parents raise nine children instilled in her the value of hard work, and the need to be nice.

"That's a lot of personalities in one household," she joked.

But two years into her six-year term at the Public Utilities Commission, Martin left that job to rejoin MacDonald – her former boss – who had since been confirmed as chief justice of the state Supreme Court. This time, MacDonald hired Martin to lead operations for the entire Judicial Branch. MacDonald announced the hiring in a press release, saying that Martin was "especially well prepared" for the role.

The job came with another jump in pay: a salary of more than $143,000, compared to approximately $130,000 that Martin was paid as a utilities commissioner.

As director of the court's administrative office, Martin was tasked with overseeing the judiciary's operations, as well as special projects, including an initiative championed by MacDonald aimed at improving the court's response to people with mental health concerns who become involved in the criminal justice system.

But in early March of this year, the New Hampshire Supreme Court issued an administrative order announcing that Martin had departed from the director job, without providing any explanation, including whether she was forced out of the position. Circuit Court Judge Chris Keating was announced as her interim replacement. Salary records show that Martin remained on the state's payroll for nearly a month, however, until April 1.

On March 27, she was formally offered the new position as general counsel leading the Judicial Branch's Office of Bar Admissions, with a start date of April 4, according to a job offer letter signed by Keating. In the new role, she would oversee the application and review process for people seeking to practice law in New Hampshire, including recent law school graduates.

Martin's position would be fully remote, the standard probationary period was waived, and she would see no gap in her health insurance coverage. And MacDonald would again be her direct supervisor.

NHPR asked Keating if he was instructed to offer Martin the position by MacDonald. He declined to comment, and instead referred to the judicial branch's statement.

Weeks into her new role, MacDonald submitted a request for a pay increase for Martin, according to a separate document obtained by NHPR. He cited her skills and experience, as well as her "working relationships in the Judicial Branch."

Publicly available state payroll information shows that on April 18, Martin received her normal paycheck, along with an additional $49,856, a result of the liquidation of her unused sick, vacation and termination pay.

'Tough choices'

Martin's payout came at an unusually fraught time for the Judicial Branch.

Throughout the winter and spring of this year, MacDonald was warning state budget writers about the impact any proposed cuts would have on the state's justice system, including the closure of courthouses or delays in jury trials.

"Tough choices," MacDonald told members of a key House budget committee as he explained the impacts of possible cuts, including to court security, in the face of a slashed budget. "It's not ideal."

The branch's financial picture was so bleak that in April — the same month that Martin received her payout and raise — MacDonald announced a hiring freeze for all but the most critical court positions. He also warned about possible layoffs in the future.

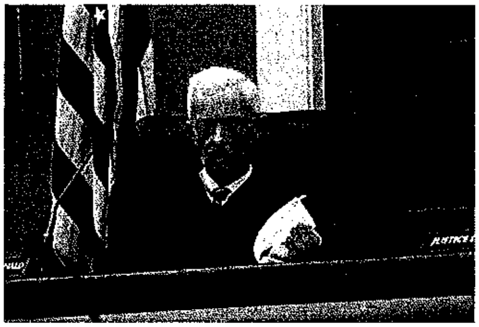
The Judicial Branch did not respond to questions about its finances, or why it chose to offer Martin a raise in her new position at the same time it was warning lawmakers about the possible need for court closures.

Despite pressure to cut costs, when Martin took over her new job, she wasn't the only one being paid to fill the role. For the previous 14 years, Sherry Hieber oversaw the application process to practice law in the state, but in early 2025 she told court leadership about her plans to retire.

In an announcement posted on the court's internal messaging system, MacDonald told branch employees that Hieber and Martin would overlap during a transition period expected to last a "few months."

Payroll records show that Martin and Hieber — both earning salaries of more than $154,000 — ended up holding the same job for five months, ending in early September when Hieber received her last state paycheck.

A Judicial Branch spokesperson declined to explain why it paid two people for a job previously performed by one person for nearly half a year, or if it violated its own personnel policies, which appear to cap "overlapping appointments" at a maximum of two weeks.



A benefit for one

Martin — a top state official with close ties to the chief justice — appears to have been able to arrange a benefit that other public employees are not able to access.

Rich Gulla, president of the SEIU, the largest public employee union in the state which represents some rank-and-file Judicial Branch employees, said that his members are not permitted to cash out their benefits while switching jobs, as Martin was allowed to do, under the terms of the union's contract.

He called Martin's brief layoff and subsequent rehiring "peculiar," and said other state employees deserve an explanation.

"I think that they deserve to know that the people running the departments are operating in an ethical manner," said Gulla. "This is very concerning."

In addition to calling for a public hearing, Rep. Berry said the payout to Martin could spur a move among lawmakers to ensure this type of payment does not occur in the future.

"The courts are going to look at it and say, was it legal? So I think as an elected official, my response would be, 'Well, let's try to make it illegal because you shouldn't be doing this,' " said Berry. "Just because you can doesn't mean you should."

Berry also praised the whistleblower for trying to shed light on the payments.

According to documents obtained in a public records request, that person followed up their initial phone call with an email to a human resources official in another state agency a week later. The person said that their "moral compass" would no longer let them work in the New Hampshire Judicial Branch, where there is "zero accountability for unethical behavior."

"The NHJB will see fallout from these moves," they wrote.

EXHIBIT

tabbies

B

Press Release
For Immediate Release
Date: October 31, 2025

Contact
Av Harris, Communications Manager
(603) 415-6770 | aharris@courts.state.nh.us

Statement of Supreme Court Justices MacDonald, Donovan, Countway and Gould

The court has become aware of public interest in a matter involving a judicial branch employee. Due to the limitations imposed by New Hampshire law, the court cannot disclose confidential personnel information. However, the court can provide the following information at this time.

Every personnel decision regarding Ms. Martin was made collectively by the Supreme Court. Since early 2024 the Judicial Branch has been undertaking a comprehensive review of its administrative operations and costs as part of an effort to improve efficiency, better align staffing with current needs, and lower overall costs for taxpayers. As part of this reorganization, the Supreme Court decided to eliminate the position previously held by Ms. Martin. Under the personnel rules, elimination of a position results in a layoff of the employee, and the employee is entitled to three weeks' notice. In accordance with standard personnel policies, and after review by the Department of Administrative Services, she received the accrued leave and benefits to which she was entitled at the time of her layoff.

Ms. Martin is presently employed as General Counsel to the Office of Bar Admissions. That office is supported entirely through bar admission and application fees, and its operations do not draw upon state general fund appropriations. The Supreme Court collectively decided to offer Ms. Martin the opportunity to transition into this critical position previously occupied by a recently-retired attorney who served as General Counsel for fourteen years. The court determined that Ms. Martin should work alongside her predecessor for several months before taking over as General Counsel so that she could absorb the institutional knowledge necessary to the execution of her responsibilities.

The Court remains committed to responsible stewardship of public resources and to maintaining the effective administration of justice across the state.

EXHIBIT

C

Press Release
For Immediate Release
Date: November 25, 2025

Contact
Michael S. Garrity, Director of Communications
(603) 931-9375 | michael.s.garrity@doj.nh.gov

James T. Boffetti, Deputy Attorney General
(603) 271-0302 | James.T.Boffetti@doj.nh.gov

Completion of Preliminary Review of Judicial Branch Employment Matter

Concord, NH – Attorney General John M. Formella announces that the New Hampshire Department of Justice (DOJ) has completed its preliminary review of a payment to a judicial branch employee who was laid off for two days and then hired into another position within the judicial branch. This payment and related events were the subject of a New Hampshire Public Radio (NHPR) story captioned "In Midst of Budget Crisis, An Unusual Move Helped Ally of NH Chief Justice Collect $50k," which was published and broadcast on October 23, 2025.

The same day the NHPR story was broadcast and published, DOJ received a letter from attorneys representing Chief Justice Gordon MacDonald, offering to provide an attorney proffer on his behalf, and apprising that they would make immediate outreach to the offices of Governor Kelly Ayotte, Speaker of the House Sherman Packard, and Senate President Sharon Carson to address issues raised in the report. Prompted by the news story and reactions to it, DOJ commenced a preliminary review of the facts and circumstances reported to determine whether any further actions were warranted. Letters were sent to several parties directing them to preserve documents and materials relevant to the preliminary inquiry along with assurances that DOJ's preliminary review was not a formal criminal investigation.

DOJ's preliminary review included interviews with current and former state employees in the judicial and executive branches, and review of judicial branch personnel rules, government records, and other documents. That review confirms the chronology of events NHPR reported—namely, Dianne Martin was hired as Director of the Administrative Office of the Courts (AOC) effective November 15, 2021, formally laid off on April 1, 2025, and hired to a different position within the judicial branch as General Counsel for the Office of Bar Admissions effective April 4,

2025. Her layoff as AOC Director triggered a payout of accrued annual leave, accrued sick leave, and termination pay. The Department of Administrative Services (DAS) processed the payout based entirely upon the accrued leave balances reported to it by the judicial branch.

NHPR's report included a copy of a March 27, 2025, letter from AOC to Dianne Martin informing her that she was being laid off effective April 1, 2025, pursuant to judicial branch personnel rule 56. During our review we learned that Dianne Martin was called to a meeting with several Justices at the New Hampshire Supreme Court on February 28, 2025, at which time she was told that her position as AOC Director was eliminated effective immediately. She had no advance notice of an impending layoff, as required by the judicial branch personnel rules. The Hon. Christopher Keating was informed the same day that he would be AOC's Interim Director. Ms. Martin left the February 28 meeting with the understanding that her layoff was effective that date; she never returned to AOC. Although verbally informed her layoff was effective February 28, 2025, records indicate that she was retained on paid administrative leave until formally laid off on April 1, 2025.

Judicial branch personnel rule 56 provides that a "layoff is a termination of employment that occurs when the Supreme Court deems it necessary to abolish a position due to a shortage of funds or work, due to material change in the duties or organization of a work unit, a change in state law, or a change in federal requirements. A layoff is considered non-prejudicial and non-disciplinary." An employee who is laid off is entitled to compensation for all her unused accrued annual leave up to a maximum of fifty (50) days, compensation for 50% of her accumulated sick leave up to a maximum of sixty (60) days, and compensation for terminal pay. Judicial branch personnel rules allowed Ms. Martin to earn 21 days of annual leave each year and to accrue a maximum of 44 days (330 hours) annual leave. Those rules also allowed Ms. Martin to earn one and one-half days (11.25 hours) of sick leave each month from the date of her initial employment (in addition to an initial credit of 20 days' sick leave) up to a maximum of 120 days (907 hours) of sick leave.

For purposes of calculating Ms. Martin's layoff payout, DAS relied entirely upon the leave balances maintained and reported to it by the judicial branch. The judicial branch was the exclusive record keeper of Ms. Martin's leave account, which was based on leave usage entered into the judicial branch's system by Ms. Martin and approved by her supervisor, Chief Justice MacDonald. Judicial branch officials attest to DOJ that the accrued leave balances they submitted to process Ms. Martin's layoff payout were accurate. Relying upon the leave balances the judicial branch provided DAS, Ms. Martin received a payment of $49,856.83, which represented a payout for 330 hours of annual leave totaling $27,386.70, 194.75 hours of sick time totaling $16,162.30 and terminal pay of $6,307.83. DAS properly calculated the payout amount based exclusively upon the accrued leave information provided to it by the judicial branch.

Four Supreme Court Justices released a public statement on October 30, 2025, explaining that the judicial branch had been contemplating reorganization of administrative operations since 2024 and that every personnel decision taken regarding Ms. Martin was made collectively by the Supreme Court. The effective date of its administrative reorganization, Judge Keating's appointment as Interim Director of AOC, Ms. Martin's layoff, and her subsequent hiring as General Counsel to the Office of Bar Admissions were the sole province of the Supreme Court.

Based on all of the facts gathered during our preliminary review, DOJ concludes that the series of events and transactions examined do not warrant further review or investigation by DOJ as, at this time, there is no reasonable suspicion to believe that further investigation would uncover actionable criminal conduct. While it would be reasonable to conclude that in certain respects human resources best practices were not followed during the series of events and transactions examined, DOJ does not have oversight authority over the judicial branch for such issues. DOJ is therefore closing its review and will take no further action on this matter.

EXHIBIT

D

JUDICIAL CONDUCT COMMITTEE-INITIATED INQUIRY

JC-25-079-CII

PROTECTIVE ORDER

The Judicial Conduct Committee ("JCC") hereby issues this protective order in accordance with New Hampshire Supreme Court Rule 40(3)(g). This protective order limits the disclosure of confidential or privileged information or documents relating to personnel decisions regarding Dianne Martin. The protective order covers all statements made by the witness identified below and records disclosed by the witness (including documents (whether in paper, electronic format, or otherwise), memoranda, emails, text messages, voicemail, voice memos, or any other format in which information is maintained) relating to the status of Dianne Martin's employment with the New Hampshire Judicial Branch.

All records or statements made by to the Judicial Conduct Committee through its attorney by the witness are subject to the following:

1. Pursuant to New Hampshire Supreme Court Rule 40(8)(c) all statements and shall be given under oath or affirmation, subject to the penalties of perjury or false swearing.

2. The statements and records may be disclosed only to the members of the JCC, its counsel, and to investigators or experts directly involved in and reasonably necessary to investigation and enforcement of the Code of Judicial Conduct.

3. Any notes taken by members of the JCC, its counsel, or agents in connection with the review of these records or statements shall be treated as confidential and are subject to the restrictions in this protective order.

4. Any person to whom disclosure of the records or statements is made shall not further disclose the information therein and shall not use the information therein for any purpose other than as set forth in this order.

5. The contents of the statements or records shall not be disclosed to any third party except to as necessary to investigate potential violations of the Code of Judicial Conduct. All such persons who are questioned in this matter shall be advised of their obligation to maintain confidentiality as set forth in Supreme Court Rule 40(3). Any person to whom disclosure of the records or statements is made in connection with this case shall be advised of the terms of this order.

6. Statements, records, or the content thereafter may be used by the JCC to elevate the Committee-Initiated Inquiry to the level of a complaint and seek an answer from any judicial officer pursuant to Supreme Court Rule 40(7) and by the JCC and hearing counsel to prosecute any statement of formal charges issued by the JCC pursuant to New Hampshire Supreme Court Rule 40(9).

7. If the JCC decides to conclude the above-captioned Committee-Initiated Inquiry without initiation of statement of formal charges under Rule 40(9) statements and records disclosed pursuant to this protective order shall be sealed and will remain confidential.

8. A violation of this protective order will be subject to appropriate sanctions, including but not limited to contempt of court.

SO ORDERED.

1/16/26

Date

John Mullen
Chairman, Judicial Conduct Committee

Acknowledgment of Witness

I have received and reviewed this protective order and agree to be bound by its terms. I am providing statements and records to the JCC subject to the terms of this order.

Date

Witness
Print and sign name

EXHIBIT

E

JUDICIAL CONDUCT COMMITTEE-INITIATED INQUIRY

CASE NO. JD-25-079-CII

EMERGENCY MOTION FOR PROTECTIVE ORDER AND/OR INJUNCTION

NOW COME Chief Justice Gordon MacDonald and Associate Justices Patrick Donovan, Melissa Countway and Bryan Gould (the "Justices"), by and through counsel, and hereby respectfully request that the Judicial Conduct Committee issue a protective order, or in the alternative an injunction, prohibiting any of its members, its counsel, or any person acting on its behalf, from making any statement, public or private, to any person that could have the effect of disclosing the existence of the Rule 40(6) Committee-initiated inquiry that apparently arises from the employment circumstances of Dianne Martin with the Judicial Branch, and in support thereof states as follows:

1. By letter dated February 5, 2026, JCC Counsel Phil Waystack proposed to counsel for the Justices that the Committee issue a public statement that "the JCC has initiated an inquiry" into "this matter" and that the "[t]he basis of this inquiry is whether any of the information now in the public domain, (or other facts which are not in the public domain) violate the Code of Judicial Conduct." Exhibit 1.

<u>The Conditions Required by Supreme Court Rule 40(3)(f) For Making a Public Statement Are Not Met</u>

2. The letter asserts that the JCC has authority to issue such a statement under Rule 40(3)(f).

3. This proposal is flawed for numerous reasons.

4. The express, textual preconditions for breaching the default requirement of confidentiality under Rule 40(3)(f) have not been met.

5. Rule 40(3)(f) provides that the JCC may issue a public statement to "confirm the existence of the investigation" only when: (1) the pendency of a proceeding before the committee is generally known to the public through independent sources; (2) the subject matter of the proceedings is of broad public interest or speculation; and (3) public confidence in the administration of justice may be threatened because of lack of information concerning the status of the proceedings.

6. None these conditions can be shown at present.

7. The plain text of the Rule only allows the JCC to issue a public statement to "confirm the existence" of an "investigation." But as Attorney Waystack's letter confirms, there is no "investigation" at this time, only an "inquiry."

8. Further, Attorney Waystack proposes that the JCC issue a statement precisely because its investigation is generally *not* known to the public. This is the clearest single reason that a public statement is not appropriate.

9. Moreover, it is not yet clear what the precise subject matter of the inquiry is, the identity or identities of the judge or judges whose conduct is the subject of the inquiry, or which provisions of the Code of Judicial Conduct are allegedly implicated. Without establishing those facts, it is not possible to determine whether the inquiry is a matter "of broad public interest or speculation."

10. Attorney Waystack has disclosed to two of the Justices that members of the JCC have received *ex parte* communications from unnamed individuals urging the members to commence an inquiry based on news accounts of personnel decisions made by the Supreme Court in February and March of 2025. If this is, in fact, the impetus for the JCC's inquiry, it further highlights that a public statement is not warranted.

11. Attorney Waystack's reference to activities in the legislature does not make a compelling case in support of "broad public interest." He states only that "[i]t has come to his attention" that "several members of the public" have corresponded with Rep. Robert Lynn concerning legislative oversight of the judicial branch. Correspondence by "several members of the public" with a legislative committee chair hardly constitutes "broad public interest," particularly when the subject matter of the inquiry remains unclear.

12. The fact that CACR 23 was introduced in the House does not reflect "broad public interest" either. The threshold for the introduction of legislation and proposed constitutional amendments in the New Hampshire House of Representatives is low. Any member of the General Court can introduce legislation. And unlike the United States Congress, the fact that a proposal gets a public hearing does not indicate potential support. In the General Court every bill gets a full public hearing and is brought to the floor for consideration of the full body, The mere introduction of a proposed amendment and the holding of a public hearing in no way reflects "broad public interest."

13. Nothing in the news article appended to the letter provides evidence of "broad public interest" either. The article's primary source, Dana Albrecht, is a longstanding critic of the judicial branch. Indeed, he is currently suing the judicial branch, the Chief Justice, all of the Associate Justices, as well as the governor, the speaker of the house, and a host of others, in an effort to gain access to records related to the Dianne Martin employment matter. *See, Albrecht v. MacDonald, et al.,* Hillsborough Superior Court, Southern District, Case No. 226-2025-cv-00705. While he is entitled to have his opinion and to prosecute his lawsuit, his statements reflect one man's idiosyncratic interests more than they reflect any "broad public interest."

14. Finally, there is no reason to believe that the news reports about the Dianne Martin employment matter threaten "public confidence in the administration of justice." Questions about how the branch handles the employment and compensation of staff are unrelated to the core judicial function of deciding cases and providing impartial justice to litigants before the courts of the judicial branch.

15. Moreover, revealing the existence of an ongoing, committee-initiated inquiry is more likely to erode public confidence in the administration of justice during the inquiry than to enhance it.

16. Revealing the existence of an active inquiry by the JCC will stand only to create a sense of impending drama as the public waits for the conclusion of the investigation to be announced. Knowledge of the pendency of an investigation that would threaten public confidence in the administration of justice because it calls into question any action or decision that the Supreme Court might take while the investigation proceeds. And that cost will be incurred even if the JCC determines, as expected, that no judicial misconduct occurred.

17. Attorney Waystack's proposal that the JCC make a public statement appears primarily designed to address the short-term public confidence in the *JCC* rather than in the administration of justice as a whole. It also seems to evince an intent to protect the JCC's reputation against unidentified allegations at the expense of the reputations of the Justices of the Supreme Court, in violation of the express confidentiality requirements of the rules.

Ongoing Confidentiality and Privacy Concerns

18. Rule 40 is replete with guarantees that the proceedings of the JCC are confidential and that the privacy and reputational interests of judges subject to its inquiries and investigations are protected.

19. Since the earliest stages of this inquiry, the Justices have had valid concerns about whether the strict confidentiality required by the rules has been observed. The February 5th correspondence and the public statement proposal further underscore their well-founded concerns.

20. Attorney Waystack interviewed Justices Donovan and Countway in a jury deliberation room in the United States District Court building. Members of the public do not ordinarily have access to that part of the federal courthouse, and it is only reasonable to assume that in order gain that access, statements were likely made to someone in the federal court. It would be pure speculation to guess exactly what was said and exactly to whom, but the extraordinary nature of the access provided reasonably raises concern about whether confidentiality has already been compromised.

21. Attorney Waystack's statements in the February 5th letter likewise raise additional questions. He writes that "[i]t has come to his attention" that Rep. Lynn has received correspondence from "several members of the public." Has Attorney Waystack engaged in conversations about this matter with a member of the legislature? Rep. Lynn, a former Chief Justice of the Supreme Court, is likely aware that Attorney Waystack has a longstanding relationship with the JCC. Was the existence of the inquiry revealed to Rep. Lynn as part of any communication between the two? Would the very act of asking Rep. Lynn questions about his communications with members of the public suggest the existence of the inquiry to him?

22. Attorney Waystack's proposal that the Justices appoint an alternate panel would also compromise confidentiality. While the Justices recognize that they cannot sit in judgment of their own cause and that such an appointment may eventually be necessary, it is clearly premature at this time.

23. The letter suggests that the JCC wishes to "consult" with an alternative panel of the Supreme Court about issuing a statement to the public. It is the JCC's responsibility, however, to rule on the applicability of Rule 40(3)(f). The JCC cannot "consult" with the Supreme Court on how it should rule because appeals of JCC decisions are made to the Supreme Court, and the Court cannot review a decision on which it has "consulted."

24. It is against this backdrop that the suggestion of a public statement is being presented, and it does not inspire confidence that Rule 40(3)'s restrictions on disclosure will be observed going forward.

Conclusion

25. The Justices have repeatedly urged Attorney Waystack to present a proposed protective order to the JCC that will allow them to disclose additional confidential and privileged records relating to the Dianne Martin complex employment matter. They have done so with great confidence that full disclosure of the existing record will lead the Committee to reach the same conclusion as the Attorney General's Office: No further action is warranted.

26. The proposal that the JCC issue a public statement announcing its inquiry before it has even considered readily available evidence would violate the JCC rules and the privacy rights of the Justices, would encourage speculation, and would ultimately undermine confidence in the judiciary.

WHEREFORE, the JUSTICES respectfully request that the JCC:

A. Issue a Protective Order prohibiting disclosure or dissemination of any information regarding the existence of the JCC inquiry or any other violation of the confidentiality requirements of the rules; or in the alternative

B. Enjoin publication of any public statement under Rule 40(3)(f).

Respectfully Submitted,

Chief Justice Gordon MacDonald, Justice Patrick Donovan, Justice Melissa Countway, and Justice Bryan Gould,

By their attorneys,
Lehmann Major List, PLLC

February 9, 2026

Richard J. Lehmann (Bar No. 9339)
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EXHIBIT

F

STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT COMMITTEE

JD-25-079-CII

JUDICIAL CONDUCT COMMITTEE'S OBJECTION TO FOUR JUSTICES' EMERGENCY MOTION FOR PROTECTIVE ORDER AND/OR INJUNCTION.

Now comes Philip R. Waystack, as Committee Counsel for the Judicial Conduct Committee, Respondent in this matter, and objects to the Justices, hereafter, the Complainants, Emergency Motion for Protective Order, and/or Injunction and says as follows:

1. Respondent admits sending a letter to counsel for the Complainants and that portions of paragraph 1 of the said motion were contained within the letter.

2. Respondent admits the allegations in paragraph 2 of the motion.

3. Paragraph 3 is a legal conclusion to which no response is necessary.

4. Respondent denies the allegations in paragraph 4 and puts the Complainants to their proof thereon.

5. Respondent admits that paragraph 5 is a partial restatement of Rule 40(3)(f).

6. Respondent denies the allegations in paragraph 6 and puts the Complainants to their proof thereon. And the Respondent answers further stating that questions concerning the employment of Dianne Martin in the judicial branch are indeed a subject of broad interest to the public, who has been informed about the matter through numerous reports in the media, and more specifically the several reports of Todd Bookman of New Hampshire Public Radio (NHPR). In addition, the public is aware of not only the investigation of the New Hampshire Attorney General's office (AG), but of the redacted interviews and reports of the investigator which have been released and are in the public domain.

   Does the same public wonder whether any judicial disciplinary authorities will look into the many questions raised by the aforesaid reports? Does the public have any legal interest in knowing that an inquiry is underway pursuant to Rule 40(3)(f)? Respondent avers that it does.

7. Respondent states that Rule 40(2) *Definitions* defines the word "Inquiry" as "A preliminary investigation begun by the committee on its own . . . " Respondent states that an investigation is currently underway, in the form of an Inquiry.

8. Respondent denies the allegations in paragraph 8 and puts the Complainants to their proof thereon.

9. Respondent denies the allegations in paragraph 9 and puts the Complainants to their proof thereon.

10. Respondent denies the allegations in paragraph 10 and puts the Complainants to their proof thereon. Moreover, if the Respondent did meet with two of the Complainants, he would have reminded them that any such discussion was confidential pursuant to Rule 40 3 (a) and (b) and finds it extraordinary that apparently one of the Complainants failed to maintain confidentiality in making this allegation.

11. Respondent restates his response to paragraph 11 and answers further stating that it has been reported widely in the media that bills have been filed in the legislature and that the House Judiciary Committee has taken action on bills concerning judicial oversight based on media reports concerning the employment of Dianne Martin in the judicial branch. This is a matter of broad public interest.

12. Respondent denies the allegations in paragraph 12 and puts the Complainants to their proof thereon. Moreover, it has been reported that the House Judiciary Committee has actually voted on CACR 23.

13. Respondent denies that allegations in paragraph 13 and puts the Complainants to their proof thereon. The Respondent answers further by stating that the news article in InDepthNH, which is attached to this response for the Committee's easy reference states that Deputy Counsel for the Judicial Branch attended the hearing and advocated against the bill. Moreover, the news article specifically lays out the specific issue – the employment of Dianne Martin in the judicial branch which is the subject of the Respondent's inquiry.

14. Respondent denies the allegations in paragraph 14 and puts the Complainants to their proof thereon.

15. Respondent denies the allegations in paragraph 15 and puts the Complainants to their proof thereon. The Respondent answers further using a quote from an InDepthNH news article to support the position that it is important for the public to know that the JCC has opened an inquiry into this matter. "What's the remedy to investigate this? The Judicial Conduct Committee doesn't do it. They're under the direct authority of the Supreme Court. You have the fox guarding the henhouse".

16. Respondent denies the allegations in paragraph 16 and puts the Complainants to their proof thereon.

17. Respondent denies the allegations in paragraph 17 and puts the Complainants to their proof thereon.

18. Respondent admits the allegations in paragraph 18 and makes specific reference to Rule 40(3).

19. Respondent has no response to the first sentence of paragraph 19. Respondent is surprised by the allegations in the second sentence. It was Complainants' counsel who contacted Respondent by telephone in the first instance. To suggest that a response by Respondent to Complainants' counsel's request is somehow a breach of confidentiality is without factual or legal merit.

20. Respondent denies the allegations in paragraph 20 and puts the Complainants to their proof thereon. Respondent answers further stating that if he did interview Justices Countway and Donovan, he would have explained that any such interview and even the request for any such interview was confidential under Rule 40(3). The fact that the Complainants make this factual allegation appears to mean that one or both of the two justices referred to did not keep the alleged interviews confidential. It is only ironic that Complainants would use this allegation to suggest that Respondent had somehow compromised confidentiality. Respondent denies any "assumptions" or "pure speculation" that Complainants may have and puts them to their proof thereon.

21. Respondent denies the allegations and implications in paragraph 21. Respondent further states that he has not spoken with Representative Robert Lynn about this matter.

22. Respondent denies the allegations in the first sentence of paragraph 22. However, he agrees with the second sentence that the Complainants cannot sit in judgement of their own cause. This motion of the Complainants, coupled with this response make it abundantly clear that the Complainants and the Respondent have a deep and significant dispute about the issues raised by the Complainants emergency motion. This dispute alone requires that an Alternative Panel be required to resolve this dispute. It is not premature, as Complainants have alleged, but present and required, at once because as Complainants have stated "... they cannot sit in judgement of their own cause . . .", as stated in paragraph 22 of their motion.

23. Respondent admits that his February 5, 2026 letter suggested that the JCC wanted to "consult" with an alternative panel as that is specific language that appears in Rule 40(3)(f). Respondent denies the balance of the allegations in paragraph 23 and puts the Complainants to their proof thereon.

24. Respondent denies the allegations in paragraph 24 and puts Complainants to their proof thereon.

25. Respondent is surprised at the word "repeatedly" in paragraph 25 and suggests that it is hyperbole. Respondent had two brief telephone conversations with Complainants counsel and counsel have exchanged two letters. After receiving the Complainants proposed protective order in their second letter of January 30,2025, Respondent replied on February 5, 2026 that he requested the Executive Secretary of the JCC to submit the Complainants proposed protective order to the JCC.

26. Respondent denies the allegations in paragraph 26 and puts the Complainants to their proof thereon.

AND ANSWERS FURTHER STATING

27. The pleading filed by the Complainants fails to include a verification of the statements therein.

WHEREFORE, THE RESPONDENT RESPECTFULLY REQUESTS THAT THE COMMITTEE:

A. Find that the Protective Order that it approved on January 16, 2026 is appropriate and properly addresses the confidentiality concerns as articulated in Supreme Court Rule 40 and more specifically Rule 40(3);

B. Deny the request of the Complainants to issue a further Protective Order as suggested in Prayer A of their pleading;

C. Deny the request by the Complainants to enjoin publication of any public statement pursuant to Rule 40(3)(f); and,

D. Find that there is a significant and unresolvable discovery dispute between the Complainants and the Respondent such that a hearing is necessary before an independent panel of appointed justices to resolve this and any further disputes between the parties.

Dated: February 23, 2026

Respectfully submitted,
Judicial Conduct Committee

By its Committee Counsel,

By: _/s/ Philip R. Waystack_
Philip R. Waystack, Esquire

STATE OF NEW HAMPSHIRE

VERIFICATION

On this 23rd day of February, 2026, I, Philip R. Waystack, Esquire, Judicial Conduct Committee Counsel, being duly sworn verify that the information set forth in this instrument is true and accurate to the best of my knowledge and belief.

/s/ Philip R. Waystack
Philip R. Waystack, Esquire

Before me,

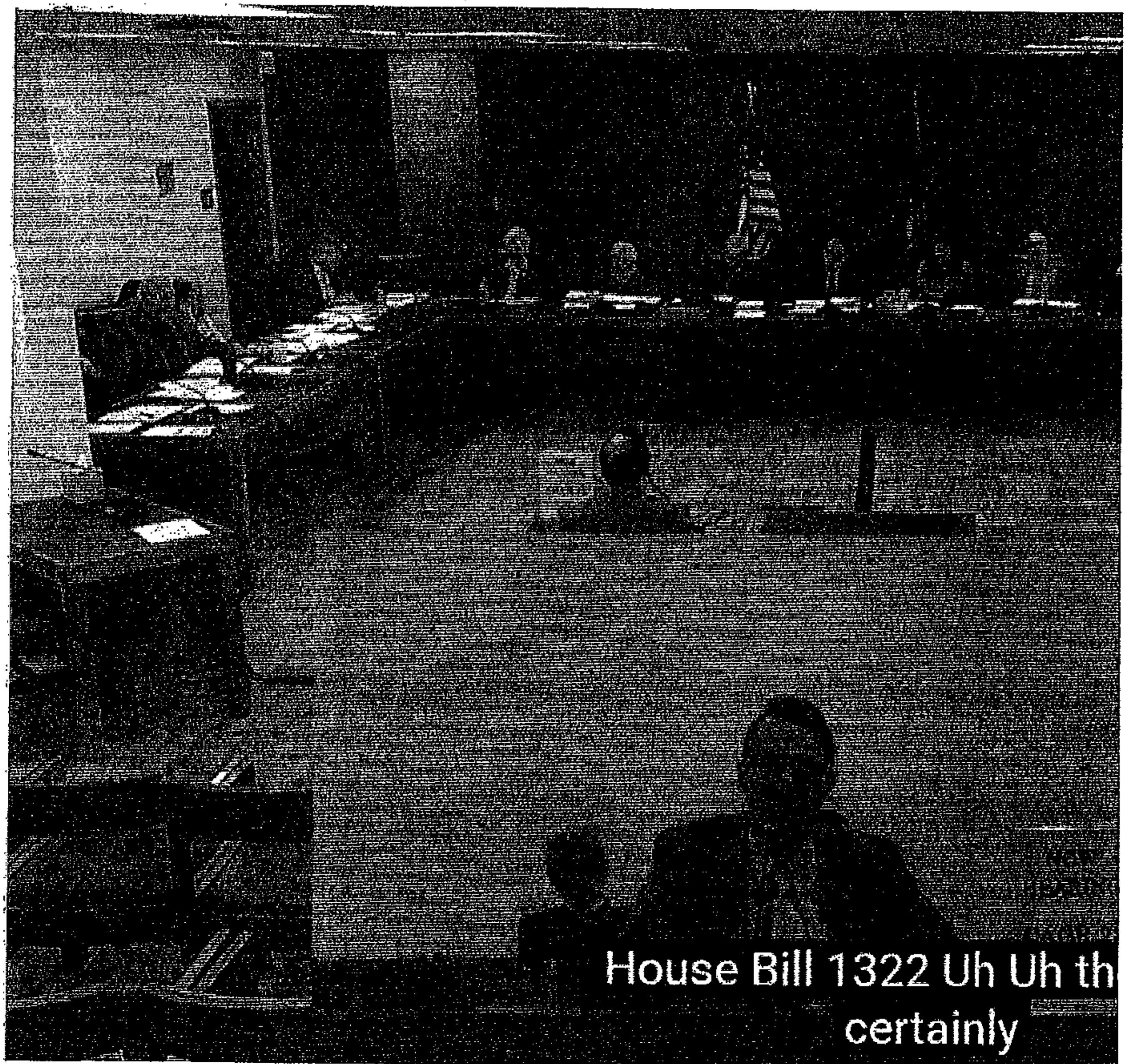
Rita S. Gilbert

Rita S. Gilbert, Notary Public

RITA S. GILBERT STATE OF NEW HAMPSHIRE -MY- COMMISSION EXPIRES JUNE 12, 2029 NOTARY PUBLIC

Constitutional Amendment Proposed To Deal With 'Judicial Crisis' in NH

By DAMIEN FISHER, InDepthNH.org (InDepthNH.org) February 4, 2026



Screenshot

Court watchdog Dana Albrecht is pictured testifying before the House Judiciary Committee on Wednesday.

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By DAMIEN FISHER, InDepthNH.org

CONCORD – After a year of New Hampshire Supreme Court scandals, it's time to rein in judges, according to Rep. Susan DeRoy (R-New Durham.)

"New Hampshire has always stood for something simple and powerful. Live free or die," DeRoy said. "That means no branch of government gets a free pass. No unchecked power."

DeRoy testified before members of the House Judiciary Committee on Wednesday asking them to back her proposal to amend the state constitution and give the legislature the ability to investigate the judicial branch.

Judges in New Hampshire do not face any real accountability for their misconduct, DeRoy said. The legislature already has the authority to impeach a judge accused of crimes or other misconduct, but that's a rare occurrence. Her proposal would allow a standing legislative commission to investigate alleged misconduct and provide transparent oversight over the whole judicial branch.

But Lauren Warner, Deputy General Counsel for the Judicial Branch, said DeRoy's proposed constitutional amendment was redundant. The legislature already has the authority to investigate misconduct and vote to impeach judges under the current constitution.

"And so essentially looking at what this bill is seeking to do, what is it seeking to do that isn't already currently in a process?" Warner asked.

Most instances of judicial misconduct are currently investigated by the Judicial Conduct Committee, overseen by the New Hampshire Supreme Court. The committee is made up of 11 members, six of whom are members of the public not connected to the judicial branch. The JCC investigates misconduct, holds hearings, gathers evidence, and imposes discipline on judges who have been found in violation. The JCC also already has the ability to work with the legislature to go further and impeach judges if deemed appropriate.

But court watchdog advocate Dana Albrecht testified that changes are needed given the urgent problems within the judicial branch.

"What we have today is nothing less than a judicial crisis," Albrecht said.

Albrecht submitted his written testimony here: https://justicemacdonald.com/2026_02_04_House_Judiciary/2025_01_04_Judiciary_Testimony_Part2.pdf

Within the last year two members of the Supreme Court have come under scrutiny for alleged ethical lapses or criminal conduct, he said. Associate Justice Anna Barbara Hantz Marconi pleaded no contest in October to a misdemeanor in connection to the criminal case against her husband, former Ports Director Geno Marconi. Hantz Marconi was able to get her job on the Court back after she paid a fine.

Chief Justice Gordon MacDonald has come under fire for the handling of a personnel matter within the judicial branch. Last year, Diane Martin was laid off from her job as the administrative director at the Judicial Branch, then hired two days later by the Supreme Court as the General Counsel to the Office of Bar Admissions. During her brief unemployment, Martin cashed out her accrued employment benefits, including unused vacation and sick time, valued at more than $50,000. According to witness statements, MacDonald laid the groundwork for Martin's transition between jobs.

The New Hampshire Attorney General's Office reviewed the matter, but deemed that nothing inappropriate occurred.

However, Albrecht said in his written testimony there are numerous inconsistencies in the witness statements in both the Diane Martin matter, and the Hantz Marconi case, which requires further investigation. But, because the JCC is under the Supreme Court, that investigation is not happening, Albrecht said.

"What's the remedy to investigate this? The Judicial Conduct Committee doesn't do it. They're under the direct authority of the Supreme Court," he said. "You have the fox guarding the henhouse."

Further compromising and complicating the landscape is MacDonald's pending divorce litigation, Albrecht said. MacDonald's divorce has been in court for the last five years without a resolution. Throughout the divorce litigation, MacDonald essentially is the supervisor for the judges sitting on his case.

At least one, Family Court Judge David Burns, suggested in 2023 that an out of state judge be assigned in order to avoid the appearance of a conflict. The case remains in New Hampshire, however, and under MacDonald's ultimate authority.

EXHIBIT
G

JUDICIAL CONDUCT COMMITTEE-INITIATED INQUIRY

CASE NO. JD-25-079-CII

REPLY IN SUPPORT OF EMERGENCY MOTION FOR PROTECTIVE ORDER AND/OR INJUNCTION

NOW COME Chief Justice Gordon MacDonald and Associate Justices Patrick Donovan, Melissa Countway and Bryan Gould (the "Justices"), by and through counsel, and hereby respectfully REPLY to Committee Counsel's Objection To Four Justices' Emergency Motion For Protective Order and/or Injunction, and in support thereof state as follows:

1. The Justices restate their understanding of the procedural *status quo* as follows: The Justices seek a clean protective order that provides them and the State with protection from potential liability, and that comports with their obligations under the rules of judicial conduct and that forestalls public disclosure of the Committee's inquiry until such time as the Committee is able to consider the full record.

2. The Justices cannot release records related to Dianne Martin's employment status with the judicial branch, information about her tenure there, communications in which she participated or is discussed, or any other information that may cause Ms. Martin to suffer reputational harm, without first knowing that any such disclosure is subject to a protective order.

3. In addition to the common law and statutory protections employees enjoy, the Justices are restricted by Canon of Judicial Conduct 1.1, which states that "a judge shall comply with the law…." Simply put, the Justices merely seek the greatest degree of protection from liability for the State and for themselves, and the greatest degree of reputational protection for Ms. Martin, before making a full disclosure of protected information.

4. Moreover, the Justices' request for a clean protective order is completely without prejudice to the authority of the JCC to take action in the future. Pursuant to Rule 40, that future

action may include requiring sworn statements and making public disclosures, to the extent that any such actions are consistent with Rule 40's procedural protections.

5. There is no apparent reason *not* to grant a clean protective order. Once granted, the Justices will be able to make a substantive disclosure that they believe will fully address any concern that they acted improperly in the Dianne Martin matter.

6. If the Committee disagrees that the proposed disclosure is sufficient, it will then be able to take further action in the future if any such action is warranted.

Specific Issues Raised In The Latest Pleadings

7. A few loose ends left by Attorney Waystack's objection must be addressed.

Propriety of Public Disclosure At Present

8. The Justices each have a reputational due process interest at stake in this matter, and it is an interest that will be irreparably harmed if the JCC makes a public statement acknowledging the existence of its inquiry.

9. Evidence of the existence of that reputational interest, and the protection it must be afforded, is found in the JCC's statement regarding Justice Hantz Marconi, released on or about November 14, 2024. In that press release, the JCC recognized that "[t]he proceedings of the Judicial Conduct Committee are always confidential at the initial stages." *Ex.* 1 at 2. "Confidentiality at the initial stages of every investigation is intended" to serve several enumerated interests, including "[t]o protect a judge's reputation from unfounded allegations that may prove baseless." *Id.* at 3. "The Committee and Judge must keep confidential the fact that a disciplinary matter is before the Committee, including any action taken by the Committee, until either the report of Committee inquiry is dismissed, a *Statement of Formal Charges* is prepared

and filed, or the Committee has disposed of the matter by taking appropriate remedial action." *Id.* None of those three things has occurred.

10. As discussed previously, Supreme Court Rule 40(3), provides for a public statement when: (1) the pendency of a proceeding before the Committee becomes generally known to the public, (2) through independent sources, and the subject matter thereof is of broad public interest of speculation; and (3) public confidence in the administration of justice may be threatened because of lack of information concerning the statute of the proceeding, the Committee may issue a brief statement. *Id.*

11. Attorney Waystack does not allege that the pendency of a proceeding before the Committee is generally known to the public. The Justices continue to believe that the other two factors are also not met, but given the lack of general knowledge of a proceeding, that question is academic. Absent evidence that the pendency of a proceeding is generally known, the threshold requirement for disclosure is not met, and confidentiality remains the Committee's obligation.

12. Additionally, to the extent that legislative activity might be said to reflect public interest in this matter, recent developments suggest that any such interest is *de minimis* at best. On this date, March 5, 2026, the full New Hampshire House took up H.R. 38, a resolution directing the House Judiciary Committee to investigate whether cause exists for the impeachment of any justice of the New Hampshire Supreme Court. The overwhelming voice vote to table that resolution can be seen at the following link at 4:03:05: https://tinyurl.com/HR38tabled. The bill was dispatched, without debate, by way of a tabling motion in less than one minute. Although there is no official count, the "nays" appear to be limited to a few votes, at most. This action certainly undermines any credible argument that there is broad interest or concern about this issue on the part of members of the House.

13. The Justices' reputational interest is founded in due process and the process the Justices seek here is minimal. They ask only that the Committee issue a protective order that allows them to present evidence. Nothing more.

Suggestion of Breach of Confidentiality

14. Attorney Waystack's suggestion that either Justice Donovan or Justice Countway somehow violated Rule 40(3) by disclosing to their colleagues the fact that he questioned them in the federal courthouse is misplaced.

15. Rule 40(3)(a) speaks only to the requirement that the *committee* maintain confidentiality. It has no applicability to individuals interviewed by the committee as part of Rule 40(2).

16. The text of Rule 40(3)(b) applies to a "Reporter," defined by Rule 40(2) as "a person who communicates a report of alleged misconduct to the committee," and to the "Judge," which in context plainly refers to a judge who is the subject of alleged misconduct communicated to the committee by a Reporter. Here, there is neither a reporter nor an allegation of misconduct. There is only an inquiry, and therefore, the Rule's confidentiality requirement as to witnesses is not triggered.

17. Moreover, the scope of Rule 40(3)(b) reaches public disclosure of the existence of a report of misconduct. There is no allegation of public disclosure.

18. Here, Attorney Waystack interviewed Justice Donovan and Justice Countway about the Dianne Martin employment matter. The Justices have noted that all decisions on that subject matter were made by all the Justices of the Supreme Court acting as a group. Nothing in Rule 40(3)(b) suggests that members of a group that made a decision are precluded from

discussing the fact or nature of an inquiry into a group with the other members of that same group.

19. The remainder of Rule 40(3) is likewise irrelevant to the present circumstances.

Role of Counsel

20. Attorney Waystack's Objection is captioned: "Judicial Conduct Committee's Objection to Four Justices' Emergency Motion …." The Justices filed their Emergency Motion with the Judicial Conduct Committee itself, seeking relief from it with the understanding that Attorney Waystack is an investigator, not "Committee Counsel." This raises the question of whether Attorney Waystack is acting in the capacity of an investigator, as a prosecutor, as counsel to the Committee itself, or whether he purports to act in all of these capacities simultaneously. The Justices request clarification on this issue.

Conclusion

21. For these reasons, the Justices again urge the Committee to issue a simple protective order that permits them to disclose sensitive employment information without subjecting them to any additional conditions as a consequence of providing the Committee with additional information.

22. Furthermore, they request an injunction preventing Attorney Waystack from issuing a press release at this time, and clarification on his role in this matter.

Respectfully Submitted,

Chief Justice Gordon MacDonald, Justice Patrick Donovan, Justice Melissa Countway, and Justice Bryan Gould,

By their attorneys,
Lehmann Major List, PLLC

March 5, 2026

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EXHIBIT 1

Press Release

JCC Statement Regarding NH Supreme Court Justice Hantz Marconi

The State of New Hampshire's Judicial Conduct Committee was established by the New Hampshire Supreme Court under New Hampshire Supreme Court Rule 39, pursuant to that Court's constitutional and statutory authority, in order to provide for the orderly and efficient administration of the Code of Judicial Conduct.

The State's Code of Judicial Conduct which appears as New Hampshire Supreme Court Rule 38 is based on general principles that promote and protect judicial independence, integrity and impartiality. The Code prohibits not only actual improprieties, that is, a violation of the law, or court rule, or a specific provision of the Code itself, but also the appearance of impropriety, that is, creating a perception in reasonable minds that a judicial officer had violated the Code or had otherwise engaged in conduct that reflects adversely on the judge's honesty, impartiality, temperament or fitness to serve as a judge. The Code applies to all of a judge's conduct, not just to judicial duties, but also to personal activities such as his or her involvement in educational, religious, charitable, fraternal or civic organizations; financial, business, or remunerative interests; and political conduct.

The proceedings of the Judicial Conduct Committee are always confidential at the initial stages. Generally speaking, after a report or Committee initiated inquiry is filed regarding a judge, the Committee cannot confirm or deny that a disciplinary matter is or may be pending, is being investigated or has been dismissed unless an exception applies.

Confidentiality at the initial stages of every investigation is intended:

-To encourage reporters to come forward without fear that the judge will learn about the report and retaliate;

-To encourage witnesses to cooperate without fear that the judge will learn about the report and retaliate;

-To reassure participants that the media or others will not contact or harass them;

-To allow the Committee time to encourage an infirm or incompetent judge to resign before charges may become public; and,

-To protect a judge's reputation from unfounded allegations that may prove baseless

Here in New Hampshire all proceedings and all information, communications, materials, papers, files, and transcripts, written or oral, received or developed by the Committee in the course of its work, are kept confidential at the initial stages. No member of the Committee or its staff and no employee of the Committee may disclose such proceedings, information, communications, materials, papers, files, or transcripts, except in the course of official duty and as otherwise authorized by New Hampshire Supreme Court Rule 40.

The Committee and judge must keep confidential the fact that a disciplinary matter is before the Committee, including any action taken by the Committee, until either the report or Committee inquiry is dismissed, a *Statement of Formal Charges* is prepared and filed, or the Committee has disposed of the matter by taking appropriate remedial action.

Notwithstanding these confidentiality provisions New Hampshire Supreme Court Rule 40 (3) provides that should the pendency of a proceeding before the Committee become generally known to the public, through independent sources, and the subject matter thereof is of broad public interest or speculation, and public confidence in the administration of justice may be threatened because of lack of information concerning the status of the proceeding and the requirements of due process, the Committee may issue a brief statement as it may deem appropriate in order to confirm the existence of a disciplinary matter before it.

To this end, the Judicial Conduct Committee issues the following statement regarding New Hampshire Associate Supreme Court Justice Anna Barbara Hantz Marconi in accordance with the relevant provisions of New Hampshire Supreme Court Rule 40 (3).

On or about October 17, 2024 the Merrimack County Grand Jury indicted Justice Hantz Marconi for:

-Attempt to Commit Improper Influence (RSA 629:1);
-Solicitation to Commit Improper Influence (RSA 629:2);
-Official Oppression (RSA 643:1);
-Solicitation to Commit Official Oppression (RSA 629:2);
-Obstructing Government Administration (RSA 642:1); and

-Criminal Solicitation of Misuse of Position. (RSA 629:2)

The Judicial Conduct Committee received a report of these charges through the Attorney General's Office and Justice Hantz Marconi self-reported these charges to the Judicial Conduct Committee through her attorneys.

The Judicial Conduct Committee resolved to offer this brief public statement to confirm the pendency of a resulting disciplinary investigation before it arising from these matters.

Justice Hantz Marconi has an unqualified right to a fair hearing regarding these matters without prejudgment. Further, Justice Hantz Marconi has indicated that she does not agree with the allegations in the criminal charges and maintains her innocence.

EXHIBIT

H

N.H. JUDICIAL CONDUCT COMMITTEE

COMMITTEE-INITIATED INQUIRY

No. JC-25-079-CII

ORDER ON EMERGENCY MOTION FOR PROTECTIVE ORDER AND/OR INJUNCTION

On November 14, 2025, the New Hampshire Committee on Judicial Conduct ("JCC" or the "Committee") voted to open a Committee-initiated inquiry pursuant to New Hampshire Supreme Court Rule 40(6) and to conduct an investigation. See N.H. S.Ct. R. 40(2)(defining "Inquiry" to mean "[a] preliminary investigation begun by the committee on its own initiative to determine whether its findings should be docketed as a complaint."). The focus of the inquiry is whether any rules of judicial conduct were violated in connection with the employment circumstances of Dianne Martin, as widely reported in the press. At the same time the Committee voted to delay notice to any involved judge to "avoid possible compromise of the inquiry and resulting investigation or for other good cause." N.H. S.Ct. 40(6). The Committee then hired Attorney Philip Waystack to be committee counsel to conduct that investigation. See N.H. S.Ct. R. 40(2) (definitions).

During the course of his investigation, Attorney Waystack interviewed Associate Supreme Court Justice Melissa Countway, among others. Justice Countway informed Attorney Waystack that she could not disclose certain information or documents without a protective order because the information he sought involved confidential personnel matters. In response to these concerns, the Committee issued a protective order on or about January 16, 2026 (hereinafter "JCC Protective Order," attached as Exhibit A). Shortly after the interview with Justice Countway, Attorney Richard Lehmann contacted

Attorney Waystack to inform him that, in addition to Justice Countway, he also represented Chief Justice Gordon MacDonald, Associate Justice Patrick Donovan, and Associate Justice Bryan Gould (hereinafter collectively the "Justices"). Attorney Lehmann proposed his own version of a protective order to Attorney Waystack.

Sometime thereafter Attorney Lehmann filed an Emergency Motion for Protective Order and/or Injunction (hereinafter "Emergency Motion") with the JCC, requesting the Committee "issue a protective order, or in the alternative an injunction, prohibiting any of its members, its counsel, or any person acting on its behalf, from making any statement, public or private, to any person that could have the effect of disclosing the existence of the Rule 40(6) Committee-initiated inquiry . . . ." Emergency Motion at 1 (preamble). Attorney Waystack filed an objection (hereinafter "Objection") and Attorney Lehmann filed a reply to the objection (hereinafter "Reply"). For the reasons set forth below the Justices' Emergency Motion is GRANTED, in part, and DENIED, in part.

New Hampshire Supreme Court Rule 40 establishes the procedures the Committee must follow in fulfilling its responsibility to administer the Code of Judicial Conduct. See N.H. R. 39(1). Rules 40(3) and 40(16) set forth detailed parameters for when information is confidential and when records or proceedings of the Committee may be made available to the public. Notwithstanding these general principles, Rule 40(3)(g) permits any person to "request from the committee, or the committee may issue on its own initiative, a protective order prohibiting the disclosure of confidential, malicious, personal or privileged information or materials submitted in bad faith and directing that the proceedings be so conducted as to implement the order."

Recognizing that certain aspects of the Committee-initiated inquiry may involve personnel matters that are confidential by law, the Committee on its own initiative issued the JCC Protective Order. Notwithstanding the JCC Protective Order, Attorney Lehmann filed the Emergency Motion. In his Reply, Attorney Lehmann requested the JCC issue a "clean protective order" or "a simple protective order that permits them to disclose sensitive employment information without subjecting them to any additional conditions as a consequence of providing the Committee with additional information." Reply ¶¶ 1, 5, 21. In his Emergency Motion and Reply, Attorney Lehmann did not articulate why the JCC Protective Order was insufficient to protect from public disclosure employment information that was subject to confidentiality by law. Nor did Attorney Lehmann submit a proposed protective order with his pleadings.

Before Attorney Lehmann filed his Emergency Motion, Attorney Waystack, in his role as committee counsel, shared with the Committee a proposed protective order, which Attorney Lehmann sent him, (hereinafter "Justices' Proposed Protective Order," attached as Exhibit B). The Committee did not accept this modified protective order. The Justices' Proposed Protective Order is unacceptable to the Committee. First, it seeks to narrow the scope of the Committee-initiated inquiry. It proposes that the inquiry be limited to investigate "whether any personnel decisions or actions by the New Hampshire Supreme Court regarding Dianne Martin during the period February through April 2025 were violative of the Code of Judicial Conduct." Exhibit B at 1. Because the investigation based on the Committee-initiated inquiry is ongoing, the Committee is unwilling to limit the scope of its investigation in this manner. There may be decisions and actions, not directly personnel decisions or actions, leading up to Dianne Martin's removal as Director of AOC or after her employment as Bar Counsel that are subject to the Code of Judicial Conduct. The Justices' Proposed Protective Order is also limited to any "judicial officer of the State of New Hampshire who is interviewed by the JCC or its counsel, employees, or agents." Id. The investigation, however, should not be confined to judicial officers. Employees of the Judicial Branch who are not judges may have confidential information or documents that are relevant to the inquiry. The JCC Protective Order covers both judges and non-judicial witnesses.

Of most concern to the JCC is the breadth of the Justices' Proposed Protective Order. In paragraph 4 of their Proposed Protective Order the Justices seek an order which provides "in no event shall Confidential Information be disclosed in any public statement, document, or decision prepared by the JCC." Id. at ¶ 4. Moreover, the Justices seek an order "prohibiting any of its members, its counsel, or any person acting on its behalf, from making any statement, public or private, to any person that could have the effect of disclosing the existence of the Rule 40(6) Committee-initiated inquiry that apparently arises from the employment circumstances of Dianne Martin with the Judicial Branch . . . ." Emergency Motion at 1 (preamble). The Emergency Motion further requests an order the enjoins "publication of any public statement under Rule 40(3)(f)." Id. (prayer B); see also Reply ¶¶ 8-13, 22. Attorney Waystack counters by asserting that a public statement is appropriate at this juncture. Objection ¶¶ 15, 23; see also id. (prayer C).

The Justice's Proposed Protective Order and Emergency Motion are overbroad. "The JCC was established under the supreme court's comprehensive constitutional, statutory, and inherent authority to superintend the court system of this State." In re

Thayer, 145 N.H. 177, 184 (2000); see also N.H. S.Ct. R. 39(1) (providing that the JCC was established "to provide for the orderly and efficient administration of the Code of Judicial Conduct."). The Code of Judicial Conduct is designed to protect "the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system." N.H. S.Ct. R. 38 (preamble). "Public trust is in large part derived from the public's perception of the judiciary." Thayer, 145 N.H. at 181.

In their Emergency Motion the Justices assert that "public confidence in the administration of justice" is not implicated in "how the branch handles the employment and compensation of staff" because these decisions "are unrelated to the core judicial function of deciding cases and providing impartial justice to litigants before the courts of the judicial branch." Emergency Motion ¶ 14. This position is inconsistent with the Rules of Judicial Conduct. A judge must at all times follow the law. N.H. S.Ct. R. 38 (Rule 1.1). To that end several of the rules of judicial conduct expressly cover a judge's administrative responsibilities. See, e.g., id. (Rules 2.5, 2.8, 2.12, 2.13). More fundamentally, Part I, Article 8 of the New Hampshire Constitution provides: "All power residing originally in, and being derived from, the people, all the magistrates and officers of government are their substitutes and agents, and at all times accountable to them. . . . The public also has a right to an orderly, lawful, and accountable government." Thus, the inquiry of how the supreme court spends public money and whether justices on the supreme court followed personnel procedures and rules lie at the heart of the "public's confidence in the administration of justice."

In order to fulfill its important responsibility, the JCC must be able to conduct a thorough investigation. If the results of the JCC's investigation establish that the Justices properly conducted their administrative responsibilities and the matter is closed without formal charges the public should be able to evaluate the work of the JCC to determine whether it properly fulfilled is mission. This is true even especially when the investigation involves a public official.

Moreover, personnel files of a public employee are not categorically exempt from public disclosure. Reid v. New Hampshire Att'y Gen., 169 N.H. 509, 528 (2016). Rather, a court must apply a "well-established" "three-step analysis" in analyzing whether personnel information should be subject to public disclosure:

> First, [the court must] evaluate whether there is a privacy interest at stake that would be invaded by the disclosure. ... If no privacy interest is at stake, the Right-to-Know Law mandates disclosure.
>
> Second, [the court must] assess the public's interest in disclosure. Disclosure of the requested information should inform the public about the conduct and activities of their government. ...
>
> Finally, [the court must] balance the public interest in disclosure against the government's interest in nondisclosure and the individual's privacy interest in nondisclosure.

Reid, 169 N.H. at 528–29 (quotation omitted). The decision in Reid was the first in a series of cases that significantly curtailed secrecy around personnel decisions relating to public employees. See, e.g., Provenza v. Town of Canaan, 175 N.H. 121, 123 (2022) (affirming trial court order which denied injunction seeking to bar public disclosure of an investigative report commissioned by the Town against a police officer); Stone v. City of Claremont, 176 N.H. 477 (2024) (affirming trial court order allowing public disclosure of "records related to disciplinary actions taken against officer"); Seacoast Newspapers, Inc. v. City of Portsmouth, 173 N.H. 325, 239 A.3d 946 (2020) (ruling that public disclosure of arbitration decision concerning termination of police officer by city for misconduct was not prohibited under the Right to Know law); Union Leader Corp. v. Town of Salem, 173 N.H. 345, 348 (2020) (overruling Union Leader Corp. v. Fenniman, 136 N.H. 624 (1993), and its progeny). This case law establishes that not all information about the employment issues relating to Dianne Martin are automatically barred from public disclosure.

Moreover, a public statement of the existence of an investigation will instill confidence in the public that the JCC is fulfilling its responsibility. "A viable and continuing JCC investigative process is an integral source of confidence upon which public perception may be based." Thayer, 145 N.H. at 181. This is because the public can be assured "that its government actively investigates allegations of judicial misconduct and takes appropriate action when these allegations are proved." Matter of Johnstone, 2 P.3d 1226, 1234 (Alaska 2000) (quoted in Thayer, 145 N.H. at 181).

If the JCC's investigation results in formal charges, that procedure will occur in a public forum. See N.H. S.Ct. R. 40(3)(d)(1). As the Supreme Court has noted, "[t]he integrity of the judicial system is fostered not just by the removal or suspension of a judge who has violated the Code of Judicial Conduct, but also by the investigative process of the JCC, the JCC's ability 'to hold a public hearing on a statement of formal charges,' Sup.Ct. R. 39(9)(g), and the availability of sanctions other than removal from office, such as public censure . . . ." Thayer, 145 N.H. at 180. The United States Supreme Court has recognized:

> The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public

> opinion. . . . [A]n enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect.

Landmark Commc'ns, Inc. v. Virginia, 435 U.S. 829, 842 (1978) (quotation omitted).

Supreme Court Rules 40(3)(e) and (f) allow for a public statement by the JCC in certain circumstances. Rule 40(3)(e) is triggered "[i]f a judge is publicly charged, through independent sources, with involvement in a proceeding before the committee, or publicly charged with conduct likely to become the subject of such a proceeding, the committee may, at the request or with the consent of the judge involved, issue brief public statements as it deems appropriate in order to confirm or deny the pendency of the proceeding, to clarify the procedural aspects thereof, to explain the right of the judge to a fair hearing without prejudgment, and to state that the judge denies the allegations." Rule 40(3)(f) allows the JCC to issue a public statement without the consent of the judge "after consultation with the chief justice or the senior associate justice of the supreme court." That rule allows for a public statement "[i]f the pendency of a proceeding before the committee is generally known to the public, through independent sources, and the subject matter thereof is of broad public interest or speculation, and public confidence in the administration of justice may be threatened because of lack of information concerning the status of the proceeding and the requirements of due process." N.H. R. S.Ct. 40(3)(f). A Rule 40(3)(f) statement may "confirm the existence of the investigation, . . . clarify the procedural aspects of the proceeding, . . . explain that the judge is entitled to due process, and . . . state that the judge denies the allegations." Id.

Here, the Justices do not consent to the issuance of a public statement pursuant to Rule 40(3)(e) as established by their position set forth in their Emergency Motion. Nonetheless, the JCC believes that it should be allowed to consult with a senior associate justice to issue a public statement under Rule 40(3)(f). The sitting Supreme Court justices cannot be involved in that consultation because of the obvious conflict of interest. Therefore, the Committee will request Supreme Court Clerk Timothy Gudas to designate an alternate Supreme Court panel to consult with the JCC on this issue.

The Committee believes that the requirements of Rule 40(3)(f) have been met. The employment issues surrounding Dianne Martin have been widely reported in the media. See, e.g., Todd Bookman, New Hampshire Public Radio, "In midst of budget crisis, an unusual move helped ally of NH Chief Justice collect $50k" (Oct. 23, 2025) (hereinafter "October 23 NHPR Report"). The Justices themselves have acknowledged the "public interest in a matter involving a judicial branch employee." Statement of Supreme Court Justices MacDonald, Donovan, Countway, and Gould (Oct. 31, 2026). The Justices attempted to assure the public that "[t]he Court remains committed to responsible stewardship of public resources and to maintaining the effective administration of justice across the state." Id. Despite this statement, public interest in the matters relating to the manner in which the Judicial Branch handled Dianne Martin's employment remains high. See, e.g., Steven Porter, Boston Globe, "Highest-ranking N.H. judge lawyers up as senior staffer's $50k payday draws scrutiny" (Nov. 7, 2025); Arielle Mitropoulos, WMUR, New Hampshire AG reviewing layoff, rehiring of Judicial Branch employee (Nov. 8, 2025); Damien Fisher, InDepthNH.org, "Chief Justice MacDonald not recusing despite 'review by Attorney General'" (Nov. 12, 2025); Crag

Donovan, Concord Monitor, "The Cost of Integrity" (Nov. 20, 2025) (letter to the editor); Nancy West, InDepthNH.org, "AG's 'review' of $50,000 payout to laid off court director raising questions" (Nov. 25, 2025); Todd Bookman, New Hampshire Public Radio, "New documents shed light on NH court personnel moves that led to 50k payout" (Jan. 23, 2026); Kevin Landrigan, New Hampshire Union Leader, "Whistleblower says complaint about court staff's cash payout led to firing" (Jan. 26, 2026); Damien Fisher, InDepthNH.org, "Constitutional amendment proposed to deal with 'judicial crisis' in NH" (Feb. 4, 2026) (hereinafter "February 4 InDepthNH.org Report"); Todd Bookman, New Hampshire Public Radio, "Propose investigation into NH's chief justice divides House Republicans" (Mar. 4, 2026) (hereinafter "March 4 NHPR Report").

Contrary to the Justices' position, the public concern is not limited to a "long standing critic of the judicial branch" who is expressing his "idiosyncratic interest." Emergency Motion ¶ 13. The numerous press reports by most major media outlets in this state, only some of which are cited in this order, establish the broad and sustained public concern about this matter. The concerns are expressed in those articles by state employees and state representatives. See, e.g., October 23 NHPR Report (quoting Rich Gulla, president of the SEIU, the largest public employee union in the state as calling "Martin's brief layoff and subsequent rehiring 'peculiar,' and [saying] other state employees deserve an explanation."); February 4 InDepthNH.org Report ("After a year of New Hampshire Supreme Court scandals, it's time to rein in judges, according to Rep. Susan DeRoy (R-New Durham.)").

Whether those issues have been handled appropriately and consistently with the law threatens the public confidence in the administration of justice. Recently, Representative Kelly Potenza was quoted as stating to the House Judiciary Committee, "The New Hampshire Supreme Court is facing a serious and ongoing crisis of public trust, one that this body has both the constitutional authority and the institutional responsibility to address." March 4 NHPR Report. Rep. Katelyn Kuttab is reported to have raised similar concerns noting, "These are serious potential allegations, and we owe it to the public to do our duty and look into these things." Id. The measure was laid on the table by the House of Representative, see HR 38 docket entry (https://gc.nh.gov/bill_Status/quicksearch.aspx). But that legislative move does not mean that the matter does not involve serious concerns. Other reasons may explain the legislature's reluctance to move forward with its own investigation. For example, Representative Paul Berch cited separation of powers concerns. March 4 NHPR Report.

The fact that the handling of Dianne Martin's employment is subject to scrutiny by the Judicial Conduct Committee is also known through independent sources. The March 4 NHPR Report specifically noted, "The New Hampshire Judicial Branch does have its own internal systems for investigating and disciplining judges, including the Judicial Conduct Committee." Id. (Emphasis added). The February 4 InDepthNH.org Report made note of the JCC's role when reporting on a hearing to broaden legislative oversight of the courts. That report noted, "Most instances of judicial misconduct are currently investigated by the Judicial Conduct Committee, overseen by the New Hampshire Supreme Court. The committee is made up of 11 members, six of whom are members of the public not connected to the judicial branch. The JCC investigates misconduct, holds hearings, gathers evidence, and imposes discipline on judges who have been found in violation. The JCC also already has the ability to work with the legislature to go further and impeach judges if deemed appropriate." Thus, the connection between the public scrutiny of the Dianne Martin matter and the JCC's oversight role has been reported publicly though these independent sources.

For the foregoing reasons, the Committee believes that all three elements of Rule 40(3)(f) have been met and intends to petition Clerk Gudas for an alternate panel of the Supreme Court to issue a public statement as authorized by that rule.

Conclusion

For the reasons set forth above, the Justices' motion for a protective order is GRANTED, in part. The JCC Protective Order issued on or about January 16, 2026, that prevents the public disclosure of personal information that is confidential as a matter of law to the extent not previously indicated, shall continue to be in place related to the JCC investigation. Further amendments to that protective order are not necessary.

Before issuing a public statement the JCC will comply with Rule 40(3)(f) and consult with a judge appointed by Clerk Gudas to act as a senior associate justice in place of the sitting supreme court justices, who all have a conflict of interest in this matter. Beyond this, Rule 40(3) adequately controls the confidentiality of the JCC's proceedings more generally. The JCC has adhered to this rule and will continue to do so. The JCC has no equitable authority to issue an injunction requested by the Justices. Cf. Matte v. Shippee Auto, Inc., 152 N.H. 216, 223 (2005) (holding that, although the district court had jurisdiction over the subject matter of the lawsuit, it did not have authority to issue equitable relief). For these reasons, the Justices' request for relief requiring a further protective order prohibiting a public statement and for an injunction is DENIED.

SO ORDERED.

3/17/26
Date

John Mullen
Chairman, Judicial Conduct Committee

EXHIBIT

I

JUDICIAL CONDUCT COMMITTEE-INITIATED INQUIRY

CASE NO. JD-25-079-CII

MOTION TO RECONSIDER ORDER ON EMERGENCY MOTION FOR PROTECTIVE ORDER AND/OR INJUNCTION

NOW COME Chief Justice Gordon MacDonald and Associate Justices Patrick Donovan, Melissa Countway, and Bryan Gould (the "Justices"), by and through counsel, and hereby moves reconsideration of the Committee's Order dated March 17, 2026, and in support thereof state as follows:

I. INTRODUCTION

The Justices move for reconsideration not to withhold information from the Committee, but to ensure that information is provided in the manner the Rules require and in the manner that best serves both the JCC's inquiry and the broader interests of the Judicial Branch and of the State of New Hampshire as a whole. From the outset, the Justices have made clear that they understand their obligation to cooperate fully with this inquiry and that they are eager to provide the Committee with the information relevant to the inquiry, as they understand it. At the same time, they must do so in a way that complies with their legal obligations, protects confidential personnel information, and permits the Committee to evaluate the complete record before making any public statement. That has been the consistent position of the Justices throughout these proceedings: they sought a clean protective order so they could present evidence, including sensitive employment-related information, without risking unlawful disclosure or reputational harm to others before the Committee had the full record before it.

That point warrants renewed emphasis now. The Justices do not seek confidentiality for confidentiality's sake. Rather, they seek an orderly process that follows existing rules. They have every intention of furnishing the documents they themselves have retained that are responsive to the Committee's inquiry, and indeed, some of those documents that were in possession of the Justices are appended to this pleading. But it is also true that many of the relevant employment and related records are not theirs in any ordinary sense; they are Judicial Branch records, maintained by the Branch as the institutional holder of the personnel, employment, and administrative materials at issue. The most direct and reliable course, therefore, is for the Committee to obtain those materials from the Judicial Branch itself, rather than to force piecemeal disclosure from individual Justices while the scope of protection remains uncertain.

Reconsideration is necessary because the Order understates the Justice's cooperative posture and, in doing so, misapprehends the relief sought. The Justices have never intended to downplay the importance that the JCC can play or the contribution to public confidence in the Judicial Branch that it can provide. The Justices have never argued that the Committee should be left uninformed. To the contrary, they have repeatedly urged a process that would allow the Committee to receive the relevant information first and then decide what, if any, further action is warranted. The primary problem is not the inquiry. The problem is the prospect of public disclosure before the Committee has obtained and reviewed the relevant records and before the Justices have had a fair opportunity to provide information in a protected setting.

Accordingly, the Justices respectfully ask the Committee to reconsider the Order and to clarify that the proper course is straightforward: the Justices will provide the responsive materials in their possession, custody, or control, and the Committee should obtain the remaining relevant employment and administrative records from the Judicial Branch, which is the holder of those records. That approach honors the Justices' duty to cooperate, minimizes the risk of liability, gives the Committee access to the best evidence, and avoids unnecessary public action before the factual record has been responsibly assembled.

II. THE COMMITTEE SHOULD MAKE NO PUBLIC DISCLOSURE UNTIL IT HAS COMPLETED A MEANINGFUL THRESHOLD REVIEW OF THE EVIDENCE

Media publicity is not a reason for the Committee to speak; it is a reason for the Committee to remain silent. Once allegations are circulating publicly, any Committee confirmation that it has opened an investigation risks giving those allegations an aura of official legitimacy before the Committee has determined whether they are accurate, complete, or materially misleading. The law of judicial-discipline confidentiality exists precisely to prevent that distortion. Further, the Committee risks setting an untenable precedent for future proceedings in which, any time there is media attention concerning an unverified allegation, the Committee could publicize the unverified facts and jeopardize a judicial officer's reputation on conjecture alone. That is exactly the type of disclosure against which this Committee's rules protect. The Committee should therefore make no public disclosure until it has at the very least completed a meaningful threshold review of the evidence and determined that formal proceedings are warranted.

A. The Order Misreads Rule 40(3)(f) by Replacing Its First Textual Requirement With A Different, Looser Standard

Rule 40(3)(f) does not authorize a public statement whenever the underlying controversy has received press attention, or whenever the public knows that the Judicial Conduct Committee *could* look into the matter. It authorizes a public statement only if "the pendency of a proceeding before the committee is generally known to the public, through independent sources." The Rule's text is exacting. A "proceeding" is defined as "[e]ach step taken or which may be taken" under Rule 40 with respect to either a report of alleged misconduct or a committee-initiated inquiry, and an "inquiry" is separately defined as "[a] preliminary investigation begun by the committee on its own initiative." The Rule distinguishes between public knowledge of the *underlying conduct* and public knowledge that the Committee has *in fact* opened a *proceeding*. And the Rule begins from the opposite presumption evident in the Order: "all proceedings" and all related information developed by the Committee "shall be confidential."

The Order does not apply that standard. Indeed, it skips the Rule's first requirement altogether. Rather than finding that "the pendency of a proceeding before the committee is generally known to the public," the Order states, at page 11, that "[t]he fact that the handling of Dianne Martin's employment is *subject to scrutiny* by the Judicial Conduct Committee is also known through independent sources." Order at 11. That is not what Rule 40(3)(f) provides. "Subject to scrutiny" is a materially different concept from "the pendency of a proceeding before the committee" or "is being scrutinized by the Committee." The former suggests only that the matter is of a type the Committee could examine. The latter requires public knowledge that the Committee *actually is* examining the matter in an active proceeding. Rule 40(3)(f) requires the latter, but the Order applies the former. For that reason, the Order misapplies the Rule.

That substitution matters because Rule 40 itself shows the drafters knew how to speak in broader, prospective terms when they wanted to. Rule 40(3)(e) applies when a judge is publicly charged either "with involvement in a proceeding before the committee" or "with conduct likely to become the subject of such a proceeding." That is a deliberate distinction. That Rule separately addresses actual involvement in an existing proceeding and conduct that may later ripen into one. The Order's "subject to scrutiny" phrasing imports the broader, anticipatory concept into Rule 40(3)(f), even though subsection (f) uses narrower language: it requires that the pendency of a proceeding already be generally known.

The Committee Counsel's own filings confirm the same failure to strictly follow the Rule's text. Its objection made no attempt to identify any independent sources that show that the public knew a JCC inquiry was already pending. Instead, it argued that the public knew about the Dianne Martin matter, knew about the Attorney General's prior review, and would naturally wonder whether "any judicial disciplinary authorities will look into the many questions raised by the aforesaid reports." JCC's Obj. at ¶6. But that argument concedes that the "pendency of a proceeding before the committee" is *not* "generally known to the public." If the question is whether the public may wonder whether disciplinary authorities will look into the matter, then the pendency of an actual proceeding is not "generally known." Wondering whether the JCC *might* open an inquiry is different than knowing that the JCC *is* actively investigating.

The independent sources cited by the Order also fail to establish public knowledge of a pending proceeding. As the Order itself recites, the March 4 NHPR report stated that the Judicial Branch has "internal systems for investigating and disciplining judges, including the Judicial Conduct Committee," and the February 4 InDepthNH report stated that "[m]ost instances of judicial misconduct are currently investigated by the Judicial Conduct Committee." Order at 11–12. Those statements establish only that the JCC exists and that its functions include investigating judicial misconduct. They do not establish public knowledge that this matter is the subject of an active JCC inquiry. Knowledge of the Committee's general oversight function, however important that function may be, is not knowledge of the pendency of a particular proceeding as required by the plain text of the Rule.

Indeed, one of the cited sources affirmatively undercuts the Order's premise. The InDepthNH article attached to the Committee's objection reported Dana Albrecht as saying, in connection with the Dianne Martin matter, that further investigation was needed, but "that investigation is not happening," adding: "What's the remedy to investigate this? The Judicial Conduct Committee doesn't do it." If an independent source told the public that no JCC investigation was occurring, that source cannot simultaneously establish that the pendency of a JCC proceeding was generally known.

The Order improperly bypasses the Rule's first requirement and substitutes a looser, nontextual test that is based on nothing more than connecting news reports of a controversy, broad statements about the JCC's functions, and a statement that the underlying controversy is the kind of thing the JCC investigates. Under the Rule, that is not enough to breach confidentiality.

B. Although The Underlying Issue Is Not Yet Ripe, The Order Proposes An Additional Failure To Hew To The Rule's Requirements

The Order's failure to strictly follow the plain text of the Rule can be seen in the following statement: "If the results of the JCC's investigation establish that the Justices properly conducted their administrative responsibilities and the matter is closed without formal charges, the public should be able to evaluate the work of the JCC to determine if it properly fulfilled is [*sic*] mission." Order at 6. This statement evinces just how far the analysis has drifted from Rule 40's text. Rule 40(3)(f) does not authorize disclosure so that the public can assess the Committee's performance. Subsection (f) authorizes only "brief statements" of publicly known investigations for a narrow set of purposes: to confirm the existence of an investigation, to clarify procedure, to explain that the judge is entitled to due process, and to state that the judge denies the allegations. It does not authorize disclosure so that the public may audit the Committee, review its investigative work, or decide whether the Committee has earned public confidence.

More fundamentally, the Rule cuts exactly the other way when no allegation of misconduct is docketed, or no formal misconduct is found. In those circumstances, the judge remains protected by Rule 40(3)'s confidentiality. Indeed, as the comment to the Rule notes, unless and until one of the Rule's specified triggers occurs, disclosure is not merely unmentioned, it is forbidden.

C. A Public Statement By The JCC Announcing That It Has Initiated An Inquiry Harms Public Confidence In The Judiciary

The Order appears to assume that the existence of media coverage weakens the case for confidentiality. It does not. It strengthens it. Once allegations are repeated in the press, the principal danger is no longer merely that the allegations will become public. The danger is that the Committee, by speaking before it has completed any meaningful threshold review, will give those allegations the credence they do not yet deserve, as they are not supported by evidence.

That is exactly the harm the relevant cases identify. In *Landmark Communications, Inc. v. Virginia*, the Court explained that confidentiality protects judges from "publication of unexamined and unwarranted complaints" and preserves confidence in the system by preventing "premature disclosure of a complaint before the Commission has determined that the charge is well founded…." 435 U.S. 829, 835–36 (1978). In a matter already the subject of some publicity, those concerns are more acute, not less, because a statement by the JCC does not merely repeat what is already public. Instead, it adds the authority and prestige of the State's judicial-disciplinary process to allegations that remain untested.

Kamasinski v. Judicial Review Council, 44 F.3d 106 (2nd Cir. 1994), makes the same point in terms directly applicable here. The court recognized the State's interest in allowing a disciplinary body to "dispose of frivolous or harassing complaints without lending them credibility" and to encourage "complete and truthful testimony." *Id.* at 109-10. That is precisely what is at risk if the Committee comments publicly at this early juncture. Once the Committee announces that it is investigating, reviewing specified allegations, or otherwise officially engaged, the public will naturally infer that the accusations have crossed some threshold of seriousness or evidentiary support. But the Committee has made no such determination. Public comment, therefore, does not merely disclose the existence of an investigation; it lends credibility to untested allegations. *Kamasinski* further emphasized that confidentiality remains constitutionally justified "so long as the [JCC] acts in its investigatory capacity." *Id.* at 112. That is this stage. And at this stage, the Committee has no proper basis to place the imprimatur of official process behind allegations it has not yet even begun to vet.

First Amendment Coalition v. Judicial Inquiry and Review Board, 784 F.2d 467 (3rd Cir. 1986), points the same way. The Third Circuit held that the Board's pre-charge role is "similar to those of the grand jury" because it "cannot impose, but only recommend, punishment...." *Id.* at 473. That analogy matters. A body performing a confidential screening function should not publicly amplify allegations before deciding whether those allegations warrant formal action. Premature Committee comment cuts against the structure of the carefully established process by hardening bald accusations into publicly reinforced official suspicion before the Committee has completed the screening function the Rules assign to it.

Landmark also emphasizes that press coverage and Committee disclosure are not the same. There, the Court did not question a state's authority to keep certain matters confidential during disciplinary proceedings. Rather, as Justice Stewart clarified "[o]nly such confidentiality" the state has decided, "will protect upright judges from unjustified harm and at the same time insure the full and fearless airing in Commission proceedings of every complaint of judicial misconduct." *Id.* at 848–49 (Stewart, J., concurring in the judgment). Therefore, just because newspapers report allegations does not mean the Committee should endorse them or give them credence through its own statements. In a case that has received some media attention, the Committee's silence helps prevent rumors and accusations from being mistaken for institutional confirmation.

Whitehead v. Nevada Commission on Judicial Discipline, 873 P.2d 946, 110 Nev. 380 (1994), shows the institutional danger of premature disclosure from the disciplinary body itself. The Nevada Supreme Court condemned "unlawful, premature disclosures of confidential information" as "obviously designed to disparage and tarnish Judge Whitehead, as well as this court." *Id.* at 958–59. That is the risk here. In a matter already under some degree of public scrutiny, premature Committee comment would not simply add one more voice to the public discussion; it would magnify the allegations by attaching official significance to them before the Committee has even determined whether they are well-founded.

The Committee should also consider other downstream effects that a public announcement of its official activities could have. If the Committee signals in this case that it is willing to publicly acknowledge that it initiated an inquiry into the conduct of the Justices based only on unconfirmed media accounts, it will encourage frivolous complaints because all anyone needs to do is create a media storm – a practice that advances in communications and social media make increasingly easy to do – and hope to be rewarded with an official acknowledgement that their particular grievance may be treated as having merit. This will make future harassment of judges more likely and easier.

The point is straightforward. In a publicly discussed matter, confidentiality is not less necessary because the media is already engaged. It is more necessary because the Committee's voice carries institutional force. The voices of the media, activists, and politicians do not. Until the Committee has completed a meaningful threshold review, any public statement risks doing exactly what *Landmark* warned against—giving official currency to "unexamined and unwarranted complaints," 435 U.S. at 835, and exactly what *Kamasinski* warned against – "lending ... credibility" to complaints before the screening process has run its course. 44 F.3d at 110. The Order gets the function of confidentiality backwards. In a case like this, the more intense the publicity, the greater the need for Committee restraint.

III. The Order Misapprehends The Proper Role Of The JCC

The Committee unquestionably serves an important role in New Hampshire's judicial-discipline framework. But it is an auxiliary one, not a core one. As the New Hampshire Supreme Court explained, the JCC "is a committee of the supreme court," *Petition of Thayer*, 145 N.H. 177, 179 (2000), and it operates within the Court's broader constitutional responsibility "to protect and preserve the judicial system." *Id.* at 180. The Rule itself reflects that subordinate position: Rule 40 authorizes the Committee to explain "the jurisdiction of the committee and the limitations upon its powers and authority," to describe filing procedures, and to release statistical reports, but it does not elevate the Committee into the public face of judicial legitimacy. N.H. Sup. Ct. R. 40(3)(h). That point matters. The Committee helps protect confidence in the judiciary. It is not itself the object of that confidence, and it oversteps its proper bounds when it places itself too centrally in the task of maintaining judicial credibility.

The Order repeatedly blurs that line by reasoning that, if the investigation closes without formal charges, "the public should be able to evaluate the work of the JCC to determine whether it properly fulfilled its mission." Order at 6. It then states that a public statement "will instill confidence in the public that the JCC is fulfilling its responsibility." Order at 7. And it invokes Rule 40(3)(f) against a backdrop of public attention, press coverage, and legislative activity. Order at 8–9. Read together, those statements reveal a common premise: that the Committee's own public credibility must be affirmatively maintained by public action. That is the wrong premise. The law recognizes an institutional interest in preserving the integrity of the judiciary and public confidence in the courts, not in protecting the reputation of the disciplinary body as a stand-alone institution. *Petition of Thayer*, 145 N.H. at 180–81.

Thayer is fatal to the Order's framing. *Thayer* did not describe the JCC as an institution with an independent mandate to defend its own public standing. It said that "fostering public confidence in the judiciary, as well as maintaining its integrity, have long been fundamental purposes of New Hampshire's system of judicial discipline," 145 N.H. at 180, and that a "viable and continuing JCC investigative process is an integral source of confidence upon which public perception may be based." *Id.* at 181. Properly understood, that means confidence arises from the existence of a lawful disciplinary mechanism within the judicial branch. It does not mean that the Committee may step outside its assigned role whenever members fear that silence will cast doubt on the Committee's own diligence, relevance, or responsiveness. The source of legitimacy is faithful adherence to a rule-bound process. It is not the Committee's public display of itself.

The Rule's own structure confirms this point. Rule 40 carefully cabins what the Committee may say publicly and when. It allows only "brief statements" in limited circumstances, and even then, only to confirm the existence of an investigation, clarify procedure, explain due-process protections, and state that the judge denies the allegations. N.H. Sup. Ct. R. 40(3)(e)–(f). It separately authorizes explanatory materials unrelated to any specific proceeding, and those materials are confined to matters such as the Committee's jurisdiction, procedures, and internal operations. N.H. Sup. Ct. R. 40(3)(h). That is a modest communications function. It is not a charter for the Committee to act as though preserving public confidence requires the Committee itself to become the center of public attention.

The Committee's own filing in this matter makes the overreach plainer still. The Committee argued that there was a public interest in knowing "that an inquiry is underway pursuant to Rule 40(3)(f)," asserted that the subject was one of "broad interest to the public," and even invoked an outside criticism that "The Judicial Conduct Committee doesn't do it" and is "under the direct authority of the Supreme Court." *Objection* at ¶¶ 6, 15. In other words, the Committee expressly treated public suspicion about whether the JCC was acting as a reason to make the JCC's activity publicly known. That is precisely the inversion the rules are designed to prevent. A disciplinary body is supposed to resist public pressure, not convert it into whatever authority the JCC believes it requires.

That is why the Order's rhetoric is not merely imprecise, but dangerous. The JCC is important. It is necessary. But it is not the judiciary, nor is it the principal repository of judicial credibility. The courts are. The administration of justice is. The Committee serves that larger institutional end only by acting with restraint and fidelity to the limits of Rule 40. Once the Committee begins to treat public concern about the JCC itself as a reason to act publicly, it ceases to function as a disciplined instrument of judicial administration and begins to behave as though its own visibility were a public good. That is self-aggrandizement, not adjudicative modesty. And it is exactly the kind of role confusion the Court should reject.

IV. The Committee Has No Authority To Ask The Clerk Of The Supreme Court To Empanel Five Superior Court Justices To Sit As A Substitute Panel Of The Supreme Court.

The Order errs in treating a substitute designated by the clerk as though that person were "the chief justice or the senior associate justice of the supreme court" for purposes of Rule 40(3)(f). Waystack himself recognized the problem. He asked that "the Supreme Court authorize the appointment of an alternative panel to sit in lieu of the present Supreme Court

Justices" because the sitting justices were factual witnesses and "it would not be appropriate for any of the present Justices to be involved" in the Rule 40(3)(f) consultation. Justice Will stands on a different footing. He was not appointed until well after the occurrences that are the subject of the investigation. Further, he has had no involvement in the events under investigation and was unaware of the matter until Mittelholzer copied him on the March 17, 2026, letter to Clerk Gudas. And RSA 490:3 has not been triggered as to him, because he remains available and is not alleged to be conflicted. Whether Justice Will has a conflict is for him alone to decide, and both the Committee and the Clerk should afford him that opportunity. The Order therefore skips the actual statutory substitution mechanism because it assumes, without evidence, that there is no Supreme Court justice available to hear the question. Rule 40(3)(f) permits no such shortcut.

WHEREFORE, the Justices respectfully move that the Judicial Conduct Committee:

A. Reconsider its Order to the extent that the Order finds that making a public statement announcing the existence of the inquiry is authorized by the rules;

B. Reconsider its Order to the extent that the Order finds that making a public statement announcing the existence of the inquiry is prudent;

C. Reconsider its Order to the extent that the Order seeks to empanel superior court judges to preside over this matter and instead consult with Justice Will; and

D. Grant such other relief as may be just and proper.

Respectfully Submitted,

Chief Justice Gordon MacDonald, Justice Patrick Donovan, Justice Melissa Countway, and Justice Bryan Gould,

By their attorneys,
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March 27, 2026

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EXHIBIT

J

JUDICIAL CONDUCT COMMITTEE-INITIATED INQUIRY

CASE NO. JD-25-079-CII

MOTION TO DISQUALIFY ATTORNEY PHILIP R. WAYSTACK AND TO APPOINT UNCONFLICTED SUBSTITUTE COUNSEL

NOW COME Chief Justice Gordon MacDonald and Associate Justices Patrick Donovan, Melissa Countway, and Bryan Gould (the "Justices"), by and through counsel, and hereby respectfully move that Attorney Philip R. Waystack be removed from his roles in this proceeding, and that the Committee appoint substitute counsel who has not participated in the inquiry, investigation, or advocacy surrounding it.

This motion should not be necessary. But the record now makes the issue unavoidable. Attorney Waystack has not confined himself to a single role. He has affirmatively represented that he was "retained to conduct an inquiry," that "inquiry" means "a preliminary investigation," and that he is "investigating facts as part of this inquiry." He has also stated, "on behalf of the JCC," that the Committee "needs to be able to issue a brief public statement," and he requested appointment of an alternative panel with whom the Committee could "consult about issuing a statement to the public as soon as possible." And then, having cast himself as investigator and strategist, he appeared as adversary counsel for the "Respondent," filed a verified objection in the Committee's name, denied allegations, "put[] the Complainants to their proof," and asked the Committee to deny relief and make findings in the Committee's favor.

That is not role separation. It is role collapse. New Hampshire law does not permit a party to evade the problem by changing labels midstream. And it is no answer to say that agencies sometimes combine functions institutionally. The point here is narrower and more serious: the same lawyer has acted as investigator, advocate, and apparent advisor to the very body whose neutrality must remain beyond question.

The Committee should disqualify Attorney Waystack now, before the defect worsens.

I. BACKGROUND

On February 5, 2026, Attorney Waystack wrote counsel for the Justices and stated that "the JCC needs to be able to issue a brief public statement that it has opened an inquiry into this matter," that "[i]t should inform the public of its actions," and that, "[f]or these reasons," he was requesting, "on behalf of the JCC," appointment of an alternative panel with whom the JCC could consult about issuing such a statement. He did not write as a mere conduit. He advanced a position, justified it, and pressed for action.

The same letter then stated, in even plainer terms: "I have been retained to conduct an inquiry under Supreme Court Rule 40(6)," Rule 40 defines "inquiry" as "a preliminary investigation," and "I am investigating facts as part of this inquiry." He added: "In the future for clarity purposes, I will refer to my investigation as an inquiry." That statement leaves no ambiguity. Attorney Waystack placed himself in the role of factual investigator.

But he did not stop there. He later filed the "JUDICIAL CONDUCT COMMITTEE'S OBJECTION TO FOUR JUSTICES' EMERGENCY MOTION FOR PROTECTIVE ORDER AND/OR INJUNCTION," appearing "as Committee Counsel for the Judicial Conduct Committee, Respondent in this matter." The objection was not neutral. It was adversarial in every respect. It denied factual allegations, asserted legal defenses, insisted that the public had an interest in knowing that an inquiry was underway, characterized the dispute as one requiring adjudication by an alternative panel, and requested that the Committee deny the relief sought by the Four Justices. It concluded with a verification signed by Attorney Waystack personally as "Judicial Conduct Committee Counsel," swearing that the instrument was true and accurate to the best of his knowledge and belief.

In short, Attorney Waystack has been wearing whichever hat best serves the moment: investigator when gathering facts, strategist when pressing for publicity, and advocate when resisting relief sought by the subjects of his own inquiry.

II. ARGUMENT

A. The Problem Is Not Ordinary Institutional Overlap, It Is The Concentration Of Incompatible Functions In One Lawyer.

New Hampshire law draws a line between the combination of functions within an agency and the combination of functions within a single individual. That distinction controls here.

In *Appeal of Office of Consumer Advocate,* the Court held that "[t]he combination of investigative, accusative, and adjudicative functions does not necessarily constitute a denial of due process," but also made clear that "[w]hen a single individual commingles these functions, the mere appearance of prejudice may be enough to render an adjudication unconstitutional." 134 N.H. 651, 659-60 (1991). *Appeal of Trotzer* states the same rule even more directly: "When a single individual commingles investigative, accusative, and adjudicative functions, the mere appearance of prejudice may be sufficient to violate due process." 143 N.H. 64, 68 (1998). By contrast, where functions are merely "commingled within a single administrative agency," a challenger ordinarily must show actual bias. *Trotzer*, 143 N.H. at 68; *Office of Consumer Advocate*, 134 N.H. at 660.

That body of law does not help Attorney Waystack. The safe harbor in those cases depends on the separation of functions between different people within the institution. Here, the same individual lawyer has claimed the investigative function for himself and then acted as the Committee's advocate in the very dispute generated by that investigation. *Trotzer* controls this matter, and this case fails to meet the standard set by *Trotzer's* logic. *Trotzer* did not bless a free-for-all. It upheld the arrangement there because the functions were actually separated. The Court stressed that the attorney serving as counsel to the board "did not participate in the investigation of Dr. Trotzer or in the preparation of allegations against him," and that the two attorneys involved had "wholly distinct functions." 143 N.H. at 69.

That is exactly what is missing here. Attorney Waystack has participated in the investigation. He said so. He was "retained to conduct an inquiry"; "inquiry" means "a preliminary investigation"; and he was "investigating facts as part of this inquiry." He has interviewed two of the Justices. He also acted as the Committee's advocate in a live contested matter. He filed the Committee's objection as "Committee Counsel," advanced the Committee's legal position, and asked for substantive relief against the Justices.

B. Attorney Waystack's Own Papers Show He Has Become More Than Counsel; He Has Become A Witness To, And Proponent Of , His Own Process.

The February 23 objection is especially problematic because it is personally verified by Attorney Waystack. That matters. A lawyer who investigates facts, litigates about those facts, and then verifies the truth of the filing on his own knowledge has not remained outside the evidentiary stream. He has inserted himself into it.

The objection also repeatedly uses the rhetoric of party combat. It refers to the Committee as "Respondent," repeatedly denies allegations, "puts the Complainants to their proof," and requests findings and relief in the Committee's favor. That is not the work of a detached advisor preserving the fairness of the process. It is the work of an advocate trying to win.

And the February 5 letter confirms that his advocacy predates the objection. In that letter, he was already arguing that the JCC "needs" to make a public statement, that it "should inform the public of its actions," and that the Committee should move quickly because critics were saying the JCC was not doing its job. In other words, even before he formally appeared as adversary counsel, he was already pressing a public-facing institutional strategy for the Committee while simultaneously claiming to be the factual investigator.

That combination is indefensible. The investigator cannot also be the public-relations strategist. The strategist cannot also be the litigator. And none of them should be the lawyer advising the tribunal.

C. The Committee Need Not Wait For A Completed Due-Process Violation Before Acting.

The Committee does not need to decide, today, whether a final constitutional violation has already occurred. It needs only to recognize the obvious: this structure is compromised, and the only sensible remedy is to stop it now.

Trotzer explains why. In rejecting one of the petitioner's claims, the Court emphasized that there was "no evidence to suggest" an adjudicative role by the allegedly conflicted individual and, critically, that she "appropriately refrained from participating in the actions of the board and neither voted nor deliberated." 143 N.H. at 69-70. The point is prophylactic as much as descriptive. Once functions begin to merge in one person, the decision-maker must ensure that person is removed from any role that could infect deliberation or advice to the tribunal.

That is precisely where the Committee stands now. Attorney Waystack has already investigated. He has already advocated. He has already pressed strategic positions "on behalf of the JCC." The Committee should not require the Justices to wait and later prove the impossible—what weight, if any, his mixed-role involvement had in private Committee deliberations. The law does not require that kind of blindfolded patience.

D. At A Minimum, The Present Record Creates An Unacceptable Appearance Of Unfairness.

This matter concerns the integrity of a judicial disciplinary process. Appearance is not secondary. It is central.

Office of Consumer Advocate and *Trotzer* both recognize that where one person combines these roles, the "mere appearance of prejudice" may suffice. 134 N.H. at 659-60; 143 N.H. at 68. And even apart from the constitutional minimum, the Committee should insist on cleaner lines than the bare constitutional floor. A process this sensitive cannot be run by a lawyer who says, in substance: I am the investigator; I am speaking on behalf of the Committee; I am urging a public statement; and I am also the Committee's litigation counsel when my own conduct is challenged.

That is not a structure likely to inspire confidence. It is a structure likely to confirm the exact criticism the Committee should be trying to avoid: that the process has become self-protective, adversarial, and structurally unfair.

E. The Proper Remedy Is Disqualification And Replacement With Genuinely Unconflicted Counsel.

The remedy is not difficult. Attorney Waystack should be removed from further participation in this matter. New counsel should be appointed who has not served as investigator, factual intermediary, public-statement advocate, or litigation counsel in the matter. If the Committee wishes to continue using an investigator, that person should be segregated from counsel who advises the Committee on legal questions or appears in any adversarial capacity. That is the only arrangement that begins to resemble the separation *Trotzer* found sufficient.

Nothing less will do. The current arrangement is not merely awkward. It is structurally unsound and must be repaired.

WHEREFORE, the Justices respectfully request that the Committee:

A. Disqualify Attorney Philip R. Waystack immediately from any further participation in this matter;

B. Prohibit Attorney Waystack from any further role in investigating facts, communicating with witnesses, communicating with counsel for the Justices, preparing filings, making recommendations, or advising the Committee or any Committee member regarding any substantive or procedural issue in this matter;

C. Appoint substitute counsel who has had no prior involvement in the inquiry, investigation, or related motion practice;

D. Direct that any factual investigation be conducted, if at all, by a person other than counsel advising the Committee on legal issues or appearing in any adversarial capacity;

E. Require disclosure for the record whether Attorney Waystack has, to date, provided any legal advice, recommendation, draft ruling, or oral guidance to the Committee or any Committee member regarding the merits, procedure, confidentiality, public-statement issues, or disposition of any motion in this matter; and

F. Grant such further relief as justice requires.

Respectfully Submitted,

Chief Justice Gordon MacDonald, Justice Patrick Donovan, Justice Melissa Countway, and Justice Bryan Gould,

By their attorneys,
Lehmann Major List, PLLC

March 30, 2026

Richard J. Lehmann (Bar No. 9339)
6 Garvins Falls Road
Concord, N.H. 03301
(603) 731-5435
rick@nhlawyer.com

EXHIBIT

K

STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT COMMITTEE

JD-25-079-CII

JUDICIAL CONDUCT COMMITTEE'S OBJECTION TO MOTION TO RECONSIDER ORDER ON EMERGENCY MOTION FOR PROTECTIVE ORDER AND/OR INJUNCTION

NOW COMES Philip R. Waystack, as Committee Counsel for the Judicial Conduct Committee (the Committee), Respondent in this matter, and objects to the Justices (Complainants') Motion to Reconsider Order on Emergency Motion for Protective Order and/or Injunction and states as follows:

The Complainants' (Justices) seek to have the Judicial Conduct Committee reconsider its' Order of March 17, 2006. Superior Court Rule 12 (*Motions – Specific*) (e) defines the legal standard for reconsideration in the trial court. It would be appropriate to consider that standard in connection with this motion.

Rule 12 (e) Motions to Reconsider

> "... The Motion shall state, with particular clarity, points of law or fact that the court has overlooked or misapprehended (emphasis added) . . ."

Complainants argue that "... the Order understated the Justices' cooperative posture, and, in doing so, misapprehends the relief sought." Reconsideration Motion at 2.

It appears that this argument is without factual or legal merit. The Complainants have produced no documents to the Committee. And this is despite an allegation in their motion that they were providing documents with their motion.

"They have every intention of furnishing the documents they have retained that are responsive to the Committee's inquiry, and indeed, some of those documents that were in the possession of the Justices are appended to this pleading." Reconsideration Motion at 1,2.

But the reconsideration motion and cover letter did not have any documents attached (emphasis added). The only actions that the Complainants have taken so far is to file an Emergency Motion For a Protective Order And/Or Injunction, a Motion To Reconsider Order, and a Motion to Disqualify Attorney Philip R, Waystack and To Appoint Unconflicted Substitute Counsel. This does not seem like a cooperative posture. The Order On Emergency Motion For Protective Order And/Or Injunction (the Order) did not misapprehend or overlook the level of the Complainants' "cooperative posture".

The Reconsideration motion goes on to suggest how document production should occur when the Complainants presumably begin the promised document production. This is not a reconsideration issue at all. Committee counsel, as investigator, will determine how he wishes to obtain document production. It is not appropriate for a judge or judges who may be investigated for judicial code violations to suggest or decide how document production will or should occur.

To be clear, there are no outstanding requests by this investigator for records from any of the four Justices or from the Judicial Branch.

Moreover, as the Complainants conceded in their Emergency Motion, they cannot make decisions on matters involving this inquiry and that the appointment of an alternate panel (of judges) may be necessary.

"... While the Justices recognize that they cannot sit in judgment of their own cause and that such appointment may eventually be necessary ..." Emergency Motion at paragraph 22.

But that is exactly what they are trying to do here – control the discovery of relevant documents in an inquiry about their own conduct. The JCC investigator will use the tools that Rule 40 gives him in obtaining relevant documents and testimony from whatever witness he may choose.

The Committee will make no public disclosure without Appropriate Judicial Approval

Because the Justices concede that they cannot sit in Judgment of their own cause, they also cannot decide whether the Committee has or can meet the standards existing in Supreme Court Rule 40(3)(f) to issue a brief statement(s). As with the Justices inappropriate attempt to control document production, the Justices are clearly not in a position to decide whether the Committee can provide the appropriate evidence to comply with Rule 40(3)(f). They simply cannot do it ethically and this/these issues only accentuate and actuate, the need for an independent panel of judicial officers to make such important decisions.

Any argument by the Justices that the Order overlooks and misapprehends Rule 40(3)(f) and is without legal or factual merit.

The Justices further argument that any public statement by the JCC harms the Public Confidence in the Judiciary is without legal or factual merit. The numerous and continuing reports in the media of judicial actions concerning the employment and benefits received by Dianne Martin from the judicial branch is what is harming public confidence in the judiciary. That lack of confidence in the judiciary, for those reasons, is often stated in the many media reports and public opinion letters and statements. It is hard to see how the fact that an investigation is taking place by the Committee could undermine public confidence in the judiciary. More accurately, the opposite is true.

The balance of the Reconsideration Motion does not present any factual or legal basis for reconsideration of the Order. Much of what is stated is new information, not presented in the Emergency Motion. The Justices are certainly entitled to a different view of the Committees' role in judicial disciplinary matters than the Committee may have, but since they cannot sit in judgement of their own cause, an alternate panel of justices/judges must be empaneled now.

Finally, it bears stating that this inquiry is dynamic in nature. The status of this judicial disciplinary inquiry is that it is moving forward. Where it was a week or so ago, may not at all be where it is now. It appears clearly that there are many legal differences between the Justices and the Committee which cannot be resolved without an alternate panel. The Justices simply cannot determine how this investigation takes place, how documents will be discovered, who the Committee's investigator will be and when and how any public statement about this inquiry/investigation may be made. Much of the Justices' Reconsideration motion and subsequent Motion to Disqualify Committee investigator impermissibly address these issues.

The Order by the Committee did not overlook or misapprehend any points of law or fact.

WHEREFORE, the Judicial Conduct Committee respectfully requests that:

A, The Justices Motion for Reconsideration be denied; and,

B. For other and such relief as may be just.

Dated: April 9, 2026

Respectfully submitted,
Judicial Conduct Committee

By its Committee Counsel,

By: /s/ Philip R. Waystack
Philip R. Waystack, Esquire

STATE OF NEW HAMPSHIRE

VERIFICATION

On this 9th of April, 2026, I, Philip R. Waystack, Esquire, Judicial Conduct Committee Counsel, being duly sworn verify that the information set forth in this instrument is true and accurate to the best of my knowledge and belief.

/s/ Philip R. Waystack
Philip R. Waystack, Esquire

RITA S. GILBERT
STATE OF
-MY-
COMMISSION
EXPIRES
JUNE 12, 2029
NEW HAMPSHIRE
NOTARY PUBLIC

Before me,
Rita S. Gilbert
Rita S. Gilbert, Notary Public

CERTIFICATION OF SERVICE

I hereby certify that as Committee counsel for the Judicial Conduct Committee, I have forwarded this date, the foregoing pleading via electronic mail to Richard J. Lehmann, Esquire, counsel for the four Justices.

Dated: April 9, 2026

By: /s/ Philip R. Waystack
Philip R. Waystack, Esquire
NH Bar #2672

EXHIBIT

2

STATE OF NEW HAMPSHIRE

JUDICIAL CONDUCT COMMITTEE

JD-25-079-CII

JUDICIAL CONDUCT COMMITTEE'S OBJECTION TO MOTION TO DISQUALIFY ATTORNEY PHILIP R. WAYSTACK AND TO APPOINT UNCONFLICTED SUBSTITUTE COUNSEL

NOW COMES the Judicial Conduct Committee (JCC), by and through Committee counsel, and objects to the Justices' Motion to Disqualify and says as follows:

I. BACKGROUND

The Justices' motion, seeks to parse words and phrases from Committee counsel's second letter to Justices' counsel in support of their arguments. In order to provide a more complete context, Committee counsel has attached his two letters of 1/29/26 and 2/05/26, as well as Justices' counsel's letter of 1/30/26 to him.

Committee counsel was surprised to receive a spontaneous phone call from Justices' counsel in late January 2026. He said that he represented Justices Gordon MacDonald, Patrick Donovan, Melissa Countway and Bryan Gould. He wanted to discuss the investigation that I was pursuing on behalf of the Judicial Conduct Committee.

From Committee counsel's perspective even the fact that an inquiry/investigation was underway was and is confidential. We then discussed the implementation of a Protective Order (PO) in order to allow the Justices to provide certain documents related to the employment of Dianne Martin as Director of the Administrative Office of the Courts (AOC).

I also told him that I thought that he had a conflict of interest in representing all four Supreme Court Justices.

We had another brief telephone conversation and I emailed Justices' counsel the Protective Order that the JCC had prepared. It was executed by the JCC Chair, John Mullen. It became clear right away that there was a dispute between the JCC and the Justices about the text and extent of the Protective Order. I then raised the issue of the arranging of an alternate panel of judges to serve to resolve any discovery and other disputes since, as the Justices have agreed, "they cannot sit in judgement of their cause". Emergency Motion at paragraph 22.

Justices' counsel wrote to Committee counsel on 1/30/26 attaching the Justices' proposed Protective Order (P.O.). He asked Committee counsel to present his letter and proposed P.O. to the "full committee for review". Lehmann letter 1/30/26, page 3. Committee counsel sent Justices' counsel a second letter on 2/05/26, again asking that the Justices "authorize" the appointment of an alternate panel for the reasons stated in the letter. That was Committee counsel's last communication with Justices' counsel. On 2/09/26 Justices' counsel filed an Emergency Motion for Protective Order and Injunction with the JCC.

II. ARGUMENT

A. Justices' counsel's legal argument, based on the cases cited in his motion, misses the mark legally and factually.

The Justices misstate the functions of Committee counsel by suggesting that his role includes investigative, accusative, and adjudicative functions. That is simply not so. Committee counsel, as defined in Supreme Court Rule 40(2) *Definitions* is "Counsel engaged by the Committee to assist prior to the filing of formal charges" (emphasis added). In the event that formal charges are filed, the Committee then engages "Hearing Counsel" to prosecute the formal charges before the committee. At that point, Hearing counsel shall have no *ex parte* communications with the committee. Rule 40 Procedural Rules of Committee on Judicial Conduct, which was initially adopted by the New Hampshire Supreme Court in 1977, provides that the investigative, accusative, and adjudicative functions are not commingled in Committee counsel. Moreover, any decision made by the Committee on formal charges are made by the Committee members and neither Committee counsel or Hearing counsel participate in voting on the decision.

The motion to disqualify suggests that the case of the Appeal of Trotzer, 143 NH 64 (1998) supports their motion. Trotzer involves ethical charges against a psychologist by the New Hampshire Board of Examiners of Psychology and Mental Health Practice. But the decision did not find that the Psychology Board commingled the investigative, accusative, and adjudicative functions in deciding that Dr. Trotzer committed professional misconduct. The citation used in the Justices' motion is only dicta and not essential to the holding in the case.

The other case cited by the Justices, Appeal of the Office of Consumer Advocate, 134 NH 651, does not support their motion to disqualify as well. Consumer Advocate states in part "... The combination of investigative, accusative, and adjudicative functions does not necessarily constitute a denial of due process ..." See, Burhoe v. Whaland, 116 NH 222, 223, 356A 2d 658, 659 (1976) (citing Withrow v. Larkin, 421 U.S 35, 52 (1975)."

Withrow is the seminal case approving the "one-tier" or unicameral judicial discipline system which has governed judicial discipline matters in New Hampshire, by Supreme Court rule, since 1977. The unicameral judicial discipline system is currently used by a majority of states as the appropriate model of a judicial discipline system. The New Hampshire Supreme Court also found that there was no due process violation in the *Office of*

Consumer Advocate based on allegations of commingling investigative, accusative, and adjudicative functions.

Finally on this point, the Justices' motion incorrectly suggests that Committee counsel is involved in the adjudicative function in the event that the Committee pursues formal charges. This is an incorrect assertion and the Justices provide no factual basis for this assertion.

B. The Justices' argument that Committee counsel's verification to his response to the Justices' Emergency Motion makes him a witness is without merit and appears to misunderstand basic litigation practice. *Superior Court Rule 11 – Motions – General* (b) states "The Court will not hear any motion grounded upon facts, unless such facts are verified by affidavit . . ."

The Justices Emergency Motion stated many "facts" but contained no affidavit or statement under oath attesting to the truth of the facts as required by Rule 11.

In responding by objecting to the motion, Committee counsel did assert some facts (i.e. that he never spoke with Representative Robert Lynn) and thus, according to rule-based litigation practice, he verified his statement, under oath to comply with pleading rules. This verification does not make him a witness, in the "evidentiary stream". Moreover, the allegation in the motion that Committee counsel was acting as an advocate in responding to the Justices' motion is a meritless argument. He was retained by the Committee as Committee counsel. Part of his job is to respond to pleadings. He is not a "detached advisor" but rather acting as counsel for the Committee.

C., D & E. The balance of the arguments in the Justices' motion is likewise without factual or legal merit. The job of acting as Committee counsel at the early stages of a judicial conduct investigation involves investigating – speaking with witnesses, examining documents, and representing the Committee as counsel. In the event as here, that the judge(s) being investigated file pleadings with the Committee, it is his job to respond to the pleadings as an advocate for the Committee. That the judge(s) being investigated do not like the way in which Committee counsel investigates or responds to their pleadings is no basis for claiming unfairness and seeking to disqualify counsel. This motion is the second attempt by the Justices to "... sit in judgement of their own cause". Emergency Motion, paragraph 22.

The first attempt was to significantly narrow the ability of Committee counsel to investigate by proposing a restrictive Protective Order. Now the Justices want to pick their own investigator. These two attempts beg for the appointment of an alternate panel of justices to decide such disputes as the Justices have raised.

WHEREFORE, the Judicial Conduct Committee respectfully requests that:

A. The Justices Motion for Disqualification and Appointment of Substitute Counsel be denied; and,

B. For other and such relief as may be just.

Dated: April 9, 2026

Respectfully submitted,
Judicial Conduct Committee

By its Committee Counsel,

By: */s/ Philip R. Waystack*
Philip R. Waystack, Esquire

STATE OF NEW HAMPSHIRE

VERIFICATION

On this 9th day of April, 2026, I, Philip R. Waystack, Esquire, Judicial Conduct Committee Counsel, being duly sworn verify that the information set forth in this instrument is true and accurate to the best of my knowledge and belief.

RITA S. GILBERT
STATE OF
-MY-
COMMISSION
EXPIRES
JUNE 12, 2029
NEW HAMPSHIRE
NOTARY PUBLIC

/s/ Philip R. Waystack
Philip R. Waystack, Esquire

Before me,

Rita S. Gilbert
Rita S. Gilbert, Notary Public

CERTIFICATION OF SERVICE

I hereby certify that as Committee counsel for the Judicial Conduct Committee, I have forwarded this date, the foregoing pleading via electronic mail to Richard J. Lehmann, Esquire, counsel for the four Justices.

Dated: April 9, 2026

By: */s/ Philip R. Waystack*
Philip R. Waystack, Esquire
NH Bar #2672

EXHIBIT

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N.H. JUDICIAL CONDUCT COMMITTEE

COMMITTEE-INITIATED INQUIRY

No. JC-25-079-CII

ORDER ON MOTION TO RECONSIDER

The JCC has received a Motion to Reconsider Order on Emergency Motion for Protective Order and/or Injunction (hereinafter "Motion to Reconsider"). Attorney Richard Lehmann filed the motion on behalf of Chief Justice Gordon MacDonald and Associate Justices Patrick Donovan, Melissa Countway and Bryan Gould (hereinafter collective the "Justices"). The Justices request that the Judicial Conduct Committee (hereinafter "JCC" or the "Committtee") reconsider, in part, its Order on Emergency Motion for Protective Order and/or Injunction (hereinafter "Order"). More specifically, the Motion to Reconsider, requests the Committee: "A. Reconsider its Order to the extent that the Order finds that making a public statement announcing the existence of the inquiry is authorized by the rules; B. Reconsider its Order to the extent that the Order finds that making a public statement announcing the existence of the inquiry is prudent; C. Reconsider its Order to the extent that the Order seeks to empanel superior court judges to preside over this matter and instead consult with Justice Will." Motion to Reconsider at 13 (prayers for relief). Committee Counsel Philip Waystack has filed an objection to the Motion to Reconsider. At its April 10, 2026 meeting the JCC denied the motion to reconsider, and issues this Order in response to the Motion to Reconsider.

In the first instance the Committee notes that the Justices have not asked the JCC to reconsider its ruling with respect to the January 16, 2026 JCC Protective Order. Accordingly, this is the operative protective order that Committee Counsel, in furtherance of the Committee's preliminary investigation, may utilize to obtain records that are privileged or confidential by law.

Next, the Committee observes that it is uncommon for the JCC to engage in contested pleadings practice or to be ruling on contested motions such the present pleadings. New Hampshire Supreme Court Rule 40(3)(g) permits a party to request the Committee issue a protective order but if the applicant disagrees with the Committee's ruling or scope of the protective order, Rule 40(3)(g) provides, "an aggrieved party or entity may request that the supreme court review the matter." The Committee, in responding to the various pleadings, anticipates the need for a replacement panel as provided for under Rule 40 because the Committee is not designed to engage in this type of significant motion practice.

After reviewing the Motion to Reconsider, the Committee clarifies that it welcomes input and review of any proposed statement with consent of the Justices pursuant to Rule 40(3)(e). To the extent the Justices do not consent to the issuance of a public statement pursuant to Rule 40(3)(e), the Committee recognizes that the current scenario is not directly addressed in either Rule 40(3)(e) or (f). For this reason it is essential for the public interest that the Committee consult with an alternate panel of the Supreme Court on the propriety of issuance of a public statement and the content of that statement.

In review of Rule 40(3)(e), the Committee notes that the word or phrase "publicly charged" is not defined in the Rule. The word "charged" in the context of Rule 40(3)(e) reasonably may encompass allegations of Code violations made in the published media reports. The Court reiterates that the Judicial Branch and public benefit from an acknowledgement that the Committee is aware of the allegations and performing its functions appropriately under Rule 40.

> *(e) If a judge is publicly charged, through independent sources, with involvement in a proceeding before the committee, or publicly charged with conduct likely to become the subject of such a proceeding, the committee may, at the request or with the consent of the judge involved, issue brief public statements as it deems appropriate in order to confirm or deny the pendency of the proceeding, to clarify the procedural aspects thereof, to explain the right of the judge to a fair hearing without prejudgment, and to state that the judge denies the allegations.*

The Committee does not believe the public is currently aware of Committee proceedings relating to the Justices other than the Hantz Marconi proceedings, but it recognizes public media reports have included expressions of confusion as to why no investigation has commenced given the nature of the reported conduct surround Ms. Martin's employment. Seeking input from an alternative panel to consider the appropriateness under the Rule of issuing a public statement is necessary, and doing so now will also help to efficiently address the issue if the matter moves forward or is otherwise resolved.

Contrary to the Justices' proposal, the alternate panel cannot include Associate Justice Daniel Will. The conflict is obvious. Associate Justice Will is one of five justices—four of whom are the percipient witnesses to or the subject of a preliminary investigation of violations of the Code of Judicial Conduct. Justice Will interacts with these colleagues daily. He is required to work with them collaboratively—not just to decide individual appellate cases but on matters of judicial administration. The present preliminary investigation involves potential violations of the Code of Judicial Conduct premised on the very same type of administrative decisions that are central to this investigation. The appearance of impropriety is unavoidable. See Rule of Judicial Conduct 1.2.

Indeed, if Justice Will presides over proceedings involving his colleagues, this itself may violate the Code of Judicial Conduct. Rule 2.11 requires a judge to disqualify himself "in any proceeding in which the judge's impartiality might reasonably be questioned . . . ." In the Matter Karl Ridsdale, 2011 WL 3684484 (N.Y. Comm. Jud. Cond. July 20, 2011), involved a judge who presided over a case in which his co-judge was a witness and the co-judge's son was the accused. The presiding judge had no personal stake in the case. Nonetheless, the New York Commission on Judicial Conduct found the presiding judge violated several provisions of the code of judicial conduct, including the New York analog to Rule 2.11(A). In that case, the N.Y. Commission found that the accused judge's handling of the case was "unavoidably tinged with an appearance of impropriety." Id. at *3. Similarly, in In the Matter of Menard, 2010 WL 4155618, at *6 (N.Y. Comm. Jud. Cond. Oct. 13, 2010), the N.Y. Commission ruled that a judge who presided over a co-judge's small claim case violated the Code of Judicial Conduct because the accused "judge's impartiality 'might reasonably be questioned.'"

These decisions are consistent with the historical practice of the New Hampshire Supreme Court. During litigation surround the disciplinary actions and impeachment proceedings relating to Justices Thayer, Horton, Broderick and Chief Justice Brock, the Supreme Court appointed alternate panels to preside over litigation in those matters. Those alternate panels did not consist of any sitting Supreme Court Justices. See Horton v. McLaughlin, 149 N.H. 141 (2003) (Fauver, Hicks,Flynn, Manias, and Dickson, JJ., presiding by special assignment); In re Thayer, 146 N.H. 342 (2001) (Perkins, O'Neill, Smukler and Fauver, JJ., presiding by special assignment pursuant to RSA 490:3); In re Thayer, 145 N.H. 177 (2000) (Manias, Mangones, O'Neill, Coffey, and Smukler, JJ., sat by special assignment pursuant to RSA 490:3). In each of those cases, Associate Justices Joseph Nadeau and Linda Dalainis were available to preside. Justice Nadeau had been appointed in March 2000, and Justice Dalainis was appointed in April 2000—well before any of those cases were decided. See N.H. Reports vol. 143, at xxv (1998-1999). There was certainly no allegation that Justices Nadeau or Dalainis were witnesses to or involved in any way in the misconduct that gave rise to that litigation. The Code of Judicial Conduct, the precedent cited above, and the New Hampshire Supreme Court's historical practice all support the conclusion that Justice Will cannot preside over disputes between his co-justices and the JCC.

Finally, the Committee notes that the Justices in their pleading propose that the Committee stands in an auxiliary role, not a core one. The pleading also suggests that the JCC is a committee of the Supreme Court and thus, is a subordinate position to the Supreme Court.

As noted in its original Order, the Code of Judicial Conduct is designed to protect "the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system." N.H. S.Ct. R. 38 (preamble). The public's perception and trust in the judiciary requires that the JCC independently investigate potential violations of the Code. In fact, the Rules of the Supreme Court impose that responsibility on the JCC. N.H. S. Ct. R. 39(9).

To the extent that the Committee is created by Rule, promulgated by the Supreme Court, absent an investigation into a Justice or Justices, the Committee is in a subordinate position. This is evident by the requirement that the Committee seek permission under Rule 40(3)(f) before issuing a public statement. When, however, a Justice or Justices of the Supreme Court are the subject of an investigation or witnesses to potential violations of the Code, the provisions of the Judicial Code of Conduct apply to the Justices in the same manner they apply to all other judicial officers. "A viable and continuing JCC investigative process is an integral source of confidence upon which public perception may be based." Thayer, 145 N.H. at 181. This is because the public can be assured "that its government actively investigates allegations of judicial misconduct and takes appropriate action when these allegations are proved." Matter of Johnstone, 2 P.3d 1226, 1234 (Alaska 2000) (quoted in Thayer, 145 N.H. at 181). Thus, the JCC must be allowed to consult with an independent, alternate panel about the propriety of issuance of a public statement pursuant to New Hampshire Supreme Court Rule 40(3)(f).

Conclusion

For the reasons set forth above, the Justices' Motion to Reconsider is DENIED.

SO ORDERED.

4/12/26
Date

John Mullen
Chairman, Judicial Conduct Committee

EXHIBIT
N

N.H. JUDICIAL CONDUCT COMMITTEE

COMMITTEE-INITIATED INQUIRY

No. JC-25-079-CII

ORDER ON MOTION TO DISQUALIFY ATTORNEY PHILIP R. WAYSTACK AND TO APPOINT UNCONFLICTED SUBSTITUTE COUNSEL

Attorney Richard Lehmann filed Motion to Disqualify Attorney Philip R. Waystack and to Appoint Unconflicted Substitute Counsel on behalf of Chief Justice Gordon MacDonald and Associate Justices Patrick Donovan, Melissa Countway and Bryan Gould (hereinafter collective the "Justices"). Committee Counsel Philip Waystack has filed an objection. At its April 10, 2026 meeting the JCC denied the motion to disqualify and issues this Order in response.

The Justices' Motion to Disqualify is an attack on the unicameral judicial disciplinary process which the Supreme Court itself established in 1977. Rule 39(9)(a) charges the JCC with the responsibility to "investigate the conduct of any judge . . . within the jurisdiction of this court and may initiate an inquiry on its own motion in accordance with Rule 40(6) . . . ." The Committee has the obligation "to prepare and file a statement of formal charges when appropriate . . ., to hold a public hearing on a statement of formal charges, during which hearing counsel shall have the burden of establishing by clear and convincing evidence a violation of the Code of Judicial Conduct . . ., and to institute disciplinary proceedings in the supreme court when appropriate . . . ." N.H. S. Ct. R. 39(9)(f) to (h). Thus, the Rules created by the Supreme Court vest the JCC—as a single body—with the duties to investigate violations of the Code of Judicial Conduct, issue charges, and adjudicate those accusations.

Moreover, New Hampshire Supreme Court Rule 39 allows the JCC to employ legal counsel and determine the duties of that lawyer. N.H. S. Ct. R. 39(5)(d). This includes the authority "to retain counsel as may from time to time be required to properly perform the functions prescribed by the committee. . . ." N.H. S. Ct. R. 39(9)(b). Rule 40 more specifically empowers the Committee to retain "committee counsel" to "assist it prior to the filing of formal charges." N.H. S. Ct. R. 40(2). That same rule permits the JCC to then retain the same lawyer who acted as "committee counsel" to be "hearing counsel." Id. Hearing counsel is "engaged by the committee to prosecute the formal charges before the committee or disciplinary proceedings in this court." Id. Once "committee counsel" is appointed as "hearings counsel," all *ex parte* communications with the committee must cease. Id. In other words, at that stage of the proceedings the prosecutorial and adjudicatory functions are severed. Notably, the rule vests the JCC with exclusive discretion to retain the same lawyer who served as committee counsel as hearings counsel. Id. Under the rules, the Supreme Court has no role in determining who serves as counsel for the JCC.

A similar unicameral judicial conduct system exists in more than 40 other states. A system in which a single administrative body investigates, issues charges based on that investigation, and then adjudicates those charges has been upheld against due process challenges by the United States Supreme Court and the New Hampshire Supreme Court. See Withrow v. Larkin, 421 U.S. 35, 47 (1975); Appeal of Off. of Consumer Advoc., 134 N.H. 651, 659, 597 A.2d 528, 533 (1991) ("The combination of investigative, accusative, and adjudicative functions does not necessarily constitute a denial of due process."); Appeal of Beyer, 122 N.H. 934, 940 (1982) ("[T]he law is clear that the mere combination of investigatory and adjudicative roles in an administrative body does not violate due process.") (citing Withrow). More particularly, courts in other states have roundly rejected claims that combining the investigation, accusation, and adjudication functions in a single judicial disciplinary board violates due process. See In RE: Zoarski, 632 A.2d 1114, 1121 (Conn. 1993) (citing cases).

The Motion to Disqualify fundamentally misunderstands the role of Committee Counsel. Attorney Waystack has no vote in committee decisions. His role at this stage of the proceedings is "assist [the Committee] prior to the filing of formal charges." N.H. S. Ct. R. 40(2) (definitions); see also N.H. S. Ct. R. 39(5)(d) and (9)(b). This includes the responsibility to investigate the matters raised by the Committee-initiated inquiry, present the evidence to the Committee, and recommend whether to pursue formal charges. It also includes advising the Committee about the merits of the Justices' motions, which in this case occurred through responsive pleadings filed by Attorney Waystack.

The Committee ultimately decides the merits of the issues before it, including ruling on the motions and determining whether there is sufficient evidence to raise the matter to the level of a complaint or institute formal charges. If the Committee votes to pursue formal charges, then the adjudicatory and prosecutorial functions are separated. As noted above, if committee counsel becomes hearings counsel, then all *ex parte* communication between hearings counsel and the Committee must cease. N.H. S. Ct. R. 40(2). The procedural requirements for the formal hearing are designed to further protect the rights of an accused judge. N.H. S. Ct. R. 40(10) & (11). If the JCC finds that the judge has violated the Code of Judicial Conduct, the judge may request a *de* *novo* hearing before a judicial referee appointed by the Supreme Court. N.H. S. Ct. R. 40(12)(c)(1) and (d)(1). This adds yet another layer of due process protection for the accused judge. The Committee is following the rules and procedures which were first established by the New Hampshire Supreme Court nearly 50 years ago. Accordingly, there is no basis to disqualify Attorney Waystack and the Justices motion is DENIED.

SO ORDERED.

4/12/26
Date

John Mullen
Chairman, Judicial Conduct Committee

EXHIBIT

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State of New Hampshire

Judicial Conduct Committee

Robert T. Mittelholzer, Esquire
Executive Secretary
127 Parrott Avenue
Portsmouth, New Hampshire 03801

Phone: (603) 427-9295
Fax: (603) 427-9297
Email: rmittelholzer@nhjcc.com

March 30, 2026

PERSONAL AND CONFIDENTIAL

The Honorable Gordon J. MacDonald, Chief Justice
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

RE: JC-25-079-C

Chief Justice MacDonald:

On November 14, 2025, the Judicial Conduct Committee voted to begin a Committee-initiated inquiry into the circumstances surrounding the removal and re-hiring of Dianne Martin. At the same time the Committee voted to open an investigation pursuant to New Hampshire Supreme Court Rule 40(6). The Committee further voted to delay notification of its inquiry. I am writing to advise you that the Judicial Conduct Committee at its meeting of March 13, 2026, voted to elevate its Committee-initiated inquiry to the level of a complaint pursuant to New Hampshire Supreme Court Rule 40(7)(a) so as to obtain a more specific response from you with respect to your role, if any, as regards the events described below.

<u>Summary of the Facts Learned During the Investigation</u>

Dianne Martin worked at the New Hampshire Department of Justice as an assistant attorney general. As Attorney General you promoted Ms. Martin to the role of chief of staff for the Department of Justice. Ms. Martin served in that role until she was appointed to the Public Utilities Commission (PUC). On or about November 15, 2021, Ms. Martin was hired as the Director of the Administrative Office of the Courts ("AOC").

The Committee-initiated inquiry indicates that Ms. Martin's management style as Director led to many, if not all, of the human resources employees to leave the Judicial Branch. In March 2024, the Judicial Branch entered into a Memorandum of Understanding ("MOU") with the Department of Administrative Services ("DAS") to provide human resources support for the Judicial Branch. Ms. Martin failed to promptly fill vital positions within the AOC, including the position of Director of Domestic Violence (DDV), a position responsible for entering protective orders into the nationwide database. This position is a liaison between the courts and New Hampshire State Police and allows the DDV to input restraining orders into the nationwide database so that police officers are notified of the existence of domestic violence restraining orders in a timely manner.

Ms. Martin failed to timely perform necessary administrative obligations, for example she repeatedly failed to authorize payment of significant bills or timely review contract proposals. Bills that went unpaid include utility bills, rent payments for certain court sites, and legal research subscriptions like Lexis Nexis. Her failure to perform resulted in court facilities receiving utility shut off notices, eviction threats, and suspension of legal research services.

Concerns about Ms. Martin's poor job performance were communicated to you as Chief Justice. Responsible sources discussed the many problems with Ms. Martin's leadership and management of the AOC with the Supreme Court justices and you. For example, former Administrative Judge of the Circuit Court, David King and Victoria Prestejohn, the former human resources manager of AOC, met with you, in person, to plainly discuss significant problems with the functioning of the AOC. Also discussed with you, in person, was the large number of respected AOC staff, including managers and administrators, who left or were leaving the AOC as a result of Ms. Martin's mismanagement.

As Chief Justice you knew about the difficulties with the operation of AOC. Associate Justice Anna Barbara Hantz Marconi undertook an investigation of what was happening at AOC. After Justice Hantz Marconi was placed on administrative leave, Associate Justice Patrick Donovan became involved in taking over the work of investigating AOC because of substantial and widespread concern about Ms. Martin's mismanagement of the AOC. Then Associate Justice Melissa Countway began collaborating with Justice Donovan on AOC matters. Other supervisory judges were discussing problems with the operation of AOC directly with Justice Countway. This issue of mismanagement at AOC was a regular subject of discussion among Supreme Court justices.

As Chief Justice you approved a plan to allow Justices Donovan and Countway to remove Ms. Martin as Director of the AOC. On Friday, February 28, 2025, Justices Donovan and Countway met with Ms. Martin in the Souter Conference Room at the Supreme Court. They informed Ms. Martin that she would no longer be Director of the AOC. They offered Ms. Martin a position as General Counsel for the Office of Bar Admissions which had been the subject of previous discussion among the justices. Ms. Martin declined. Justices Donovan and Countway took Ms. Martin's building access card, work phone, and Judicial Branch-issued laptop computer. Justice Countway escorted Ms. Martin from the building. Ms. Martin told DOJ investigators that she understood she was terminated effective immediately. Shortly after this meeting with Ms. Martin, Justices Donovan and Countway met with Chief Justices Mark Howard and Ellen Christo and then the staff at the AOC to inform them that Ms. Martin was no longer employed as the Director of the AOC.

Ms. Martin told DOJ investigators that she emailed you as Chief Justice on Monday, March 3, 2025, about her termination.

Your behavior at the Court on Monday, March 3, 2025, indicates that you were upset about the removal of Ms. Martin from her position. You entered Justice Donovan's chambers, reportedly slamming the office door. It is also reported that you yelled at Justice Donovan, using profane language in anger. Later that day you engaged in a similar behavior in a heated exchange with Justice Countway. This was not the first time in your tenure that you yelled and used profanity in anger toward a judicial officer.

On Monday, March 3, 2025, Circuit Court Judge Christopher Keating was told he was appointed as Interim Director of the AOC. Judge Keating held that position until October 14, 2025, when he was appointed as State Court Administrator, a new position created by a change in Supreme Court Rule 54.

On April 1, 2025, Judge Keating sent Ms. Martin a letter informing her that her position was being abolished as part of a reorganization, and she was going to be laid off. This letter further informed Ms. Martin that she was entitled to a payout for unused annual leave, sick leave, and terminal pay. This resulted in a total payout of approximately $49,855.00 to Ms. Martin.

On April 4, 2025, Ms. Martin was rehired by the Judicial Branch as General Counsel for the Office Bar Admissions, which, according to media reports, resulted in a pay increase of approximately $10,000 from her prior job as Director of the AOC. Moreover, because of the two-day gap in service, Ms. Martin was paid at least $49,855.00 for annual and sick leave and termination pay that she would not have received if she transferred directly from Director of AOC to General Counsel of Bar Admissions without a gap in service. Under personnel rules, that annual and sick leave would have carried over to Ms. Martin's new position without the gap in service. See State of New Hampshire Judicial Branch Personnel Rules (hereinafter "Personnel Rules") Rule 55. A whistleblower attributed the decision to lay Ms. Martin off and promptly rehire her as "the Chief's idea."

In addition, Ms. Martin's employment as General Counsel would overlap approximately five months with Attorney Sherry Hieber, who held the same position. Pursuant to the Judicial Branch's own personnel practices employees are not allowed to overlap for more than two weeks. See Personnel Rule 26.

On or about April 9, 2025, as Chief Justice you sent an email to court staff announcing a hiring freeze and warning of possible judicial branch staff layoffs because of potential legislative budget cuts to the Judicial Branch. This email was sent the same week that Ms. Martin was "laid off," thereby triggering a large pay-out.

According to media reports, just weeks after she began as General Counsel, you as Chief Justice requested a pay increase for Ms. Martin based on her skills, experience, and "working relationships in the Judicial Branch." You also sent an internal memorandum to Judicial Branch staff extolling Ms. Martin's many skills when her transition to the Office of Bar Admissions was announced. This statement does not comport with information otherwise obtained in the course of the Committee-initiated investigation.

On October 31, 2025, you and Justices Donovan, Countway, and Gould issued a press release. That press release stated that in early 2024 the Judicial Branch began "a comprehensive review of its administrative operations and costs as part of an effort to improve efficiency, better align staffing with current needs, and lower overall costs for taxpayers." The press release then states that Ms. Martin was laid off as part of that reorganization.

The press release contradicts other evidence. "On April 11, 2025, Chief Justice Gordon J. MacDonald of the New Hampshire Supreme Court issued an order for a comprehensive review of the administrative structure of the judicial branch and the trial courts." *New Hampshire Judicial Branch Assessment* at 4. That order "authorized the New Hampshire Judicial Branch (NHJB) to engage the National Center for State Courts (NCSC) to conduct an analysis of the NHJB and make recommendations for the committee's review." *Id.* The NCSC did not issue its assessment until on or about July 1, 2025. That report recommended the Court adopt a rule "that clearly defines existing and new responsibilities of the AOC." *Id.* at 37. The report further recommended that the Judicial Branch "consolidate select functions of the Administrative Offices of the Circuit and Superior Courts into the AOC." *Id.* at 38. The Supreme Court did not approve the rule changes to implement these recommendations and create the new State Court Administrator position until October 14, 2025.

Part I, Article 73-a of the New Hampshire Constitution provides: "The chief justice of the supreme court shall be the administrative head of all the courts. He shall, with the concurrence of a majority of the supreme court justices, make rules governing the administration of all courts in the state and the practice and procedure to be followed in all such courts. The rules so promulgated shall have the force and effect of law."

<u>Alleged Violations of the Rules of Judicial Conduct</u>

The Committee has determined that the facts described above, if true, would constitute violations of the following provisions of the State of New Hampshire's Code of Judicial Conduct Rule 1.1, Rule 1.2, Rule 2.13(A) and (B), Rule 2.5(A), and Rule 2.8.

Rule 2.5(A) Competency, Diligence and Cooperation and Rule 2.13 Administrative Appointments

Rule 2.5(A) requires a judge "to perform judicial and administrative duties, competently and diligently." (Emphasis added). Rule 2.13 governs a judge's responsibilities with respect to administrative appointments. That rule provides:

(A) In making administrative appointments, a judge:

> (1) shall exercise the power of appointment impartially and on the basis of merit; and
>
> (2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

The Committee's inquiry sets forth facts that, if true, would establish that you made the decision to "lay off" Ms. Martin and to rehire her as General Counsel for the Board of Bar Admission, rather than terminate her. In the alternative, you could have transferred Ms. Martin from Director of the AOC to the General Counsel position without incurring a gap in service and triggering a payout of leave-time and termination pay. The investigation establishes facts that this decision may not have been made impartially or based on merit but was the result of favoritism and caused Ms. Martin to receive compensation beyond the value of services rendered.

The Committee requires you to provide a complete explanation of the decision to remove Ms. Martin from the position of Director of AOC, including, but not limited to responding to the following:

- Describe, in detail, the history and nature of your relationship with Ms. Martin.
- Describe, in detail, your understanding of Ms. Martin's job performance as Director of AOC.
- Who conducted Ms. Martin's job performance reviews? Please provide the Committee with a copy of all of Ms. Martin's job performance reviews.
  - Were you aware of complaints by judicial officers and AOC staff about Ms. Martin's job performance?
  - Were you aware that Ms. Martin had not promptly filled the Director of Domestic Violence position?

- Were you aware that Ms. Martin had not paid bills owed by the Judicial Branch in a timely manner?
    - Were you aware that numerous staff left the AOC as a result of Ms. Martin's performance as AOC director?
    - With respect to each of these questions:
        - What information did you learn?
        - When did you become aware of the issue?
        - Who brought the issue to your attention?
        - What did you do in response to the issue?

- Was Ms. Martin an "at will" employee of the Judicial Branch? Could Ms. Martin have been terminated based on poor job performance without notice? If not, why not?

- Did Ms. Martin have an employment contract with the Judicial Branch? Provide a copy of that contract if one exists.

- On February 28, 2025, was Ms. Martin terminated or laid off, or was she in some other employment status?
    - When was that decision made?
    - Who made it?
    - What was the basis for the decision?

- What communication did you have with Ms. Martin after her removal as Director of AOC between February 28, 2025, and March 3, 2025, when you spoke with Justice Donovan and/or Justice Countway? Please describe in detail each of those communications.
    - When did they occur?
    - By what means?
    - What did you communicate to Ms. Martin?
    - What did Ms. Martin communicate to you?

- Ms. Martin reported to DOJ investigators that you praised her work and informed Ms. Martin that her removal as Director of AOC was not based on her job performance.
    - Is this characterization of the communication accurate?
    - If not, explain how it is inaccurate.

- If it is accurate, how is this consistent with complaints about Ms. Martin's job performance which were brought to your attention?

- Did you have other communication with Ms. Martin between March 3, 2025, and April 4, 2025? Please describe in detail each of those communications.
  - When did they occur?
  - By what means?
  - What did you communicate to Ms. Martin?
  - What did Ms. Martin communicate to you?

- Is there anything in writing notifying Ms. Martin of the reason she was removed as Director of the AOC? If so, please provide the Committee with a copy of any writing.

- Why was Ms. Martin laid off on April 1, 2025 and rehired as General Counsel to the Office of Bar Admissions on April 4, 2025, instead of being transferred directly to that position?

- Did Ms. Martin threaten to sue the Judicial Branch or any judicial officer or non-judicial officer because of her removal as Director of the AOC?

- Was Ms. Martin's termination from the AOC part of a larger settlement? If so, please provide the Committee with a copy of that settlement.

- What exactly are the specific personnel rules that apply to Ms. Martin's "layoff," rehiring, and the calculation of her benefits?

- Provide specific calculations with supporting documentation to justify the approximately $50,000 payout to Ms. Martin.
  - Who was responsible for tracking the amount of sick leave Ms. Martin used?
  - Who was responsible for tracking the amount of annual leave Ms. Martin used?
  - Did anyone in the Judicial Branch need to approve Ms. Martin's use of sick or annual leave?

- Ms. Martin told investigators from the Department of Justice that she took a leave of absence around August 2024 and returned in December 2024 or January 2025.
    - When did Ms. Martin take a leave of absence?
    - When did she return to work?
    - Was Ms. Martin's leave under Family and Medical Leave Act (FMLA) pursuant to Personnel Rule 39 or unpaid leave pursuant to Personnel Rule 40 or was it some other form of leave?
    - Personnel Rule 39 requires that when an employee takes a leave of absence under FMLA, "An employee shall apply all accumulated leave, where applicable, to cover this period of absence. Unpaid leave may be used only if all other leave has been exhausted."
    - Rule 40 governs leave without pay. Rule 40(c) likewise provides: "An employee who requests a leave of absence without pay shall be required to use all applicable accumulated leave, including monthly accruals earned while on leave with pay, before being granted the leave of absence without pay."
    - Was Ms. Martin required to exhaust all accumulated leave pursuant to either of these rules while she was on leave?
    - If Ms. Martin was not required to exhaust annual and sick time before taking leave, why not?
    - Are the numbers reported by the DOJ investigation that Ms. Martin had 330 hours of annual leave and 194.75 hours sick time accurate? If so, provide documents establishing these numbers. If not, what are the accurate figures?
    - If Ms. Martin was required to exhaust annual and sick time, how did she have 330 hours of annual leave and 194.75 hours of sick time, as reported by the DOJ investigation, at the time she was "laid off" on April 1, 2025?

- Is it true that several weeks into Ms. Martin's new position as General Counsel to the Office of Bar Admissions, you submitted a request for a pay increase for Ms. Martin, citing her skills and experience, as well as her "working relationships in the Judicial Branch"?
    - If so, what prompted you to take this action?
    - Upon what information was such a recommendation based?

- Who determined that Ms. Hieber and Ms. Martin would overlap positions as General Counsel to the Office of Bar Admissions during a transition period expected to last a "few months"?
    - It has been reported that the overlap lasted for five months. Is this accurate?
    - What duties and responsibilities did the General Counsel of Office of Bar Admissions have that required overlap of five months?
    - Who determined that a five-month overlap was necessary to learn those duties and responsibilities?
    - How was that decision made?
    - In so doing, did the Judicial Branch violate its own personnel policies, which appear to cap "overlapping appointments" at a maximum of two weeks? See Personnel Rule 26.

- Several news reports have referred to a complaint made by a state employee which has not been previously made public and at least one other; a whistleblower who has alleged that Ms. Martin's layoff and immediate rehiring was done at Ms. Martin's request and with your assistance. The so-called "whistleblower" reportedly stated that Ms. Martin's layoff and immediate rehiring was the "Chief's idea."
    - Who is this "whistleblower"?
    - Was it your idea to "lay off" Ms. Martin and rehire her as General Counsel to the Board of Bar Examiners?
    - If it was not your idea, was this accomplished at Ms. Martin's request?
    - Was this accomplished with your assistance?
    - Precisely what assistance did you provide and what were your reasons for doing so?

Rule 2.8 Decorum, Demeanor, and Communication with Jurors

Rule 2.8(B) states: "A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity . . . ." The Committee's inquiry sets forth facts that, if true, would establish that as Chief Justice you did not act with patience, dignity, or in a courteous manner toward court officials in your official capacity.

The investigation indicates on the morning of March 3, 2025, you confronted Justice Donovan and Justice Countway in each of their offices in anger, yelling and swearing. The investigation revealed facts that this was not the first time you, in your role as Chief Justice, confronted another judge in anger, raising your voice, and using profanity.

- How would you describe your interaction with Justice Donovan on March 3, 2025?
  - Describe your demeanor.
  - Did you slam the door?
  - Did you raise your voice toward him?
  - Did you use profanity toward him?
  - Why were you so upset?

- How would you describe your interaction with Justice Countway on March 3, 2025?
  - Describe your demeanor.
  - Did you slam the door?
  - Did you raise your voice toward her?
  - Did you use profanity toward her?
  - Why were you so upset?

- Have you ever raised your voice and/or used profanity in anger toward any judicial officer or employee of the Judicial Branch who is not a judge? If you answer yes, please describe each incident in detail.
  - When did it happen?
  - Where did it happen?
  - Who was present?
  - What was the issue that caused you to be angry?
  - How did the other person react?

Rule 1.1 Compliance with the Law and Rule 1.2 Promoting Confidence in the Judiciary

Rule 1.1 states: "A judge shall comply with the law, including the Code of Judicial Conduct." Rule 1.2 states: "A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety."

The Committee's inquiry sets forth facts that, if true, would establish that as Chief Justice your conduct may not have conformed to these rules in a number of ways.

For the reasons set forth above, there is substantial question about whether the removal of Ms. Martin as Director of the AOC, her pay out, and hiring as General Counsel of the Board of Bar Admissions complied with Judicial Branch personnel rules.

Furthermore, at a time when the you were saying publicly that the Judicial Branch was facing a budget shortfall and financial difficulties, you authorized Ms. Martin to be "laid off" and rehired three days later. This resulted in a nearly $50,000 pay-out that would not have been necessary if Ms. Martin was simply transferred from one position to another without interruption in her service.

You may have undermined the public confidence in and integrity of the judiciary by issuing a public statement on October 31, 2025, which stated that Ms. Martin was "laid off" as a result of the elimination of her position due to a court restructuring. As the facts set forth above indicate, the position of Director of AOC was not eliminated on February 28, 2025, when Ms. Martin was relieved of her duties. Moreover, the Court did not order a study of the restructuring of the court until April 11, 2025, the NCSC did not issue a report recommending that the AOC be restructured until the summer of 2025, and the position of Director of the AOC was not actually eliminated until October 14, 2025.

- Did Justices Donovan, Countway, and Gould participate in drafting and/or approve this Press Release? If so, was anyone else involved? Describe the role of each person who participated in drafting the press release?
- When was it first decided to eliminate the position of Director of AOC?

- Who made that decision?
- How was the decision made?
- Why was the decision made to eliminate the position?
- If the position of Director of the AOC was eliminated on February 28, 2025, why was Judge Keating appointed interim Director of the AOC?
- Why did Ms. Martin not continue to fulfill her job as Director of AOC until October 14, 2025, when the position of State Court Administrator was created?
- Why did Ms. Martin not fill the position of State Court Administrator?
- Why does Supreme Court Rule 54 require the position of State Court Administrator to be held by a judge?

The October 31, 2025 press release issued by you and Justices Donovan, Countway, and Gould states that every personnel decision regarding Ms. Martin was made collectively by the Supreme Court.

- Which members of the Court participated in the personnel decisions regarding Ms. Martin?
- How did the members participate?
- When did those communications occur?

New Hampshire Supreme Court Rule 40(7)(b) provides in relevant part: “Drafting and Docketing of Committee-generated Complaint. If, after undertaking and completing an inquiry on its own initiative in accordance with section (6), the committee determines that there is a reasonable basis to docket a complaint against a judge, a written complaint shall promptly be drafted and docketed.”

As noted above, the Committee has voted to docket the Committee-initiated inquiry as a complaint because it finds that the facts set forth above, “which, if true, would establish a violation of the Code of Judicial Conduct.” N.H. S. Ct. R. 5(c)(1).

Rule 40(7)(c) then provides:

> (c) Request for Answer to Complaint. After a complaint is docketed, the Executive Secretary shall promptly forward to the judge a copy of the complaint and a request for an answer thereto or to any portion thereof specified by the Committee. Unless a shorter time is fixed by the Committee and specified in such notice, the judge shall have 30 days from the date of such notice within which to file his or her answer with the Committee. Such answer shall be filed with the Executive Secretary, who shall, upon receipt of a written request from the reporter, provide to the reporter a copy of the judge's response. In addition to the required answer, the judge may submit to the Committee such other matters as he may choose. Whenever the Executive Secretary provides a judge with a copy of a complaint against such judge, the Executive Secretary shall at the same time send a copy of the complaint to the chief justice or administrative judge of the court system in which such person serves. In such instances, the chief justice or administrative judge shall send a copy of the complaint to the presiding justice of the particular court in which such person serves.

The Committee has further determined to open a preliminary investigation of this complaint pursuant to Supreme Court Rule 40(8).

Accordingly, you may anticipate that this office or Committee counsel may be contacting potential witnesses at the Committee's instruction.

Please be assured, however, that in conducting any such investigation all individuals contacted shall be notified of their obligation to maintain confidentiality as set forth in Supreme Court Rule 40(3).

Please file your response with this office within the next 30 days in accordance with Supreme Court Rule 40(7)(c).

Thank you for your attention to this matter.

Yours truly,

/s/ *Robert T. Mittelholzer*

Robert T. Mittelholzer
Executive Secretary

RTM

cc: Attorney Richard J. Lehmann