

STATE OF MAINE
SUPREME JUDICIAL COURT

In Re:)
) CJC Docket No. 24-033
)
Catherine Connors)
)

**REPORT TO THE SUPREME JUDICIAL COURT
RECOMMENDING DISCIPLINARY ACTION**

This report is submitted by the Committee on Judicial Conduct to the Supreme Judicial Court in its capacity to supervise and assure the proper performance of the judiciary in Maine. The Committee's Report is submitted pursuant to paragraph 9 of the Court's Order Establishing the Committee and Rule 3 of the Committee's Procedural Rules, which provide that if the Committee decides that a violation of the Code of Judicial Conduct has been established that is of such a serious nature as to warrant formal disciplinary action, it shall report its decision to the Court.

Factual History

Before her confirmation as a justice to the Maine Supreme Court, at times, for almost 30 years as an attorney, Catherine Connors represented banks and banking interests, including but not limited to, foreclosure matters in Maine. That representation included her filing an *amicus* brief to the Maine Supreme Court for the Maine Bankers Association in the case of *Federal National Mortgage Association v. Deschaine*, 2017 ME 190 and representing and filing an appellate brief on behalf of Bank of America and The National Mortgage Bankers Association in *Pushard v. Bank of America*, 2017 ME 230 on March 29, 2017. (Exhibit 1, Cox Complaint at Ex. G).

At the January 30, 2022 judicial confirmation hearing for her potential appointment to the Maine Supreme Court, Ms. Connors was questioned by various legislators concerning her clients and areas of representation, inevitable conflicts of interest that would occur if she was appointed to the

SJC, and the appearance of impropriety that could arise due to her past legal representation of those clients and their interests. Regarding conflicts and the appearance of impropriety, questions asked by legislators and the answers of judicial candidate Connors included the following:

Q: And you have no problem recusing yourself from anything that gives the appearance of a conflict?

Answer: Correct. When there's any doubt err on the side of recusal...

Q: So, what you were telling us today is you would recuse yourself in those cases involving those issues if you are approved and confirmed?

A: So, what we're talking about is the appearance of impropriety, so even if the Code of Judicial Conduct didn't say in black and white Cathy you can't do this, I think it would make sense as a logical matter for me to stay away from that and other clients that I've spent a long time with over many years dealing with a variety of subjects.

Q: What is the shelf life of the appearance of impropriety?

A: You ask a very good question. And if someone is represented by Pierce Atwood, I recuse whoever the client may be. If it's someone who was once my client then I believe it's going to be a significant period of time for recusal no matter what the issue was or worked on, recuse forever.

Q: With respect to banks and foreclosures?

A: Well um

Q: You did a lot of those cases

A: I think I've appeared; I think I've appeared on a number of foreclosure appeals on behalf of banks and a couple of *amici* briefs so I'd probably be recused from, certainly those particular clients, those particular banks and I'd have to go back and look at the cases. I think that we're talking about significant recusals.

After her confirmation hearing, Attorney Connors was appointed as a Justice on the Maine Supreme Court. On June 6, 2022, Justice Connors participated in the oral argument of the *Finch* appeal. (Ex. 2, Docket Record). More than three months after the *Finch v. U.S. Bank, N.A.* oral argument, on September 30, 2022, she wrote to the Judicial Ethics Advisory Committee asking if she should recuse herself from her participation in the *Finch* and *J.P. Morgan Chase Acquisition Group v. Camille J. Moulton* foreclosure appeals. (Ex. 3). Justice Connors noted, *inter alia*, that the Maine Bankers Association had filed an amicus brief in *Moulton*. (Ex. 3, p.2).

The Ethics Committee determined that Justice Connors did not need to recuse herself from the *Finch* and *Moulton* appeals stating that, “[t]he two pending cases before the Law Court are totally separate from the *Deschaine* and *Pushard* matters decided five years ago.” (Ex. 3, p.3). The Committee also stated, that “[t]he sole justifications for recusal would be either that (i) the legal issues raised in these cases are ones in which Justice Connors advocated a position representing a private client; or (ii) she previously represented an *amicus* in the same capacity in one of those earlier cases.” *Id.* That said, nowhere in the decision of the Ethics Committee is the term or concept of the appearance of a conflict addressed.

Justice Connors continued to sit on the *Finch* and *Moulton* cases and on January 11, 2024 by a 4-3 vote, with Justice Connors voting for the bank’s position, the *Finch* decision overturned the *Pushard* and *Deschaine* decisions which was a victory for the banks and a loss for the homeowners. (Ex. 1, Tab. A). Notably, the *Pushard* decision that was overturned was the same case that Justice Connors had lost on appeal when she was an attorney. (Ex 1, Tab. J).

Attorney Cox’s Complaint

On January 18, 2024 Attorney Thomas Cox wrote to the Committee on Judicial Conduct alleging that Justice Connors violated Rule 2.11 (A) of the Code of Judicial Conduct by failing to recuse herself in the case of *Finch v. US Bank, N.A.*, 2024 ME 2, and by continuing her involvement in the companion

case, *J.P. Morgan Chase Acquisition Corp. v. Camille J. Moulton* which was decided by the Law Court on January 30, 2024.

Attorney Cox alleged that Justice Connor sat on the panel at oral arguments on the *Finch* and *Moulton* cases, that she was the most active judge challenging the positions of the homeowner's counsel in *Finch*, that she joined in the *Finch* decision reversing the *Pushard* decision, and that but for her participation in the 4-3 holding in *Finch*, the trial court's judgment for the homeowner, consistent with *Pushard*, would have been upheld. (Ex. 1, p.3).

Attorney Cox stated that the recusal requirement of Canon 2, Rule 2.11 (A) of The Maine Code of Judicial Conduct essentially tracks the federal rule for judges and magistrates which states that "[a]ny justice, judge or Magistrate Judge of the United States shall disqualify [herself] in any proceeding in which [her] impartiality may be reasonably questioned." (Ex. 1, p.5). He further stated that the Maine Supreme Court, citing the 2015 Advisory Notes to Maine Canon 2, Rule 2.11 has held that the standard for whether a judge's impartiality may be questioned "is an objective standard that mandates recusal 'when a reasonable person, knowing all of the facts would question the judge's impartiality.'" *Id.* He noted that the Maine Supreme Judicial Court also stated that "subjective beliefs about the judge's impartiality are irrelevant." *Id.*

Attorney Cox set forth numerous facts that he asserts could lead to Justice Connors impartiality being reasonably questioned. They include then attorney Connors being an affiliate member of the Maine Bankers Association, her past representation of mortgage owners and servicers before the Law Court on residential foreclosure issues and her involvement in various and specific Law Court cases on behalf of banks including the *Pushard* case. (Ex. 1, pp.6-7 and Ex. 1, Tab J).

Attorney Cox asserted that the *Finch* decision not only affects the parties to that action but will affect numerous future foreclosure cases and litigants given the application of the same statutory provisions, similar forms of promissory notes and mortgages, and proof of essential elements in the future.

Procedural History

Based upon attorney Cox's complaint, the Committee on Judicial Conduct wrote to Justice Connors on February 20, 2024 and asked why she chose not to recuse herself in the *Finch* and *Moulton* appeals. (Ex. 4). She responded by her letter of February 28, 2024 and attached her correspondence to, and the response from, the Judicial Ethics Advisory Committee. (Ex. 5). After reviewing Justice Connor's letter to the Committee on Judicial Conduct with the attachment, the Committee had concerns about, and questions for, Justice Connors which were set forth in the Committee's letter to Justice Connors dated May 28 2024. (Ex. 6). Justice Connors responded to that letter with her letter dated June 7, 2024. (Ex. 7). Then, considering all of the information available concerning the matter, the Committee on Judicial Conduct, the Committee determined that Justice Connors violated Canon 2, Rule 2.11 of the Code of Judicial Conduct and that Justice Connors be reported to the Maine Supreme Judicial Court for that violation.

Argument

Justice Connors was required to follow the requirements of Canon, 2, Rule 2.11 (A) to consider whether her impartiality might be questioned from the perspective of a reasonable person. Therefore, it does not matter whether Justice Connors subjectively thought she could be fair or impartial despite participating in foreclosure appeals where she had repeatedly taken strong positions on behalf of banking interests against the interests of homeowners. How could her impartiality not be reasonably questioned given that the Law Court in *Finch* was to decide if the *Pushard* case, which Attorney Connors had previously lost on appeal, should be reversed? The test to be applied, and that which she should have, but did not, appropriately consider, was whether a reasonable person, might think there was the appearance of impropriety given her past history of involvement in foreclosure cases on behalf of banking interests and actual involvement as an advocate for the banking interests in *Pushard*.

Certainly, the legislators that questioned Attorney Connors at her confirmation hearing were appropriately concerned about the appearance of impropriety given her history of representation in foreclosure cases. Attorney Connors in response to those questions implied that she was sensitive to the issue. Moreover, she unequivocally stated that there would be significant recusals based on her past history of representation and that when she was in doubt about whether to recuse that she would err on the side of recusal. In fact, Jeffrey Evangelos, a former state representative on the Judiciary Committee voted to confirm Justice Connors because she testified that if there was any doubt about her impartiality that she would err on the side of recusal. As quoted in the Portland Press Herald on January 30, 2024 he said, "I voted to confirm her based on those assurances and she has betrayed that trust. These people getting nominated to the supreme court of Maine have to tell the committee the truth and have to keep their word. Otherwise their testimony is meaningless."

Justice Connors, well before her September 30, 2022 inquiry to the Ethics Committee, knew of her substantial representation of banks and banking interests, she knew that the *Finch* and *Moulton* cases were foreclosure cases, she knew the specific issues to be decided in *Finch* and *Moulton*, she participated in the *Finch* oral argument, she knew that the decisions of the appeals would either overturn or leave intact the *Pushard* case in which she advocated on behalf of banking interests and, perhaps most importantly, she knew that the outcome of the appeals would not only affect the immediate parties to them but likely hundreds, if not, thousands of Maine homeowners facing foreclosure in the future.

Unfortunately, despite overwhelming information that could, and would, cause a reasonable person to question her impartiality, Justice Connors chose to actively participate in the *Finch* and *Moulton* before even seeking any outside guidance. Then, after she was informed that she did not have to recuse she consciously chose not to recuse despite the appearance of impropriety which should have been self-evident. The initial and legitimate concern of legislators who questioned her at her confirmation hearing was echoed after her participation and vote in *Finch* when various members of the legislature and public expressed their surprise and dismay with Justice

Connors in the media, criticizing her participation in the appeals given her prior legal representation of banks and her representations concerning recusal at the confirmation hearing.

Home ownership and foreclosure actions are serious matters and of concern to Mainers. Justice Connors' lack of sensitivity to the appearance of impropriety should have been, but apparently was not, self-evident. A member of the public informed of the surrounding facts and circumstances of Justice Connors' representation of banking interests would reasonably question her impartiality before and during the time that she chose to participate in the *Finch* and *Moulton* appeals. Thus, Justice Connors violated Canon 2, Rule 2.11 (A) and the public outcry concerning her participation in the appeals is proof that a reasonable person not only could, but would, question her impartiality under the circumstances.

Sensitivity to the appearance of a conflict and/or the appearance of impropriety is of great importance required of all judges. This is particularly so when it concerns a Justice on the Maine Supreme Judicial Court as the laws established by the Court tend to affect not only the immediate parties to an appeal but other Mainers who must abide by decisions that will stand for decades and effect numerous citizens over time. Justice Connors' failure to be sensitive to the appearance of impropriety and recuse herself in the face of it, not only violates the Judicial Code of Conduct but it undermines public confidence in the judiciary.

The Committee suggests that the count to be considered against Justice Connors is as follows:

Count One

Canon 2, Rule 2.11(A) mandates that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality may be reasonably questioned..." Justice Connors' failure to recuse herself in the appeals of *Finch* and *Moulton* demonstrate violations of Rule 2.11(A).

Respectfully Submitted,

A handwritten signature in blue ink, consisting of a vertical line on the left, a horizontal line extending to the right, and a diagonal line crossing the horizontal line from the bottom left to the top right.

John A. McArdle, III
Counsel to The Committee on
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