

In Re Catherine R. Connors

**AMENDED 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.

**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. 2). She responded by her letter of February 28, 2024 and attached her correspondence to, and the response from, the Judicial Ethics Advisory Committee. (Ex. 3). 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. 4).

Justice Connors responded to that letter with her letter dated June 7, 2024. (Ex. 5). 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.

### **Factual Findings**

Having considered the available information, the Committee on Judicial Conduct made findings of fact which are as follows:

1. Before her confirmation as a justice to the Maine Supreme Court, at times, for over 25 years as an attorney, Catherine Connors represented banks and banking interests in Maine. *See e.g., Diversified Foods v. First National Bank of Boston*, 985 F.2d 27 (1st. Cir. 1993).
2. Catherine Connors' representation of banks and/or banking interests 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).
3. At the January 30, 2020 judicial confirmation hearing for her potential appointment to the Maine Supreme Court, Catherine 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.
4. Regarding conflicts and/or the appearance of impropriety, questions asked by legislators, answers of judicial candidate Connors or statements made by her included the following:

“If confirmed, I will step away from all affiliations not permitted by the Code of Judicial Conduct, and I will, of course, consistent with those ethical rules,

recuse myself from cases related to my practice.” (Confirmation Hearing Transcript, Exhibit 6, pp.21-22).

Q: Give us your thoughts on recusal. You’ve represented a lot of clients who well may come before the law court, and so give us your understanding of the recusal rules.” (Exhibit 6, p.23).

A: “Well, my understanding is, first of all, when it comes to anything that I've heard a privileged communication about that may relate to the case, that's it forever. I never have that case in front of me. Then as to client -- clients of Pierce Atwood, any Pierce Atwood case that comes, I believe it's appropriate to recuse myself for the term, the seven years. Then there's the issue of the -- even the appearance of impropriety, and that's where I think you have to look at the individual circumstances of each -- each case. That's my understanding of what the Code of Judicial Conduct requires, and I'd certainly take the advice from my colleagues and the experts in that field in making those individual determinations period.” (Exhibit 6, pp.23-24).

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

A: “Correct. And when there's any doubt, to defer on the side of recusal.” (Exhibit 6, p.24).

Q: “... I do want to follow up a little bit on the line of questioning with the recusals. You identified that the ones you'd recuse yourself for life and then seven years, but what is the shelf life of the appearance of a conflict in those cases question I mean has it been in the last one year or five years question I mean –

A: Well, I mean that -- you ask a very good question, and if it's -- if it's someone who's represented by Pierce Atwood, I'm recused, whoever the client may be, whether I've represented them, ever, myself or not. If it's somebody I was -- who was once my client, and then I believe that it's dash it's -- going to be a significant period of time for recusal, no matter what the issue was, is certainly if it was something that I ever worked on, recused forever. If it has to do with something else, it's a tangential relationship, it's been many years, then I think that's where we're talking about where it becomes very important to look at the specifics.

Q: And so in relationship, for exist in instance, to banks and foreclosures –

A: Well –

Q: Have you had a lot of those cases?

A: “ I think I've appeared – I've appeared on a number of foreclosure appeals on behalf of banks, not -- and a couple of amici briefs. So I'd probably be recused from –well, certainly from those particular clients, those particular banks. And I'd have to go back and look at the cases, but I think we're talking about significant recusals. (Exhibit 6, pp. 35-36).

5. After her confirmation hearing, Attorney Connors was appointed an Associate Justice on the Maine Supreme Court.

6. On June 6, 2022, Justice Connors participated in the oral argument of the *Finch* appeal. (Ex. 7).

7. 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. 8).

8. In her inquiry, Justice Connors noted, *inter alia*, that the Maine Bankers Association had filed an amicus brief in *Moulton*. (Ex. 8, p.2).

9. The Maine Judicial 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. 8, p.3).

10. The Maine Judicial Ethics 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.*

11. Nowhere in the decision of the Maine Judicial Ethics Committee was the term or concept of the appearance of a conflict addressed. *Id.*

12. 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).
13. 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).

## CONCLUSIONS OF LAW

1. Justice Connors' history of legal representation of banking interests and her involvement in the *Pushard* case would cause a reasonable person to question her impartiality by participating in the *Finch* and *Moulton* cases.
2. Despite information that would cause a reasonable person to question her impartiality, Justice Connors chose to actively participate in the *Finch* and *Moulton* appeals before and after seeking guidance from the Maine Judicial Ethics Committee.
3. Justice Connors was required but failed to recuse herself from the *Finch* and *Moulton* cases in violation of Canon 2, Rule 2.11 (A) which requires recusal when a reasonable person would question her impartiality in participating in those two cases

## 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 history of representation and that when she was in doubt about whether to recuse that she would err on the side of recusal.<sup>1</sup>

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.

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<sup>1</sup> 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.”

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 affect 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.



## **Sanction Requested**

Given Justice Connors' violation of Canon 2, Rule 2.11(A) the Committee on Judicial Conduct asserts that Justice Connors should receive a public reprimand for her creating and maintaining the appearance of impropriety given her initial involvement, and continued participation, in the *Finch* and *Moulton* cases. The Committee further requests that the reprimand contain language, *inter alia*, stating that judicial candidates are to be candid at confirmation hearings and that representations by them at those hearings are to be honored particularly with respect to actual conflicts, the appearance of conflict and conformity with the Judicial Canon of Ethics in order to preserve the integrity of, and the public's confidence in, the judiciary in Maine.

## **Jurisdiction and Forum**


The Committee on Judicial Conduct appreciates the Court's acknowledgment that many other states have adopted alternatives that do not put members of a supreme court in the position of having to adjudicate ethics complaint against a colleague and that it is open to exploration of alternative means to adjudicate this matter. Given that this is the first time that a report of a complaint concerning a Maine Supreme Judicial Court Justice has been filed with the Maine Supreme Judicial Court and the matter involves a finding of the appearance of impropriety, it would be best if present or past members of the Maine Supreme Judicial Court were spared the task of evaluating and potentially sanctioning one of their own. Also, and equally importantly, the Committee respectfully suggests that the best way to maintain public trust in the process of evaluating the complaint against Justice Connors requires that no present or past member of the SJC pass judgment on Justice Connors in this matter.

Other states have different procedures for handling an ethics complaint against a state supreme court justice to avoid a state supreme court justice from judging his or her colleagues. In larger states such a

complaint is referred to a panel at a different state appellate court. In smaller states they can be referred to a panel of Superior Court judges. Given that Maine has a relatively small vertical court structure without another level of State appellate court to handle this matter, this complaint could be referred to a panel of Maine Superior Court Justices. That said, such a panel should not include any judge or justice involved in the prior Maine Judicial Ethics Committee decision concerning Justice Connors to avoid impropriety or, at least, the appearance of it. In the alternative, referral of this matter to a panel of out of state judges would prevent a conflict, the appearance of one and would prevent any Maine judge or justice from having to pass judgment on Justice Connors in this matter.

Dated: December 16, 2024

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 one from the bottom left.

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