STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW DOCKET NO. JUD 24-3

IN RE: CATHERINE R. CONNORS

BRIEF OF THE MAINE COMMITTEE ON JUDICIAL CONDUCT IN SUPPORT OF DISCIPLINARY ACTION

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INTRODUCTION

The Committee on Judicial Conduct (the "Committee") submits the following brief to this Panel of judges and justices pursuant to the Procedural Order of Justice Michaela Murphy dated July 15, 2025, and in the Committee's capacity to supervise and assure the proper performance of the judiciary in Maine.

Previously, the Committee submitted a Report and an Amended Report pursuant to paragraph 9 of the Maine Supreme Judicial Court's Order Establishing the Committee and Rule 3 of the Committee's Procedural Rules, which provide that if the Committee decides a violation of the Code of Judicial Conduct ("the Code") has been established that is of such a serious nature as to warrant formal disciplinary action, it shall report its decision to the Maine Supreme Judicial Court.

ATTORNEY COX'S COMPLAINT

On January 18, 2024, Attorney Thomas Cox wrote to the Committee alleging that Justice Catherine Connors violated Rule 2.11(A) of the Code 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. Joint Statement of Facts ¶ 23 ("JSF ¶___").

Attorney Cox alleged that Justice Connors 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. Record 104 ("R. ___").

Attorney Cox averred that the recusal requirement of Canon 2, Rule 2.11(A) of the Code 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." R. 106. 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.'" R. 106. He noted that the Maine Supreme Judicial Court also

stated that "subjective beliefs about the judge's impartiality are irrelevant." R. 106.

Attorney Cox set forth numerous facts that he asserts could lead to Justice Connors' impartiality being reasonably questioned. They include, but are not limited to, then Attorney Connors' former law firm Pierce Atwood being an affiliate member of the Maine Bankers Association, her past representation of mortgage owners and servicers before the Maine Supreme Judicial Court on residential foreclosure issues, and her involvement in various Maine Supreme Judicial Court cases on behalf of banks including the *Pushard* case. R. 106-108.

PROCEDURAL HISTORY

Based upon Attorney Cox's complaint, the Committee wrote to Justice Connors on February 20, 2024 and inquired why she chose not to recuse herself in the *Finch* and *Moulton* appeals. R. 269. She responded by letter dated February 28, 2024 and attached correspondence to and from the Judicial Ethics Advisory Committee (the "Advisory Committee"). R. 270-274.

After reviewing Justice Connor's response to the Committee, the Committee had additional questions for Justice Connors, as enumerated in

the Committee's letter to Justice Connors dated May 28, 2024. R. 275-276. Justice Connors responded by letter dated June 7, 2024. R. 278-280.

After evaluating Justice Connors' responses to the Committee's questions, her e-mail exchange with the Advisory Committee, considering her testimony at her Confirmation Hearing and examining Rule 2.11(A), the Committee found that Justice Connors violated Canon 2, Rule 2.11(A) which requires recusal when a reasonable person would question her impartiality in participating in the *Finch* and *Moulton* appeals. JSF ¶ 27. The Committee further recommended the Justice Connors receive a public reprimand for creating and maintaining the appearance of impropriety. JSF ¶ 27.

The Committee submitted its Report to the Supreme Judicial Court Recommending Disciplinary Action, Justice Connors filed her response, the Supreme Judicial Court issued a Remand of the matter and the Committee filed an Amended Report to the Supreme Judicial Court Recommending Disciplinary Action. JSF ¶ 28.[1]

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[1] As a result of procedural changes for the handling of a judicial conduct complaint against a Maine Supreme Court Justice, the Chief Justice of the Maine State Superior and District Courts appointed a hearing officer in the matter and jurists to serve on a panel to decide it. JSF ¶ 29.

The parties have agreed to the content of the Record and the Joint Statement of Facts and have agreed that, with those submissions, the parties' briefs are sufficient for the appointed jurists to decide this matter. JSF ¶ 30. That said, many additional and

STATEMENT OF FACTS

Before Catherine Connors became an Associate Justice of the Maine Supreme Judicial Court she practiced law for 34 years, primarily as an appellate attorney, at the law firm of Pierce Atwood. JSF ¶ 1. She represented various clients in many areas of law, including various banks, the Maine Bankers Association, the National Mortgage Bankers Association from time to time on appeals relating to foreclosure interests. JSF ¶ 1.

Pierce Atwood, the firm where Justice Connors was a partner, is an affiliate member of the Maine Bankers Association. R. 226. The entry regarding Pierce Atwood in the listing of the Maine Bankers Association affiliate members states, "Pierce Atwood is a full-service law firm with offices throughout New England. We provide a broad range of transactional, regulatory, advisory and dispute resolution services to financial institutions." R. 229.

In her response to the Committee dated June 7, 2024, Justice Connors stated, "I continue to recuse in any appeal in which Pierce Atwood

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important facts exist in the Record and are cited in this Brief for consideration by this Panel.

represents a party or amicus because I retain a financial interest (albeit very small) in the firm." R. 278.

As early as 1993, Attorney Connors represented banks in appeals, such as *Diversified Foods v. First National Bank of Boston*, 985 F.2d 27 (1st Cir. 1993).

Other cases on which she represented banks and/or banking interests included, but were not limited to, *Bank of America, N.A. v. Cloutier*, 2013 ME 17, *Federal National Mortgage Association v. Deschaine*, 2017 ME 190, and *Bank of New York Mellon v. Shone*, 2020 ME 12. JSF ¶ 3.

In the case of *Federal National Mortgage Association v. Bradbury*, 2011 ME 120, then Attorney Connors co-authored the Law Court brief on behalf of the banking entities, arguing against the imposition of contempt sanctions against a party whose conduct was called reprehensible by the Law Court for the practice of filing false summary judgment affidavits in foreclosure cases. *Federal National Mortgage Association v. Bradbury*, 2011 ME 120, 124, 131-132.

In the case of *Pushard v. Bank of America, N.A.*, 2017 ME 190, a foreclosure appeal before the Maine Supreme Judicial Court, Attorney Connors and Attorney John Aromando of Pierce Atwood wrote, signed and

filed a brief on behalf of the lender and appellee Bank of America, N.A. dated September 14, 2016. JSF ¶ 4.

On December 12, 2017, the Maine Supreme Court issued an opinion on the *Pushard* case, vacating the bank's prior judgment and remanding for judgment in favor of the Pushards, the homeowners, and against the Bank of America due to the bank's failure to file statutory notice requirements. JSF ¶ 5.

In the foreclosure case of *Federal National Mortgage Association v. Deschaine, et al.*, Attorney Connors and Attorney John Aromando wrote, signed and filed an *amicus curiae* brief to the Maine Supreme Judicial Court on behalf of the Maine Bankers Association and the National Mortgage Bankers Association. JSF ¶ 6. [2]

On January 30, 2020, Catherine Connors testified at a public hearing before the Joint Standing Committee on the Judiciary in Augusta, Maine for

[2] On December 7, 2017, the Maine Supreme Judicial Court, in the *Deschaine* case, held that *res judicata* barred a mortgage company from bringing a second foreclosure action against the mortgagor involving the same property and based on the same note and mortgage. JSF ¶ 8. More specifically, the Court held that the principal of *res judicata* bars a bank from attempting a second foreclosure action when, in the first foreclosure action, judgment on the merits is granted to the homeowner and that a trial court entering judgment for the homeowner can require the unenforceable mortgage to be removed as a lien on the mortgaged property. R. 22, 33-34.

the purpose of that Committee considering her for appointment as an Associate Justice to the Maine Supreme Judicial Court (the "Confirmation Hearing"). JSF ¶ 8.

At the time of her Confirmation Hearing, Attorney Connors had practiced law for 34 years and had written and argued more than 100 appeals primarily, but not exclusively, to the Maine Supreme Judicial Court. JSF ¶ 2.

At the Confirmation Hearing, and prior to the time that Attorney Connors was questioned by the Joint Standing Committee, State Representative Jeffrey Evangelos and Attorney John Hobson, Chair of the Governor's Judicial Selection Committee, spoke about the prospect of Nominee Connors recusing herself from cases should she be appointed to the Maine Supreme Judicial Court.[3]

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[3] Representative Evangelos: Mr. Hobson, just a particular concern I have regarding the judicial selection process regarding the one area. The nominee has represented the banking industry in a variety of areas, including foreclosures, and I know that Justice Saufley recuses herself at times from those types of cases because of the involvement of her spouse in that industry. R. 48-49.

In the event that the nominee, if she's confirmed, has to recuse herself from these cases, you're going to be down to five Supreme Court justices. Did you take that into consideration?" R. 49.

Attorney Hobson: "[w]ell, any justice on any issue, if they have had prior involvement, and obviously, something coming from the private sector has that issue, will have to recuse themselves. And so there may be a time that the Court is down from its seven

At the Confirmation Hearing, Nominee Connors was questioned about possible conflicts of interest, including potential conflicts of interest relating to her participation in cases related to foreclosures. JSF ¶ 9.

> Nominee Connors: "[i]f confirmed I'll 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." R. 57-58.
>
> Chair of the Joint Standing Committee of the Judiciary: "[a]nd you would have no problem recusing yourself from anything that gives the appearance of a conflict?"
>
> Nominee Connors: "[c]orrect. And when there's any doubt, to defer on the side of recusal. (emphasis added). R. 60.
>
> Representative Hartnett: "[w]hen you were talking about recusal, you indicated that you would -- anybody you represented, any entity you had presented, you're recusing yourself before the Court, but I think you said sort of as a blanket rule and you have different rules when it came to an appearance of conflict. R. 67.
>
> I've heard from representatives of the tribes and some of the advocates for the tribes that they feel the positions that you took -- again, I know they were consistent with the State's, excuse me -- about tribal

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members to less than, but as we -- today earlier, this committee affirmatively recommended to the full Senate Justice Hjelm. There is a basis. R. 49.

I also think Justice Clifford is -- active retired -- and he is -- has been a sitting Superior Court justice as well as an experience Supreme Court Justice Clifford's (indiscernible) R. 49.

So those are resources available to the chief in the event that there is a case at which Ms. Connors is required to recuse herself." R. 49.

sovereignty, rights to water, and sustenance fishing, they viewed as attacks on that sovereignty and their rights. R. 67-68.
Would you recuse yourself from issues concerning tribal rights if they came before you on the law court related to the issues that you litigated?" R. 67-68.

Nominee Connors: "[o]h yes. That's the short answer. I think that in -- particularly with respect to matters and where I've done a lot of litigation over a long period of years, and the tribes are one -- one subject and one set of clients, but I would take a cue from Chief Justice McKusick, who, when he was deciding whether to recuse himself from similar clients that he spent a long time over many years representing, he -- I think it was a minimum of 10 years that he decided he would not hear that, and certainly the seven years of the term." R. 68.

Representative Hartnett: "[s]o what you're telling us here today is you would recuse yourself from cases involving those issues if you're appointed and confirmed?' R. 68

Nominee Connors: "[b]ecause I think even -- we're talking about 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 long period of time over many years dealing with a variety of subjects period." R. 68-69.

Representative Evangelos: " I do want to follow up a bit on the line of questioning with recusals. You've identified the ones that 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? I mean, has it been in the last one year or five years question I mean -- --" R. 71.

Nominee Connors: "[w]ell, I mean, that's a -- you ask a very good question, and if it's -- if it's somebody 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 -- 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." R. 71-72.

Representative Evangelos: "[a]nd so in relationship, for instance to the banks and foreclosures –" R, 72

Nominee Connors: "well" R.72

Representative Evangelos: " have you had a lot of those cases?" R.72

Nominee Connors: "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 recuse 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." (emphasis added). R. 72.

Representative Evangelos "[a]nd in follow up, I think you've also represented Central Maine Power." R.72.

Nominee Connors: "and that would be another one of those clients that I've done a -- a significant amount of time -- work over a long period of time. So I think I'm recused for the seven years of the term." R. 72-73.

Justice Connors has reviewed her Confirmation Hearing testimony and confirms that it accurately reflects her testimony at that hearing. JSF ¶ 11.

The appeal of the *Finch v. U.S. Bank N.A* case involved Maine foreclosure law and the question of *res judicata* which had previously been decided in the *Deschaine* and *Pushard* cases. JSF ¶ 12.

On June 6, 2022, as an Associate Justice of the Maine Supreme Judicial Court, Catherine Connors participated in the oral argument of the appeal of *Finch v. U.S. Bank, N.A.* JSF ¶ 13.

In August of 2022, the Law Court invited *amicus* briefs in *Moulton* and instructed the parties to file new briefs in *Finch*. JSF ¶ 14.

On September 30, 2022, Justice Connors sought advice from the Advisory Committee regarding whether she should recuse herself from participation from both the *Finch v. U.S. Bank N.A.* appeal and the *J.P. Morgan Chase Acquisition Group v. Camille J. Moulton* foreclosure appeal. She indicated she was not asking for a formal opinion. JSF ¶ 15.

In her inquiry to the Advisory Committee:

- Justice Connors noted, *inter alia*, that the Maine Bankers Association filed an *amicus* brief in the *Moulton* case. JSF ¶ 16.
- Justice Connors stated that she became a Justice on the Maine Supreme Judicial Court in 2020 and that, although she didn't think she was ethically required to do so, she had recused herself from any mortgage foreclosure appeal for two years. JSF ¶ 17.

- Justice Connors did not directly address the issue of the appearance of a conflict of interest or Judicial Code of Conduct Canon 2.11(A). R. 271-272.
- Justice Connors did not apprise the Advisory Committee, while relating the history of her involvement in foreclosure matters, of any representations she made when testifying at her Confirmation Hearing concerning recusal and the appearance of a conflict of interest. R. 270-272.

On October 4, 2022, the Advisory Committee provided an informal opinion indicating that Justice Connors need not recuse herself from the *Finch* and *Moulton* appeals because those cases were separate from the *Deschaine* and *Pushard* matters decided five years earlier. JSF ¶ 18.

On November 1, 2022, Justice Connors participated in the oral argument in the case of *J.P. Morgan Chase acquisition Corp v. Moulton*. Justice Connors continued to sit on both the *Finch* and *Moulton* cases. JSF ¶¶ 19-20.

On January 11, 2024, by a 4-3 vote, with Justice Connors voting in favor of the bank's position, the *Pushard* and *Deschaine* decisions were overturned. JSF ¶ 21.

But for Justice Connors' participation in the *Finch* ruling, the vote would have been 3-3, which would have resulted in the lower court's ruling in the homeowner's favor standing after appeal.

On January 18, 2024, Attorney Thomas Cox wrote to the Committee alleging that Justice Connors violated Rule 2.11(A) of the Code of Judicial Conduct by failing to recuse herself from *Finch v. U.S. Bank, N.A.*, 2024 ME 2 and by continuing her involvement in the companion case of *J.P. Morgan Chase Acquisition Corp. v. Camille J. Moulton,* which was decided by the Maine Supreme Judicial Court on January 30, 2024. JSF ¶ 23.

Attorney Cox alleged Justice Connors sat on the panel at oral arguments on the *Finch* and *Moulton* cases. JSF ¶ 24.

Code Rule 2.11(A) states a judge shall disqualify or recuse himself or herself from any proceeding in which the judge's impartiality might reasonably be questioned, and notes, without limitation, a variety of circumstances that require recusal. JSF ¶ 25.

The Committee requested that Justice Connors explain why she did not recuse herself from the *Finch* and *Moulton* appeals. JSF ¶ 26. Following Justice Connors' initial response to the Committee, the Committee made

additional inquiry of Justice Connors regarding her testimony at her Confirmation Hearing. JSF ¶ 26.

After evaluating pertinent information, the Committee found that Justice Connors violated Canon 2, Rule 2.11(A) and recommended that Justice Connors receive a public reprimand. JSF ¶ 27.

STATEMENT OF THE ISSUES

1. Did Justice Connors violate Rule 2.11(A) and/ or other provisions of the Maine Code of Judicial Conduct and, if so, should she receive a public reprimand and/or other sanction?

SUMMARY OF THE ARGUMENT

Justice Connors should have recused herself from the *Finch* and *Moulton* appeals in light of the fact that a reasonable person knowing all of the facts would question her impartiality.

Justice Connors' assertion that Rule 2.7 required her to sit, her reliance on an informal advisory opinion and proper application of Rule 2.11(A) do not shield her from adherence to Rule 2.11(A) and her breach of the Rule.

A public reprimand is an appropriate sanction given Justice Connors' ethical violations, the harm caused by them, and the need to preserve the public confidence in the integrity of the judiciary.

STANDARD OF REVIEW

The Panel deciding this matter is to review it on a *de novo* basis to determine if, more likely than not, Justice Connors violated the Code and determine the appropriate sanction for any violation. *In the Matter of Robert M.A. Nadeau,* 2016 ME 116, ¶¶ 5, 44-45.

ARGUMENT

I. The Applicable Standard for Recusal is Whether a Reasonable Person Knowing all of the Facts Would Question Justice Connors' Impartiality.

Judicial impartiality is a fundamental principle of the administration of justice. "Justice must satisfy the appearance of justice." *In re Muchison,* 349 U.S. 133 ,136, 75 S.Ct. 623, 625, 99 L. Ed. 942, 946 (1955). Rule 2.11(A) attempts to ensure that no judge presides in a case in which he or she is not disinterested and impartial. Rule 2.11(A) not only mandates disqualification where a judge is biased or prejudiced, but also where the judge's impartiality might reasonably be questioned. The use of the word *shall* in Rule 2.11 means that the disqualification is mandatory if the judge's impartiality might be reasonably questioned. *The use of shall in a Rule is a command* and leaves

no room for discretion. *In The Matter of Robert M.A. Nadeau,* 2018 ME 18, ¶ 14. (emphasis added).[4]

Rule 2.11 creates an objective standard, requiring recusal where there is an appearance of bias and prejudice sufficient to permit the average person reasonably to question the judge's impartiality. The language of Rule 2.11(A) creates an objective test for the appearance of impartiality: whether the facts create a reasonable doubt concerning the judge's impartiality, not in the mind of the judge, or even necessarily in the mind of the litigant, but rather in the mind of reasonable person with knowledge of all of the circumstances. *See, United Farm Workers of America, AFL-CIO v. Superior Court,* 170 Cal. App. 3d 97 (1985) (judge "ought to consider how his participation in a given case looks to the average person on the street"); *Tyson v. State,* 622 N.E. 2d 457 (Ind. 1993) (question is not whether the judge's impartiality is impaired in fact, but whether there exists a reasonable basis for questioning the judge's impartiality); *Farm Credit Bank of St. Paul v. Brakke,* 512 N.W. 2d 718 (N.D. 1994); *Wells v. Del Norte School District,* 753 P.2d 770, 772 (Cal. 1988)

[4] The question in each case is not necessarily whether the judge is impartial or not, but rather, whether another person might reasonably question the judge's impartiality under the circumstances. A judge's obligation not to hear and decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed. Annotated Model Code of Judicial Conduct (3d. ed, 2016), Rule 2.11 cmt. [2], p. 141.

(even *ex-parte* contact which involved no comment about pending case constitutes appearance of impropriety). For purposes of considering the appearance of a conflict, a reasonable person is one who is "an observer who is informed of all of the surrounding facts and circumstances." *Cheney v. Court for Dist. of Columbia,* 541 U.S. 913, 924 (2004).

Given that the appearance of impartiality test is one of reasonableness, judges should err on the side of caution by disqualifying themselves in cases raising close questions. *See Abington Ltd. Partnership v. Heublein,* 717 A.2d 1232 (Conn. 1998)(appearance of impropriety existed from judge's visit to property in question even though no substantive information gained beyond what was within record); *State v. Mann,* 512 N.W.2d 528 (Iowa 1994) (court applies a "reasonable person" test analogizing when a judge should recuse to challenges for cause to potential jurors).

II. 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 Knowing All of the Facts.

Whether or not Justice Connors subjectively thought she could be fair or impartial is immaterial. Instead, the relevant question is whether a

reasonable person knowing all of the facts would reasonably question her impartiality. Some of those facts include the following:

- over many years Attorney Connors participated in foreclosure appeals and taken positions on behalf of banking interests against the interests of homeowners;
- she wrote a brief to the Maine Supreme Judicial Court on behalf of the Bank of America and the Mortgage Bankers Association in the *Pushard* case;
- she was questioned about impropriety and the appearance of impropriety concerning banking/foreclosure cases at her Confirmation Hearing;
- she testified at her Confirmation Hearing that she expected significant recusals for the seven year term of her judicial appointment to the Maine Supreme Judicial Court;
- she also testified that if, in doubt, she would err on the side of recusal.

Despite her representations to legislators at her Confirmation Hearing, Justice Connors participated in the *Finch* oral argument and she did not seek

advice from the Advisory Committee about potential recusal until after she participated in the *Finch* oral argument.

At her Confirmation Hearing, Nominee Connors stated that she would recuse for the seven-year length of her judicial term in cases involving the firm of Pierce Atwood, matters involving tribal rights, and cases involving Central Maine Power. R. 59, 65-69, 72-73. When questioned specifically on the "shelf life of the appearance of impropriety" she testified, "Well, I mean, that's -- you ask a very good question, and if it's -- it's somebody 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 -- 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, and I think that's what we're talking about where it becomes very important to look at the specifics." R. 71-72 (emphasis added).

She was then asked, "And so in relationship, for instance to banks and foreclosures -- have you a lot of those cases?" to which she responded, " 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. (R. 71-72). 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." R. 72 (emphasis added).

Given that the Law Court in *Finch* was to decide whether the *Pushard* case (which Attorney Connors previously lost on appeal) should be reversed, it is unthinkable that Justice Connors' impartiality not be reasonably questioned. The test to be applied, and that which Justice Connors 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* which were to be reconsidered in *Finch*.

Certainly, the legislators that questioned Nominee Connors at her Confirmation Hearing were appropriately concerned about the appearance of impropriety given her history representing banks and the financial industry in foreclosure cases. The issues of recusal and the appearance of impropriety were certainly on the legislators' minds, and they must have been on Nominee Connors' mind when she answered those important

questions. Justice Connors acknowledges that the Confirmation Hearing transcript accurately states her testimony before the Judicial Selection Committee. JSF ¶ 11.

"Judicial disqualification is required if a reasonable person who knew all the circumstances would question the judge's impartiality, even though no actual bias or prejudice has been shown." *Fletcher v. Conco Pipe Line Co.*, 323 F.3d 661, 664 (8th Cir. 2003). The fact that the questions about recusal and the appearance of impropriety were asked at Nominee Connors' Confirmation Hearing demonstrates that *reasonable people were concerned* about her ability to be impartial given her past representation of banks, that the legislators questioning her were concerned about those issues at the time of the Confirmation Hearing, and that reasonable people would continue to be concerned about those issues when Justice Connors was faced with the decision of whether to participate in a banking/foreclosure appeal as a Justice on the Maine Supreme Judicial Court.

III. The Requirements of Rule. 2.11(A) Required Justice Connors' Recusal.

It is important to understand what Justice Connors knew before deciding to participate in the *Finch* and *Moulton* appeals. Well before her

September 30, 2022 request for an informal opinion from the Advisory Committee, Justice Connors knew, *inter alia*, the following:

1. Her history of substantial representation of banks and banking interests;
2. That legislators were concerned about, and questioned her, regarding her past representation of banks in foreclosure and other matters and the appearance of impropriety and recusals in those cases;
3. That she testified at her Confirmation Hearing that there would be significant recusals for her in foreclosure cases;
4. That the *Finch* and *Moulton* cases were foreclosure cases;
5. The specific issues to be argued and decided in *Finch* and *Moulton* appeals;
6. That she had already consciously chosen to participate, and had participated, in the *Finch* oral argument;
7. That the decisions of the *Finch* and *Moulton* appeals would either overturn or leave intact the *Pushard* case in which she had previously advocated on behalf of banking interests;
8. That overturning the *Finch* and *Moulton* decisions would benefit the Maine Bankers Association and its affiliate member Pierce Atwood;

9. That she had a continuing financial interest in Pierce Atwood at the time of the *Finch* appeal; and

10. That the outcome of the appeals would affect not only the litigants to those appeals but also likely hundreds, if not more, Maine homeowners that would face foreclosure in the future.[5]

Unfortunately, despite overwhelming information that could, should, and would cause a reasonable person to question her impartiality, Justice Connors affirmatively chose to actively participate in the *Finch* oral argument before even seeking any outside advice.

Only after the important oral argument in the *Finch* appeal did Justice Connors seek an opinion, and an informal one at that, from the Advisory Committee stating that she didn't think she had to recuse herself but that she had recused herself in foreclosure cases for two years. R. 271. That assertion was a far cry from what she stated at the Confirmation Hearing

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[5] It is fair to say that Justice Connors knew she was casting the deciding vote that would make a 4-3 decision in *Finch* and that such a vote would benefit her former clients such as Bank of America, the Federal National Mortgage Association (Fannie Mae), Bank of New York Mellon, and the Maine Bankers Association and its member banks. Pierce Atwood was an affiliate member of that association and promoted itself as a New England-wide firm offering a broad range of transactional, regulatory, advisory and dispute resolution services. R. 226, 229. When practicing as an attorney at Pierce Atwood, Attorney Connors and the firm were substantially aligned with the interests of banks. Thus, it was reasonable that her impartiality to sit on the *Finch* and *Moulton* cases be questioned and require recusal.

when speaking about recusals for life, recusal for the length of the seven-year term and, in foreclosure cases, significant recusals. R. 57-58, 60, 67-69, 71-73. In other words, at the very least, the Advisory Committee did not know of her past thought process and representations to the Joint Committee on the Judiciary at her Confirmation Hearing about when, and for how long, recusals in foreclosure cases would be appropriate.

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 relevant facts and circumstances of Justice Connors' representation of banking interests, Pierce Atwood's Affiliate Membership in the Maine Bankers Association, and Justice Connors continuing financial interest in the Pierce Atwood firm 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 questions raised by the legislators at the Confirmation Hearing about necessary recusals. The public outcry concerning her actual participation in the appeals proves that a reasonable person not only could, but would, question her impartiality under the circumstances.

IV. Justice Connors' Assertion that Rule 2.7 of the Code of Judicial Conduct Obliged her not to Recuse is Incorrect and Without Merit.

In both her June 7, 2024 response to the Committee and in her December 31, 2024 filing to the Maine Supreme Judicial Court, Justice Connors asserted that Rule 2.7 was the reason that she stopped recusing in foreclosure cases after her first two years on the Court. In her June 7, 2024 response to the Committee, she wrote, "I concluded that, consistent with Rule 2.7, I should not recuse except when the Code really required disqualification." R. 278.

Rule 2.7 of the Code of Judicial Conduct states that "[a] judge shall hear and decide matters except when disqualified or recusal is required." Canon 2, Rule 2.7 (emphasis added). Thus, it is clear that the duty to sit does

not apply when recusal is required. Even if the question is a close one, the balance tips in favor of recusal. *In re Boston's Children First*, 244 F.3d 164 (1st Cir. 2001)(although judge did not demonstrate partiality, recusal required as judge's comments open to interpretation can cause the appearance of impropriety). *Id.* at 170.

The advisory notes to Rule 2.7 state that the Rule addresses the need to support the timely resolution of pending matters and efficient use of judicial and litigant resources. They further state that the rule requires judges to give full attention to their judicial caseload and to avoid unnecessary repetition or delay in resolving pending matters. Justice Connors suggests that these are two compelling reasons why she did not recuse. However, they do not apply to the *Finch* and *Moulton* cases.

Unlike a trial judge sitting alone in the Superior or District Court, where recusal can delay a case and/or increase litigation costs, such problems do not arise when a single justice of the Maine Supreme Judicial Court recuses him or herself. First, recusals are frequent and do not delay appellate cases where there is a panel of judges available to hear and decide an appeal. In fact, on April 15, 2022, long before the *Finch* oral argument, Chief Justice Valerie Stanfill recused herself from the *Finch* appeal. R. 282.

Her recusal was entirely appropriate, and that recusal did not cause delay of the appeal or the Law Court's decision. Also, and importantly, former Chief Justice Leigh Saufley recused herself in foreclosure cases as it was known that her spouse worked in the mortgage industry and that connection could lead to the appearance of impropriety.

Moreover, when Justice Connors appeared at her Confirmation Hearing, it was clear that there would be significant recusals and that they would not be an undue burden on the Court if she was appointed and had to recuse in foreclosure cases.[6]

Justice Connors' argument and "rationale" for claiming that Rule 2.7 obliged her to sit on the *Finch* and *Moulton* appeals is misplaced. The fact that Chief Justice Stanfill recused herself from the case, the fact that the court can and does function with less than all of its members available to

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[6] Representative Evangelos addressing John Hobson, Chair of Governor Mills' Judicial Selection Committee stated, "Mr. Hobson, just a particular concern I have regarding the judicial selection process regarding the one area. The nominee has represented the banking industry in a variety of areas, including foreclosures, and I know that Justice Saufley recuses herself at times from those types of cases because of the involvement of her spouse in that industry. In the event that the nominee, if she is confirmed, has to recuse herself from these cases, you're going to be down to five Supreme Court Justices. Did you take that in consideration?" R. 48-49.

Attorney Hobson responded indicating that, although there may be a time when the Court is down from its seven members to less than that there were "resources available to the chief in the event there's a case at which Ms. Connors is required to recuse herself." R. 48-49.

vote in the face of recusal, and the fact that former Chief Justice Saufley would recuse in banking related cases because her husband worked in the mortgage industry not only suggest that the "duty to sit" argument made by Justice Connors should not prevail but that, like her predecessor Chief Justice Saufley, Justice Connors should have recused, given what would be, at the very least, the appearance of a conflict or impropriety.

Therefore, unlike a trial court where recusal may cause burden and delay, the Maine Supreme Judicial Court can decide cases with less than all justices participating or access active retired justices to augment a panel where an additional judge or judges may be needed due to recusal.

V. Justice Connors' Reliance on the Informal Advisory Opinion of the Committee on Judicial Ethics Does not Shield her from Responsibility to Conform with the Rules of Judicial Conduct.

Justice Connors was involved in the *Finch* appeal as of March of 2022, she participated in the oral argument in June of 2022, and she was part of the public call for new briefs in *Finch* and for *amicus* briefs in *Moulton* in late August 2022 when the Court indicated its intent to possibly reconsider and repudiate the *Deschaine* and *Pushard* decisions. R. 154. These events all occurred before Justice Connors sought an informal opinion from the Advisory Committee on September 30, 2022. R. 270.

Prior to the point where Justice Connors finally reached out to the Advisory Committee, Justice Connors apparently did not see her 25 years of work and representation of the financial industry, her involvement in the *Finch* and *Moulton* appeals (revisiting issues she briefed in the *Deschaine* appeal), Pierce Atwood's Affiliate Membership in the Maine Bankers Association, and her ongoing financial interest in Pierce Atwood as enough for her to consider whether all of that might cause an outside and objective observer to reasonably question her impartiality. Moreover, as stated in Section III of this brief, there were several additional facts known to Justice Connors that, in the aggregate, substantiate the view that Justice Connors could not appear to be impartial by participating in the *Finch* and *Moulton* appeals.

It was not until the Maine Bankers Association filed an *amicus* brief in *Moulton* that Justice Connors considered whether she had to recuse. But even then, she did not look at the "impartiality could reasonably questioned" standard stated in the first part of Rule 2.11(A). Instead, she focused upon section 2.11(A)(4) of the Rule which addresses when the judge has "served as a lawyer in the matter in controversy." R. 272.

To the Advisory Committee, Justice Connors stated that "[t]hese pending appeals are not the same appeals in which I filed an *amicus* brief in *Deschaine* and a different bank in *Pushard*. R. 272. Her inquiry to the Advisory Committee was "[d]oes it make difference that I did not represent a party in *Deschaine*, but rather an *amicus* and that *amicus* is now filing an *amicus* brief in a separate appeal, represented by a different firm?" R. 272. Clearly, Justice Connors did not give the Advisory Committee all of the facts and did not ask the appropriate question: "[d]o all of the facts regarding my involvement with the financial industry rise to the level where my impartiality in sitting on the *Finch* and *Moulton* cases might be reasonably questioned by a reasonable person knowing all of the facts?"

Because of Justice Connors' failure to relate all of the pertinent facts to the Advisory Committee and her failure to ask the necessary question, she received less than an adequate response in the informal opinion from the Advisory Committee. More specifically, instead of the Advisory Committee knowing about (1) Justice Connors' statements about recusals and the appearance of conflicts at her Confirmation Hearing, (2) her ongoing financial interest in Pierce Atwood, (3) Pierce Atwood's Affiliate Membership in the Maine Bankers Association, (4) the fact that the Maine Bankers

Association would benefit from an overturning of *Pushard* and *Deschaine* and (5) other relevant factors that would weigh against her continued involvement in *Finch* and *Moulton,* the Advisory Committee, without all of the important facts, came to the erroneous conclusion in its informal opinion that Justice Connors was not required to recuse because the cases were different in its view. Of course, the cases were not substantially different as *Finch* addressed whether the *Pushard* case, on which Attorney Connors worked and argued for the bank, should be overturned.

Although the October 2, 2022 informal opinion of the Advisory Committee was not based on a complete set of facts, Justice Connors interpreted the opinion to have given her permanent clearance from the "impartiality might be reasonably questioned" standard. When the Portland Press Herald published an article in its morning edition of the October 31, 2022 paper, before the oral argument that day in *Moulton,* Justice Connors should have at least reexamined the application of this standard to her situation and acted in conformance with her words at the Confirmation Hearing "and when there is any doubt err on the side of recusal." R. 60. She either did not do that or, if she considered it, she reached the erroneous conclusion that her impartiality could not be reasonably questioned.

Accordingly, Justice Connors first had a blind spot with respect to her past work and how it would look to an objective outsider and had a second blind spot when it came to recognizing that Rule 2.11(A) was to be considered and followed given her past involvement in banking matters rather than the more narrow question that Justice Connors asked the Advisory Committee of whether she had "served as a lawyer in the matter in controversy."

VI. A Public Reprimand is the Appropriate Sanction.

The Maine Supreme Judicial Court has stated, "[i]n fashioning an appropriate sanction, we examine multiple factors, including the judge's professional history, the context within which the violations occurred, the harm to the litigants and public, the seriousness of the violations, the judge's acknowledgement of the violations and understanding of the impact on the litigants, and the prospects for ensuring public trust and confidence in the judge's work in the future. *In re Nadeau*, 2017 ME 121, ¶ 60. A sanction must be sufficient to deter the individual being sanctioned from again engaging in such conduct and to prevent others from engaging in similar misconduct in the future." *Id.* "Available sanctions include, but may not be limited to, requirements for obtaining appropriate assistance or ethics education,

censure, reprimand, forfeiture of funds, suspension from duties, and disbarment or the lesser sanction of suspension from the practice of law." *Id.* at ¶ 61.

In evaluating the facts of this matter, the factors used by the Panel to elect a sanction and the range of sanctions that may be imposed, the Committee determined that Justice Connors should receive a public reprimand given representations she made at her Confirmation Hearing, and her subsequent actions creating and maintaining the appearance of impropriety by her initial and continued participation in the *Finch* and *Moulton* cases. JSF ¶ 27.

The Maine Supreme Judicial Court has issued reprimands to Maine judges on several occasions. *See, e.g., In the Matter of Robert M.A. Nadeau,* 2018 ME 18 (reprimand for violation of Rule 2.11(A) for participation in parties' resolution of case); *In the Matter of Lyman L. Holmes,* 2011 ME 119 (reprimand for failure to dispose of judicial matters promptly); *Matter of Cox,* 553 A.2d 1255 (Me. 1998)(reprimand for undue participation in plea bargain process); *Matter of Cox,* 532 A.2d 1017 (Me. 1987) (reprimand for conversation with police officer concerning son's speeding case); and *Matter*

of Howard F. Barrett, Jr., 512 A.2d 1036 (Me. 1986)(reprimand for failure to promptly decide case).

At her Confirmation Hearing, Justice Connors implied that she was sensitive to the appearance of conflicts and the need for frequent and lengthy recusals. R. 59, 65-69, 72-73. Despite those representations she failed to recuse herself in violation of Canon 2, Rule 2.11(A). As a result, there was direct harm to the litigants in the *Finch* and *Moulton* cases as the law pertaining to foreclosures was changed with her casting a vote in the 4-3 decision. But for her participation, the vote would have been 3-3 and the lower court judgment in favor of the homeowners would have stood. Thus, by Justice Connors' participation, there was not only immediate harm to the Finch family but harm to the public, as foreclosure law was changed to the detriment of homeowners.

Unfortunately, to date, Justice Connors' failure to acknowledge her violation of Rule 2.11 and breach of public trust should be a factor in considering the appropriate sanction.

Canon 1 of the Code states that "[a] judge shall uphold and promote the independence, integrity, and impartiality of the judiciary; shall avoid impropriety; and Should avoid the appearance of impropriety." Rule 1.1 of

that Canon states that "[a] judge shall comply with the law and the Maine Code of Judicial Conduct." Canon 2(A) of the Code states that "[a] judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice." The Maine Supreme Judicial Court has stated that, "a judge who fails to conform his [or her] conduct to the minimum standards of the Canons of the Code, is by definition in violation of the general requirements of Canons 1 and 2(A)." *Matter of Judge John W. Benoit, Jr.*, 512 A.2d 1381, 1382 (Me. 1987).

The Committee recognizes that there has never been a complaint against a Maine Supreme Court Justice before and that the Complaint against Justice Connors is one of first impression. Considering the type of conduct giving rise to reprimands in the past and considering the proportionality of the sanction to the violation, the Committee respectfully asserts that a public reprimand is an appropriate sanction for Justice Connors in order to make clear that all Maine judges must seriously consider and avoid the appearance of impropriety, regardless upon which Maine Court they sit, and particularly when they have the honor and privilege of sitting on the Maine Supreme Judicial Court.

Sensitivity to the appearance of a conflict and/or the appearance of impropriety is of great importance and is required of all judges. This is particularly so when it concerns a Justice on the Maine Supreme Judicial Court as that Court interprets law and establishes precedent that tends to affect not only the immediate parties to an appeal but other Maine citizens who are bound by those decisions that often stand for decades.

It is not unusual for a politician to make campaign promises that are not kept after he or she is elected. Although the public is used to this and grudgingly accepts it as "just politics," individuals who seek to and then sit on the Maine Supreme Judicial Court are bound to the highest standards of ethical behavior both in and outside of the Court. Justice Connors' statements at her Confirmation Hearing directly and impliedly suggested that she was sensitive to the appearance of conflict and impropriety and that, if confirmed to the Court, she would act accordingly. R. 59, 65-69, 72-73. However, her post-confirmation actions showed a lack of self-awareness, a failure to be sensitive to and timely consider the appearance of impropriety, and the failure to recuse herself in the face of it. Therefore, Justice Connors not only violated the Code but undermined public confidence in the judiciary. In our society of increasing distrust and lack of

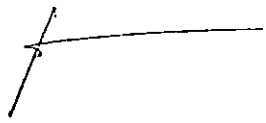
respect for people and institutions, including the judiciary, the public reprimand requested by the Committee is necessary to maintain and preserve the integrity of the judiciary in Maine.

Finally, because the issue of the appearance of impropriety was directly raised at Justice Connors' Confirmation Hearing and she provided certain assurances regarding recusals the Committee requests that the opinion issued by this panel contain language, *inter alia*, reminding all jurists and judicial candidates that they must not only be thoughtful and candid at Confirmation Hearings. This is particularly true with respect to issues relating to the Code ,and jurists acting consistent with them in order to preserve the integrity of, and the public's confidence in, the judiciary in Maine.

CONCLUSION

For the many reasons aforementioned, the Committee requests that the Panel issue a public reprimand to Justice Connors and that such reprimand incorporate language to encourage jurists to be sensitive to the appearance of impropriety.

Dated: August 26, 2025



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