

STATE OF MAINE
SUPREME JUDICIAL COURT
AMENDMENTS TO THE
ORDER ESTABLISHING THE COMMITTEE ON JUDICIAL CONDUCT AND
THE MAINE RULES FOR THE COMMITTEE ON JUDICIAL CONDUCT AND
FOR JUDICIAL DISCIPLINARY PROCEEDINGS

2025 Me. Rules 06

Effective: June 25, 2025

It is ORDERED that the Order Establishing the Committee on Judicial Conduct and the Rules of the Committee on Judicial Conduct are amended to read as follows, in full. The amendments are to take effect upon adoption and apply to all pending matters. Although we received comments from the public suggesting additional changes to our first and second drafts of proposed amendments to this Order and Rules and we may consider additional amendments in the future, we deem it appropriate to promulgate the amendments set forth here immediately.

~~RULES OF THE COMMITTEE ON JUDICIAL CONDUCT~~

ORDER ESTABLISHING COMMITTEE ON JUDICIAL CONDUCT

All of the Justices concurring therein, the ORDER establishing this Committee took effect on July 5, 1978. The Order was amended by orders that took effect on August 21, 1978, December 11, 1981, March 7, 1983, November 15, 1983, December 1, 1984, August 18, 1987, May 13, 1993, August 1, 1994, October 1, 1998, January 1, 2001, November 10, 2015, July 1, 2018, November 12, 2019, ~~and~~ September 22, 2020, and ~~is hereby further amended, effective~~ July 1, 2021, and is hereby further amended, effective June 25, 2025, to provide as follows:

1. There is hereby established a Committee on Judicial Conduct, consisting of eight members appointed by the Supreme Judicial Court. One member shall be a justice of the Superior Court. One member shall be a judge of the District Court. One member shall be a judge of the Probate Courts. Two members shall be attorneys at law admitted to practice in the State of Maine, and three members shall be representatives of the general public of the State of Maine and shall not be attorneys or members of the judiciary. The public and attorney members shall be appointed by the Supreme Judicial Court upon the recommendation of the Governor.

2. The term of each member shall be for six years, except that an incumbent may continue to serve until a successor is appointed. No member shall serve more than one term in office consecutively, provided that the members appointed to serve two years or less of an initial or unexpired term shall not be considered to have served the equivalent of a term for purposes of this section.

2A. Alternate members shall be appointed by the Supreme Judicial Court, ~~each for a term of six years as follows:~~

A. One alternate member ~~who~~ shall be either an active or an active retired justice of the Superior Court who shall serve whenever a member of the Committee from that Court is recused or is otherwise unavailable to participate in Committee action;

B. One alternate member ~~who~~ shall be a judge or an active retired judge of the District Court who shall serve whenever a member of the Committee from that Court is recused or is otherwise unavailable to participate in Committee action;

C. One alternate member ~~who~~ shall be an attorney at law admitted to practice in the State of Maine who shall serve whenever an attorney member is recused or is otherwise unable to participate in Committee action;

D. One alternate member ~~who~~ shall be a representative of the general public of the State of Maine, ~~and~~ not an attorney or a member of the judiciary, ~~who and~~ shall serve whenever a public member of the

Committee is recused or is otherwise unable to participate in Committee actions; and

E. One alternate member ~~who~~ shall be a judge of the Probate Courts who shall serve whenever a member of the Committee from those Courts is recused or is otherwise unavailable to participate in Committee action.

3. The Committee may establish such offices, employ ~~an Executive Secretary~~ a Committee Counsel and additional legal counsel, and make arrangements for such secretarial administrative and other assistance as the Committee shall reasonably require.

4. The Committee shall have an operating budget approved by the Chief Justice of the Supreme Judicial Court, and expenses of the Committee shall be paid from appropriations of funds to the Judicial Department through the budget of the state courts.

5. The Supreme Judicial Court shall appoint a chairperson of the Committee and, from time to time, the Committee may designate from its members a vice chairperson and secretary. A quorum of the Committee shall consist of five members, and no action shall be taken by the Committee except by vote of a majority of the full Committee.

5A. The Committee shall make public any rules of general applicability adopted by it for the conduct of its operations under this Order.

6. The Committee shall receive and may initiate complaints concerning the performance or misconduct of any judge on the Supreme Judicial Court, the Superior Court, the District Court, or the Probate Courts. The Committee shall make an initial assessment of a complaint based on its content and on any further information from the complainant or from court records of cases involved in the complaint. In special circumstances where the nature of the allegations suggests that prior notice to the person complained against might create a significant risk of compromising the Committee's ability to obtain information necessary to accurately assess the complaint, the Committee may conduct a preliminary investigation, but not involving the use of subpoena power, and designed, to the extent practical, to preserve the confidentiality of the complaint and of the preliminary investigation. Unless the complaint is dismissed on the basis of information from the complainant, from the court

records, or from any preliminary investigation, the Committee or its designee shall communicate the complaint to the person complained against and shall provide such person with a copy of any written complaint. The person complained against shall have reasonable opportunity to respond. The Committee shall conduct such further investigation as it deems fit. At any stage of such further investigation the Committee shall have subpoena power and may require a person to appear or produce evidence before the Committee, or before its legal counsel or other designee as designated by the Committee through its chairperson, and to provide evidence under oath. If the Committee determines that the complaint is unfounded, the Committee shall dismiss the matter, notifying the person complained against and any complainant of its actions.

6A. After receipt of a complaint, the Committee may direct its Executive Secretary Committee Counsel to seek informal correction of any judicial conduct or practice, ~~which that~~ the Committee determines may create an appearance of judicial misconduct. Any recommendation from the Committee or its Executive Secretary Committee Counsel may be directed to the Chief Justice or other appropriate official of the Judicial Department as well as to the person who is the subject of the complaint. A recommendation for informal correction may be made at any stage of the proceedings but shall not necessarily preclude further action on the complaint. The Committee may in its discretion inform the complainant of any action taken under this provision.

7. The Committee shall hold a hearing at the request of a majority of the members of the Committee or of the person whose conduct is being investigated. At such hearing the person under investigation shall be entitled to counsel. The Committee shall have subpoena power, and every witness shall be sworn. The hearing shall be had before the Committee with a record.

8. All proceedings before the Committee shall be confidential, and no information shall be published by the Committee unless by order of the Supreme Judicial Court, except that as follows:

A. In connection with the consideration of the appointment of a person who is or has been a judge, the Committee shall provide information on any complaints made against that person and the Committee's disposition thereof, upon written request from the Governor or the Legislature's Joint Standing Committee on the Judiciary

or other appropriate legislative committee, or from a United States governmental agency or official authorized to consider and act upon the nomination or appointment of persons to United States government positions.

B. Upon request of the person whose conduct is being investigated, or by majority vote of the Committee, after giving that person an opportunity to express ~~his~~ the person's views on the question, any hearing held pursuant to paragraph 7 of this order shall be public.

C. Information may be provided to the Board of Overseers of the Bar, the Grievance Commission, and Bar Counsel in connection with matters within their jurisdiction.

D. Unless otherwise provided by law, any person who is the subject of a complaint to the Committee may disclose at any time any information contained in the complaint.

9. If after the completion of the Committee's investigation and hearing, if any, the Committee determines (A) that the person under investigation has been convicted of a crime, the nature of which casts into doubt ~~his~~ the person's continued willingness to conform ~~his~~ the person's conduct to the Code of Judicial Conduct as applicable, or (B) that in fact the person has violated the Code as applicable and that the violation is of a serious nature so as to warrant formal disciplinary action, the Committee shall file a report of its findings with the Supreme Judicial Court together with a statement of the alleged charges, a recommendation as to action by the Court, the transcript of any hearing, and any exhibits considered by the Committee. ~~Any further proceedings shall be before the Court and shall be public. The report and all subsequent court filings and proceedings in the matter are public.~~

10. If after completion of the Committee's investigation and hearing, if any, the Committee determines that the person under investigation is suffering from a disability ~~which that~~ materially affects ~~his or her~~ the person's ability to perform ~~his or her~~ the person's duties as a judge, the Committee shall file a report of its findings with the Supreme Judicial Court, together with a recommendation as to action, the transcript of any hearing, and any exhibits considered by the Committee.

11. The Committee shall have no responsibility or authority with respect to retirement by reason of failing health initiated by the judge or on ~~his or her~~ the judge's behalf.

12. Members of the Committee and its staff shall be immune from liability for any conduct in the course of their official duties relating directly or indirectly to discipline and the rules of the Court and the Committee governing the Committee's operation and proceedings. In the absence of malice, a complainant and any witness shall be immune from liability based upon the filing of a complaint or the giving of any testimony in a proceeding before the Committee.

**RULES FOR THE COMMITTEE ON JUDICIAL CONDUCT
AND FOR JUDICIAL DISCIPLINARY PROCEEDINGS**

RULE 1. RECEIPT AND REVIEW OF COMPLAINT; INVESTIGATION

A. Complaints of judicial misconduct and disability shall be made in writing and shall be signed by the complainant, who may be a member of the Committee or Committee Counsel. Each complaint received shall be assigned a number and a docket, and receipt of the complaint shall be acknowledged.

B. The Committee shall consider each complaint received to determine whether it is of a type within the Committee's authority and whether it describes conduct that could constitute a violation of the Code of Judicial Conduct.

(i) If the Committee is unable to make that determination on the basis of the complaint alone it may, through its staff, obtain additional information from the complainant or from court records of proceedings related to the complaint. In special circumstances where the nature of the allegations suggests that prior notice to the person complained against might create a significant risk of compromising the Committee's ability to obtain information necessary to accurately assess the complaint, the Committee may conduct a preliminary investigation, but not involving the use of subpoena power, and designed, to the extent practical, to preserve the confidentiality of the complaint and the preliminary investigation.

(ii) If the Committee determines that a complaint is not of a type within the Committee's authority or that the complaint does not constitute judicial misconduct, it shall dismiss the complaint, notify the complainant of its decision, and notify the person complained against of the nature of the complaint and the Committee's decision. The Committee may also provide the person complained against with a copy of the complaint dismissed under sub-paragraphs (i) and (ii), and shall provide such a copy upon request unless the Committee determines that knowledge of the complaint or of the complainant's identity might interfere at that time with pending court proceedings or compromise future court proceedings, or would cause a significant risk of harm to the interests of the complainant or others involved in the complaint.

(iii) If the Committee determines that a complaint is within the Committee's authority and describes conduct that could constitute a violation of the Code of Judicial Conduct, it shall communicate the complaint to the person complained against by providing that person with a copy of the written complaint and shall request a written response. The Committee may conduct such investigation of the matter as it deems appropriate. If the Committee determines that the complaint is unfounded or frivolous or otherwise provides insufficient cause for proceeding, it shall dismiss the complaint and notify the complainant and the person complained against of its decision. If the Committee determines that the complaint involves conduct that may constitute a violation of the Code of Judicial Conduct, but that the violation is not of a sufficiently serious nature as to warrant disciplinary action, it shall dismiss the complaint with a caution, and notify the complainant and the person complained against of its decision. The dismissal of a complaint with a caution shall not constitute discipline, and the person complained against need not report or disclose the matter in any inquiry with respect to the imposition of any disciplinary action.

(iv) The dismissal of any complaint by the Committee does not preclude later consideration of the matters involved in that complaint to the extent that they may evidence a pattern or practice of judicial misconduct, or are otherwise relevant to the consideration of any other complaint or matter properly before the Committee under these rules. A complaint dismissed by the Committee may be reconsidered if new information is received upon the basis of which the Committee

determines that such reconsideration is necessary to fulfill the purposes of the judicial disciplinary process.

C. The Committee may initiate an investigation of a matter within its authority on its own motion.

RULE 2. HEARING AND DECISION BY THE COMMITTEE

A. The Committee shall hold a hearing at the request of a majority of its members or of the judge whose conduct is being investigated. Such hearing shall be had before the Committee with a record. The Committee shall have subpoena power, and every witness shall be sworn.

B. The Committee may engage additional legal counsel to present the matter before it. The judge shall be entitled to be present at the hearing, to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Both counsel may subpoena witnesses under the Committee's authority.

C. The Committee Counsel or any other counsel for the Committee ~~counsel~~ shall issue to the judge a written notice containing a statement of alleged misconduct, including reference to any section of the Code of Judicial Conduct alleged to have been violated, or alleged disability. The notice shall state alleged facts upon which such charges are based. The Committee Counsel or any other counsel for the Committee ~~counsel~~ shall make available to the judge all information concerning such charges as the Committee has acquired.

D. Within thirty days after receipt of notice, the judge shall file a written response setting forth any admission, denial, affirmative defense, or other matter upon which ~~he~~ the judge intends to rely at the hearing.

E. Discovery shall be allowed under the Committee's direction upon request to and approval of the Committee.

F. Evidence shall be admitted if it is of a kind upon which reasonable persons are accustomed to rely in the conduct of serious affairs. The Committee shall be guided on evidentiary matters by the Maine Rules of Evidence.

G. The Chair~~man~~ of the Committee or ~~his~~ the Chair's designee may meet with counsel prior to hearing for the purpose of framing the issues, identifying areas of agreement, and otherwise simplifying the hearing.

H. After hearing a matter, the Committee shall decide whether it is satisfied by a preponderance of the evidence that it should issue a report to the Supreme Judicial Court because:

(i) the judge has violated the Code of Judicial Conduct and ~~that~~ the violation is of such a serious nature as to warrant formal disciplinary action; ~~or~~

(ii) the judge has been convicted of a crime the nature of which casts into doubt ~~his~~ the judge's continued willingness to conform ~~his~~ the judge's conduct to the Code of Judicial Conduct; or

(iii) the judge is suffering from a disability ~~which~~ that materially affects ~~his~~ the judge's ability to perform ~~his~~ the judge's duties as a judge.

I. The Committee shall make findings of fact and shall draw conclusions of law. If the Committee decides that ~~a charge has not been established~~ no report to the Supreme Judicial Court should issue, it shall dismiss the matter and provide written notice of its decision to the judge and any complainant. If the Committee decides that ~~a charge has been established~~ it should issue a report, it shall report its decision to the Supreme Judicial Court and shall provide to the judge and any complainant written notice of its decision to report to the Court.

RULE 3. REPORT TO THE SUPREME JUDICIAL COURT

A report to the Supreme Judicial Court shall include a statement of the alleged charges, a statement of the Committee's findings of fact and conclusions of law, and a recommendation ~~of~~ for action to be taken by the Court. A copy of such report shall be provided to the judge. The report shall be accompanied by the complete record of the matter before the Committee including the transcript of any hearing and any exhibits considered by the Committee. ~~Any further proceedings shall be before the Court and shall be open to the public.~~ The report and all subsequent court filings and proceedings in the matter are public.

RULE 4. ANCILLARY ORDERS

The Committee may make such orders as may be necessary in aid of its authority.

RULE 5. QUORUM; ALTERNATE MEMBERS

No action may be taken by the Committee except by a majority vote of the full Committee. Whenever a member of the Committee is unable to participate in Committee consideration of a complaint, the Committee may determine that the appropriate alternate member be notified and designated to participate in the consideration of that complaint. A quorum of the Committee shall consist of five members, including any alternate members designated to serve in lieu of a regular member.

RULE 6. CONFIDENTIALITY

A. Except as otherwise provided by these rules or by order of the Supreme Judicial Court, all proceedings before the Committee shall be confidential and no information may be published by the Committee. All persons concerned with any matter before the Committee shall be requested to respect the confidentiality of Committee proceedings.

B. Any hearing held before the Committee pursuant to Rule 2 of these rules shall be confidential except that it shall be public upon request of the person whose conduct is being investigated, or by majority vote of the Committee after giving that person an opportunity to express ~~his~~ the person's views on the question. In determining whether a hearing shall be public, the Committee will consider: the public interest in access to information, the stage of the Committee's investigation into the matters to be heard, any special need to protect the confidentiality of witnesses or testimony in the particular proceedings, the presence in the proceedings of matters that are otherwise made confidential by law, the extent and nature of public awareness of the proceedings or their subject matter, and any special factors that may be relevant in the particular situation.

C. Unless otherwise provided by law, any person who is the subject of a complaint to the Committee may disclose at any time any information contained in the complaint.

D. As indicated in Rule 3, if the Committee decides that a charge has been established and reports its decision to the Supreme Judicial Court, any proceedings held by the Court shall be open to the public.

RULE 7. ANNUAL REPORT

The Committee shall report annually to the Supreme Judicial Court summarizing its activities.

RULE 8. AMENDMENT JUDICIAL DISCIPLINE PROCEEDINGS

~~These rules are subject to revision by the Committee.~~

~~A. If a report by the Committee pursuant to Rule 3 involves a judge or justice of the Superior Court, the District Court, or a Probate Court, any further proceedings shall be before the Supreme Judicial Court. The Chief Justice or in the Chief Justice's absence the senior Associate Justice member of the Supreme Judicial Court shall be responsible for conducting any procedural events and issuing any procedural orders that do not involve an adjudication of any substantive issues. If the matter involves disputed issues of fact, the Supreme Judicial Court shall designate one of its members as a hearing officer. The panel that decides the matter consists of the remaining active members of the Court who are available to serve, and active retired members may serve if necessary to constitute a panel of at least five.~~

~~B. If a report by the Committee pursuant to Rule 3 involves a justice of the Supreme Judicial Court, the other members of the Supreme Judicial Court shall not participate. The Executive Clerk of the Supreme Judicial Court shall forward the report to the Chief Justice of the Superior Court and the Chief Judge of the District Court for them to select a hearing officer and the panel that decides the matter. The panel shall consist of five jurists. The hearing officer and the panel shall be selected from the active retired judges and justices of both trial courts and the five most senior active judges of each trial court who are available to serve. Seniority shall be based on time in active service as a member of the active judge's or justice's current court, not on total service in the Judicial Branch. The hearing officer shall conduct any procedural events and issue any procedural orders that do not involve an adjudication of any substantive issue.~~

C. In any proceeding under paragraphs A and B, the Committee shall have the burden to prove one or more of the violations of the Maine Code of Judicial Conduct that are alleged in the Committee's report. If the reported matter does not involve disputed issues of material fact, the matter shall be submitted to the panel based on a stipulated record and stipulated statement of facts. Otherwise, the following procedure applies:

(i) The hearing officer shall conduct an evidentiary hearing and rule on all issues arising before, during, or after the hearing. Evidence at any evidentiary hearing shall be admitted if it is of a kind upon which reasonable persons are accustomed to rely in the conduct of serious affairs, with guidance from the Maine Rules of Evidence. After the hearing record is closed, the hearing officer shall issue a recommended decision, including findings of fact, conclusions of law, and a recommended disposition.

(ii) The hearing officer shall not participate in the panel's review and ruling on the hearing officer's recommended disposition. Panel members other than the hearing officer shall review the recommended decision. The panel's review of findings of fact shall be for clear error and its review of conclusions of law shall be de novo.

(iii) If the panel concludes that no violation of the Code has been proved by a preponderance of the evidence, or that the violation is not of a sufficiently serious nature as to warrant formal disciplinary action, the panel shall dismiss the report and may also refer the matter to the Committee for informal correction if appropriate. If the panel concludes that a violation warrants formal disciplinary action, the panel may impose upon the judicial officer who is the subject of the report any one or more of the forms of discipline permitted by law, such as admonishment, reprimand, suspension, fine and probation. A divided decision need not identify how panel members voted.

D. A decision rendered by a panel of the Supreme Judicial Court pursuant to paragraph A is final. A decision rendered by a panel of trial court judicial officers pursuant to paragraph B may be appealed to the Supreme Judicial Court solely on issues of law. See M.R. App. P. 2A, 2B.

Advisory Note – June 2025

By virtue of the Maine Constitution provision conferring the judicial power upon the Supreme Judicial Court of Maine, Me. Const. art. VI, § 1, the Court has the inherent authority to promulgate rules and procedures for judicial discipline and pursuant to that authority amends the Order and Rules throughout to

- change the term “Executive Secretary” to “Committee Counsel” and distinguish this Counsel from additional legal counsel;
- correct grammatical usage; and
- provide gender-neutral language.

The Order that establishes the Committee is further amended to

- clarify in paragraph 2 that the restriction on the number of terms is a limit on *consecutive* terms;
- omit the requirement in paragraph 2A that each alternate member be appointed for a term of six years;
- change the term “secretarial” to “administrative” in paragraph 3 of the order;
- provide in paragraph 6A that any recommendation from the Committee or Committee Counsel regarding the informal correction of any judicial conduct or practice may be directed to the person who is the subject of the complaint; and
- provide in paragraph 9 that the report and all subsequent court filings and proceedings in the matter are public.

The Rules are broadened and renamed the Rules for the Committee on Judicial Conduct and for Judicial Disciplinary Proceedings. Amendments are incorporated to

- broaden the name of Rule 2 to indicate that it governs both hearing and decision;
- clarify in Rule 2(H) and (I) that the Committee is deciding whether to issue a report to the Supreme Judicial Court for any of the reasons listed in Rule 2(H), not deciding whether a charge has been “established”;
- provide in Rule 3 that the report and all subsequent court filings and proceedings in the matter are public;
- omit the provision in Rule 8 that authorized the Committee to revise the Rules; and
- promulgate a new Rule 8 setting forth separate paths for reports regarding (A) judges and justices of the Superior Court, District Court, and Probate Courts and (B) justices of the Supreme Judicial Court. The Supreme Judicial Court’s inherent authority over judicial discipline includes the power to vest justices and judges of lower courts with disciplinary responsibility, as the Court has already done with respect to Committee membership. The further investiture of responsibility for considering reports regarding justices of the Court is necessary to prevent the appearance of impropriety that arises from Supreme Judicial Court justices considering a report regarding a justice of the Supreme Judicial Court. *See* Model Rules for Judicial Disciplinary Enforcement R. 26 commentary (Am. Bar Ass’n 1994) (“The highest court is a collegial body. Granting it the authority to discipline its own members would create appearances of impropriety and of conflicts of interest.”). When a state supreme court justice is the subject of a report, the American Bar Association (ABA) favors the creation of a “special supreme court” composed of members of state appellate or trial courts. *See* Model Rules for Judicial Disciplinary Enforcement R. 26; *see, e.g.*, Mass. Gen. Laws Ann. ch. 211C, § 9 (requiring “[t]he chief justice and the six most senior justices of the appeals court other than the chief justice” to “serve in the place of the supreme judicial court when charges are brought against a member of the supreme judicial court”); Vt. R. Sup. Ct. for Disciplinary Control of

Judges R. 13(2), (3) (requiring the Administrative Judge for Trial Courts, or the next senior trial judge if the Administrative Judge for Trial Courts is unavailable, to appoint five judges to “hear any appeal . . . involving a complaint against a member of the Supreme Court”). We follow the ABA’s recommended approach and adopt a procedure similar to those of Massachusetts and Vermont.

The new Rule 8 establishes the procedure for adjudicating reported complaints involving any judicial officer. It adopts the evidentiary standard of the Maine Administrative Procedure Act and the requirement of proof by a preponderance of the evidence that applies to disciplinary proceedings involving attorneys. The American Bar Association (ABA) model rules incorporate the clear-and-convincing-evidence standard for disciplinary proceedings against judges, *see* Model Rules for Judicial Disciplinary Enforcement R. 7, but incorporating that aspect of the Model Rules would literally create a double standard of conduct.

The new Rule 8 provides for a right of appeal on issues of law only to the Supreme Judicial Court from decisions rendered by panels of trial court judges and justices. The purpose of the limited appeal is to recognize the necessity of preserving the Supreme Judicial Court’s constitutional authority as the court of last resort on issues of Maine law. The rule of necessity operates as an exception to the requirement of impartiality. The ABA’s Model Code of Judicial Conduct acknowledges the rule of necessity in commentary to Rule 2.11 regarding judicial disqualification. Comment 3 to the Rule states:

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

Model Rule 2.7 declares the duty of judges to hear cases and controversies assigned in one simple sentence: “A judge shall hear and decide matters

assigned to the judge, except when disqualification is required by Rule 2.11 or other law.” The Maine Constitution assigns ultimate responsibility for determining matters of law to the Supreme Judicial Court; the Court cannot abdicate that responsibility.

Dated: June 25, 2025

FOR THE COURT,*

_____/s/_____
VALERIE STANFILL
Chief Justice

ANDREW M. MEAD
ANDREW M. HORTON
RICK E. LAWRENCE
WAYNE R. DOUGLAS
JULIA M. LIPEZ
Associate Justices

* This Order was approved after conference of the Court, all listed Justices concurring therein.