

## Comments on H.875

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Thank you for asking for input from me in my capacity as the Vice Chair of the Judicial Conduct Board. I have to start with the caveat that the Judicial Conduct Board has not reviewed or discussed this proposed legislation. I am not speaking for the Board, and the Board has not taken a position on this legislation.

That said, what I can offer is information about the Judicial Conduct Board's oversight of judicial officers, in general and with respect to financial disclosures, based on my own knowledge and experience.

### Data reporting requirement

The Vermont Constitution specifies that "The Supreme Court shall have administrative control of all the courts of the state, **and disciplinary authority concerning all judicial officers and attorneys at law in the State.**" Vermont Const. Ch. 2, § 30. To this end, the Vermont Supreme Court has promulgated (1) the Rules for Disciplinary Control of Judges, which establishes and governs review over judicial conduct by the Judicial Conduct Board, and (2) the Rules of Judicial Conduct, which are the ethical rules applicable to judicial officers.

The proposed legislation would require the Judicial Conduct Board to report to the State Ethics Commission aggregate data on ethics complaints made to the Board, separated by topic, and the disposition of those complaints, including any prosecution, enforcement action, or dismissal. This requirement raises concerns about whether it is actually permissible under the express provision of Ch. 2, § 30 of the Vermont Constitution. It appears that it may exceed the authority of the legislature, and that it would impermissibly expand the jurisdiction of the State Ethics Commission. It also directly contravenes the Rules for Disciplinary Control of Judges promulgated by the Vermont Supreme Court, which governs and limits the release of information related to complaints of judicial misconduct. I think these concerns should be closely considered in order to avoid constitutional infirmity and conflict between separate branches of government.

### Financial Disclosures

The Vermont Constitution provides that Assistant Judges are elected, and that their judicial functions may be established by law. The Constitution also provides that Probate Judges are elected, and that the General Assembly may establish by law qualifications for the election to and holding of such office. The manner of election for both positions is to be established by law.

The Rules of Judicial Conduct also already address financial disclosures required by judges, and those rules do apply to the assistant and probate judges. The Rules further explain that they apply to successful candidates for judicial positions, as well as unsuccessful candidates who are incumbent. Rule 4.4. All lawyers whether they are successful or unsuccessful are also subject to the Vermont Code of Professional Responsibility, which is also under Vermont Supreme Court oversight. *Id.*

My understanding of this bill is that it would add assistant judges and probate judges to the list of candidates who are required to comply with the disclosure requirements for other candidates for state and legislative office, and it adds to the information candidates are required to disclose. It also creates a penalties provision for failure to file and for false disclosures, etc., which is overseen by the State Ethics Commission. I question whether successful candidates for office, who would then be judicial officers, can be subject to oversight or penalty by the State Ethics Commission rather than the Judicial Conduct Board. I also express my concern about potential confusion and conflict regarding oversight of successful judicial candidates. Unsuccessful candidates pose a different question, as they would not be governed by our rules.

I also think it is important to remember that both assistant judges and probate judges are allowed to continue to practice law, so their ability to disclose information may be limited by their ethical obligations and attorney-client privilege. I think that is already covered in the proposed legislation, but I highlight the importance of this provision because it again implicates the possible conflict posed by overlapping oversight that draws in judges and attorneys.

It should remain clear that oversight of judicial officers is outside the jurisdiction of the General Assembly and the State Ethics Commission. This is addressed in 3 V.S.A. § 1202(d), but should be kept in mind in regards to any provision that purports to apply to judicial officers, including candidates for judicial office who succeed in becoming judicial officers.