

SPECIAL REPORT TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES
REGARDING COMPLAINT 97-1

I. Introduction

The Legislative Ethics Committee received nine separate complaints in March of 1997 regarding the actions of Representative Roland E. Hemon in filing House Resolution 16, a resolution urging that impeachment proceedings be instituted against Strafford County Probate Court Judge Gary R. Cassavechia.

Following a review of the complaints, the Committee conducted a preliminary investigation, in accordance with its procedural rules, and voted unanimously to institute formal proceedings to inquire into the complaint. A formal statement of charges and notice of hearing was first sent by certified mail to Representative Hemon on April 10, 1997. Representative Hemon refused receipt of the mail on three different occasions. On April 24, 1997, Representative Hemon was served by the Strafford County Sheriff's Department with the Notice of Hearing and Formal Statement of Charges. Because of the delay in service, the Committee rescheduled the hearing to May 27, 1997. On May 20, 1997, Rep. Hemon requested that the hearing again be rescheduled pending an appeal to the Governor and Council on his request for representation by the Attorney General's Office. The Committee granted his request on May 21, 1997. His appeal was subsequently denied by the Governor and Council and the Committee opened the hearing on June 2, 1997 and received evidence on June 2, June 4, and June 9. Midway through the first day of the hearing, the Ethics Committee granted Representative Hemon's request that he be represented by Representative William McCann.

II. Complaints

The complaints alleged that Rep. Hemon violated the principles set forth in the Ethics Guidelines, Section 1, I, Principles of Public Service, relating to the legislative office as a public trust and engaged in the prohibited activities set forth in Section 4, II (c) and III of the Ethics Guidelines.

III. Findings of Fact

House Resolution 16 was filed by Representative Hemon for consideration by the New Hampshire House of Representatives during its 1997 session. This resolution is the first step required in the process established under the Constitution for removing a current judge from office (Part II, Articles 17 and 38).

The House Committee on Judiciary and Family Law held a hearing on House Resolution 16 on February 24, 1997 and voted 13-0 to report it as inexpedient to legislate on March 6, 1997. On March 19, 1997, the House voted 286-51 against recommitting the bill. The committee report of inexpedient to legislate was then adopted by voice vote.

House Resolution 16 is the third attempt by Representative Hemon to seek the impeachment of Judge Cassavechia in the last 4 years. All of these resolutions result from rulings which Judge

Cassavechia has issued in a Strafford County Probate Court case involving the guardianship and subsequent administration of the estate of Representative Hemon's mother.

At some time after the Probate Court proceedings began, Representative Hemon raised the question of the Court's personal jurisdiction over his mother, contending that she was a resident of Maine at the time the guardianship proceedings commenced. The Court ruled against him. Representative Hemon has filed at least thirteen appeals with the New Hampshire Supreme Court on this matter as well as seeking review in the Federal Court system. On the twelve occasions in which the New Hampshire Supreme Court has ruled, it has found no error in Judge Cassavechia's finding that the Probate Court had personal jurisdiction over Mrs. Hemon. The thirteenth appeal was filed this spring and is currently being considered by the Court. The Federal Court also found no error.

IV. Rulings

Section 1, Principles of Public Service, Section I, Public Office as a Public Trust, provides that :

Legislators should treat their office as a public trust, only using the powers and resources of public office to advance public interests, and not to attain personal benefits or pursue any other private interest incompatible with the public good.

In filing House Resolution 16, Representative Hemon has again used his public office to pursue a private interest, that of penalizing the judge who made rulings unfavorable to Representative Hemon, in a manner incompatible with the public good. Although review of the judicial process and proposed court reforms are appropriate matters for consideration by this legislature, the continual filing of the same resolution based on the same set of facts against the same judge constitutes both harassment and retaliation by Representative Hemon. The power to file such a resolution derives directly from Rep. Hemon's membership in the House and is a clear conflict of interest due to the personal involvement of Representative Hemon in this matter.¹

Section 4, II (c) provides:

In dealing with state agencies, legislators shall not...threaten a state agency or its employees with reprisals or promised inducements of any kind to influence agency decisions so as to obtain special personal benefits for the legislator, the legislator's immediate family, or for certain constituents which would not be available to others under similar conditions.

Although Representative Hemon contended that the Court would not be considered a state agency under these rules, the Committee found that this provision was intended to prevent the exertion of undue influence against any state agency regardless of the branch of government. Because the legislature has control over the appropriation of money to the judicial branch and

¹ While no complainant raised the provisions of Part Two, Section 1, II of the Ethics Guidelines, the Committee notes that Representative Hemon's actions also violated this section. Given the lack of discussion of this particular section during the proceedings, however, the committee did not take this violation into consideration in reaching its conclusions.

indeed the power to remove judges from office, the application of this provision must necessarily extend to the courts.

Filing this resolution constitutes a reprisal against the judge who presided over the matter involving Representative Hemon's mother. Representative Hemon's unhappiness with the Court's order denying his request to be appointed his mother's guardian has resulted in over a decade of litigation and a protracted effort by Representative Hemon to seek retribution against Judge Cassavechia. Such actions clearly violate the prohibited activities provisions of the Guidelines.

Section 4, III provides:

Legislators shall not use their public position or office to obtain anything of value for the private benefit of the legislator or the legislator's immediate family.

Although Representative Hemon argued that he would obtain nothing of value if House Resolution 16 were to pass, it is the Committee's finding that the value to him of the retribution might well outweigh any conceivable monetary benefit he might have received had he been appointed guardian. Because of his position as a legislator, Representative Hemon has been able to continually threaten Judge Cassavechia with impeachment based for the most part on actions which Judge Cassavechia took in 1984. Such a continued abuse of power is clearly violative of our Ethics Guidelines.

V. Conclusion

House Resolution 16 seeks the same result as the resolutions which Representative Hemon filed in 1996 and 1994. In 1994, the Committee recommended that Rep. Hemon be reprimanded, an action which the House took on June 18, 1994. In 1996, this Committee recommended that Representative Hemon be censured. Because that ruling was issued after the House had adjourned for the biennium, the recommendation was never taken up by the House. The Ethics Committee finds by clear and convincing evidence that House Resolution 16 again violates the very same provisions of the Ethics Guidelines for which Representative Hemon was cited before.

In determining our recommendation for action based on these repeated violations, the committee has considered not only the repeated warnings of this committee, but also the effect of the continual filings of this resolution on Judge Cassavechia. (The Ethics Committee notes the advice which Representative Hemon received this session from the House Democratic Leader that if Representative Hemon persisted in this conduct, he might face expulsion by the House of Representatives. The Democratic Leader was called by Representative Hemon as a witness in the proceeding before the Ethics Committee with no notice and apparently to specifically address the advice he gave to Representative Hemon about the possible result of his actions.)

No State or Federal Court has found any ruling of Judge Cassavechia in Representative Hemon's matter to be in error; indeed, the rulings of Judge Cassavechia have been sustained at every appeal. The Ethics Committee does not have to reach the issue of what sort of ruling could be so wantonly and egregiously erroneous as to warrant impeachment. Accordingly, it appears to this Committee that the impeachment legislation is groundless.

The conduct of Representative Hemon in 1994 might charitably be viewed as misguided. Representative Hemon is not a lawyer and perhaps did not fully understand the case in which he is involved or the role of the judiciary in our form of government. He may have seen himself, as did some of his witnesses, as taking an appeal to another, perhaps more friendly forum. The Ethics Committee viewed his actions as an abuse of legislative power for personal ends and acted accordingly.

The subsequent actions of Representative Hemon have demonstrated that he has no intention of abating his involvement in legislation to impeach Judge Cassavechia, nor even of waiting until a federal or state court has found Judge Cassavechia in error in the underlying matter.

Accordingly, given the uncontroverted evidence of Representative Hemon's conflict of interest in this matter, the Committee has been left with little choice but to recommend the following course of action:

If Representative Hemon were to represent to the Ethics Committee, Speaker of the House and Senate President in writing by 10:00 a.m. on January 29, 1998 that he would not introduce, sponsor or co-sponsor legislation to impeach Judge Cassavechia the Ethics Committee would recommend that he be censured by the House. Failing such a written commitment, however, the Ethics Committee recommends the expulsion of Representative Hemon from the New Hampshire House of Representatives.²

Dated at Concord, New Hampshire, this first day of July, 1997.

Respectfully submitted,

Representative Jeb E. Bradley
Chairman

² Please note that the date set forth in the Special Report was modified by the Committee on its own motion from August 31, 1997 to January 29, 1998 by vote of the Committee on January 28, 1998.