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**Final Report of the Committee to Study the Massachusetts Code of Judicial Conduct on the
2016 Massachusetts Code of Judicial Conduct**

Table of Contents

Introduction	2
Summary of Key New and Revised Provisions	5
Discussion and Explanation	11
Appendix A - List of Committee Members	Attached
Appendix B - Correlation Tables	Attached

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Introduction

In September 2012, the Massachusetts Supreme Judicial Court established the Committee to Study the Massachusetts Code of Judicial Conduct ("Committee").¹ The Justices asked the Committee to review the Massachusetts Code of Judicial Conduct ("2003 Code" or "2003 Massachusetts Code") in light of the American Bar Association's 2007 Model Code of Judicial Conduct ("2007 Model Code" or "Model Code") and to consider whether the 2007 Model Code should be adopted in Massachusetts.²

The Committee submitted a Proposed Code of Judicial Conduct to the Supreme Judicial Court in March 2015, and recommended that the Justices permit the Committee to publish the Proposed Code for public comment. At that time, the Committee also submitted a Report of the Committee on the Code Published for Public Comment. The Justices consented to publication for comment, and the Committee received comments through June 4, 2015. After thorough review of the comments, the Committee submitted its Revised Proposed Code to the Supreme Judicial Court on June 25, 2015.

The Justices carefully considered the Committee's Revised Proposed Code, and made several revisions. On October 8, 2015, the Justices adopted the final version and ordered that it be effective as of January 1, 2016. This is the Committee's updated Report on the 2016 Massachusetts Code of Judicial Conduct as adopted ("2016 Code" or "2016 Massachusetts Code").

Background

The 2007 ABA Model Code represents the ABA's first comprehensive revision of the 1990 Model Code. The 2007 Model Code preserves most of the substance of the 1990 Model Code, but extensively reorganizes the content. Following a structure analogous to the ABA Model Rules of Professional Conduct, the 2007 Model Code includes Canons, which state overarching principles; Rules, which are enforceable provisions; and Comments, which provide guidance in interpreting and applying the Rules and, in some instances, identify aspirational goals. The 2007 Model Code also addresses several new topics, including specialty courts and self-represented litigants, and it explicitly endorses judicial outreach in order to improve public understanding of and confidence in the courts.

In 2003, the Supreme Judicial Court adopted a Massachusetts Code of Judicial Conduct based on the 1990 ABA Model Code.³ The Justices subsequently amended Canon 3B(9), effective January 1, 2010, and Canons 4A and 4B, effective January 1, 2013. The amendments to Canons 4A and 4B were proposed by a Working Group appointed by the Justices to

¹ A list of Committee members may be found in Appendix A.

² All references to the 2007 Model Code include any amendments adopted by the ABA through October 2015.

³ The Massachusetts Code in effect through September 30, 2003 was based on the ABA's 1972 Model Code.

recommend changes relating to judges' ability to speak to the public on matters related to the administration of justice. The Working Group also recommended that the entire 2003 Code be reviewed in light of the 2007 Model Code. The Justices adopted this recommendation and established a Committee for this purpose. The Justices appointed Justice Cynthia J. Cohen of the Appeals Court, the chair of the Working Group, to chair the Committee. The Justices also appointed each member of the Working Group to serve on the Committee along with eleven new members drawn from the judiciary, the bar, and academia. Supreme Judicial Court Justice Fernande R.V. Duffly continued in her role as the Supreme Judicial Court's liaison, and Supreme Judicial Court Staff Attorney Barbara F. Berenson continued as staff counsel to the project.

The full Committee met twenty-five times between November 2012, and June 2015. While most meetings ran for two-and-one-half hours, there was one full-day meeting in July 2014, and several extended meetings. The Committee also communicated extensively by email and held several conference calls. The Committee's work was greatly facilitated by each member's participation in at least two small groups. Each small group was charged with undertaking an in-depth review of several rules of the 2007 Model Code, including comparing these rules with analogous provisions of the 2003 Code, considering non-conforming versions adopted in other states, and making recommendations for the full Committee to consider. In several instances, the complexity of a particular issue warranted the appointment of a subcommittee to work over a longer period of time and, where necessary, to consult with court administrators and others. Subcommittees considered the topics of extrajudicial activities, ex parte communications in specialty courts (referred to in the 2007 Model Code as "problem solving courts"), and accommodations for self-represented litigants.

Early in its deliberations, the Committee agreed that it would recommend the adoption of the organizational structure of the 2007 Model Code. Soon thereafter, the Committee also agreed that it would recommend the adoption of the provisions of the 2007 Model Code unless there was persuasive reason either to retain a non-conforming provision of the 2003 Code or to recommend a new, non-conforming provision. Committee members agreed that consistency with the 2007 Model Code, which has been adopted in many other jurisdictions (albeit sometimes with modifications),⁴ would offer the important advantage of making it possible to consult a national body of legal and advisory opinions when interpreting code provisions.

Committee members carefully considered every word of the 2007 Model Code. Even where the Committee decided to adopt a Model Rule and its Comments without any substantive change, it reached that decision only after thorough discussion of the provision, comparison of that provision to any analogous provision in the 2003 Code, and review of any non-conforming versions of the provision adopted in other states. Committee members engaged in lengthy and vigorous debate on a number of issues. Ultimately, however, the Committee was able to craft provisions that won the support of all members.

⁴ The ABA reports that as of October 22, 2015, only four states have not established a committee to review their codes in light of the 2007 Model Code. Thirty-one states (including Massachusetts) and the District of Columbia have approved revised codes, two states have proposed revisions to their codes, and thirteen states have established committees to review their codes.

The Committee's work also was informed by scholarship in the field of judicial ethics and by ethics advisory opinions. In particular, the Advisory Opinions of the Committee on Judicial Ethics interpreting the 2003 Code helped the Committee to consider the practical and broad-reaching consequences of its work. Like the 2007 Model Code, the 2016 Massachusetts Code generally reflects a more expansive view of the role of judges in society. For that reason, some provisions of the 2016 Code will have the effect of negating, in whole or in part, certain advisory opinions that were based on the 2003 Code.

The Committee is very grateful for the assistance provided by the American Bar Association. Attorney Mark Harrison, who chaired the ABA Joint Commission to Evaluate the Code of Judicial Conduct, attended the Committee's first meeting, and offered insightful suggestions not only with respect to substantive matters but also as to the Committee's structure and process. Professor Charles Geyh, a Reporter to the ABA Joint Commission to Evaluate the Code of Judicial Conduct, graciously responded to the Committee's questions, and John Holtaway, the ABA's Lead Senior Counsel, Policy Implementation and Client Protection, provided the Committee with access to the codes adopted in other states and other helpful reference materials. The Committee also is very grateful to Attorney Deirdre Roney, General Counsel to the Massachusetts State Ethics Commission, for meeting with the Committee and providing guidance concerning the views of the State Ethics Commission on the relationship between the Code and G. L. c. 268A and c. 268B. The Committee also greatly appreciates the willingness of the members of the Committee on Judicial Ethics and the Commission on Judicial Conduct to meet with the Committee in December 2014 to receive a briefing on the Committee's work and to provide feedback.

Summary of Key New and Revised Provisions

Format and Organization. The 2016 Massachusetts Code of Judicial Conduct adopts the structure of the 2007 American Bar Association Model Code. The Canons state overarching principles. A set of enforceable black-letter Rules follows each Canon. The Comments that accompany the Rules do not state enforceable obligations, but rather provide interpretive guidance and, occasionally, identify aspirational goals.

Substantive Changes from the 2003 Massachusetts Code of Judicial Conduct. The most significant substantive differences between the 2016 Massachusetts Code and the 2003 Massachusetts Code are as follows. In several instances, the 2016 Code reverses the 2003 Code. Far more often, the 2016 Code provides additional clarification or covers topics that formerly were not addressed:

Canon 1

- Relationship Between the Code and the State Conflict of Interest Law. Rule 1.1, Comment [1], clarifies the relationship between the Code and the State conflict of interest law, G. L. c. 268A and c. 268B. Comment [1] explains that a judge's obligation to comply with the law ordinarily includes the obligation to comply with the State conflict of interest law, but that the unique role of judges requires them on occasion to be bound by rules that may be more or less restrictive than those followed by other public employees. In many instances, the Code imposes more stringent restrictions on judges' activities because of their obligation to act at all times in a manner that promotes public confidence in the judiciary. Thus, for example, the Code regulates aspects of a judge's personal conduct, including a judge's participation in extrajudicial activities unrelated to the law, and prohibits judges from political and campaign activities open to many other public employees. However, in a few instances (e.g. acceptance of some gifts related to a judge's official position, such as certain bar association invitations), the Code creates exemptions from particular restrictions imposed by G. L. c. 268A §§ 3 and 23(b)(2) so that judges may more fully participate in activities related to the law, the legal system, and the administration of justice.
- Judicial Outreach. Rule 1.2, Comments [4] and [6], explicitly encourage judicial outreach for purposes of improving professionalism within the bench and bar, promoting access to justice, and promoting public confidence in the administration of justice. These Comments expand upon the revisions to Canons 4A and 4B made to the 2003 Code effective January 1, 2013.
- Judicial Recommendations. Rule 1.3, Comment [2], states that a judge may provide a recommendation on official letterhead and/or sign it using the judicial title only if the recommendation is based on observations made in the judge's judicial capacity. There is no comparable provision in the 2003 Code, but the principle is not new.

Canon 2

- Bias and Harassment. Rule 2.3 adds "or engage in harassment" to the prohibition against a judge's manifestations of bias or prejudice. The rule also prohibits bias, prejudice, or harassment based upon a person's status or condition. Examples of status or condition listed in Comment [2] include race, color, sex, gender identity or expression, religion, nationality, national origin, ethnicity, citizenship or immigration status, ancestry, disease or disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. The Comments also elaborate on the meaning of harassment, including sexual harassment.
- Self-Represented Litigants. Rule 2.6(A) expressly permits a judge to make reasonable efforts to facilitate the ability of self-represented litigants to be fairly heard, and a Comment provides examples of permissible accommodations. This is a new topic.
- Participation in Settlement Discussions and Plea Discussions. Rule 2.6(B) continues to permit judges to encourage parties to settle their civil cases, but now explicitly directs that the judge shall not act in a manner that is coercive. Rule 2.6(B) also authorizes judges to participate in plea discussions in criminal cases in accordance with applicable law. The reference to criminal cases is new.
- Ex Parte Communication in Specialty Courts. Rule 2.9(A)(2) provides for an exception to the prohibition against ex parte communications in specialty courts as authorized by law. The term "specialty court" is defined in the Terminology section to mean a specifically-designated court session that focuses on individuals with underlying medical, mental health, substance abuse or other issues that contribute to the reasons such individuals are before the court; the definition further explains that specialty court sessions integrate treatment and services with judicial case oversight and intensive court supervision. "Law" is defined in the Terminology section to include court rules as well as standing orders issued by the Supreme Judicial Court, the Appeals Court, the Chief Justice of the Trial Court, or a Chief Justice of a Trial Court Department. Ex parte communications in specialty courts is a new topic.
- Inadvertently Received Ex Parte Communication. Rule 2.9(B) provides that if a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall promptly notify the parties of the substance of the communication. This is a new topic.
- Prohibition Against Independent Investigation. Rule 2.9(C) prohibits a judge from independently investigating adjudicative facts. There is no comparable provision in the 2003 Code, although the principle is not new.
- Disqualification. Rule 2.11(A) requires disqualification if the judge cannot satisfy both a subjective and an objective standard. The subjective standard requires disqualification if the judge concludes that he or she cannot be impartial. The objective standard requires disqualification whenever the judge's impartiality might reasonably be questioned by a

fully-informed disinterested observer. Comment [2] explains that a judge's obligation to disqualify applies whether or not a motion to disqualify has been filed. These provisions make explicit what is implicit in the 2003 Code.

- Addressing Disability or Impairment of a Lawyer or Another Judge. Rule 2.14 requires a judge to take appropriate action when the judge has a reasonable belief that the performance of a lawyer or a judge is impaired by mental or physical illness or by alcohol or substance abuse. The 2003 Code requires a judge to take appropriate action only where the impairment has manifested itself in lack of diligence or competence or is evidenced by the violation of an ethical rule that raises a significant question about the lawyer's or judge's honesty, integrity, trustworthiness, or professional fitness. This is a new topic.
- Cooperation with Disciplinary Authorities. Rule 2.16 requires judges to cooperate with disciplinary authorities and prohibits judges from retaliating against those assisting or cooperating with an investigation. There is no comparable provision in the 2003 Code, although the principle is not new.

Canon 3

- Coercive Activities. Rules 3.1(B) and (D) explicitly prohibit a judge from engaging in extrajudicial conduct that would appear to a reasonable person to be coercive or that is reasonably likely to lead to recurrent disqualification. There is no comparable provision in the 2003 Code, although the principle is not new.
- Reasonable Use of Court Resources in Connection with Extrajudicial Activities. Rule 3.1(E) permits a judge to make reasonable, lawful use of court premises, staff, and resources in connection with activities that concern the law, the legal system, or the administration of justice. There is no comparable provision in the 2003 Code.
- Proposing Legislation. Rule 3.2 gives examples of topics a judge may appropriately address with an executive or legislative body or official, and makes it clear that a judge may propose new legislation or amendments to existing legislation as well as comment on new legislation or amendments to existing legislation proposed by others. The permission to propose or comment on new legislation is new.
- Testifying as a Character Witness. Rule 3.3, Comments [2] - [4], explain that the prohibition on testifying as a character witness does not preclude a judge from vouching for the qualifications of judicial applicants or nominees; providing character references for bar applicants; or responding to inquiries from governmental entities, or contractors for such entities, conducting background checks on applicants for public employment. Commentary to the 2003 Code permits judges to vouch for the qualifications of judicial applicants or nominees, but the other exceptions are new.
- Appointment to Governmental Commission. Rule 3.4, Comment [1], clarifies the factors relevant to a judge's acceptance of an appointment to a governmental board or

commission. A judge must consider the subject matter of the appointment and the availability of judicial resources, and must give due regard to the importance of respecting the separation of powers, minimizing judicial disqualification, and upholding the independence, integrity, and impartiality of the judiciary.

- Use of Nonpublic Information. Rule 3.5, Comment [2], states that the restrictions on a judge's use of nonpublic information are not intended to limit the judge's ability to act on information acquired in a judicial capacity where necessary to protect the health or safety of the judge or other persons. This is a new topic.
- Membership in Discriminatory Organizations. Rule 3.6, which prohibits a judge from holding membership in organizations practicing invidious discrimination, now requires a judge to resign immediately from any organization practicing invidious discrimination.
- Participation in Legal, Educational, Religious, Charitable, Fraternal, or Civic Organizations. Rule 3.7(A) and associated Comments address the permissible scope of a judge's participation in extrajudicial activities. Notably, a number of activities prohibited under the 2003 Code or under Advisory Opinions interpreting that Code are now permitted, but a judge's participation is always subject to the controlling requirements of Rule 3.1.
 - Fundraising Events. Paragraph (A)(6A) permits a judge to serve as a keynote speaker or receive an award or comparable recognition at a fundraising event of an organization, so long as the organization is concerned with the law, the legal system, or the administration of justice *and* promotes the general interests of the judicial branch or the legal profession, including enhancing the diversity and professionalism of the Bar. This provision reverses a prohibition in the 2003 Code. A fundraising event is defined as an event for which the organizers' chief objectives include raising money to support the organization's activities beyond the event itself.
 - Planning Fundraising. Paragraph (A)(3) permits a judge to participate in internal discussions related to fundraising. This provision reverses a prohibition in the 2003 Code. If the organization is composed entirely or predominantly of judges, a judge also may plan fundraising and manage and invest the organization's funds.
 - Sponsorship of Events. Comments [1A] and [1B] clarify that while permitted activities must be of or sponsored by an organization not conducted for profit, a judge may participate in events of an organization that receives sponsorship or financial support from for-profit entities.
 - Solicitation. Paragraph (A)(4) permits a judge to solicit contributions or members for an organization only if the persons solicited are members of the judge's family or judges over whom the judge does not exercise supervisory authority. The Code now treats solicitation for contributions and for members in the same way.

- Judge's Name on Solicitations. Comment [2] clarifies that Paragraph (A)(4) permits a judge associated with an organization to be identified by name and title on letterhead or other materials used by the organization to solicit donations and members if comparable designations are used for other persons associated with the organization. This provision reverses a prohibition in the 2003 Code.
- Encouraging Pro Bono Services. Rule 3.7(B) permits a judge to encourage lawyers to provide pro bono publico legal services. This is a new topic.
- Assisting Minor Children with Fundraising Activities. Rule 3.7(C) permits a judge to assist the judge's minor children in fundraising activities, so long as the activities are not for the primary or exclusive benefit of the judge's own child. This is a new topic.
- Practicing Law. Rule 3.10 provides that a judge may give legal advice and review documents for a "member of the judge's family," as defined in the Terminology section, but may not serve as a family member's lawyer in any forum. Rule 3.10 also permits a judge to serve as a judge advocate general in the military. These are new topics.
- Reasonable Compensation for Teaching Activity. Rule 3.12 permits a judge to be reasonably compensated for any teaching activity, but prohibits a judge from otherwise accepting an honorarium or fee for a speaking engagement. A teaching activity is broadly defined to include lecturing in educational programs sponsored by non-profit organizations and associations, including but not limited to educational institutions, bar associations, professional associations, providers of continuing legal education, and governmental entities concerned with the law, the legal system, or the administration of justice.
- Accepting Gifts or Other Benefits. Rule 3.13 describes when a judge may accept a gift or other benefit. A judge may never accept a gift or benefit if it would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. If that threshold standard is met, whether a judge may accept a gift or benefit depends in part on whether it is being given for or because of the judge's official position or action. Rule 3.13 also addresses a judge's obligation to disclose gifts that the judge may accept.

Of particular note is the treatment of the following types of gifts that are given for or because of a judge's official position or action:

- Gifts Incident to Public Recognition. This type of gift may be accepted but must be disclosed if it is of "substantial value." (As of this writing, "substantial value" is defined as \$50 or more. See 930 Code of Massachusetts Regulations 5.05.) The 2003 Code required disclosure only if the value of the gift exceeded \$350.
- Invitations to Attend Without Charge Luncheons, Dinners, Receptions, Award Ceremonies, and Similar Events of Bar Associations and Other Law-Related Non-profit Organizations that are Held in Massachusetts. Acceptance is permitted and

disclosure is not required. A judge is no longer required to obtain a determination by the Chief Justice of the court on which the judge sits that the invitation serves a legitimate public purpose because such invitations are presumed to do so.

- Discounted or Free Membership to Bar Associations or Other Law-Related Non-Profit Organizations. Acceptance is permitted and disclosure is not required. This is a new topic.
- Free or Discounted Attorneys' Fees. Acceptance without disclosure is permitted in two instances: first, when the lawyer providing the legal services and all the firm's lawyers are relatives or close personal friends of the judge, or second, when a lawyer or law firm has offered special pricing as part of a commercial opportunity or marketing strategy to a group of similarly situated persons who are not judges. There are additional instances when a judge may accept but must disclose free or discounted legal services. Acceptance with disclosure is permitted if the same benefit is extended to non-judges in comparable circumstances (e.g., a firm offers a professional courtesy discount to former partners, and the judge is a former partner), and the lawyer, the lawyer's firm, and their interests are not before the judge, have not been before the judge in the reasonably recent past, and are unlikely to come before the judge in the reasonably near future. The Code also addresses when a judge may accept free or discounted legal services for representation in disciplinary matters. This is a new topic.
- Reimbursements of Expenses and Waivers of Fees and Charges. Rule 3.14(C) provides that when a judge is invited, in connection with the judge's official position or official action, to attend and receive reimbursement of expenses or waiver of fees at an event not covered by Rule 3.13(D)(2), the judge must notify the Chief Justice of the court on which the judge sits and obtain a determination that acceptance serves a legitimate public purpose. There is no comparable provision in the 2003 Code, but Rule 3.14 is consistent with practice pursuant to the Massachusetts conflict of interest law.
- Reporting Requirements. Rule 3.15 requires a judge annually to complete the Public Report of Extra-Judicial Income and the Statement of Financial Interests.

Canon 4

Political Activities. There are no significant substantive changes.

Discussion and Explanation

This section of the Report compares each provision of the 2016 Code ("Code") with both the 2007 Model Code and the 2003 Massachusetts Code and identifies substantive differences. Where the Committee proposed adoption of a provision of the 2007 Model Code, it did so after independent review. Where the Committee proposed retaining a provision of the 2003 Massachusetts Code that deviates from the 2007 Model Code, it did so after making a determination that the 2003 Code offers more appropriate guidance for Massachusetts judges, e.g., because Massachusetts judges are not elected or subject to any reappointment procedure. In those instances where the 2016 Code substantively departs from both the 2007 Model Code and the 2003 Massachusetts Code, this Report provides more expansive discussion of the rationale. To the extent that topics addressed by opinions of the Committee on Judicial Ethics construing the 2003 Code (or its predecessors) are treated differently in the 2016 Code, the 2016 Code supersedes those opinions.

Preamble

Comparison to 2007 Model Code

The Preamble to the Code is largely consistent with the 2007 Model Code, which contains new language emphasizing that, at all times, judges should aspire to conduct that will ensure the greatest possible public confidence in judges' independence, integrity, impartiality, and competence. The Committee made two substantive modifications: (i) judges are described as "persons" of integrity, rather than "men and women" of integrity to avoid an unnecessary emphasis on gender and to account for transgender persons, and (ii) because Massachusetts judges are not elected, references to judicial candidates are omitted here and throughout the Code.

Comparison to 2003 Massachusetts Code

Unlike the 2003 Code, the Preamble now includes two sections -- Preamble and Scope. The Preamble is limited to a description of the general purpose and rationale of the Code. Much of the language in this section corresponds to language in the 2003 Code, but the structure of the Code is now explained in the new Scope section. These changes conform the structure of the Code to that of the 2007 Model Code.

Scope

Comparison to 2007 Model Code

The Scope section is largely consistent with the language of the 2007 Model Code, and explains the relationship among the Canons, Rules (formerly "Sections"), and Comments (formerly "Commentary"). Canons state overarching principles, and Rules articulate enforceable standards. Comments serve two functions. Comments usually provide guidance regarding the purpose, meaning, and proper application of the Rules, but in several instances Comments identify aspirational goals. The Code modifies Model Comment [6] to clarify that some conduct

that literally may violate a Rule may not warrant discipline because the violation may not contravene the policy behind a prohibition or may be de minimis.

Comparison to 2003 Massachusetts Code

The Scope section is new, but corresponds to provisions in the 2003 Code that explain its structure. As previously noted, the Code establishes a more direct connection between Rules and Comments than exists between Sections and Commentary in the 2003 Code. The addition to Comment [6] is derived from the Preamble to the 2003 Code.

Terminology

Comparison to 2007 Model Code

The Code omits several terms that are defined in the 2007 Model Code: "aggregate," "appropriate authority," "contribution," "de minimis," "judicial candidate," "member of the candidate's family," "personally solicit," and "public election." The Committee omitted most of these definitions because they predominantly or exclusively pertain to rules regulating judicial elections. "Appropriate authority" is deleted because the Code explicitly identifies the pertinent authority where applicable. "De minimis," which is defined in the 2007 Model Code only in the context of interests pertaining to disqualification, is deleted because it is used in the Code in additional contexts and is a well-understood term.

The Code defines the term "court personnel" and uses it in lieu of the undefined phrase "court officials and court staff" that is used throughout the 2007 Model Code. The Code also includes several newly-defined terms. "Close personal friend" is defined because this term is relevant to the rules governing disqualification and the acceptance of gifts. A definition of "Specialty court" is included because Rule 2.9 addresses ex parte communications in specialty courts. "Fundraising event" is defined because this term is integral to distinctions made in Rule 3.7. "Judicial applicant" and "judicial nominee" are defined, as several rules or comments refer to such individuals. "Substantial value" is defined as the dollar value determined by the State Ethics Commission.

The Code modifies the definitions of several other terms. "Impartial" is expanded to require the absence of bias or prejudice in favor of or against parties' representatives. For clarification, a second sentence is added to the definition of "impending matter." "Impropriety" is defined to mean conduct that violates the law (including the Code), as well as conduct that constitutes grounds for discipline under G. L. c. 211C, § 2(5). The definition of "law" is expanded to include standing orders. In addition, the definition explains that, as permitted by Chapter 268A §§ 3 and 23(b)(2), provisions of the Code supersede provisions of c. 268A in several instances.

In the definition of "member of the judge's family," "sibling" is added, and the term "familial" is replaced by "family-like" to make it clear that a blood relationship is not required. In addition, a new sentence notes that residence in the judge's household may be relevant, but not dispositive, when determining whether a judge maintains a close family-like relationship

with an "other relative or person." "Member of a judge's family residing in the judge's household" is expanded to include domestic partners and relatives by adoption. "Nonpublic information" is clarified and expanded to include information that is expunged. "Political organization" is revised to include groups working to pass or defeat ballot questions.

Comparison to 2003 Massachusetts Code

Several terms defined in the 2003 Code are no longer defined. "De minimis" is no longer defined because it is a well-understood term and used in contexts additional to those in the 2003 Code. "Ex parte communication" is not included in the Terminology section, but is defined in Rule 2.9, where that subject is extensively addressed. Consistent with the 2007 Model Code, "require" is no longer defined, as it is a well-understood term. The Code does not define "relationship interest," which was not defined in either the 1990 ABA Model Code or the 2007 Model Code.

The following terms are added to the Terminology section: "Close personal friend" "Domestic partner," "Fundraising event," "Impartial," "Impending matter," "Impropriety," "Independence," "Integrity," "Judicial applicant," "Judicial nominee," "Member of the judge's family," "Nonpublic information," "Pending matter," "Specialty court," and "Substantial value."

The definition of "Court personnel" is simplified to court employees "subject to the judge's direction and control." Throughout the Code, the defined term "court personnel" replaces the 2007 Model Code's references to "court officials and court staff." As noted, definitions of many other terms are revised to be consistent or largely consistent with the definitions used in the 2007 Model Code.

Application

Comparison to 2007 Model Code

Because the references in the 2007 Model Code to part-time judges and administrative law judges are inapplicable in Massachusetts, the Committee adapted Canon 6 of the 2003 Code to describe those subject to the Code.

Comparison to 2003 Massachusetts Code

The Application Section of the Code corresponds to Canon 6 of the 2003 Code, and tracks its provisions relating to retired judges and time for compliance for newly-appointed judges. Consistent with G. L. c. 211C, § 2(2), which identifies those persons subject to the jurisdiction of the Commission on Judicial Conduct, the Code defines active judges as any judge serving on the Trial Court, the Appeals Court, or the Supreme Judicial Court, until resignation, removal, or retirement. Also consistent with that statute, a new comment informs judges that their conduct prior to assuming judicial office may have disciplinary consequences under the law. Other new comments clarify that (i) an active judge who becomes an applicant or nominee for a different judicial office must comply with the requirements of both the Code and the appointing authority, and (ii) although judicial applicants and judicial nominees are not governed

by the Code, the Governor of the Commonwealth historically has used an Executive Order to impose a code of conduct upon such individuals.

Canon 1 - A Judge Shall Uphold and Promote the Independence, Integrity, and Impartiality of the Judiciary, and Shall Avoid Impropriety and the Appearance of Impropriety.

Comparison to 2007 Model Code

Canon 1 is adopted from the 2007 Model Code without modification.

Comparison to 2003 Massachusetts Code

Canon 1 corresponds to Canons 1 and 2 of the 2003 Code. It addresses both the obligation to uphold the independence, integrity, and impartiality of the judiciary and the duty to avoid impropriety and the appearance of impropriety. The term "impartiality" is added to integrity and independence in Canon 1 and throughout the Code to emphasize its importance as an overarching principle. Canon 1 also requires a judge to promote, as well as uphold, the fundamental values of the judiciary.

Rule 1.1 - Compliance with the Law

Comparison to 2007 Model Code

Rule 1.1 is adopted from the 2007 Model Code without modification. The Committee added Comment [1] to explain the relationship between the Code and the State conflict of interest law, G. L. c. 268A and c. 268B.

Comparison to 2003 Massachusetts Code

Rule 1.1 corresponds to the first clause of Canon 2A of the 2003 Code. The Committee added Comment [1] to describe the relationship between the Code and the state conflict of interest law, G. L. c. 268A and c. 268B. Comment [1] clarifies that a judge's obligation to comply with the law includes the obligation to comply with the State conflict of interest law except in those few instances where, as permitted by G. L. c. 268A §§ 3 and 23(b)(2), the Code creates specific exemptions so that judges may more fully participate in activities related to the law, the legal system, and the administration of justice. Comment [1] also explains that in some instances, the Code imposes more stringent restrictions than the conflict of interest law because judges must act at all times in a manner that promotes public confidence in the judiciary.

Rule 1.2 - Promoting Confidence in the Judiciary

Comparison to 2007 Model Code

Rule 1.2 and Comments [1] – [3] are adopted from the 2007 Model Code without modification. In Comments [4] and [6], the Committee replaced "should" with "are encouraged to," and in Comment [6], the Committee added "appropriate" before "community outreach activities." These changes emphasize that judges are affirmatively encouraged (but not obliged)

to engage in community outreach, and that engagement in any particular activity is subject to the provisions of the Code. In Comment [5], the Committee clarified that improprieties include conduct for which a judge may be disciplined pursuant to G. L. c. 211C, § 2(5).

Comparison to 2003 Massachusetts Code

Rule 1.2 corresponds to Canon 2 and the first clause of Canon 2A of the 2003 Code. Comments [1] – [3] and [5] correspond to the Commentary to Canon 2A of the 2003 Code. Comments [4] and [6] are new, and reflect the 2007 Model Code’s recognition that it is desirable for judges to participate in extrajudicial activities that will promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, promote access to justice for all, and promote public understanding of and confidence in the administration of justice.

Rule 1.3 - Avoiding the Abuse of Judicial Office

Comparison to 2007 Model Code

Rule 1.3 is adopted from the 2007 Model Code without modification. Comments [2] and [3] are different from the model comments. After considerable discussion concerning when judges should be permitted to use official letterhead and/or the judicial title in written recommendations, the Committee revised Comment [2] to be generally consistent with State Ethics Commission Advisory Opinion 13-1. The Committee concluded that a judge should be permitted to use official letterhead or court email for a recommendation or sign a recommendation using the judicial title only if the recommendation is based on observations made in the judge's judicial capacity. Where a judge's knowledge of the applicant's qualifications do not arise from observations made in the judge's judicial capacity, the judge may not use official letterhead, court email, or the judicial title, but the judge may send a private letter and may refer to the judge's current position and title in the body of that letter if that information is relevant to some substantive aspect of the recommendation. Comment [2] also reminds judges that other restrictions may pertain to recommendations for employment in the judicial branch or state government.

The Committee modified Comment [3], relating to recommendations for persons being considered for judicial office, to address various aspects of the judicial selection process in Massachusetts.

Comparison to 2003 Massachusetts Code

Rule 1.3 and its Comments correspond to Canon 2B and associated Commentary of the 2003 Code. Rule 1.3 substitutes the phrase "abuse the prestige of judicial office" for "lend" to more accurately describe the prohibited conduct, and adds prohibitions against a judge’s advancing economic as well as personal interests, and against allowing others to abuse the prestige of judicial office. The 2003 Code does not address the use of letterhead in writing recommendations, but cautions judges to be sensitive to possible abuse of the prestige of judicial office.

Canon 2 - A Judge Shall Perform the Duties of Judicial Office Impartially, Competently, and Diligently.

Comparison to 2007 Model Code

Canon 2 is adopted from the 2007 Model Code without modification.

Comparison to 2003 Massachusetts Code

Canon 2 corresponds to Canon 3 of the 2003 Code, but adds an explicit requirement that the judge perform the duties of judicial office competently. Canon 3B(2) of the 2003 Code requires that judges maintain professional competence in the law.

Rule 2.1 - Giving Precedence to the Duties of Judicial Office

Comparison to 2007 Model Code

Rule 2.1 and Comments [1] and [2] are adopted from the 2007 Model Code without modification. The Committee added new Comment [3] to emphasize that a rule of reasonableness should govern disciplinary proceedings under this Rule, and to recognize that there may be occasions where family obligations, illnesses and emergencies require a judge's immediate attention.

Comparison to 2003 Massachusetts Code

Rule 2.1 corresponds to Canon 3A of the 2003 Code. To track the Model Code, the Committee replaced "judicial duties" with "duties of judicial office," used in the 2003 Code. Here and throughout the Code, the Committee intends references to duties of judicial office or a judge's judicial duties to include a judge's adjudicative duties and administrative responsibilities. The Comments are new.

Rule 2.2 - Impartiality and Fairness

Comparison to 2007 Model Code

Rule 2.2 and Comments [1] and [2] are adopted from the 2007 Model Code without modification. Comment [3] is modified to clarify that a judge whose judicial decision or action is later found by an appellate court to be incorrect or an abuse of discretion has not violated the Code in the absence of fraud or corrupt motive, or a clear indication that the judge's conduct was in bad faith or otherwise violated the Code. Comment [4] is modified to substitute "self-represented" for "pro se" and to add a cross-reference to Rule 2.6(A). The Committee determined that Rule 2.6(A), which ensures the right to be heard, was the appropriate place to include further guidance on the topic of self-represented litigants.

Comparison to 2003 Massachusetts Code

Rule 2.2 corresponds to Canons 3B(2) and 3B(8) of the 2003 Code. Comment [3] corresponds to the Commentary to Canon 1A of the 2003 Code. Other comments are new.

Rule 2.3 - Bias, Prejudice and Harassment

Comparison to 2007 Model Code

Rule 2.3 is adopted from the 2007 Model Code with the following modifications. The prohibition against harassment is also included in Paragraph (A), and the list of examples of "status or condition" are placed in Comment [2]. That Comment offers additional guidance by expanding the examples of status or condition to include those based upon color, gender identity or expression, nationality, citizenship or immigration status, and disease.

Comparison to 2003 Massachusetts Code

Rule 2.3 corresponds to Canons 3B(5) and (6), but the prohibition against sexual harassment is new. The examples of status or condition in Comment [2] are expanded to include those based upon color, gender identity or expression, nationality, ancestry, citizenship or immigration status, disease, marital status, and political affiliation. Comments [1] and [3] correspond to the Commentary to Canon 3B(5). Comments [4] and [5] are new. Comment [4] defines harassment, and Comment [5] elaborates on the meaning of sexual harassment.

Rule 2.4 - External Influences on Judicial Conduct

Comparison to 2007 Model Code

Rule 2.4 and its Comments are adopted without modification, except that the term "partisan interests," which is found in Canon 3B(2) of the 2003 Code, is added to the list of potential influences identified in Paragraph (A).

Comparison to 2003 Massachusetts Code

Rule 2.4 corresponds to Canons 2B and 3B(2) of the 2003 Code. The Code adds financial interests or relationships to the list of potential influences identified in Paragraph (B). New Comment [1] underscores the general purpose of the Rule by linking the judge's duty not to be swayed by inappropriate outside influences to the judge's obligation to decide cases based on the law and the facts.

Rule 2.5 - Competence, Diligence, and Cooperation

Comparison to 2007 Model Code

Rule 2.5 is adopted from the Model Code without modification, except that Paragraph (A) also requires a judge to perform judicial and administrative duties in a timely manner. Comments are adopted without substantial modification.

Comparison to 2003 Massachusetts Code

Rule 2.5 corresponds to Canons 3B(2), 3B(8) and 3C(1). The Code places in a single location a judge's obligation to perform all judicial duties competently, diligently, and in a timely manner. Comments [1] and [2] are new. Comment [1] underscores the importance of competence, while Comment [2] emphasizes that judges should seek the resources to carry out their adjudicative and administrative responsibilities. Comments [3] and [4] correspond to the Commentary to Canon 3B(8).

Rule 2.6 - Ensuring the Right to Be Heard

Comparison to 2007 Model Code

In Rule 2.6, the first sentence of Paragraph (A) is adopted from the 2007 Model Code without modification. An additional sentence is added that comports with a July 25, 2012, resolution by the Conference of Chief Justices and the Conference of State Court Administrators recommending that states amend their codes of judicial conduct to include a rule that "a judge may make reasonable efforts, consistent with the law and court rules, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." The resolution also suggested that states include comments consistent with local rules and practice "regarding specific actions judges can take to exercise their discretion in cases involving self-represented litigants."

The Committee appointed a subcommittee to consider whether and where to place such a rule in the Code, and the scope and content of any accompanying comment. The subcommittee proposed, and the Committee agreed, that the Code should contain the following rule: "A judge may make reasonable efforts, consistent with the law, to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." Because "law" is defined to include court rules, this language is identical to that recommended in the resolution. In accordance with the subcommittee's recommendation, the Committee also decided that the most appropriate place for the rule was in Rule 2.6(A), which ensures the right to be heard.

After careful examination of comments adopted in other jurisdictions, and consultation with others, including the Special Advisor to the Trial Court on Access to Justice Initiatives, the subcommittee recommended the inclusion of an expansive comment. Comment [1A] explains that the judge has an affirmative role to play in ensuring the right to be heard, and in the interest of ensuring fairness and access to justice, may make reasonable accommodations to persons with a legal interest in the proceedings. It also reminds judges that they should be careful that

accommodations do not give self-represented litigants an unfair advantage or create an appearance of judicial partiality. Comment [1A] further explains that, in some circumstances, particular accommodations for self-represented litigants are required by decisional or other law, and that, in other circumstances, accommodations are within the judge's discretion. Comment [1A] additionally provides seven illustrative examples of permissible discretionary accommodations. Comment [1A] also references the Judicial Guidelines for Civil Hearings Involving Self-Represented Litigants (2006) as a useful resource in civil cases.

Paragraph (B) is substantially modified from the 2007 Model Code. Paragraph (B) specifically authorizes a judge to participate in settlement discussions in civil proceedings and plea discussions in criminal proceedings, in accordance with applicable law. Comment [2] expands the list of factors a judge should consider when deciding upon an appropriate settlement practice to include "whether there is a history of physical or emotional violence or abuse between the parties."

Comparison to 2003 Massachusetts Code

Rule 2.6(A) corresponds to Canon 3B(7), but the reference to self-represented litigants is new. Comments [1] and [1A] are new. Rule 2.6(B) is new, as are Comments [2] and [3].

Rule 2.7 - Responsibility to Decide

Comparison to 2007 Model Code

Rule 2.7 is adopted from the 2007 Model Code without modification. The first sentence of Comment [1] is omitted as redundant.

Comparison to 2003 Massachusetts Code

Rule 2.7 corresponds to Canon 3B(1) and its Commentary. Comment [1] is new. The Committee decided not to carry over the Commentary to Canon 3B(1) stating that judges may request "not to be assigned to a particular case or class of cases because of strongly held personal or moral beliefs." After extensive discussion, the Committee concluded that the 2007 Model Code appropriately expresses the expectation that judges will hear and decide all assigned matters except where disqualification is required. Moreover, Rule 2.11(A) requires disqualification whenever the judge's impartiality might reasonably be questioned, even if the particular ground is not among those specifically listed in that rule.

Rule 2.8 - Decorum, Demeanor, and Communication with Jurors

Comparison to 2007 Model Code

Rule 2.8 is adopted from the 2007 Model Code with the addition of a clause to Paragraph (C) expressly permitting judges to express appreciation to jurors for their service. A new sentence is added to Comment [2] to highlight that a judge's commendations or criticisms of a

jury verdict could be perceived as calling into question the judge's ability to rule impartially on any post-trial motions or on remand.

Comparison to 2003 Massachusetts Code

Rule 2.8 corresponds to Canons 3B(3), 3B(4), and 3B(10) of the 2003 Code. The clause in Paragraph (C) permitting judges to express appreciation to jurors is carried over from Canon 3B(10) of the 2003 Code. Comments [1] and [2] correspond to the Commentary to Canons 3B(4) and 3B(10), respectively. Comment [3] is new.

Rule 2.9 - Ex Parte Communications

Comparison to 2007 Model Code

Rule 2.9 is substantially different from the 2007 Model Code in several respects. The Committee deliberately omitted Paragraph (A)(2). This provision, which permits a judge to obtain the written advice of a disinterested expert, was in the 1990 ABA Model Code but was not adopted by Massachusetts in the 2003 Massachusetts Code. The Committee agreed that this provision remains contrary to Massachusetts law and practice.

The Code includes a new Paragraph (A)(2), which permits a judge to engage in ex parte communications in specialty courts as authorized by law; both "specialty court" and "law" are defined in the Terminology section. (The 2007 Model Code refers to such courts, sessions, or programs as "problem solving courts.") In the 2007 Model Code, this issue is addressed only in Comment [4]. The Committee concluded that, in view of the growing number and importance of specialty courts, it was preferable to address this topic in the rule itself. Before arriving at this conclusion, the Committee appointed and received the recommendations of a subcommittee that surveyed the rules and protocols currently governing specialty courts and programs in Massachusetts, including drug courts, mental health courts, veterans' courts, and tenancy preservation programs. Representatives of the Committee also consulted with the Chief Justice of the Trial Court.

The Committee also decided not to adopt the 2007 Model Code's iteration of Paragraph (A)(3). Instead, the Committee substantially revised this paragraph to retain the detailed provisions contained in Canon 3B(7)(c) of the 2003 Code, as these provisions give additional guidance and conform to Massachusetts practice.

Rule 2.9 (A)(4) is modified to clarify that it relates only to civil and not criminal cases. In addition, the final clause is eliminated from Paragraph (B) to allow the judge discretion to decide whether the parties should have an opportunity to respond when a judge inadvertently receives an unauthorized ex parte communication. The Committee was of the opinion that, depending on the circumstances, it may be adequate for the judge simply to inform the parties.

New Comment [1A] defines ex parte communication. This definition is unchanged from the 2003 Code. Comment [2] is modified to make clear that a court rule might require notice to both the party and the party's attorney in certain circumstances. Comment [4] reiterates that

judges may engage in ex parte communications as permitted by law, including court rules and standing orders governing specialty courts. Comment [4A] clarifies that where permitted by law, judges in specialty courts may consult with probation officers, housing specialists and other court employees.

Comment [5] includes the specific guidance contained in Canon 3B(7)(c) of the 2003 Code. Comment [6] is modified to emphasize that the prohibition against a judge's independent investigation of adjudicative facts applies equally to all types of media, including electronic media. Comment [7] is modified to include the names of the relevant ethics advisory bodies in Massachusetts (the Committee on Judicial Ethics and the State Ethics Commission).

Comparison to 2003 Massachusetts Code

Rule 2.9(A) of the Code corresponds to Canon 3B(7) of the 2003 Code. However, the Committee modified the 2003 Code to clarify that the law governing specialty courts may provide an exception to the prohibition on ex parte conversations with probation officers. Paragraph (B) corresponds to the Commentary to Canon 3B(7)(c) and addresses inadvertent disclosures of ex parte information, such as misaddressed emails. Paragraph (C), the prohibition against independent investigation, also corresponds to the Commentary to Canon 3B(7)(c). Paragraph (D) corresponds to the Commentary to Canon 3B(7).

Comments [1], [2], [3], and [5] correspond to the Commentary to Canon 3B(7) of the 2003 Code. Comment [1A] relocates the definition of "ex parte communication," which is unchanged from the 2003 Code, to this Comment. Comment [4], which addresses issues concerning ex parte conversations in specialty courts, is new. Comment [4A], which explains when a judge may consult ex parte with a probation officer, distinguishes between the broader permission that may be allowed in specialty courts and the more limited permission otherwise allowed. Comments [6] and [7] are new.

Rule 2.10 - Judicial Statements on Pending and Impending Cases

Comparison to 2007 Model Code

Effective January 1, 2010, the Supreme Judicial Court amended the 2003 Code to include new Canon 3B(9) as well as a Guidance Regarding the Issuance of Explanatory Memoranda (Appendix A to the 2003 Code). The Committee agreed that the Code should retain nearly all of the substance of Section 3B(9) and the Guidance. Hence, while the Code's iteration of Rule 2.10 incorporates the structure and some of the language contained in the 2007 Model Code, it differs substantially from the 2007 Model Code. The rationale for Canon 3(B)(9) was explained at the time of its adoption.

Comparison to 2003 Massachusetts Code

Rule 2.10 and associated Comments largely incorporate the substance of Canon 3B(9) of the 2003 Code, including the Guidance Regarding the Issuance of Explanatory Memoranda. The Code rephrases and clarifies the thrust of Canon 3B(9)(d) in Rule 2.10(E), which states that a

judge may respond directly or through a third party to public criticisms of the judge's behavior, but shall not respond to public criticisms of the substance of the judge's rulings other than by making statements that explain the procedures of the court, general legal principles, or what may be learned from the public record in a case.

While Rule 2.10(F) corresponds to Canon 3B(9)(c), the Committee concluded that cases pending or impending in any court, and not just an appellate court, may raise important issues about which it is appropriate for a judge to lecture or write for educational purposes. Accordingly, subject to the overarching prohibition in Rule 2.10 (A) ("a judge shall not make any statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any Massachusetts court"), Paragraph (F) permits a judge to comment in legal education programs and materials, scholarly presentations and related materials, or learned treatises, academic journals, and bar publications upon issues in matters pending or impending at all court levels, so long as those matters are not pending or impending before the judge.

The Comments to Rule 2.10 correspond to the Commentary to Canon 3B(9). The Guidance Regarding the Issuance of Explanatory Memoranda (Appendix A to the 2003 Code) is largely incorporated in Comment [10]. However, Comment [10] (ii) deletes the provision from Canon 3B(9) stating that "[a] judge should not issue an explanatory memorandum solely to respond to public criticism of the [judge's] decision." This statement was deleted for two reasons. First, there may be times when a judge's decision is widely criticized due to a misunderstanding of the judge's reasons, and a judge should not be prohibited from issuing an explanatory memorandum to correct the public's misunderstanding. Second, Comment 10(i) lists the factors that a judge should weigh before issuing an explanatory memorandum, and one of these factors is the danger that the issuance of an explanatory memorandum would suggest that judicial decisions are influenced by public opinion or criticism voiced by third parties, and would not promote confidence in the courts and in the independence, integrity, and impartiality of judges.

Rule 2.11 - Disqualification

Comparison to 2007 Model Code

Rule 2.11 is adopted from the 2007 Model Code with the following modifications. Paragraph (A) is revised to add that a judge must disqualify himself or herself if the judge cannot be impartial. Paragraph (A)(4) is deleted, as Massachusetts does not elect its judges. Paragraph (A)(5) is renumbered as Paragraph (A)(4) and is modified to clarify that it applies to statements made by a judge while a judicial applicant, judicial nominee, or judge. Paragraph (A)(6) is renumbered as Paragraph (A)(5). Paragraph (C) is revised to incorporate the substance of the remittal procedure in Canon 3F of the 2003 Code.

Comment [1] is modified to explain that impartiality requires a judge to satisfy both a subjective and an objective standard. Comment [1] also provides an example of when a judge's impartiality might reasonably be questioned, even if none of the provisions of Paragraphs (A)(1) - (A)(5) applies. The example addresses a judge's obligations to disqualify himself or herself

when the judge has been a client of a party's lawyer or the lawyer's firm. A final new sentence cautions that social relationships may contribute to a reasonable belief that a judge cannot be impartial. Comment [4] is modified to emphasize the broad scope of the analysis required to determine whether a judge's impartiality reasonably would be questioned. Model Comment [6] is deleted because "economic interest" is defined in the Terminology section. Taking its place as Comment [6] is a provision explaining that the filing of a judicial discipline complaint against the judge does not itself require disqualification, and that the decision to disqualify must be resolved on a case-by-case basis.

Comparison to 2003 Massachusetts Code

Rule 2.11 corresponds to Canons 3E and 3F, but Rule 2.11 emphasizes that a judge is disqualified from any matter if the judge cannot satisfy both a subjective and an objective standard. Paragraph (A)(5)(b) is more expansive than the Commentary to Canon 3E, and Paragraph (A)(5)(d), which precludes a judge from hearing on appeal a case that he or she previously heard in another court, is new. Paragraph (C) makes explicit the previously implicit requirement that the consultation must be free from coercion, express or implied. The Comments correspond to the Commentary to Canons 3E and 3F. The example in Comment [1] is new, as is Comment [2], which clarifies that a judge's obligation not to hear or decide matters when disqualification is required applies whether or not a motion to disqualify has been filed.

Rule 2.12 - Supervisory Duties

Comparison to 2007 Model Code

Rule 2.12 is adopted from the Model Code without substantial modification.

Comparison to 2003 Massachusetts Code

Rule 2.12 corresponds to Canons 3C(2) and 3C(3). The Comments are new. Comment [1] underscores that judges may never direct court personnel or others within the judge's control to act inconsistently with the Code. Comment [2] emphasizes the close connection between public confidence in the judicial system and the timely administration of justice.

Rule 2.13 - Administrative Appointments

Comparison to 2007 Model Code

Rule 2.13(A) is adopted from the Model Code without modification. Rule 2.13(B) is deleted because it pertains to judicial elections. Rule 2.13(B) is Model Rule 2.13(C). Comment [1] is modified to give examples of the types of appointments that a Massachusetts judge may be called upon to make and to assure judges that compliance with court rules pertaining to fee-generating appointments will satisfy their obligations under this rule. Comment [2] is amended to contain a reference to the Trial Court Personnel Policies and Procedures Manual. Comment [3] is deleted, as it pertains to judicial elections.

Comparison to 2003 Massachusetts Code

Rule 2.13 corresponds to Canon 3C(4). Comment [2], which defines nepotism, is new.

Rule 2.14 - Disability and Impairment

Comparison to 2007 Model Code

Rule 2.14 is adopted from the 2007 Model Code without modification. New Comment [1] makes clear that it is part of a judge's judicial duties to take appropriate action to address the disability or impairment of a lawyer or another judge, and also explains the relationship between Rules 2.14 and 2.15. Comments [2] and [3] are based on Comments [1] and [2] to the Model Code. Comment [2] provides guidance concerning a judge's ability to defer taking action when a lawyer is appearing before a judge. Comment [3] is modified by deleting the last clause, as the reference to Rule 2.15 suffices.

Comparison to 2003 Massachusetts Code

This new rule is designed to foster public confidence in the administration of justice by requiring judges to take appropriate action whenever the judge has a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol or by a mental, emotional, or physical condition. Previously, the Code addressed impairment in Canon 3D and required judicial action only where the impairment had manifested itself in lack of diligence or competence, or was evidenced by the violation of an ethical rule raising a significant question about the judge's or lawyer's honesty, integrity, trustworthiness, or professional fitness.

Rule 2.15 - Responding to Judicial and Lawyer Misconduct

Comparison to ABA Model Code

Rule 2.15 is adopted from the 2007 Model Code with the following modifications. Paragraphs (A) and (B) are modified to include "integrity." Paragraph (A) is also modified to provide that the appropriate authorities to receive the information are the Chief Justice of the Supreme Judicial Court, the Chief Justice of the court on which the judge sits, and the Chief Justice of the Trial Court, if the judge in question serves on the Trial Court.⁵ Paragraph (B) is modified to provide that the appropriate authority is the Office of Bar Counsel. Paragraphs (C) and (D) are modified to require that the information received by the judge must be credible.

Comment [1] is modified to permit a judge to defer making a report of a lawyer's misconduct until a matter is concluded, in instances where no person will be harmed by the delay. Comment [2] is modified to provide a more comprehensive list of "appropriate actions."

⁵ The Chief Justice of the Supreme Judicial Court routinely forwards reports of alleged misconduct to the Commission on Judicial Conduct.

Comparison to 2003 Massachusetts Code

Rule 2.15 corresponds to Canon 3D.

Rule 2.16 - Cooperation with Disciplinary Authorities

Comparison to 2007 Model Code

Rule 2.16 and its Comment are adopted from the 2007 Model Code without modification.

Comparison to 2003 Massachusetts Code

Rule 2.16 and its Comment are new. Rule 2.16 requires judges to cooperate with disciplinary agencies and prohibits judges from retaliating against a person assisting or cooperating with an investigation. Comment [1] underscores that judicial cooperation in disciplinary processes protects the public and increases public confidence in the courts.

Canon 3 - A Judge Shall Conduct the Judge's Personal and Extrajudicial Activities to Minimize the Risk of Conflict with the Obligations of Judicial Office.

Comparison to 2007 Model Code

Canon 3 is adopted from the 2007 Model Code without modification.

Comparison to 2003 Massachusetts Code

Canon 3 corresponds to Canon 4 of the 2003 Code. The word "personal" is added to make the Canon more complete and accurate.

Rule 3.1 - Extrajudicial Activities in General

Comparison to 2007 Model Code

The Committee appointed a subcommittee to consider the many issues raised by Model Rules 3.1 and 3.7, which address a judge's participation in extrajudicial activities. After much study and lengthy debate, the subcommittee recommended, and the Committee adopted Rule 3.1 in a form that is largely consistent with Model Rule 3.1. Paragraphs (A) and (B) of Rule 3.1 are modified to replace "will" with "are reasonably likely to," as a judge should refrain from participation not only in activities that are certain to interfere with the proper performance of the judge's judicial duties or to lead to recurrent disqualification, but also in activities that are reasonably likely to do so. The Committee replaced "frequent" with "recurrent" in Paragraph (B) because the crucial consideration is whether participation is reasonably likely to lead to the judge's repeated disqualification due to the nature of the activity or the organization. Paragraph (E) is modified to expressly permit reasonable use of court resources for extrajudicial activities so long as the use is not prohibited by law and is incidental to activities that concern the law, the legal system, or the administration of justice.

The Comments are mostly, but not entirely, taken from the Comments in the 2007 Model Code. Model Comments [1] and [2], which encourage judges to engage in appropriate extrajudicial activities, have been combined. A new Comment [2] reiterates the importance of a judge avoiding activities that are reasonably likely to interfere with the obligations of judicial office. Comment [3], which explains that discriminatory conduct will violate the precepts of the Code even if it occurs outside the judge's official or judicial actions, is expanded to include examples consistent with Rule 2.3, and Comment [4] contains a new example to illustrate coercive conduct. Comment [5] is new.

Comparison to 2003 Massachusetts Code

Rule 3.1(A) – (D) corresponds to Canon 4A, but the factors bearing on the propriety of engaging in an extrajudicial activity are expanded to take into account the likelihood of recurrent disqualification, the potential for interference with judicial integrity and independence, and the need to avoid coercive conduct. Paragraph (E) is new. Comments [1] and [3] are adopted from

the Commentary to Canons 4A and 4B, as amended effective January 1, 2013, but Comment [3] is revised to expand the examples of expressions of bias or prejudice. Comments [2], [4], and [5] are new.

Rule 3.2 - Appearances before Governmental Bodies and Consultation with Government Officials

Comparison to 2007 Model Code

Rule 3.2 and its Comments are adopted from the 2007 Model Code with the following modifications. Paragraph (B) of the Model Code is not adopted. (Model Paragraph (C) is Paragraph (B) of the Code.) The Committee concluded that permitting a judge to voluntarily appear before a governmental body or consult with an executive or legislative body or official for the purpose of sharing information or insights that the judge gained in carrying out judicial duties was too vague a standard. The first sentence of Comment [1] is expanded to clarify that a judge may propose new legislation, comment on new legislation proposed by others, or propose or comment on amendments to existing law. Additionally, a new sentence is added to Comment [1] to give examples of topics related to the law, the legal system, and the administration of justice that a judge might properly address with governmental bodies and executive or legislative branch officials.

Comparison to 2003 Massachusetts Code

Rule 3.2 corresponds to Canon 4C(1) with the following modifications. "Voluntary" is added to clarify that judges must appear if formally summoned. The scope of the exception for a judge's pro se appearances is extended to situations where the judge is acting in a fiduciary capacity. The Comments are new. Comment [1] is intended to reverse the Commentary to Section 4B of the 2003 Code to the extent it prohibits judges from proposing new legislation or commenting on new legislation proposed by others. See CJE Opinion No. 2014-4. The list of examples in Comment [1] is intended to indicate the types of topics that a judge may appropriately address.

Rule 3.3 - Testifying as a Character Witness

Comparison to 2007 Model Code

Rule 3.3 is adopted from the 2007 Model Code without modification. Comment [1] is adopted without modification, except that "lends" replaces "abuses" to be consistent with Rule 1.3. Comments [2] – [4] are new, and provide exceptions permitting a judge to comment upon the character of an applicant or nominee for judicial or court-related office, to provide a character reference for a bar applicant based on the judge's personal knowledge, and to respond based on personal knowledge to an official inquiry in connection with a background investigation related to public employment or a security clearance.

Comparison to 2003 Massachusetts Code

Rule 3.3 corresponds to the last sentence of Canon 2B, and Comment [1] corresponds to the last paragraph of the Commentary to Canon 2B. Comments [2] – [4] are new.

Rule 3.4 - Appointments to Governmental Positions

Comparison to 2007 Model Code

Rule 3.4 is adopted from the 2007 Model Code without modification. Comment [1] is modified in several respects. When assessing the appropriateness of accepting an appointment, a judge should consider whether the subject matter involves the topics approved in Rule 3.2. Additionally, a judge should give due regard to the importance of respecting the separation of powers and of minimizing judicial disqualification. Comment [1] also references applicable restrictions on multiple office holding contained in the Massachusetts Constitution, and includes a final sentence stating that judges should regularly reexamine the propriety of continuing in any appointed position, as the composition and/or mission of any such committee, board, or commission may change. Comment [2] is modified to specify the United States, the Commonwealth of Massachusetts, and the judge's county, city, or town.

Comparison to 2003 Massachusetts Code

Rule 3.4 corresponds to the first sentence of Canon 4C(2). In conformity with new language used throughout the 2007 Model Code, the entities or positions to which a judge may accept appointment are described as those that "concern the law, the legal system, or the administration of justice." Comment [1], which reminds judges of the many factors that may be relevant to the appropriateness of accepting an appointment, corresponds to the Commentary to Canon 4C(2), but contains substantial additional detail intended to assist the judge in deciding whether to accept an appointment. Comment [2] is based on the second sentence of Canon 4C(2).

Rule 3.5 -Use of Nonpublic Information

Comparison to 2007 Model Code

Rule 3.5 is adopted from the 2007 Model Code without any substantial modification. "Knowingly" replaces "intentionally" because a judge should be prohibited from any known improper use of nonpublic information. The Comments are adopted without any substantial modifications.

Comparison to 2003 Massachusetts Code

Rule 3.5 corresponds to Canon 3B(11). The Comments are new. Comment [2] states that the rule's restrictions on a judge's use of nonpublic information are not intended to affect the judge's ability to act on information acquired in a judicial capacity where necessary to protect the health or safety of the judge or other persons.

Rule 3.6 -- Affiliation with Discriminatory Organizations

Comparison to 2007 Model Code

Rule 3.6 and its Comments are adopted from the 2007 Model Code with the following modifications. Paragraphs (A) and (B) delete references to the bases for discrimination because, as Comment [1] explains, a judge's membership in any organization that practices invidious discrimination creates a perception that the judge's impartiality is impaired. Comment [2] is modified to prohibit judges from joining organizations that practice invidious discrimination even if the organization's membership practices are constitutionally protected. Comment [2] also incorporates Model Comment [3], which requires a judge to resign immediately from an organization engaged in invidious discrimination. New Comment [3] explains that whether an organization engages in invidious discrimination is a threshold issue, but not the end of the inquiry, as even an organization that does not engage in invidious discrimination may engage in practices such that a judge's membership might erode public confidence in the impartiality of the judiciary.

The Committee carefully considered whether it remains necessary to include an exemption for national or state military service and concluded that it was prudent to do so. It appears in Comment [5], adopted from the Model Code.

Comparison to 2003 Massachusetts Code

Rule 3.6 corresponds to Canon 2C. Rule 3.6(A) expands the prohibition on invidious discrimination to encompass any organization that practices invidious discrimination. Rule 3.6(B) corresponds to the last paragraph of the Commentary to Canon 2C, as does Comment [1]. The portion of Comment [2] that tracks the Model Code comes from the first paragraph of the Commentary to Canon 2C. The remainder of Comment [2] and Comments [3] – [5] are new.

Rule 3.7 - Participation in Legal, Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

Rule 3.7 consumed a great deal of the Committee's time. Early on, the Committee appointed a subcommittee to make recommendations concerning Rules 3.1 and 3.7. This subcommittee, which met regularly for well over a year, focused most of its efforts on Rule 3.7. The full Committee also devoted substantial portions of numerous meetings to Rule 3.7. Because the 2007 Model Code views participation in extrajudicial activities far more permissively than the 2003 Code, the Committee painstakingly considered the policy rationales and suitability of each and every aspect of the rule. In general, the Committee agreed with the overall philosophy of the 2007 Model Code that judges should be encouraged to be actively engaged in the legal community and the community at large. On the other hand, because Massachusetts does not elect its judges, the Committee was concerned that some provisions in Model Rule 3.7 (notably those touching on fundraising) were overly permissive. After robust debate and consideration of numerous drafts, the Committee unanimously agreed to a proposal that members considered right for Massachusetts.

Rule 3.7 deviates substantially from both the 2007 Model Code and the 2003 Code. In an attempt to provide the greatest clarity, this section of the Report will address how Rule 3.7 differs from both the 2007 Model Code and the 2003 Code at the same time. Also to enhance clarity, it will discuss the comments to Rule 3.7 immediately following the discussion of the section of Rule 3.7 to which those comments pertain.

Rule 3.7 is derived from both Model Rule 3.7 and Canons 4A, 4B, and 4C of the 2003 Code. However, it contains numerous substantive differences from both sources. Rule 3.7 also is far more detailed than either the 2007 Model Code or the 2003 Code. This level of detail is a result of the Committee's desire to anticipate and answer many common questions concerning a judge's participation in extrajudicial activities, to respond to certain advisory opinions of the Committee on Judicial Ethics (e.g., 2014-2, 2014-1, 2013-1, and 2011-2), and to incorporate the substance of the Memorandum dated July 31, 2014, from the Supreme Judicial Court to all Massachusetts judges regarding participation in bar association events ("July 31, 2014 - SJC Memorandum").

The title of Rule 3.7 is modified from the 2007 Model Code to add the word "Legal," to reflect that judges frequently participate in legal organizations and activities. The title also reflects that Rule 3.7 addresses many topics that are spread throughout Canons 4A – 4C of the 2003 Code.

The introductory phrase to Paragraph (A), "subject to the requirements of Rule 3.1," is from Model Rule 3.7 and emphasizes that judge must always consider whether participation in any extrajudicial activity would violate Rule 3.1. The order and punctuation of the language that follows is changed from that used in the Model Code to make it clearer that Rule 3.7 applies to activities of or sponsored by or on behalf of (i) various types of organizations not conducted for profit, and (ii) governmental entities concerned with the law, the legal system, or the administration of justice.

Paragraphs (A)(1) and (A)(2) are new, and are intended to reassure judges that so long as Rule 3.1 is not an impediment, they may serve as members of the organizations described in Paragraph (A) and may plan and attend events and activities of those organizations. The 2003 Code does not contain analogous provisions, and left judges uncertain about their ability to join and generally participate in organizations. New Comment [1] gives some examples of the organizations covered by this rule, and reiterates the importance of the introductory phrase in Paragraph (A).

New Comment [1A] describes the analysis that a judge should perform in determining whether participation in an extrajudicial activity would violate Rule 3.1, and provides a non-exhaustive list of factors relevant to that analysis. Comment [1A] also clarifies that while a judge may participate only in activities of or sponsored by private non-profit organizations or governmental entities, a judge is not precluded from participating in the events of such organizations even if those events receive sponsorship or financial support from for-profit entities. However, the judge must avoid giving the impression that the organization, its members, or an event's sponsors are in a special position to influence the judge. Similarly, where

appropriate in light of the nature of the organization or event, the judge also must avoid giving the impression that the judge favors the organization's mission.

New Comment [1B] notes that the Code explicitly encourages activities where the judge's participation will promote public understanding of and confidence in an independent judiciary, foster collegiality among the bar and communication and cooperation between the judiciary and the bar, enhance the judge's ability to perform judicial or administrative duties, or otherwise further the goals of the courts. (A notable example is speaking to various not-for-profit groups about the administration of justice.) Comment [1B] also explains that the importance of judicial participation in such activities warrants some relaxation of concerns relating to the number and types of sponsors of an event.

Together, Comments [1A] and [1B] reverse the thrust of CJE Opinions 2011-1, 2014-1,⁶ and 2014-2, and incorporate the substance of the July 31, 2014 - SJC Memorandum. However, Rule 3.7 does not grant a judge unlimited discretion to participate in privately-sponsored events. As clearly indicated in Paragraph (A) and Comment [1A], a judge always must consider whether participation in an extrajudicial event is consistent with the principles contained in Rule 3.1.

Paragraph (A)(3) addresses the extent to which a judge may be involved in an organization's fundraising. Reversing the prohibition contained in Canon 4C(3)(b)(i) of the 2003 Code, Paragraph (A)(3) allows a judge to participate in internal discussions related to fundraising. However, the Committee chose not to go as far as the 2007 Model Code, which, without limitation, allows a judge to participate in planning fundraising and managing and investing an organization's funds. Paragraph (A)(3) allows a judge to participate in planning fundraising and managing and investing an organization's funds only if the organization is composed entirely or predominantly of judges and exists to further the educational or professional interests of judges. This provision corresponds to Canons 4C(3)(b)(i) and 4C(4) of the 2003 Code.

Paragraph (A)(4) reflects concern about the potentially coercive effect of allowing a judge to solicit contributions or members for an organization; it permits a judge to solicit contributions or members only from members of the judge's family or from judges over whom the judge does not exercise supervisory or appellate authority. This approach is consistent with the 2007 Model Code's treatment of solicitation of contributions, but is more restrictive than its treatment of solicitation of members. Paragraph (A)(4) continues the limitations on solicitation contained in Canon 4C(3)(b)(i) and associated Commentary, except that the Code allows the judge to solicit from members of the judge's family. The Committee also omitted the 2003 Code's distinction in Canon 4(3)(b)(iii) between membership solicitations that are essentially a fundraising mechanism and those that are not because it appeared to the Committee that most membership solicitations have at least an indirect fundraising goal.

Comment [2], derived from Comment [4] of the Model Code, clarifies that a judge may be identified by name and title on an organization's letterhead or other communications, including those that seek donations or the enrollment of members, so long as comparable

⁶ Insofar as it defines a fundraising event, CJE Opinion 2014-1 is again addressed below.

designations are used for other persons. This practice is prohibited in the 2003 Code by the Commentary to Canon 4C(3)(b). The Committee discussed this issue extensively. Committee members acknowledged that, in theory, it might be preferable for judges not to be so identified, but the ultimate conclusion was that requiring judges to monitor the communications of organizations and direct the content of their letterhead or websites would be burdensome and potentially unenforceable, and would interfere with the ability of judges to participate in leadership roles in organizations.

Paragraph (A)(5) is adopted without modification from Model Rule 3.7(A)(6). This provision corresponds to Canon 4C(3)(a)(i) and (ii) of the 2003 Code.

Paragraphs (A)(6) and (A)(6A) address when a judge may serve as a keynote or featured speaker at, receive an award or other comparable recognition at, be featured on the program of, or permit the judge's title to be used in connection with an organization's event. Where the event is not a fundraising event, Paragraph (A)(6) permits a judge to participate as described if the event is sponsored by any organization falling within the limitations of Paragraph (A). Paragraph (A)(6A), which reverses a prohibition in the Commentary to 4C(3)(b) in the 2003 Code, permits a judge to participate as described at a fundraising event if the organization is concerned with the law, the legal system, or the administration of justice, *and* the organization promotes the general interests of the judicial branch of government or the legal profession, including enhancing the diversity and professionalism of the bar. The Committee decided not to adopt a less restrictive provision in the 2007 Model Code, which requires only that the organization be concerned with the law, the legal system, or the administration of justice. The Committee reached that conclusion because of concerns about a judge lending prestige to fundraising events of organizations that advocate particular points of view or advance the interests of particular constituencies.

Comment [3] defines the term "fundraising event," which is undefined in the 2003 Code but has been construed by the Committee on Judicial Ethics. (As noted earlier in this Report, the term "fundraising event" is also defined in the Terminology Section of the Code.) Explicitly reversing the CJE's definition of fundraising event, see, e.g., CJE Opinion No. 2014-1, the Code defines a "fundraising event" as one for which the organizers' chief objectives include raising money to support the organization's activities beyond the event itself. Comment [3] explains that unless that is the case, an event is not a fundraising event even if the revenues ultimately exceed the costs of the event.

Comment [4] explains that the restricted class of organizations described in Paragraph (A)(6A) minimizes the likelihood that the judge's involvement in a fundraising event would reflect adversely upon the judge's independence, integrity, or impartiality. Comment [4] also gives examples of organizations that fall within and outside this restricted class.

Paragraph (A)(7) permits a judge to make recommendations to public or private fund-granting organizations or agencies on behalf of an organization concerned with the law, the legal system, or the administration of justice. Paragraph (A)(7) is consistent with both the Model Code and Canon 4C(3)(b)(ii) of the 2003 Code.

Comment [5] notes that a judge's permissible extrajudicial activities may involve writing or teaching. Comment [5] is derived in part from Canon 4B of the 2003 Code, but has been expanded to include teaching and writing on non-legal matters. There is no counterpart in the 2007 Model Code, although Comment [4] to Model Rule 1.3 notes the "special considerations" that may arise if a judge writes for a for-profit entity. Comment [5] includes a cross-reference to Rule 1.3, Comment [4].

Paragraph (B), permitting judges to encourage lawyers to provide pro bono services, is unchanged from the Model Code and has no counterpart in the 2003 Code. Comment [6] is the same as Model Comment [5] with the addition of a reference to encouraging reduced-fee legal services. Comment [6] explains that, among other things, judges may participate in events recognizing lawyers who have done pro bono work. There is again no counterpart in the 2003 Code.

Paragraph (C) has no counterpart in either the Model Code or the 2003 Code, but it is modeled on a provision included in the codes of several states. As new Comment [7] explains, Paragraph (C) is intended to allow a judge to participate in the normal daily activities of the judge's child, but is not intended to allow a judge to participate in fundraising activities for the primary or exclusive benefit of the child or to engage in direct solicitations on behalf of the child other than from members of the judge's family.

Rule 3.8 - Appointments to Fiduciary Positions

Comparison to 2007 Model Code

Rule 3.8 is adopted from the Model Code without substantial modification. Comment [1] is adopted without modification.

Comparison to 2003 Massachusetts Code

Rule 3.8 corresponds to Canon 4E and its Commentary.

Rule 3.9 -- Service as Arbitrator or Mediator

Comparison to 2007 Model Code

Rule 3.9 is adopted without modification. Comment [1] is modified to delete "arbitration," because Massachusetts judges do not participate in arbitration in the course of their judicial duties, and to add "conciliation," which Massachusetts judges sometimes perform in the course of their judicial duties. The word "assigned" is deleted because some judicial duties may be voluntarily assumed.

Comparison to 2003 Massachusetts Code

Rule 3.9 corresponds to Canon 4F. Comment [1] is new.

Rule 3.10 -- Practice of Law

Comparison to 2007 Model Code

Paragraph (A) of Rule 3.10 is adopted without substantial modification. Paragraph (B), which is designed to ensure that a judge may serve as an active judge advocate general in the military, is a new provision. Similar provisions are contained in the codes of several other states. Comments [1] and [2] are the same as Model Comment [1], but because that comment contains two independent ideas, the Committee separated them. New Comment [3] clarifies that a judge who performs legal services in the context of military service must confine that conduct to authorized activities.

Comparison to 2003 Massachusetts Code

Paragraph (A) and Comments [1] and [2] correspond to Canon 4G of the 2003 Code and its Commentary. However, while the 2003 Code permits a judge only to act for himself or herself in all legal matters, Rule 3.10(A) also permits a judge to give legal advice to and review documents for a member of the judge's family, as defined in the Terminology section of the Code. A judge may not serve as a family member's lawyer in any forum. Paragraph (B) is new.

Rule 3.11 - Financial, Business, or Remunerative Activities

Comparison to 2007 Model Code

Paragraphs (A) and (C) are adopted without modification from the 2007 Model Code. Paragraph (B) is modified to permit a judge to manage and participate in a business entity only if that entity is primarily engaged in investment of the financial resources of the judge or members of the judge's family. Model Comment [1] is deleted, as it gives guidance inapplicable to Paragraph (B) as modified. Model Comment [2] is adopted without modification (and renumbered as Comment [1]). Comment [2] is new.

Comparison to 2003 Massachusetts Code

Rule 3.11(B) and most of Rule 3.11(C) correspond to Canons 4D(1), 4D(2), and 4D(4) of the 2003 Code. Rule 3.11(C)(4) and Rule 3.11(A) are new. New Comment [2] is added to incorporate the line of advisory opinions of the Committee on Judicial Ethics that draw a distinction between the permitted management of an investment and the prohibited management of a business. See, e.g., CJE Opinion Nos. 2006-4, CJE 2004-6.

Rule 3.12-- Compensation for Extrajudicial Activities

Comparison to 2007 Model Code

Rule 3.12 is adopted without modification. Comment [1] is expanded to emphasize the judge's obligation to ensure that any compensation for extrajudicial activities does not raise any question of undue influence or undermine the judge's ability to act independently and with

integrity and impartiality. Comment [2] is new. Comment [2] permits a judge to be reasonably compensated for any teaching activity, broadly defined as lecturing in any educational program, but prohibits a judge from accepting an honorarium or speaking fee for a speaking engagement that is not a teaching activity. Comment [3] corresponds to Model Comment [2].

Comparison to 2003 Massachusetts Code

Rule 3.12 corresponds to Section 4H(1)(a) and its Commentary. The 2003 Code permitted a judge to accept an honorarium or speaking fee provided that the compensation was reasonable and commensurate with the task performed. Rule 3.12 permits a judge to accept reasonable compensation for a teaching activity, but prohibits a judge from otherwise accepting an honorarium or speaking fee. Comment [1] does not prohibit a judge from being paid more than a non-judge for a teaching activity, so long as the judge's compensation is commensurate with the task performed and the judge's qualifications to perform that task. Comment [2] explains that a teaching activity may include lecturing in educational programs sponsored by non-profit organizations and associations including but not limited to educational institutions, bar associations, professional associations, providers of continuing legal education, and governmental entities concerned with the law, the legal system, or the administration of justice.

Rule 3.13 - Acceptance and Reporting of Gifts, Loans, Benefits, or Other Things of Value

Rule 3.13, which concerns when a judge may accept gifts and other benefits, consumed more of the Committee's time than any other rule with the exception of Rule 3.7. Although Rule 3.13 is derived from both Model Rule 3.13 and Canon 4D(5), it contains numerous structural and substantive differences from both. Like the discussion of Rule 3.7, this section of the Report begins with a short discussion of the Committee's deliberative process before turning to the differences between Rule 3.13 and both the 2007 Model Code and 2003 Massachusetts Code. Those differences are discussed together, in an attempt to provide the greatest clarity. Also to enhance clarity, the comments to Rule 3.13 are discussed immediately following the discussion of the section of the rule to which a comment pertains.

Throughout its consideration of Rule 3.13, the Committee gave much consideration to the relationship between the Code of Judicial Conduct and the Massachusetts conflict of interest law, G. L. c. 268A and c. 268B. Chapter 268A §§ 3 and 23(b)(2) provide that conduct explicitly authorized by another statute or regulation may supersede certain provisions of the conflict of interest law. The rules of the Supreme Judicial Court are considered regulations for this purpose. Nevertheless, the Committee was of the opinion that, in general, the Code should conform to the provisions of c. 268A and c. 268B. Committee members were reluctant to give more leeway to judges to accept gifts, loans, bequests, benefits or other things of value ("gifts" or "benefits") than ordinarily is given to state employees. Following lengthy deliberations, the Committee ultimately concluded that, in a few instances, there were sound policy reasons to create exemptions from restrictions ordinarily imposed by c. 268A §§ 3 and 23(b)(2).

Additionally, because the Code regulates the personal, as well as the professional, conduct of judges, the Committee ultimately decided that it would greatly improve clarity to differentiate between gifts or benefits given for or because of a judge's official position or action

and those not given for or because of a judge's official position or action. This decision led the Committee to structure its Rule 3.13 differently from both the 2007 Model Code and the 2003 Massachusetts Code.

Turning to the specific sections of Rule 3.13, Paragraph (A) establishes the baseline proposition that a judge may not accept any gift or benefit if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity or impartiality. Comments [1] and [2] discuss the rationale for and structure of the Rule. Comment [1] explains that although the Code of Judicial Conduct is largely consistent with the state conflict of interest law, it differs in two important respects. First, because judges are always obligated to uphold and promote the independence, integrity, and impartiality of the judiciary, a judge may not accept any gift or benefit, even if available to other public employees and unrelated to the judge's official position or action, if acceptance would appear to a reasonable person to undermine the judge's independence, integrity, and impartiality. Second, there are some limited instances when this Rule permits a judge to accept a gift or benefit given for or because of the judge's official position or action that ordinarily would be prohibited by c. 268A §§ 3 and 23(b)(2), in order to allow judges to participate more fully in activities and organizations dedicated to the law, the legal system, and the administration of justice.

Comment [2] provides a road map to the Rule. After reiterating the constraints imposed by Paragraph (A), Comment [2] discusses the purposes of Paragraphs (B) – (E). Paragraphs (B) and (C) address instances when a gift or benefit is not given for or because of a judge's official position or action. Paragraph (B) identifies limited circumstances in which a gift may be accepted and not disclosed, while Paragraph (C) allows for additional instances when a judge may accept but must publicly report a gift. Paragraphs (D) and (E) address instances when a gift or benefit is given for or because of the judge's official position or action. Paragraph (D) identifies those circumstances when a gift may be accepted and not disclosed, while Paragraph (E) identifies instances when public reporting is required to foster public confidence in the judiciary. Comment [3] gives some examples of the types of gifts prohibited by Paragraph (A), including a gift from a lawyer or law firm appearing before the judge.

Paragraphs (B)(1) – (8) identify instances when a judge may accept and does not have to disclose a gift that is not given because of a judge's official position or action. As noted below, many of these instances have counterparts in the Model Code or the 2003 Massachusetts Code. Paragraph (B)(1) and Comment [4] address gifts or benefits not of substantial value as that term is defined by the State Ethics Commission. As of this writing, the State Ethics Commission defines "substantial value" as \$50 or more. 930 C.M.R. 5.05. The Committee's decision to use the same monetary threshold for reporting as the state conflict of interest law is one significant way in which the Committee elected to conform the Code to that law. The 2003 Code provided that non-exempt gifts and other benefits had to be disclosed only when the value exceeded \$350.

Paragraph (B)(2) differs from the Model Code by limiting the exception to "close personal friends" rather than "friends." This refinement is consistent with the proviso that the person providing the gift or benefit be within the limited category of persons whose appearance or interest in a pending or impending matter before the judge would require the judge's disqualification. Comment [5] is consistent with Model Comment [2] but provides additional

explanation. Paragraph (B)(2) corresponds to Canons 4D(5)(d) and (e) and associated Commentary in the 2003 Code.

Paragraph (B)(3) corresponds to the Model Code and Canon 4D(5)(c) of the 2003 Code. New Comment [6] provides additional guidance to judges seeking to assess when an invitation constitutes ordinary social hospitality. There is no counterpart to Comment [6] in the Model Code or the 2003 Code, although the 2003 Code does note in its Commentary to Canon 4D(5)(c) that judges should carefully weigh acceptance of hospitality from members of the bar to avoid any appearance of bias.

Paragraph (B)(4) is new. Paragraph (B)(4) recognizes that a judge's participation in non-law-related organizations and activities, such as those permitted under Rule 3.7, may lead to a judge's being offered a gift or benefit. A judge may accept such a gift or benefit so long as the same gift or benefit is made available on the same terms to similarly situated persons who are not judges. Comment [7] provides an example.

Paragraphs (B)(5) – (B)(7), which address benefits that are equally available to similarly situated persons who are not judges, are unchanged from the Model Code. Paragraph (B)(5) pertains to commercial or financial opportunities and benefits, such as special pricing and discounts; Paragraph (B)(6) pertains to prizes in random drawings and contests; and Paragraph (B)(7) pertains to benefits such as scholarships and fellowships. Comment [8] is substantively unchanged from Model Comment [3]. These provisions correspond to Canons 4D(5)(a), (f), and (g) of the 2003 Code, except that the 2003 Code does not contain a provision concerning rewards and prizes due to random drawings, contests, and similar events.

Paragraph (B)(8), which addresses benefits associated with the activities of a family member of a judge who resides in the judge's household that incidentally benefit the judge, is unchanged from the Model Code, and Comment [9] is substantively unchanged from Model Comment [4]. These provisions correspond to Canon 4D(5)(b) of the 2003 Code and its Commentary.

Paragraph (C) provides that a judge may accept but must disclose any other gift or benefit provided that it is consistent with Paragraph (A) and not given for or because of the judge's official position or action. Disclosure is necessary in order to make readily identifiable any potential for compromise of the judge's independence, integrity, and impartiality, and thereby maintain public confidence in the judiciary.

Comment [11], which has no counterpart in the Model Code or the 2003 Code, addresses whether and when a judge may accept a gift of free or discounted legal services pursuant to Paragraph (B) or accept and disclose such a gift pursuant to Paragraph (C). Comments [11A] and [11B] address instances when the Supreme Judicial Court may authorize, respectively, the Commonwealth to pay reasonable attorneys' fees or a judge to accept a gift of free or discounted legal services for representation before the Commission on Judicial Conduct. Because the explanation of Comment [11] is lengthy and involves consideration of Paragraphs (B)(2), (B)(5), and (C), it is located at the end of the discussion of Rule 3.13, along with the discussion of Comments [11A] and [11B].

Paragraphs (D)(1) – (4) identify instances when a judge may accept and not disclose a gift that is given for or because of a judge’s official position or action, provided that acceptance is not prohibited by Paragraph (A). Comment [12] explains that, in these instances, the risk of the appearance of a conflict of interest is so slight that public reporting is not required.

Paragraph (D)(1) addresses a gift or benefit incident to public recognition of the judge where the gift or benefit is not of substantial value (under \$50). Comment [13] observes that plaques and trophies are common examples of gifts judges may receive incident to public recognition, and notes that an item with an inscription honoring a judge may have little market value. Unlike the 2003 Code, Paragraph (D)(1) does not restrict the awarding organization to one whose members do not frequently represent the same side in litigation. This restriction is unnecessary because the judge would assess the propriety of accepting an award from any particular organization under the standards of Paragraph (A).

Paragraphs (D)(2) and (D)(3) reflect the Committee’s view that so long as acceptance is consistent with Paragraph (A), a judge should be able to accept and not disclose an invitation to attend without charge a luncheon, dinner, award ceremony or similar event of a bar association or other non-profit law-related organization held in Massachusetts, see Paragraph (D)(2), and to accept and not disclose discounted or free membership in a bar association or other non-profit law-related organization, see Paragraph (D)(3). The rationale, which is further explicated in Comment [14], is that the public interest will be served by encouraging judges to participate in activities that promote the administration of justice.

The same rationale led the Committee to exempt judges from the requirements of G. L. c. 268A and 930 CMR 5.08 to the extent that they make it necessary for the Chief Justice of the court on which the judge sits to certify that a legitimate public purpose will be served by the judge’s acceptance of a complimentary invitation to attend a luncheon, dinner, award ceremony or similar event of a bar association or other non-profit law-related organization held in Massachusetts. The Committee learned in the course of its work that the paperwork required by judges and their Chief Justices to obtain these certifications has resulted in a significant decline in judicial attendance at bar association events. Accordingly, the Committee concluded that the Code should eliminate this requirement by including an explicit determination that judicial participation in these activities presumptively serves a legitimate public purpose. By not requiring a judge to disclose these complimentary invitations, Paragraph (D)(2) differs from both the Model Code and Canon 4D(5)(a).

Paragraph (D)(4) and Comment [15] are consistent with Paragraph (B)(8) of the Model Code. There is no counterpart in the 2003 Code.

Paragraph (E) identifies two instances when a judge may accept but must disclose a gift or benefit given for or because of a judge’s official position or action. Paragraph (E)(1) applies when a judge accepts a gift or benefit of substantial value (\$50 or more) incident to public recognition of the judge. Paragraph (E)(2) addresses complimentary invitations to a judge’s spouse, domestic partner, or guest(s) to attend dinners, award ceremonies and similar events of bar association and other non-profit law-related organizations when the judge is being honored.

The requirement that a judge be honored in order to accept (with disclosure) a complimentary invitation differs from both the Model Code and the 2003 Code.

Returning to Comment [11], this Comment addresses whether and when a judge may accept a gift of free or discounted legal services. The Committee spent a great deal of time discussing this subject, particularly in light of CJE Opinion No. 2013-1.

The Committee agreed that, in general, the receipt by a judge of free or discounted legal services carries a significant risk that such a gift would appear to a reasonable person to be given because of the judge's official position or action and to undermine the judge's independence, integrity, or impartiality. The Committee also agreed, however, that there are certain circumstances where that risk is sufficiently abated that a judge may accept and not disclose the receipt of free or discounted legal fees pursuant to Paragraphs (B)(2) or (B)(5), or may accept but must disclose the receipt of free or discounted legal services pursuant to Paragraph (C).

Paragraph (B)(2), the close personal friend or relative exception, may apply to a gift of free or discounted legal fees. However, because a gift of legal services is always a gift from both the lawyer providing the services and that lawyer's firm, Paragraph (B)(2) applies only if the lawyer providing the services is a sole practitioner or works at a firm where all of the lawyers are relatives or close personal friends of the judge (e.g. a firm composed of two siblings who are both close personal friends of the judge).

Paragraph (B)(5) permits a judge to accept and not disclose commercial or financial opportunities and benefits, including special pricing and discounts, if the same opportunities and benefits are available on the same terms to similarly situated persons who are not judges. Paragraph (B)(5) is intended to address instances when a business offers discounted services as a business promotion in order, for example, to increase the volume of sales or expand into new markets, and does not apply to instances where discounted services are offered as a matter of professional courtesy. Pursuant to this provision, a law firm may offer lower rates to individual as opposed to corporate clients, or may offer a reduced rate for estate planning services to all persons over 65.

Paragraph (C) allows for additional instances not covered by Paragraph (B) when a judge may accept but must disclose free or discounted legal services. After extensive deliberations, the Committee agreed that a reasonable person would not believe that acceptance of free or discounted legal services would undermine the judge's independence, integrity, or impartiality when the same benefit is extended to non-judges in comparable circumstances, and the lawyer, the lawyer's firm, and their interests are not before the judge, have not come before the judge in the reasonably recent past, and are not likely to come before the judge in the reasonably near future. Examples of comparable circumstances include the following: a law firm's policy is to extend professional courtesies to all former partners, and the judge is a former partner; a law firm's policy is to extend professional courtesies to the relatives of partners, and the judge's sibling is a partner at the firm; a lawyer's policy is to offer discounted legal services both to lawyers facing proceedings before the Board of Bar Overseers and to judges facing proceedings before the Commission on Judicial Conduct. Even if a lawyer or law firm offers discounted representation for disciplinary matters as part of a marketing strategy, Paragraph (C) applies. In

that instance, as in other situations where Paragraph (C) may apply, disclosure is required to maintain public confidence in the judiciary by making readily identifiable any potential for compromise to the judge's independence, integrity, or impartiality.

The Committee spent considerable time discussing the issue of attorneys' fees for judges facing accusations of judicial misconduct before the Commission on Judicial Conduct. The Committee learned that most accusations made against judges are dismissed after preliminary review or after investigation reveals that no judicial misconduct occurred.⁷ However, even in such instances, judges may incur substantial attorneys' fees. For these reasons, the Code references two alternatives, in addition to those mentioned above, whereby a judge may obtain assistance with the costs of defending a judicial conduct complaint. Comment [11A] reminds judges that G. L. c. 211C § 7(15) provides that "[w]ith the approval of the Supreme Judicial Court, a judge shall be entitled to the payment of reasonable attorneys' fees by the Commonwealth in any case where the matter is dismissed by the commission at any stage after the filing of a sworn complaint or statement of charges, where the Supreme Judicial Court determines despite a Commission recommendation for discipline that no sanction is justified, or where the Supreme Judicial Court determines that justice will be served by the payment of such fees." In addition, Comment [11B] explains that a judge may accept a gift of free or discounted legal representation due to a matter before the Commission on Judicial Conduct upon a determination by the Supreme Judicial Court that such representation would serve the public interest.

A new Supreme Judicial Court Standing Order describes the procedures to be utilized by a judge seeking reasonable attorneys' fees from the Commonwealth pursuant to Comment [11A] or permission to accept a gift of free or discounted legal services pursuant to Comment [11B]. See SJC Standing Order Regarding Procedure for Judges Seeking a Determination Concerning Attorneys' Fees for Representation in a Matter Before the Commission on Judicial Conduct.

The Committee also recommends that the bench and bar continue to explore the availability of insurance to cover the cost of legal representation for judges in disciplinary matters.

⁷ The Commission on Judicial Conduct provided the following statistics for the past five years. In 2014, 79.4% of cases were dismissed outright (including those dismissed after preliminary review and after investigation), and 10.3% were dismissed with an expression of concern. In 2013, 94.8% of cases were dismissed outright (including those dismissed after preliminary review and after investigation), and 2.1% were dismissed with an expression of concern. In 2012, 93.1% of cases were dismissed outright (including those dismissed after preliminary review and after investigation), and 5.9% were dismissed with an expression of concern. In 2011, 93.8% of cases were dismissed outright (including those dismissed after preliminary review and after investigation), and 4.4% were dismissed with an expression of concern. In 2010, 94.4% of cases were dismissed outright (including those dismissed after preliminary review and after investigation), and 0.01% were dismissed with an expression of concern.

Rule 3.14 -- Reimbursement of Expenses and Waivers of Fees or Charges

Comparison to 2007 Model Code

Rule 3.14(A) is adopted without modification from the 2007 Model Code. Paragraph (B) is modified to preclude acceptance by the judge of reimbursement for the expenses of a spouse, domestic partner, or guest. New Paragraph (C) is intended to implement the requirements of G. L. c. 268A and 930 CMR 5.08 by ensuring that the Chief Justice of the court of which the judge sits makes an individualized determination that a legitimate public purpose is being served by a judge's acceptance of reimbursements or waivers of fees in connection with an invitation to a judge when the invitation is connected to the judge's official position or official action and the invitation is not one covered by Rule 3.13(D)(2).

Model Comment [1] is deleted and replaced with new Comment [1], which explains that this rule applies specifically to a judge's attendance at tuition-waived and expense-paid seminars that may be sponsored by law-related organizations or educational, civic, religious, fraternal, and charitable organizations, and is intended to apply to events not described in Rule 3.13(D)(2). Comment [2] is the same as Model Comment [2]. A modified version of Model Comment [3] sets out factors for the judge to consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity. The final sentence of Comment [3] clarifies that when an invitation is associated with any of the judge's non-law-related activities, the judge may accept reimbursement or a fee waiver only if the same invitation is offered to non-judges who are engaged in a similar manner. Comment [4] again distinguishes the requirements of this Rule from Rule 3.13(D)(2).

Comparison to 2003 Massachusetts Code

Rule 3.14 corresponds to Canon 4H of the 2003 Code, but Rule 3.14 has a wider focus. The Comments are new.

Rule 3.15 - Reporting Requirements

Comparison to 2007 Model Code

Rule 3.15 is modified substantially from the Model Code and is designed to implement specific reporting requirements imposed upon Massachusetts judges by the Supreme Judicial Court and the State Ethics Commission.

Comparison to 2003 Massachusetts Code

Rule 3.15 corresponds in part to Canon 4H(2) as well as Canon 4D(5)(h). Paragraph (A) requires a judge to complete annually the Public Report of Extra-Judicial Income in the form promulgated by the Supreme Judicial Court and the Statement of Financial Interests in the form promulgated by the State Ethics Commission. Paragraph (B) references the reporting requirements imposed by Rules 3.12 and 3.13.

Canon 4 - A Judge Shall Refrain From Political Activity Inconsistent With the Independence, Impartiality, or Integrity of the Judiciary

Comparison to 2007 Model Code

Because Massachusetts does not elect judges, many aspects of Canon 4 are not relevant to judges in the Commonwealth and have been modified or omitted entirely in the Code. The Code omits any reference in Canon 4 to candidates for judicial office but retains the reference to independence, impartiality and integrity as governing principles.

Comparison to 2003 Massachusetts Code

Canon 4 corresponds to Canon 5 of the 2003 Code. While Canon 5 requires that a judge refrain from political activity, Canon 4 requires a judge to refrain from political activity that is inconsistent with the independence, impartiality, or integrity of the judiciary.

Rule 4.1 - Political and Campaign Activities

Comparison to 2007 Model Code

The Committee rejected Model Rule 4.1 for the reasons stated above, except insofar as it is consistent with Canon 5A of the 2003 Code.

Comparison to 2003 Massachusetts Code

Rule 4.1 and its Comments correspond to Canon 5A of the 2003 Code and its Commentary.

Rule 4.2 - Activities of Judges Who Become Candidates for Nonjudicial Office

Comparison to 2007 Model Code

Rule 4.2 is a renumbered and revised version of Rule 4.5 of the Model Code. Model Rules 4.2 – 4.4 have been omitted, as they pertain to campaign activities of judges. Paragraph (A) of Rule 4.2 omits as inapplicable the references in the Model Rule to "nonjudicial elective office" and to permission under law for a judge to retain judicial office while becoming a candidate for elective office. Rule 4.2(B) adopts Model Rule 4.5(B). Comment [1] is derived from Comment [2] to Model Rule 4.5. Comment [2] is new.

Comparison to 2003 Massachusetts Code

Rule 4.2(A) and Comment [1] correspond to Canon 5A(2) of the 2003 Code. Rule 4.2(B) and Comment [2] are new.

November 19, 2015

APPENDIX A
Committee to Study the Massachusetts Code of Judicial Conduct

Honorable Cynthia J. Cohen (Chair)	Appeals Court
Honorable Kenneth V. Desmond, Jr.	Superior Court (served on the Boston Municipal Court until January 14, 2013)
Honorable Judith Fabricant	Superior Court (Chief Justice, as of December 1, 2014)
Honorable Linda S. Fidnick	Probate and Family Court
Lisa C. Goodheart, Esq.	Sugarman, Rogers, Barshak & Cohen, P.C.
Michael S. Greco, Esq.	K & L Gates LLP
Honorable Diana H. Horan	Housing Court
Honorable Angel Kelley Brown	Superior Court (served on the District Court until March 26, 2013)
Professor Renee M. Landers	Suffolk University Law School
Honorable Mark D. Mason	Superior Court (served on the District Court until January 2, 2015)
Professor Nancy J. Moore	Boston University School of Law
Honorable Karyn F. Scheier	Land Court (Chief Justice until January 2, 2014)
Honorable John F. Spinale	Juvenile Court
Barbara F. Berenson, Esq. (Staff)	Supreme Judicial Court

Former Members:

Honorable Peter W. Agnes, Jr.	Appeals Court (served until August 13, 2015, excluding February 16 – September 12, 2013)
Professor Luke Bierman	Northeastern University School of Law (Served until February 19, 2014)
Honorable James F. McHugh (retired)	Appeals Court (Served until June 10, 2013)

APPENDIX B

Correlation Tables

2003 Massachusetts Code to 2016 Massachusetts Code

<u>2003 Code</u>	<u>2016 Code</u>
Preamble	Preamble and Scope
Terminology	Terminology
Canon 1	Canon 1 (partial) and Rule 1.2 (partial)
Canon 2	Canon 1 (partial) and Rule 1.2 (partial)
Canon 2A	Rules 1.1 and 1.2 (partial)
Canon 2B	Rules 1.3, 2.4(B) and (C), and 3.3
Canon 2C	Rule 3.6(A)
Canon 3	Canon 2
Canon 3A	Rule 2.1
Adjudicative Responsibilities	
Canon 3B(1)	Rule 2.7
Canon 3B(2)	Rules 2.2, 2.4(A), and 2.5(A) (partial)
Canon 3B(3)	Rule 2.8(A)
Canon 3B(4)	Rule 2.8(B)
Canon 3B(5)	Rule 2.3(A) and (B)
Canon 3B(6)	Rule 2.3(C)
Canon 3B(7)	Rules 2.6(A) and 2.9(A)
Canon 3B(7)(a)	Rule 2.9(A)(1)
Canon 3B(7)(a)(i)	Rule 2.9(A)(1)(a)
Canon 3B(7)(a)(ii)	Rule 2.9(A)(1)(b)
Canon 3B(7)(c)	Rule 2.9(A)(3)
Canon 3B(7)(c)(i)	Rule 2.9(A)(3)(a)
Canon 3B(7)(c)(ii)	Rule 2.9(A)(3)(b) (partial)
Canon 3B(7)(c)(iii)	Rule 2.9(A)(3)(c)
Canon 3B(7)(c)(iv)	Rule 2.9(A)(3)(d)
Canon 3B(7)(d)	Rule 2.9(A)(4)
Canon 3B(7)(e)	Rule 2.9(A)(5)
Canon 3B(8)	Rule 2.5(B) and Comments [3] and [4]
Canon 3B(9)	Rule 2.10(A) and (C)

Canon 3B(9)(a)	Rule 2.10, Comment [2]
Canon 3B(9)(b)	Rule 2.10(D) (partial)
Canon 3B(9)(c)	Rule 2.10(F)
Canon 3B(9)(d)	Rule 2.10(E) (partial)
Canon 3B(9)(e)	Rule 2.10(D) (partial)
Canon 3B(10)	Rule 2.8(C)
Canon 3B(11)	Rule 3.5 and Comment [1]

Administrative Responsibilities

Canon 3C(1)	Rule 2.5(A) and (B)
Canon 3C(2)	Rule 2.12(A)
Canon 3C(3)	Rule 2.12(B)
Canon 3C(4)	Rule 2.13(A)(1) (partial), (2), and (3)

Disciplinary Responsibilities

Canon 3D(1)	Rule 2.15(A) and (C)
Canon 3D(2)	Rule 2.15(B) and (D)

Disqualification

Canon 3E(1)	Rule 2.11(A)
Canon 3E(1)(a)	Rule 2.11(A)(1) (partial)
Canon 3E(1)(b)	Rule 2.11(A)(5)(a) (partial)
Canon 3E(1)(c)	Rule 2.11(A)(5)(a) (partial)
Canon 3E(1)(d)	Rule 2.11(A)(2)(d) and (5)(c)
Canon 3E(1)(e)	Rule 2.11(A)(1) (partial)
Canon 3E(1)(f)	Rule 2.11(A)(2)(a) (partial), (2)(c) (partial), and (A)(3) (partial)
Canon 3E(1)(g)	Rule 2.11(A)(2)(c) (partial) and (A)(3) (partial)
Canon 3E(1)(h)	Rule 2.11(A)(2) (partial)

Remittal of Disqualification

Canon 3F(1)	Rule 2.11(C)
Canon 3F(2)	Rule 2.11(C) (partial)

Canon 4

Canon 3

Extrajudicial Activities in General

Canon 4A	Rule 3.1 (partial)
Canon 4A(1)	Rule 3.1(C) (partial)
Canon 4A(3)	Rule 3.1(A)

Avocational Activities

Canon 4B	Rule 3.7(A) (partial)
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Governmental, Civic and Charitable Activities

Canon 4C(1)	Rule 3.2(A) and (B)
Canon 4C(2)	Rule 3.4 and Comment [2]
Canon 4C(3)	Rule 3.7(A)(5)
Canon 4C(3)(a)(i)	Rule 3.7(A)(5)(b)
Canon 4C(3)(a)(ii)	Rule 3.7(A)(5)(a)
Canon 4C(3)(b)(i)	Rule 3.7(A)(3) (partial) and (4) (partial)
Canon 4C(3)(b)(ii)	Rule 3.7(A)(7) (partial)
Canon 4C(3)(b)(iii)	Rule 3.7(A)(4) (partial)
Canon 4C(3)(b)(iv)	Rule 3.1(C)

Financial Activities

Canon 4D(1)	Rule 3.11(C)(1) and (3)
Canon 4D(2)	Rule 3.11(A) and (B) (partial)
Canon 4D(4)	Rule 3.11(C)(2) and Comment [1]
Canon 4D(5)	Rule 3.13(A) (partial)
Canon 4D(5)(a)	Rule 3.13(B)(1), 3.13(D)(1) and (4),
3.13(E)(2)	
Canon 4D(5)(b)	Rule 3.13(B)(8)
Canon 4D(5)(c)	Rule 3.13(B)(3)
Canon 4D(5)(d)	Rule 3.13(B)(2) (partial)
Canon 4D(5)(e)	Rule 3.13(B)(2) (partial)
Canon 4D(5)(f)	Rule 3.13(B)(5)
Canon 4D(5)(g)	Rule 3.13(B)(7)
Canon 4D(5)(h)	Rule 3.13(B)(1), Rule 3.13 (C), Rule 3.13(E)

Fiduciary Activities

Canon 4E	Rule 3.8(A)
Canon 4E(1)	Rule 3.8(A) (partial)
Canon 4E(2)	Rule 3.8(B)
Canon 4E(3)	Rule 3.8(C)

Arbitration

Canon 4F	Rule 3.9
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Practice of Law

Canon 4G	Rule 3.10(A)
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Compensation, Reimbursement, and Reporting

Canon 4H(1)	Rules 3.12 and 3.14(A)
Canon 4H(1)(a)	Rule 3.12 (partial) and 3.14(A) (partial)
Canon 4H(1)(b)	Rule 3.14(B)
Canon 4H(2)	Rule 3.15(A) and (B)

Canon 5

Political Conduct in General

Canon 7A(1)

Canon 7(A)(1)(a)

Canon 7(A)(1)(b)

Canon 7(A)(1)(c)

Canon 7(A)(2)

Canon 7(A)(3)

Canon 6

Retired Judges

Canon 6A(1)

Canon 6A(2)

Effective Date for Compliance

Canon 4

Rule 4.1(A)

Rule 4.1(A)(1)

Rule 4.1(A)(2) and (3)

Rule 4.1(A)(4) and (5)

Rules 4.2(A) and 4.1(C)

Rule 4.1(B)

Application

Application(I)(B)

Application (I), Comment [1]

Application (II)

2016 Massachusetts Code to 2003 Massachusetts Code

<u>2016 Code</u>	<u>2003 Code</u>
Preamble	Preamble
Scope	Preamble
Terminology	Terminology
Application	Canon 6
Active Judges Application(I)(A)	New
Retired Judges Application(I)(B)	Canon 6A(1)
Time for Compliance Application(II)	Canon 6B
Canon 1	Canons 1 and 2
Compliance with the Law Rule 1.1	Canon 2A (partial)
Promoting Confidence in the Judiciary Rule 1.2	Canon 2 and 2A (partial)
Avoiding Abuse of the Prestige of Judicial Office Rule 1.3	Canon 2B (partial)
Canon 2	Canon 3
Giving Precedence to the Duties of Judicial Office Rule 2.1	Canon 3A
Impartiality and Fairness Rule 2.2	Canon 3B(2) (partial) and 3B(8) (partial)
Bias, Prejudice, and Harassment Rule 2.3(A)	Canon 3B(5) (partial)
Rule 2.3(B)	Canon 3B(5) (partial)
Rule 2.3(C)	Canon 3B(6)
Rule 2.3(D)	Canon 3B(6) Commentary

External Influences on Judicial Conduct

Rule 2.4(A)	Canon 3B(2) (partial)
Rule 2.4(B)	Canon 2B (partial)
Rule 2.4(C)	Canon 2B (partial)

Competence, Diligence, and Cooperation

Rule 2.5(A)	Canons 3B(8) (partial) and 3C(1) (partial)
Rule 2.5(B)	Canons 3B(8) (partial) and 3C(1) (partial)

Ensuring the Right to be Heard

Rule 2.6(A)	Canon 3B(7) (partial) and New
Rule 2.6(B)	New

Responsibility to Decide

Rule 2.7	Canon 3B(1)
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Decorum, Demeanor, and Communication with Jurors

Rule 2.8(A)	Canon 3B(3)
Rule 2.8(B)	Canon 3B(4)
Rule 2.8(C)	Canon 3B(10)

Ex-Parte Communications

Rule 2.9(A)	Canon 3B(7) (partial)
Rule 2.9(A)(1)	Canon 3B(7)(a)
Rule 2.9(A)(1)(a)	Canon 3B(7)(a)(i)
Rule 2.9(A)(1)(b)	Canon 3B(7)(a)(ii)
Rule 2.9(A)(2)	New
Rule 2.9(A)(3)	Canon 3B(7)(c)
Rule 2.9(A)(3)(a)	Canon 3B(7)(c)(i)
Rule 2.9(A)(3)(b)	Canon 3B(7)(c)(ii)
Rule 2.9(A)(3)(c)	Canon 3B(7)(c)(iii)
Rule 2.9(A)(3)(d)	Canon 3B(7)(c)(iv)
Rule 2.9(A)(4)	Canon 3B(7)(d)
Rule 2.9(A)(5)	Canon 3B(7)(e)
Rule 2.9(B)	Canon 3B(7)(c) Commentary
Rule 2.9(C)	Canon 3B(7)(c) Commentary
Rule 2.9(D)	Canon 3B(7) Commentary

Judicial Statements on Pending and Impending Cases

Rule 2.10(A)	Canon 3B(9) (partial)
Rule 2.10(B)	New
Rule 2.10(C)	Canon 3B(9) (partial)
Rule 2.10(D)	Canon 3B(9)(b) and (e)
Rule 2.10(E)	Canon 3B(9)(d)
Rule 2.10(F)	Canon 3B(9)(c)

Disqualification

Rule 2.11(A)	Canon 3E(1)
Rule 2.11(A)(1)	Canon 3E(1)(a) and (e)
Rule 2.11(A)(2)(a)	Canon 3E(1)(f) (partial), (g) (partial) and (h) (partial)
Rule 2.11(A)(2)(b)	Canon 3E(1)(f) (partial), (g) (partial) and (h) (partial)
Rule 2.11(A)(2)(c)	Canon 3E(1)(f) (partial), (g) (partial) and (h) (partial)
Rule 2.11(A)(2)(d)	Canon 3E(1)(d) (partial), (f) (partial), (g) (partial), and (h) (partial)
Rule 2.11(A)(3)	Canon 3E(1)(f) (partial), (g) (partial) and (h) (partial)
Rule 2.11(A)(4)	New
Rule 2.11(A)(5)(a)	Canon 3E(1)(b) and (c)
Rule 2.11(A)(5)(b)	Canon 3E Commentary
Rule 2.11(A)(5)(c)	Canon 3E(1)(d) (partial)
Rule 2.11(A)(5)(d)	New
Rule 2.11(B)	New
Rule 2.11(C)	Canon 3F(1) and (2)

Supervisory Duties

Rule 2.12(A)	Canon 3C(2)
Rule 2.12(B)	Canon 3C(3)

Administrative Appointments

Rule 2.13(A)(1)	Canon 3C(4) (partial)
Rule 2.13(A)(2)	Canon 3C(4) (partial)
Rule 2.13(A)(3)	Canon 3C(4) (partial)

Disability and Impairment

Rule 2.14	New
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Responding to Judicial and Lawyer Misconduct

Rule 2.15(A)	Canon 3D(1) (partial)
Rule 2.15(B)	Canon 3D(2) (partial)
Rule 2.15(C)	Canon 3D(1) (partial)
Rule 2.15(D)	Canon 3D(2) (partial)

Cooperation with Disciplinary Authorities

Rule 2.16(A)	New
Rule 2.16(B)	New

Canon 3

Canon 4

Extrajudicial Activities in General

Rule 3.1	Canon 4A
Rule 3.1(A)	Canon 4A(3)
Rule 3.1(B)	New
Rule 3.1(C)	Canon 4A(1)
Rule 3.1(D)	New
Rule 3.1(E)	New

Appearances before Governmental Bodies and Consultation with Government Officials

Rule 3.2(A)	Canon 4C(1) (partial)
Rule 3.2(B)	Canon 4C(1) (partial)

Testifying as a Character Witness

Rule 3.3	Canon 2B (partial)
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Appointments to Governmental Positions

Rule 3.4	Canon 4C(2) (partial)
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Use of Nonpublic Information

Rule 3.5	Canon 3B(11) (partial)
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Affiliation with Discriminatory Organizations

Rule 3.6(A)	Canon 2C (partial)
Rule 3.6(B)	Canon 2C Commentary

Participation in Legal, Educational, Religious, Charitable, Fraternal or Civic Organizations and Activities

Rule 3.7(A)	Canon 4C(3)
Rule 3.7(A)(1)	New
Rule 3.7(A)(2)	New
Rule 3.7(A)(3)	Canon 4C(3)(b)(i) (partial) and (4) (partial)
Rule 3.7(A)(4)	Canon 4C(3)(b)(i) (partial), (iii) (partial), and (4) (partial)
Rule 3.7(A)(5)	Canon 4C(3)(a)
Rule 3.7(A)(5)(a)	Canon 4C(3)(a)(ii) (partial)
Rule 3.7(A)(5)(b)	Canon 4C(3)(a)(i) (partial) and (ii) (partial)
Rule 3.7(A)(6)	New
Rule 3.7(A)(6A)	New
Rule 3.7(A)(7)	Canon 4C(3)(b)(ii)
Rule 3.7(B)	New
Rule 3.7(C)	New

Appointments to Fiduciary Positions

Rule 3.8(A)	Canon 4E
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Rule 3.8(B)	Canon 4E(2)
Rule 3.8(C)	Canon 4E(3)
Rule 3.8(D)	New

Service as Arbitrator or Mediator

Rule 3.9	Canon 4F
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Practice of Law

Rule 3.10	Canon 4G (partial)
Rule 3.10(A)	Canon 4G (partial)
Rule 3.10(B)	New

Financial, Business, or Remunerative Activities

Rule 3.11(A)	New
Rule 3.11(B)	Canon 4D(2)
Rule 3.11(C)	Canon 4D(1) (partial)
Rule 3.11(C)(1)	Canon 4D(1) (partial)
Rule 3.11(C)(2)	Canon 4D(4) (partial)
Rule 3.11(C)(3)	Canon 4D(1) (partial)
Rule 3.11(C)(4)	New

Compensation for Extrajudicial Activities

Rule 3.12	Canon 4H(1) and (1)(a)
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Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

Rule 3.13(A)	New
Rule 3.13(B)	New
Rule 3.13(B)(1)	Canon 4D(5)(h) (partial)
Rule 3.13(B)(2)	Canon 4D(5)(d) (partial), (e) (partial).
Rule 3.13(B)(3)	Canon 4D(5)(c)
Rule 3.13(B)(4)	New
Rule 3.13(B)(5)	Canon 4D(5)(f)
Rule 3.13(B)(6)	New
Rule 3.13(B)(7)	Canon 4D(5)(g)
Rule 3.13(B)(8)	Canon 4D(5)(b) (partial)
Rule 3.13(C)	Canon 4D(5)(h) (partial)
Rule 3.13(D)	New
Rule 3.13(D)(1)	Canon 4D(5)(a)
Rule 3.13(D)(2)	New
Rule 3.13(D)(3)	New
Rule 3.13(D)(4)	Canon 4D(5)(a)
Rule 3.13(E)	New
Rule 3.13(E)(1)	Canon 4D(5)(h)
Rule 3.13(E)(2)	Canon 4D(5)(a)

Reimbursement of Expenses and Waivers of Fees or Changes

Rule 3.14(A)	Canon 4H(1) and (1)(a)
Rule 3.14(B)	Canon 4H(1)(b) (partial)
Rule 3.14(C)	Canon 4H(2) (partial)

Reporting Requirements

Rule 3.15(A)	Canon 4H(2) (partial)
Rule 3.15(B)	Canon 4H(2) (partial)

Canon 4

Canon 5

Political and Campaign Activities

Rule 4.1(A)	Canon 5A(1)
Rule 4.1(A)(1)	Canon 5A(1)(a)
Rule 4.1(A)(2)	Canon 5A(1)(b) (partial)
Rule 4.1(A)(3)	Canon 5A(1)(b) (partial)
Rule 4.1(A)(4)	Canon 5A(1)(c) (partial)
Rule 4.1(A)(5)	Canon 5A(1)(c) (partial)
Rule 4.1(B)	Canon 5A(3)
Rule 4.1(C)	Canon 5A(2) (partial)

Activities of Judges who Become Candidates for Nonjudicial Office

Rule 4.2(A)	Canon 5A(2) (partial)
Rule 4.2(B)	New