SUPREME JUDICIAL COURT

Boston, Massachusetts 02108

NOTICE OF APPROVAL

Notice is hereby given that the Supreme Judicial Court has approved and promulgated rules as further indicated below.

RALPH D. GANTS
Chief Justice

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1. Court submitting Rules for Approval:

   Supreme Judicial Court Rules Committee

2. Date Rules Submitted for Approval:

   February 6, 2015

3. Date:

   February 25, 2015

4. Rule or Rules, or Amendments Thereto, Approved and Promulgated:

   Approval of Rules of the Trial Court Committee on Professional Responsibility for Clerks of the Courts, as attached. Repeal of current Rules of the Committee on Professional Responsibility for Clerks of the Courts.

5. Effective Date:

   March 23, 2015

(The original of this notice is to be filed in the office of the Clerk of the Supreme Judicial Court for the Commonwealth, and a copy to be sent by the Clerk to the court which requested approval of the rules.)

Rules of the Trial Court Committee on Professional Responsibility for Clerks of the Courts

Scope and Title

These rules govern the procedures of the Trial Court Committee on Professional Responsibility for Clerks of the Courts (hereinafter Committee) in the exercise of its jurisdiction pursuant to Supreme Judicial Court Rule 3:13. They may be known and cited as the Rules of the Committee on Professional Responsibility for Clerks of the Courts.

Rule 1. Definitions

A. In these rules, unless otherwise provided, the term Chief Justice shall mean the Chief Justice of a Department of the Trial Court.

B. Clerk means anyone serving in the position of Clerk, Clerk-Magistrate, Register or Recorder in the Trial Court, whether elected or appointed and whether serving in a permanent or temporary capacity.

C. Committee means the Trial Court Committee on Professional Responsibility for Clerks of the Courts.

D. Complaint means a written statement, or an oral statement memorialized in writing, that alleges misconduct of a Clerk, or a mental or physical disability of a Clerk.

E. Hearing Officer means a person appointed by the Committee for the purpose of presiding over a hearing.

F. Special Counsel means an attorney appointed by the Committee to conduct investigations, to make recommendations to the Committee, and to present evidence at a hearing, with respect to charges against a Clerk, and to take any other action related thereto which the Committee may direct.

Rule 2. Composition of the Committee

A. The Chief Justice of the Trial Court and the Court Administrator shall be permanent members of the Committee, and the Chief Justice of the Trial Court shall be the Chair. A third member of the Committee shall be selected for each proceeding. The third member shall be chosen by the association of Clerks or Registers to which the Clerk who is the subject of the proceeding may belong.

B. A member of the Committee shall not participate in any proceeding in which the impartiality of that member might reasonably be questioned. Recusal and disqualification pursuant to this section shall be by a member him- or herself or at the request of the two other members. In case of recusal or disqualification of a member, an alternate member shall be appointed by the remaining two members, except that if the recused or disqualified member was appointed by an association of Clerks or Registers, the association shall select the alternate member. If the Chief Justice of the Trial Court and the Court

Administrator are both recused or disqualified, the Chief Justice of the Supreme Judicial Court shall select their replacements.

C. An affirmative vote of at least two members of the Committee is required to affirm or modify discipline imposed by a Chief Justice. An affirmative vote of at least two members also is required to dismiss, informally resolve or otherwise dispose of a complaint, to issue formal charges, impose discipline or make recommendations to the Supreme Judicial Court regarding removal of a Clerk. A meeting may be held and a vote may be taken by telephone unless any member objects.

Rule 3. Jurisdiction of the Committee

Complaints against a Clerk shall be referred to a Chief Justice for investigation and resolution. As provided in S.J.C. Rule 3:13, the Committee is authorized:

A. upon appeal by a Clerk, to review discipline imposed by a Chief Justice that includes a suspension without pay of any length or a recommendation that a Clerk be removed;

B. upon referral of a Chief Justice, to address a complaint against a Clerk in the first instance. Such referral by the Chief Justice shall be made in accordance with guidelines established by the Chief Justice of the Trial Court and the Court Administrator in consultation with representatives of the Clerks. Upon such referral, the Committee may receive information, conduct investigations and hearings, dismiss, informally resolve, issue formal charges, impose discipline except for removal, or otherwise dispose of complaints, and make recommendations to the Supreme Judicial Court concerning removal of a Clerk.

C. upon referral from a Chief Justice, to receive information, investigate, and take appropriate action relative to any mental or physical disability of a Clerk.

Rule 4. Confidentiality

All Committee proceedings prior to the filing of formal charges shall be confidential. Prior to formal charges, records, files and reports of the Committee shall be confidential, and no disclosure shall be made except as follows: (1) upon written waiver of the Clerk; (2) upon inquiry by a state or federal agency conducting an investigation on behalf of the Commonwealth or the United States government after seven days' notice to the Clerk in writing; or (3) upon inquiry by the Supreme Judicial Court or on appeal by the Clerk to the Supreme Judicial Court.

The Committee may issue public statements and release general information concerning the nature of its jurisdiction and the procedure for filing complaints. In cases where the subject matter has become public, the Committee may issue public statements as it deems appropriate to confirm the pendency of the investigation, clarify procedural aspects and correct misinformation. The Committee may issue public statements and release information concerning its proceedings and reports at the direction of the Supreme Judicial Court and may provide whatever records, files, reports or other information is necessary in an appeal of a decision by the Clerk to the Supreme Judicial Court. If, in the

course of its proceedings, the Committee becomes aware of credible evidence that any person has committed a crime, the Committee shall report such evidence to the appropriate law enforcement agency.

Formal charges become public ten days after issuance or upon the filing of the Clerk's response, whichever occurs first. In the case of formal proceedings, only the formal charges, the answer thereto, the evidentiary hearings, the report of the hearing officer, and the final action by the Committee shall become public.

Rule 5. General Procedures of the Committee

A. Upon request for good cause, or on its own motion, the Committee may extend any time limit set forth herein.

B. At any stage of the process, the Committee may place a Clerk on paid administrative leave, or with the consent of the Clerk, specially assign the Clerk pending the final disposition of a complaint. The Committee may specially assign a Clerk pending the final disposition of a complaint without the Clerk's consent only with the approval of the Supreme Judicial Court.

C. At any stage of the process, the Committee may consult with any appropriate judicial or administrative officer. At any stage of the process, the Committee and the Clerk may reach a negotiated settlement of the case that may include any terms and conditions agreeable to both parties, including discipline up to and including resignation. The Committee shall promptly notify the appropriate Chief Justice of any settlement or informal resolution.

D. At any stage of the process, the Committee may appoint Special Counsel.

E. At any time prior to the issuance of formal charges, the Committee may conduct interviews, whether or not under oath and whether or not such statements are memorialized.

F. In the event that the Clerk resigns after formal charges have been issued, the Committee may, upon a finding that the integrity of the judicial branch and the interest of the administration of justice would be served, continue its investigation in order to make a report to the Supreme Judicial Court.

G. The Committee shall keep a record of all proceedings concerning a Clerk. The Committee's findings, conclusions and recommendations shall be entered in the Committee's record.

Rule 6. Matters referred to the Committee in the first instance

When a Chief Justice refers a matter directly to the Committee, the Committee may assign an investigator to undertake a discreet and confidential investigation and evaluation. The Committee shall notify the Clerk involved when it receives a referral from a Chief Justice. The notice shall include a summary of the allegations. If the investigator determines that the matter referred by the Chief Justice does not set forth allegations that, if true, would constitute misconduct or disability, the investigator shall recommend that the complaint be dismissed. If the Committee accepts the investigator's

recommendation, the matter shall be dismissed and the appropriate Chief Justice and the Clerk shall be notified.

If the investigator, after an initial investigation and evaluation, determines that the matter referred by the Chief Justice sets forth facts that, if true, would constitute misconduct and recommends to the Committee that it proceed further, the Committee shall decide whether there is adequate reason to proceed to the preparation of formal charges. If the Committee decides that further investigation is necessary before making this determination, the Committee may continue the investigation. If the Committee finds that there is sufficient cause to proceed, the Committee shall issue formal charges against the Clerk pursuant to Rule 8. If the Committee finds that there is insufficient cause to proceed, the matter shall be dismissed and the Chief Justice and the Clerk shall be notified.

Rule 7. Matters on appeal from a decision of a Chief Justice

A Clerk may appeal to the Committee from a disciplinary sanction imposed by a Chief Justice that includes a recommendation of removal or a suspension without pay of any length by submitting a written request for appeal to the Committee within ten days of receipt of the decision of the Chief Justice. An appeal shall stay any suspension imposed by the Chief Justice unless the Committee determines otherwise. A Chief Justice may place a Clerk on paid administrative leave or, with the consent of the Clerk, specially assign the Clerk pending the final disposition of a complaint. A Chief Justice may specially assign a Clerk pending the final disposition of a complaint without the Clerk's consent only with the approval of the Supreme Judicial Court

Any discipline imposed by the Committee that does not include a suspension without pay or a recommendation for removal shall be final with no further appeal.

A. Suspension without pay of fewer than three days

If the Chief Justice imposes a suspension without pay of fewer than three days, and the Clerk appeals, the Chief Justice shall provide the Committee with written findings and conclusions that support the discipline, and the Clerk may submit written objections to the findings and conclusions according to a schedule established by the Committee. The appeal shall consist of a hearing before the Committee at which the Clerk and the Chief Justice or their representatives may appear. The Clerk and the Chief Justice may also submit memoranda in support of their positions. After hearing and review of the memoranda, the Committee may affirm, increase or decrease the suspension. If the Committee affirms the suspension or imposes any suspension without pay that is fewer than three days, the Clerk may appeal the Committee's decision in accordance with the provisions of Rule 9. If the Committee decides to consider imposing a suspension without pay of three days or more, the Committee shall issue formal charges in accordance with Rule 8A.

B. Suspension without pay of three days or more

If the Chief Justice imposes a suspension without pay of three days or more and the Clerk appeals, the appeal shall constitute a formal proceeding before the Committee, commencing with the issuance of formal charges by the Committee in accordance with Rule 8A.

Rule 8. Formal Proceedings

A. Formal charges

Formal charges issued under Rules 6 or 7 shall be in the form of a detailed, signed complaint that includes a clear statement of the allegations against the Clerk and the alleged facts forming their basis. Where more than one act of misconduct is alleged, each act should be clearly set forth in the complaint. The Committee shall promptly serve the Clerk with a copy of the formal charges, and the Clerk shall have ten days to respond. The appropriate Chief Justice shall be notified of the filing of formal charges. After issuance and before a hearing commences, formal charges may be substantively amended, provided that the Clerk is given notice of the amended charges, twenty one days to respond, and adequate time before the hearing to prepare a defense regarding the amended charges.

Upon the filing of the Clerk's written response to the formal charges or the expiration of the time for its filing, the formal charges shall become public. The Committee shall designate both a Special Counsel to prepare and present the case and a Hearing Officer to take evidence and report thereon to the Committee. Special Counsel who has been designated at an earlier stage may continue to serve in that capacity.

B. Discovery

1. Within ten days after service of the formal charges, the Committee shall make available for inspection to the Clerk all books, papers, records, documents, electronic recordings, and other tangible things within the custody and control of the Committee relevant to any issues in the case, and any written or electronically recorded statement within the custody and control of the Committee that is relevant to the issues in the case.

2. Within thirty days after service of the formal charges, the Special Counsel and the Clerk

a. May, upon written request to the other party prior to the hearing:

(i) Inspect and copy within a reasonable period of time all books, papers, records, documents, electronic recordings, and other tangible things which the other party intends to present at a hearing.

(ii) Obtain the names and addresses of witnesses to the extent known to a party in the proceeding, including an identification of those intended to be called to testify at the hearing.

(iii) Inspect and copy within a reasonable period of time any written or electronically recorded statements made by witnesses who may be called to give testimony at the hearing.

b. May, upon such terms and conditions as the Hearing Officer may impose:

(i) Depose within or without the Commonwealth persons who may have relevant testimony. The complete record of the testimony so taken shall be made and preserved by stenographic record or electronic recording. The written application to the Hearing Officer shall state the name and post office address of the witness, the subject matter concerning which the witness is expected to testify, the time and place of taking the deposition, and the reason why such deposition should be taken. Unless notice is waived, no deposition shall be taken except after at least seven days' notice to the other parties. Unless otherwise directed by the Committee, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter of the proceedings. Parties shall have the right of cross-examination and objection. In making objections to questions or evidence, the grounds relied upon shall be stated briefly, but no recording filed in the proceeding shall include argument or debate. Objections to questions or evidence shall be noted in the record, but the stenographer or recorder shall not have the power to decide on the competency, materiality or relevancy of evidence. Objections to the competency, relevancy, or materiality of the testimony are not waived by failure to make them before or during the taking of the deposition.

(ii) Subpoena relevant witnesses and documents to the hearing.

(iii) Seek any limitation or protection for any discovery permitted by this Rule.

3. In granting discovery the Hearing Officer shall protect against disclosure the mental impressions, conclusions, opinions, and legal theories of an attorney or other representative of a witness or party in these proceedings.

4. Other issues relative to discovery that are not covered in these Rules shall be addressed or resolved by the Hearing Officer in accordance with the comparable provisions of the Massachusetts Rules of Civil Procedure.

C. Hearing

1. The Committee shall schedule a hearing to take place in not fewer than thirty nor more than sixty days from the date a written answer is due to the Committee. The Hearing Officer shall immediately notify the Clerk and all counsel of the time and place for the hearing. The Special Counsel and the Clerk may jointly agree to delay the commencement of the hearing. Also, at the request of Special Counsel or the Clerk, the hearing officer may extend the date for the hearing.

2. The hearing shall be conducted by a Hearing Officer chosen by the Committee. The hearing shall be open to the public and recorded. The rules of evidence applicable to civil proceedings in Massachusetts shall apply, and all testimony shall be under oath. Both the Clerk and Special Counsel shall be permitted to introduce evidence and produce and cross-examine witnesses. The Clerk and Special Counsel shall be entitled to compel the attendance and testimony of witnesses, and the production of papers, books, accounts, documents, electronic recordings, other tangible things, and any other relevant evidence or testimony. Formal charges may be amended after the commencement of a hearing only if the amendment is technical in nature and if the Clerk and counsel are given adequate time to prepare a response.

D. Decision of the Committee

1. Within thirty days after the conclusion of the hearing, the Hearing Officer shall submit to the Committee, Special Counsel, and the Clerk a report which shall contain findings, the recording of testimony, all exhibits, and a recommendation on discipline.

2. Unless there is good cause for delay, within sixty days of receipt of the Hearing Officer's report, the Committee shall render a decision on discipline based upon the report of the Hearing Officer. In its discretion, the Committee may allow the Clerk and Special Counsel to submit written objections to the Hearing Officer's findings and recommendation on discipline. The Clerk and Special Counsel may file a request to be heard by the Committee and if either participant so requests, the Committee shall schedule a hearing and give notice to both as to the time and place at least seven days in advance of the hearing. The hearing shall be public but the deliberations of the Committee shall be conducted in executive session. In rendering its decision, the Committee is not required to accept the recommended discipline of the Hearing Officer. The Committee's decision shall contain its reasons, and it may adopt all or part of the findings and conclusions of the Hearing Officer as support for its decision. The Committee shall immediately provide a copy of its decision to the Clerk and to Special Counsel.

3. The Committee shall not impose any discipline unless the charges have been proven by clear and convincing evidence in the record of the hearing.

Rule 9. Appeal to the Supreme Judicial Court

The Clerk may appeal any recommendation for removal or suspension without pay imposed by the Committee to the Supreme Judicial Court within ten days of receiving the decision of the Committee. An appeal shall stay any suspension imposed by the Committee unless the Supreme Judicial Court determines otherwise. If a suspension is fewer than three days, the appeal shall be requested in a writing directed to the Chief Justice of the Supreme Judicial Court and will consist of a review of the record of the Committee's proceedings by the Justices of the Supreme Judicial Court in their administrative capacity. If a suspension is three or more days, the matter shall be filed in the Office of the Clerk for the Commonwealth and proceed in such manner as the Court may direct. The decision of the Justices shall be public. The Clerk may not appeal to the Supreme Judicial Court from any discipline imposed by the Committee that does not include a suspension without pay or a recommendation for removal.

Rule 10. Cases involving allegations of mental or physical disability

In considering allegations that a Clerk is unable adequately to perform as a Clerk because of mental or physical disability, the Committee shall, insofar as applicable and except as provided below, follow procedures established by these Rules.

A. If in a matter relating to an allegation of mental or physical disability the Clerk is not represented by counsel, the Committee may appoint an attorney to represent the Clerk at public expense.

B. If a complaint or statement of allegations involves the mental or physical health of a Clerk, and the Clerk denies the alleged disability, the Committee may upon good cause shown require the examination of the Clerk by qualified medical experts selected by the Committee.

C. If a complaint or statement of allegations involves the mental or physical health of a Clerk, the Committee shall investigate whether a Clerk's mental or physical condition may, even with a reasonable accommodation, adversely affect the Clerk's ability to serve as Clerk.