

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

1. Court Submitting Rules for Approval:

Commission on Judicial Conduct

2. Date Rules Submitted for Approval:

May 14, 2019

3. Date Approved & Promulgated by the Supreme Judicial Court:

August 29, 2019

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

Amendment to Rule 12, Rules of the Commission on Judicial Conduct, as attached hereto.

5. Effective Date:

October 1, 2019

(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.)



The Commonwealth of Massachusetts
COMMISSION ON JUDICIAL CONDUCT

11 BEACON STREET SUITE 525
BOSTON, MASSACHUSETTS 02108
(617) 725-8050
FAX (617) 243-9938
WWW.MASS.GOV/CJC

May 14, 2019

The Honorable Frank M. Gaziano
Justice of the Supreme Judicial Court
Chair of the Supreme Judicial Court Rules Committee
John Adams Courthouse
One Pemberton Square, Suite 2200
Boston, MA 02108

Re: Amendments to the Rules of the Commission on Judicial Conduct

Dear Justice Gaziano:

Pursuant to M.G.L. c. 211C, sec. 3(1), the Commission on Judicial Conduct respectfully submits the enclosed revised proposed amendments to Rule 12 of the Rules of the Commission on Judicial Conduct for the Court's consideration.

The revised proposed amendments include a standard of proof which must be met before the CJC is required to appoint counsel for a judge who is subject to a complaint alleging judicial disability. The revised proposed amendments also seek to clarify the manner in which counsel is selected for a judge facing a disability complaint and to clarify that a denial of a "current or past" disability triggers the requirement that a judge waive medical privilege and submit to an Independent Medical Examination.

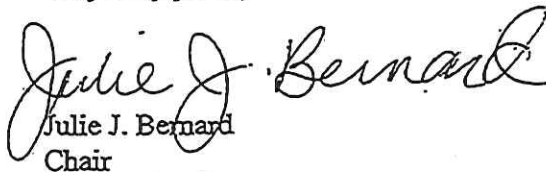
The Commission invited public comments on these proposed amendments by issuing a press release on September 17, 2018 (enclosed). This press release was distributed to major Massachusetts newspapers including the *Boston Globe*, the *Boston Herald*, and *Massachusetts Lawyers Weekly*. This press release was also distributed to the Chief Justice of each court department. The Commission also posted a public notice inviting comments in the September 17, 2018 edition of *Massachusetts Lawyers Weekly*. The Commission's press release and public notice both directed readers to a detailed description of the proposed amendments and provided readers with instructions regarding how to make comments on the proposed amendments.

The Commission received comments regarding the proposed amendments from Dr. Nataly Minkina, M.D. and the Massachusetts Judges Conference (both comments enclosed).

After reviewing the comments submitted and the Commission's enabling statute (M.G.L. c. 211C), and after consultation with the Rules Committee of the Supreme Judicial Court, the Commission has revised its proposed amendments to CJC Rule 12 (revised amendments enclosed).

The Commission on Judicial Conduct respectfully recommends that the Court adopt these revised proposed amendments. If you have any questions or comments, please feel free to contact Executive Director Howard V. Neff, III.

Very truly yours,


Julie J. Bernard
Chair

Enclosures

cc: Ms. Christine P. Burak, Esq., Legal Counsel to the Chief Justice of the SJC (with enclosure)
Mr. Howard V. Neff, III, Esq. (with enclosure)

Revised Proposed Amendments to the Rules of the Commission on Judicial Conduct

RULE 12: CASES INVOLVING ALLEGATIONS OF MENTAL OR PHYSICAL DISABILITY

In considering allegations of mental or physical disability, the Commission shall, insofar as applicable and except as provided below pursuant to Chapter 211C, section 10, follow procedures established by these rules.

- A. If, in a matter relating to mental or physical disability, the Commission finds facts supporting sufficient cause to believe that a judge has a mental or physical disability that may be affecting the judge's ability to perform judicial duties and the judge is not represented by counsel, the Commission shall request that the Supreme Judicial Court appoint an attorney to represent the judge. Where the Commission has not made a request for counsel, at any stage of proceedings on a complaint alleging judicial disability, a judge may request that the Commission seek appointment of counsel to represent the judge and the Commission shall then request that the Court appoint an attorney to represent the judge. Any attorney appointed to represent the judge shall be compensated by the Commission according to the guidelines and rates set forth for special masters by Superior Court Rule 49.
- B. If a sworn complaint or statement of allegations involves the current or past mental or physical health of a judge, a denial of the alleged disability or condition shall constitute a waiver of medical privilege and the judge shall be required to produce any and all medical records relevant to the question of whether the judge has a mental or physical disability that may be affecting the judge's ability to perform judicial duties.
- C. In the event of a waiver of medical privilege, the judge shall be deemed to have consented to an examination by a qualified medical practitioner designated by the Commission. The report of the medical practitioner shall be furnished to the Commission and the judge. The judge's attorney and/or his or her representative may be present for any such examination.