

THE COMMONWEALTH OF MASSACHUSETTS

**Commission on Judicial Conduct
Annual Report
2001**

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TABLE OF CONTENTS

I. INTRODUCTION	1
II. THE MASSACHUSETTS COMMISSION ON JUDICIAL CONDUCT	1
1. The Commission's Jurisdiction.....	1
2. The Complaint Process	2
3. Confidentiality.....	6
III. SUMMARY OF COMMISSION ACTIVITY IN 2001.....	7
IV. CASE SUMMARIES	13
V. GENERAL INFORMATION ABOUT THE COMMISSION	15
1. Membership	15
2. Budget	15
3. Staff	16
4. Meetings.....	16
VI. APPENDICES	17
A. Massachusetts General Laws Chapter 211C	19
B. Rules of the Commission on Judicial Conduct	27
C. Code of Judicial Conduct.....	37

D. Flow Chart of Commission Procedures	45
E. Complaint Form	49

I. INTRODUCTION

The role of judicial conduct agencies throughout the country is to help enforce the standards of judicial conduct. These agencies, established by the fifty states and the District of Columbia to oversee judges' conduct both on and off the bench, play a vital role in maintaining public confidence in the judiciary and preserving the integrity of the judicial process. As a forum for citizens with complaints against judges, judicial conduct agencies help maintain the balance between judicial independence and public accountability.

They also serve to improve and strengthen the judiciary by creating a greater awareness of proper judicial conduct on the part of judges themselves.

Judicial conduct agencies act only on complaints involving judicial misconduct and disability. They do not serve as appellate courts, nor do they deal with complaints involving a judge's decisions or rulings unless there is an accompanying allegation of fraud, corrupt motive or other misconduct.

II. THE MASSACHUSETTS COMMISSION ON JUDICIAL CONDUCT

The Massachusetts Commission on Judicial Conduct (Commission) was established in 1978 with the enactment of the Court Reorganization Act. Before April 1, 1988, Commission activity was governed by the provisions of Massachusetts General Laws c.211C, as inserted by St. 1978, c.478, §114. In 1987, c.211C was substantially amended, effective April 1, 1988. See St. 1987, c.656.

Since 1988, the Commission has been operating under the amended version of c.211C (see Appendix A) and new procedural rules (see Appendix B). The Commission's Rules 1 and 6 were amended, effective October 1, 1999.

This annual report covers the Commission's activities from January 1, 2001 through December 31, 2001.

1. THE COMMISSION'S JURISDICTION

The Commission is authorized to accept complaints only against state court judges. The Commission's jurisdiction includes the conduct of judges prior to assuming judicial office, and retired judges who are assigned to perform the duties of a judge for a temporary period, as well as the conduct of lawyers who used to be judges, while they held judicial office.

The Code of Judicial Conduct, promulgated by the Supreme Judicial Court (Rule 3:09; see Appendix C), sets forth eight canons which govern a judge's behavior. The Commission's grounds for discipline include violations of these canons, as well as the following:

- (1) conviction of a felony;
- (2) willful misconduct in office;
- (3) willful misconduct which, although not related to judicial duties, brings the judicial office into disrepute;
- (4) conduct prejudicial to the administration of justice or conduct unbecoming a judicial officer, whether conduct in office or outside of judicial duties, that brings the judicial office into disrepute; or
- (5) any conduct that constitutes a violation of the codes of judicial conduct or professional responsibility.

The Commission may not investigate complaints of misconduct which occurred more than one year prior to the date the complaint is received unless the Commission finds "good cause" to consider them, or unless there is an alleged pattern of recurring judicial misconduct, the last episode of which arose during the one-year period. Some factors which may determine "good cause" include the seriousness of the allegations, whether evidence still exists, and whether witnesses are still available.

The Commission does not have the power to review the record of a case to determine whether a judge made the correct decisions; that is for appellate courts. The Commission does not have the power to change the decisions of any court or to intervene in any case. The filing of a complaint with the Commission does not automatically require the disqualification of the judge from a pending case.

2. THE COMPLAINT PROCESS

a. Initiation of Proceedings

A complaint may be filed by any person. In order to make sure a complaint contains all the information necessary for screening, the Commission provides a complaint form. (See Appendix E.) However, a letter to the Commission which contains all the necessary information may suffice.

If there is a reason preventing the complainant from filing in writing, a complaint may be filed orally. Any complaint may be filed anonymously. In order for a complaint to be docketed, it must allege specific facts which, if true, would constitute judicial misconduct or disability. The

Commission may initiate its own complaint when it receives reasonable information about judicial misconduct.

b. Screening

When the Commission receives a complaint, the staff screens it to determine whether the complaint falls within the Commission's jurisdiction. If the complaint does not allege judicial misconduct, it is not accepted. If it does, it is docketed and assigned a complaint number.

c. "Frivolous or Unfounded" Complaints

If, upon screening, the Executive Director considers a complaint to be "frivolous or unfounded," pursuant to Rule 6D, the complaint goes to the Commission for immediate consideration of whether it should be summarily dismissed.

d. Stale Complaints

If, upon screening, the Executive Director finds that a complaint alleges that judicial misconduct occurred more than one year prior to the filing of the complaint, the complaint goes to the Commission for immediate consideration of whether there is good cause to investigate it. "Good cause" considerations include how old the allegations are, why the complaint was not filed sooner, and whether evidence and witnesses' memories of the events are likely still to exist. After a finding of no good cause, a complaint is dismissed, and the judge and complainant are so notified. After a finding of good cause, a complaint is investigated.

e. Anonymous Complaints

Any anonymous complaint goes immediately to the Commission for a decision as to whether the seriousness or the notoriety of the misconduct alleged outweighs the potential prejudicial effect of investigating the complaint. The complaint is thereafter dismissed or investigated, depending upon the vote of the majority of the Commission.

f. Notice to the Judge

In most complaints, the judge is immediately notified of the entire complaint and invited to respond if he or she wishes. If the complaint is to be considered right away by the Commission for summary dismissal, notice of the complaint will be given to the judge along with the Commission's decision as to that. If the Executive Director determines upon screening a complaint that notifying

the judge of the entire complaint would create a substantial risk of evidence being lost or destroyed, or a substantial danger of retaliation by the judge against the complainant or any other person mentioned

in the complaint, the complaint goes to the Commission for immediate consideration of whether there exists such risk or danger. If a majority of the Commission votes that there is, the Commission determines the least amount of information in the complaint which will be withheld from the judge, only until such risk or danger ends. The complaint is then investigated.

g. Investigation

The staff member assigned the complaint conducts a prompt, confidential investigation, which may include listening to tape recordings or reviewing transcripts of court proceedings, interviewing witnesses, reviewing documents, and observing in court. At the conclusion of the investigation (within ninety days, whenever possible), the Commission reviews the report of the investigation, the judge's response, if any, and any other relevant materials. The Commission votes whether to dismiss the matter or to proceed to a Sworn Complaint or Statement of Allegations. At any stage of the proceedings, the Commission may decide to dispose of a complaint by dismissal, Informal Adjustment, or Private Reprimand.

h. Dismissal with an Expression of Concern

If the Commission finds, after investigation of a complaint, that the facts do not rise to the level of judicial misconduct but are cause for concern for the future, the Commission may dismiss a complaint while expressing to the judge its specific concern.

i. Informal Adjustment/Agreed Disposition

If the Commission decides to dispose of a complaint by Informal Adjustment, it develops a list of conditions designed to prevent a repetition of the misconduct. This form of disposition requires agreement by the judge to the terms of the Informal Adjustment. The terms may include counseling, education, assignment of a mentor judge, monitoring by the Commission for a specified period of time, voluntary retirement, or other appropriate conditions. An Informal Adjustment may take the form of an information or admonition to the judge that certain conduct is or may be cause for discipline.

j. Private Reprimand

The Commission may issue a Private Reprimand to a judge, as part or all of the disposition of a complaint, if the judge consents. A Private Reprimand is considered to be a more severe discipline than the information or admonition mentioned in the paragraph above.

k. Sworn Complaint or Statement of Allegations

After considering the investigation of a complaint, if the Commission votes to proceed to the next level of charging, either the complainant signs a Sworn Complaint or the Commission staff prepares a Statement of Allegations. The Sworn Complaint or Statement of Allegations is sent to the judge.

The judge then has twenty-one days in which to respond in writing and to request an appearance before the Commission. The judge may be accompanied by counsel.

After the twenty-one days allowed for a judge's response to the Sworn Complaint or Statement of Allegations, and after the judge's appearance, if any, the Commission votes to dispose of the matter in one of the following four ways: 1) dismissal; 2) Informal Adjustment; 3) Private Reprimand; or 4) issuing Formal Charges.

l. Formal Charges

When Formal Charges are issued, they are sent to the judge, who has ten days to respond. After reviewing the judge's response, if the Commission decides to continue with the formal proceedings, it files the Formal Charges and the judge's response with the Supreme Judicial Court. Upon that filing, both documents become public.

m. Hearing

When Formal Charges are filed with the Supreme Judicial Court, the Commission requests that the Court appoint a Hearing Officer. The Commission schedules a Hearing, which is open to the public. The rules of evidence applicable to civil proceedings in Massachusetts apply at the Hearing.

The Commission has the burden of proving the charges by clear and convincing evidence. Within thirty days after the conclusion of the hearing, the Hearing Officer submits a report to the Commission containing proposed findings and recommendations.

n. Commission Recommendations

Before the Commission reaches its final decision, the judge and the complainant have the right to be heard regarding the Commission's recommendation for discipline. That hearing is open to the public; the Commission deliberations which follow are closed. The Commission must then make a report to the Supreme Judicial Court within ninety days. The Commission's conclusions and recommendations may differ from those of the Hearing Officer.

o. Disposition

The Supreme Judicial Court, usually after hearing, acts on the Commission's report. The Court may adopt the Commission's recommendations concerning discipline or impose greater or lesser discipline.

As a general matter, the Commission's authority to dispose of a complaint is limited to dismissal, Private Reprimand, or Informal Adjustment. The Commission does not have the power to impose disciplinary sanctions without the consent of the judge; only the Supreme Judicial Court has that power. The Commission may recommend that the Supreme Judicial Court impose a greater variety of sanctions upon a judge than is available to the Commission, including public censure. Neither the Commission nor the Court has the power to remove a judge from the bench. (The Legislature must act in order to remove a judge for misconduct. The Governor and Governor's Council may retire a judge for mental or physical disability, before the mandatory retirement age of seventy.) The complainant and the judge are always notified of the final disposition of a complaint.

p. Physical or Mental Disabilities

The Commission follows the same procedures as above in dealing with complaints about physical or mental disabilities that affect a judge's performance.

3. CONFIDENTIALITY

The statute and the rules which govern the Commission on Judicial Conduct require that the complaint and all Commission proceedings remain confidential, unless and until the Commission files Formal Charges with the Supreme Judicial Court. (There are certain limited exceptions to this

requirement.) This strict confidentiality includes all communications made to and by the Commission or its staff; it protects complainants, witnesses, and judges.

III. SUMMARY OF COMMISSION ACTIVITY IN 2001

One hundred thirty-three of the hundreds of complaints received in 2001 were docketed because they fell within the Commission's jurisdiction.¹ Of those complaints docketed, 52.6% were filed against judges of the Probate & Family Court; 24.8% were filed against judges of the District Court; 19.5% were filed against judges of the Superior Court; 1.5% were filed against judges of the Juvenile Court; and 0.75% each were filed against judges of the Housing and Boston Municipal Courts. Chart 3 presents the distribution of complaints by court.

In 2001, litigants filed 84% of the complaints. Of the litigants who filed complaints, 55% were *pro se*. Relatives of litigants filed an additional three complaints. Eleven complaints, or 8%, were filed by lawyers. Three complaints, or 2%, were filed by concerned citizens. Two complaints, or 1.5%, were initiated by the Commission. No complaints were filed anonymously in 2001. Chart 5 presents the distribution of complaints by source.

Most of the complaints filed in 2001 contained multiple allegations of misconduct. The subject matter of the allegations is presented in Chart 6. Disagreement with the judge's rulings was the most frequent allegation, appearing in 67% of the complaints (although it is not, standing alone, an allegation of misconduct). The next most frequent allegation was bias or prejudice, which appeared in 59% of the complaints. The type of bias or prejudice most frequently alleged was gender bias, which arose in 15% of the complaints filed, and in 25% of the complaints alleging bias or prejudice. Of those alleging gender bias, 75% alleged bias against men, and 30% alleged bias against women. (One complaint alleged bias against both men and women.) Racial bias was

¹ This summary will refer only to the docketed complaints.

alleged in 14% of the bias complaints. Following bias, the next most frequent allegations were: denial of full opportunity to be heard (48%); inappropriate demeanor (45%); failure to follow the law or incompetence (22%); denial of constitutional rights (20%); improper *ex parte* communication (15%); conspiracy or collusion (14%); and administrative problems (13%), of which 88% alleged delay.

Chart 1 presents the status of the Commission's 2001 docket. The Commission disposed of 129 complaints in 2001, including some which were carried over from previous years. Ninety-five complaints were pending at the end of 2001, including five which had been Informally Adjusted. The status of those complaints is shown in Chart 1.

As shown in Chart 2, the Commission dismissed outright 117 complaints, or 90.6% percent of the complaints disposed by the Commission during 2001. Of those complaints dismissed, 45% were dismissed after preliminary review because they were stale, frivolous or unfounded, or moot; 45.7% were dismissed after investigation because the Commission did not find that any judicial misconduct had occurred. In addition, five complaints (3.9% of those disposed) were dismissed with an expression of concern following an investigation.

Chart 2 also indicates that seven complaints, or 5.4% per cent of the complaints disposed by the Commission in 2001, were closed as Informally Adjusted during 2001. (Five other complaints were Informally Adjusted but remained pending at the end of 2001.) There were no public hearings held in 2001.

CHART 1		
Status of Commission Docket		
2001		
Complaints Pending January 1, 2001		91
Investigations in Progress	91	
Informal Adjustments in Progress	0	
Complaints Filed in 2001		133

Complaints Disposed in 2001	129
Complaints Pending December 31, 2001	95
Investigations in Progress	90
Informal Adjustments in Progress	5

CHART 2	
Commission Action on Complaints	
2001	
Complaints Before the Commission in 2001	224
Complaints Pending from Previous Year	91
Complaints Filed in 2001	133
Complaints Under Investigation During 2001	166
Complaints Disposed in 2001	129
Dismissed after Preliminary Review	58
Dismissed after Investigation	59
Dismissed with Concern (after investigation)	5
Informally Resolved/Closed with Reprimand	6
Informally Resolved/Closed Other	1

CHART 3
Complaints by Court
2001

	N = 133
Supreme Judicial Court (7)*	0
Appeals Court (25)	0
Superior Court (80)	26
Land Court (4)	0
Probate and Family Court (51)	70
Housing Court (10)	1
District Court (175)	33
Boston Municipal Court (11)	1
Juvenile Court (41)	2

* the number of judges authorized by statute for each court for July 1, 2000-June 30, 2001

CHART 4

Type of Case Involved
2001

	N = 135*
Divorce, Custody, Support	62
Civil	36
C. Abuse Prevention	8
Criminal	24
Estate or Other Probate Matter	5
C. Guardianship	2
Off-Bench Conduct	4
Juvenile	2
Small Claims	2

*Some complaints involve more than one case.

CHART 5		
Type of Complainant		
2001		
		N = 135*
Litigant		113
<i>Pro Se</i>	62	
Lawyer		11
Litigant's Relative		3
Concerned Citizen		3
Commission on Judicial Conduct		2
Witness Victim Victim's Relative		1
Anonymous		
Legislator		
Other		
*Some complaints have more than one complainant.		

CHART 6		
Subject Matter of Complaints*		
2001		
Disagreement with Decisions and Rulings		
Bias, Prejudice		
Gender		20
Against Men	15	
Against Women	6	
Racial		11
Against <i>Pro Se</i> Litigants		5
Against Criminal Defendants		4
Against Disabled or Elderly		
Socioeconomic		2
Against Prosecutors		
Denial of Full Opportunity to be Heard		64
Inappropriate Demeanor		60
Failure to Follow the Law, Incompetence		29
Denial of Constitutional Rights		27
<i>Ex Parte</i> Communication		20

Conspiracy Collusion		
Administrative Problems		17
Delay	15	
Other than Delay	6	
Abuse of Authority		12
Conflict of Interest		9
Failure to Investigate/Discipline Attorney Misconduct		
Corruption, Bribe, Extortion		6
Retaliation		6
Coercion to Settle or Plead		6
Giving Legal Advice, Acting as an Advocate		
Fraud, Deception, Dishonesty, Lack of Integrity		3
Failure to Record Proceedings Properly, Editing Tapes		3
Cover-up		2
Bringing the Judiciary into Disrepute		2
Lack of Common Sense		2
Obstruction of Justice		1
Improper Comment about a Pending Case		1
Mental Disability		1
Substance Abuse		1

* Many complaints contain more than one allegation.

CHART 7
Summary of Commission Activity, 1997-2001

	1997	1998	1999	2000	2001
Complaints Pending from Previous Year	92	108	129	60	91
New Complaints Filed	167	160	181	340	133
Complaints Investigated	188	196	226	209	166

Complaints Dismissed	147	126	244	292	122
Complaints Informally Resolved and Closed	4	3	1	19	7
Complaints Informally Resolved and Still Pending at End of Year	1	5	5	0	5
Total of Complaints Informally Resolved	5	8	6	19	12
Public Hearings Held	2	0	0	0	0
Reports Filed with the Supreme Judicial Court	2	0	0	0	0

IV. Case Summaries

The following case summaries represent examples of the complaints of which the Commission disposed during 2001.²

Dismissed without Investigation

1) Stale

A litigant alleged that misconduct had taken place eight years earlier. The litigant offered no reason for the delay in filing the complaint. He also lacked credibility due to extremely exaggerated allegations of misconduct made in this and previous complaints. The Commission voted there was not good cause to investigate this stale complaint and dismissed it.

2) Frivolous or Unfounded

A *pro se* litigant complained that a judge had showed gender bias and abuse of power in denying his motion and allowing a motion of the opposing party. As this complainant had previously made similar allegations against other judges which were not borne out, and as he offered no evidence of bias or abuse

² Only masculine pronouns will be used, in order not to identify the gender of any participant.

of power other than adverse decisions, the Commission voted to dismiss the complaint as frivolous or unfounded.

3) Moot

A litigant filed a complaint alleging that an instance of misconduct by a judge had taken place before the date of an Agreed Disposition which the Commission had recently reached with the judge, regarding the same pattern of misconduct. Feeling that the Agreed Disposition was sufficient to acknowledge the existence of the pattern and to avoid its recurrence in the future, and that it would be unfair to make the judge answer to existing similar complaints which predated the agreement, the Commission dismissed this complaint as moot.

Dismissed after Investigation

4) A litigant complained that a judge made discourteous remarks about him, failed to listen to his lawyer's argument, and exhibited gender bias in his decisions. A review of the audiotape of the court proceeding at issue, as well as interviews of the complainant and a witness, revealed no evidence to support the allegations. The Commission dismissed the complaint.

5) A litigant complained that the judge showed favoritism toward an attorney representing another party in the case. He also complained that the judge made inappropriate gestures and comments to him from the bench. The complainant could provide no evidence of favoritism. Nor did a review of the audiotape of the court proceedings or interviews of witnesses support the allegations. The Commission voted to dismiss the complaint.

Dismissed with an Expression of Concern

6) A *pro se* litigant complained that a judge at a pre-trial hearing showed inappropriate demeanor and denied him full opportunity to be heard by deciding the ultimate issue after the pre-trial hearing. After investigation, the Commission did not find that the judge's demeanor rose to the level of judicial misconduct. The Commission voted to dismiss the complaint while expressing to the judge its concern that his failure to give a clear indication that he was trying the case on the merits on the pre-trial date might reasonably cause a *pro se* litigant to conclude that he had failed to receive his full right to be heard.

7) A friend of a defendant complained that the defendant was denied his right to counsel during his arraignment. After investigation, the Commission voted to dismiss this complaint while expressing to the judge its concern that the defendant did not have an attorney present at his arraignment and did not waive counsel either in writing or orally. The Commission cautioned the judge to take care to observe defendants' rights to counsel on the record in the future.

Informally Adjusted/Agreed Disposition

8) A litigant complained that a judge was rude, arrogant and disrespectful, showed gender bias and prejudice, would not let his attorney speak, gave the idea he had already made up his mind, and acted like an advocate for the opposing party. The investigation substantiated all of the allegations except those of gender bias and being an advocate for one party. The judge and the Commission entered into an Agreed Disposition in which the judge was privately reprimanded for again displaying a pattern of conduct for which he had previously been admonished by the Commission.

9) Several complaints filed against a judge alleged that he failed to follow the law, treated litigants and attorneys in a discourteous manner, and failed to give them full opportunity to be heard according to law. Investigation of these complaints supported the allegations of misconduct. As the judge and the Commission were unable to reach an agreement as to disposition at that time, the Commission issued a Statement of Allegations consolidating all of the complaints to date. Following the judge's response, Formal Charges were issued. The Formal Charges and the judge's Response were filed with the Supreme Judicial Court and became public. The SJC appointed a Hearing Officer and a Public Hearing was scheduled by the Commission. Shortly before the Hearing was to begin, the judge and the Commission reached agreement on an Informal Adjustment which made a Hearing unnecessary. The terms of the Agreed Disposition which were made public by means of a press release included a reprimand, a three-month unpaid suspension, and a requirement that the judge attend two weeks of educational training at his own expense. The terms also included monitoring of the judge by the Commission for two years following his suspension.

IV. GENERAL INFORMATION ABOUT THE COMMISSION

1. MEMBERSHIP

The Commission is composed of nine members who serve without pay. Three lay persons are appointed by the Governor, three lawyers are appointed by the Chief Justice for Administration and Management of the Trial Court, and three judges are appointed by the Justices of the Supreme Judicial Court. The Commission annually elects one of its members to serve as Chairman and one to serve as Vice Chairman. Commissioners are eligible for only one six-year term, except when appointed to fill a vacancy for the remainder of an unexpired term.

The Commission members who were appointed to serve during the period covered by this report are:

Honorable Margot Botsford, Chairman

Geraldine Hines, Esquire, Vice Chairman (resigned May 1, 2001 when appointed to the bench)

Sally Livingston, elected Vice Chairman May 15, 2001

Honorable Catherine P. Sabaitis

Honorable William W. Teahan, Jr.

Gerald C. J. Cook, Esquire (resigned February 12, 2001)

William E. Bernstein, Esquire

Gael Mahony, Esquire (appointed March 8, 2001 to fill unexpired term of Attorney Cook)

Henry T.A. Moniz, Esquire (appointed May 2, 2001 to fill unexpired term of Attorney Hines)

John G. Gallup

Robert J. Guttentag (appointed January 29, 2001)

Alternate members are appointed in each category by the same appointing authorities, to serve at the call of the Chairman in place of Commission members who are disqualified from or unable to participate in a Commission proceeding. Those appointed to serve during 2001 were:

Honorable Charles M. Grabau

Honorable Joseph Lian, Jr.

Jane E. Tewksbury, Esquire (appointed July 19, 2001).

2. BUDGET

The Commission is an independent agency in the Judicial Branch, funded through a line-item in the budget of the Supreme Judicial Court. The Commission received a total appropriation of \$459,069 for fiscal year 2001.

3. STAFF

Barbara Morgan Fauth: Executive Director, September, 1987 - September, 2001.

Gillian E. Pearson: Staff Attorney, 1988-1999; Supervising Staff Attorney, 1999-2001; Acting Executive Director, beginning September, 2001.

Francis A. McLoughlin, Jr.: Staff Attorney, beginning January, 2001.

Konstantina Vagenas: Staff Attorney, beginning January, 2001.

Mark Signore: Executive Assistant since 1996.

Darlene Graves: Administrative Secretary since 2000.

4. MEETINGS

The Commission generally meets monthly, on the second Tuesday of the month. The Commission met ten times in 2001.

APPENDICES

APPENDIX A
Massachusetts General Laws c.211C,
as amended by St. 1987, c.656

SECTION 1. Establishment; membership; expenses; term; chairman

There shall be a commission on judicial conduct consisting of nine members. Three judges shall be appointed by the justices of the supreme judicial court, none of whom shall be justices of said court and no two of whom shall be from the same department of the trial court. Three members of the bar shall be appointed by the chief administrative justice of the trial court, none of whom shall be judges. Three members shall be appointed by the governor, none of whom shall be members of the bar. The members of the commission shall serve without compensation, but shall be reimbursed for all expenses reasonably incurred by them in the performance of their duties. Members of the commission shall serve for six year terms. Commission membership shall terminate if a member ceases to be qualified for the appointment.

A vacancy shall be filled by the appointing authority for the remainder of the term. Upon the expiration of the term of office of a member, his successor shall be appointed in the manner aforesaid. No person shall succeed himself as a member of the commission except when his membership is due to an appointment to fill a vacancy for the remainder of an unexpired term. One or more alternate members, as necessary, shall be elected in the manner prescribed for initial appointments in each representative class, and shall serve at the call of the chairman to take the place of those who are disqualified from participating in a commission proceeding pursuant to commission rules.

SECTION 2. Investigations; hearings; recommendations

(1) All judges of the trial court, the appeals court and the supreme judicial court shall be subject to discipline pursuant to this chapter. The commission on judicial conduct shall have the authority to receive information, investigate, conduct hearings, and make recommendations to the supreme judicial court concerning allegations of judicial misconduct and allegations of mental or physical disability affecting a judge's performance.

(2) The commission shall have jurisdiction over investigations and recommendations regarding discipline arising from the conduct of all judges, including any retired judge who is assigned to perform the duties of a judge for a temporary period. This jurisdiction shall include all conduct that occurred prior to a judge's assuming judicial office, and conduct of a lawyer who is no longer a judge that occurred while he held judicial office; provided, however, that in evaluating such conduct, the commission shall give substantial weight to relevant decisions of the supreme judicial court and the board of bar overseers regarding bar discipline. The foregoing shall not be construed to derogate the inherent authority of the supreme judicial court to supervise and discipline judges, the authority of the governor with the consent of the council to remove a judge upon the address of both houses of the legislature or to retire a judge involuntarily because of advanced age or mental or physical disability, the authority of the legislature to remove a judge through impeachment, or the supervisory authority of the chief justices of the appeals and supreme judicial courts or of the chief and department administrative justices of the trial court.

(3) Except where the commission determines otherwise for good cause, the commission shall not deal with complaints arising out of acts or omissions occurring more than one year prior to the date commission proceedings are initiated pursuant to section five; provided, however, that, when the last episode of an alleged pattern of recurring judicial conduct arises within the one year period, the commission may consider all prior acts or omissions related to such alleged pattern of conduct.

(4) In the absence of fraud, corrupt motive, bad faith, or clear indication that the judge's conduct violates the code of judicial conduct, the commission shall not take action against a judge for making findings of fact, reaching a legal conclusion, or applying the law as he understands it. Commission proceedings shall not be a substitute for an appeal.

(5) Grounds for discipline shall include:

- (a) conviction of a felony;
- (b) willful misconduct in office;
- (c) willful misconduct which, although not related to judicial duties, brings the judicial office into disrepute;
- (d) conduct prejudicial to the administration of justice or conduct unbecoming a judicial officer, whether conduct in office or outside of judicial duties, that brings the judicial office into disrepute; or
- (e) any conduct that constitutes a violation of the codes of judicial conduct or professional responsibility.

SECTION 3. Report; appropriations; offices; rules; immunity; executive director; proceedings

(1) The commission shall report only to the supreme judicial court. The commission shall be allowed for its purposes annually such amount as shall be appropriated for it by the general court. The commission shall be provided with adequate offices. The commission may adopt rules of procedure, without compliance with the provisions of chapter thirty A, but subject to the approval of the supreme judicial court, and may develop appropriate forms for its proceedings. Such rules shall establish reasonable time limits for all stages of commission proceedings and standards for extending time limits applicable to commission proceedings.

(2) Members of the commission, hearing officers, commission counsel, and staff shall be absolutely immune from suit for all conduct in the course of their official duties. A complaint submitted to the commission or its staff and communications related to the complaint shall be absolutely privileged, and no civil action predicated on the complaint or on such a communication may be instituted against any complainant or witness or his counsel; provided, however, such immunity from suit shall apply only to communications to the commission or its staff and shall not apply to public disclosure of information contained in or relating to the complaint.

(3) The commission shall appoint an executive director who shall serve at the pleasure of the commission. The executive director shall be a member of the Massachusetts bar, shall serve full time, and shall not engage in the practice of law. The executive director shall receive an annual salary, subject to appropriation, which is fixed by the commission consistent with classification and compensation policies of the supreme judicial court, and such expenses as are approved by the commission and incurred in the discharge of the executive director's duties.

(4) The executive director shall have duties and responsibilities as prescribed by the commission, including the authority to:

- (a) receive information, allegations, and complaints;
- (b) make preliminary evaluations;
- (c) screen complaints;
- (d) conduct investigations;
- (e) recommend dispositions;
- (f) maintain the commission's records;
- (g) maintain statistics concerning the operation of the commission and make them available to
- (h) prepare the commission's budget for approval by the commission and administer its funds;
- (i) employ and supervise other members of the commission's staff;
- (j) prepare the annual report of the commission's activities required pursuant to section four; and
- (k) employ, with the approval of the commission and subject to appropriation, special counsel, private investigators, or other experts, and clerical assistants, as necessary to investigate and process matters before the commission and before the supreme judicial court. Neither the attorney general's staff nor law enforcement officers shall be employed for this purpose.

(5) The supreme judicial court may delegate the power to enforce process in commission proceedings to another appropriate court. A witness at any stage of commission proceedings may rely on any privilege applicable to civil proceedings.

SECTION 4. Annual report

The commission shall submit annually to the general court and the supreme judicial court a report of its activities together with recommendations. This report shall be a matter of public record and shall be printed as a public document.

SECTION 5. Initiation of proceedings; inquiry, investigation and evaluation; detailed complaint or statement of allegations; formal charges

(1) Commission proceedings relating to the conduct of a judge may be initiated by an oral or written complaint stating facts that, if true, would be grounds for discipline, or by the commission's own motion when the commission receives reasonable information, including reports in the news media, as to conduct that appears to constitute grounds for discipline. Upon receipt of such complaint or adoption of such motion, the commission shall promptly notify the judge, except as provided in subdivision (2), and shall conduct a prompt, discreet and confidential inquiry, investigation and evaluation.

(2) The commission shall notify the judge of the proceedings and their subject matter before commencing any inquiry, investigation or evaluation in all cases except as follows:

(a) where, because of the nature of the complaint, delay is necessary in order to preserve evidence, notice may be delayed until such evidence is obtained, until the matter is dismissed, or until the sworn complaint or statement of allegations is served pursuant to subdivision (6), whichever occurs first;

(b) where the identity of the complainant could be readily determined by the judge from the nature of the complaint and there is a danger of reprisal against the complainant, notice may be delayed until the danger of reprisal ends, until the matter is dismissed, or until the sworn complaint or statement of allegations is served pursuant to subdivision (6), whichever occurs first; provided, however, that in any such case where there is an ongoing danger of reprisal, the notice and the statement of allegations may be drafted so as to conceal the complainant's identity.

(3) The commission shall discourage and shall promptly dismiss complaints which are frivolous, unfounded or outside commission jurisdiction. The commission shall notify the judge and the complainant, if any, of such dismissal in accordance with the provisions of subdivisions (1), (2) and (10).

(4) At any stage of the proceeding, the commission shall be entitled within the time limits established by commission rule to compel by subpoena the attendance and testimony of witnesses, including the judge, and to provide for the inspection of documents, books, accounts, and other records.

(5) After a thorough inquiry, investigation and evaluation, the executive director shall recommend to the commission, and the commission shall determine, by majority vote, whether there is adequate reason to proceed to the preparation of a detailed complaint or statement of allegations. If so, the commission shall request that the complainant file a detailed sworn complaint against the judge. When a sworn complaint is not obtained, the executive director shall prepare a clear statement of the allegations against the judge and the alleged facts forming their basis. Said complaint or statement of allegations shall clearly set forth each act of misconduct where more than one act of misconduct is alleged, and shall state clearly the provision of statute, code of judicial conduct or code of professional responsibility alleged to have been violated by each alleged act of misconduct.

(6) The judge shall be served promptly with a copy of the sworn complaint or statement of allegations.

(7) The judge shall have twenty-one days after receipt of the sworn complaint or statement of allegations to respond in writing to the charges and, if he wishes, to file a written request for a personal appearance before the commission.

(8) The judge shall be entitled to counsel of his own choice. After the judge is served with the sworn complaint or statement of allegations, he shall be entitled before the issuance of formal charges and within the time limits established by commission rule to compel by subpoena the attendance and testimony of witnesses, through depositions, and to provide for the inspection of documents, books, accounts, written or electronically recorded statements, and other records. The judge may file written material for commission consideration before the issuance of formal charges.

(9) If the judge requests a personal appearance before the commission, he may be accompanied by counsel, his statement and that of his counsel shall be recorded, and the commission shall not issue formal charges until after such personal appearance.

(10) If at any time prior to the issuance of formal charges the commission determines that it does not have sufficient cause to proceed, the commission shall terminate the proceedings by closing the investigation or dismissing the complaint or the statement of allegations. In that event, the commission shall give notice to the complainant, if any, and to the judge that it has found insufficient cause to proceed. The file in any matter so terminated shall be closed.

(11) The commission may not refer subsequently to a file closed before the issuance of formal charges except in the following circumstances:

- (a) in a subsequent proceeding that raises similar allegations against the judge and indicates a pattern of recurring judicial misconduct;
- (b) in a subsequent proceeding alleging conduct in violation of conditions imposed as part of an informal adjustment pursuant to subdivision (1) of section eight;
- (c) in connection with a decision as to the recommended sanction to be imposed in a subsequent proceeding.

(12) The commission may, upon notice to the judge, amend the allegations prior to a finding of sufficient cause to issue formal charges. The judge may amend his written response or submit additional written material for commission consideration before such finding.

(13) After the judge's personal appearance pursuant to subdivision (9), if any, and after the expiration of any time limit upon written submissions by the judge pursuant to subdivisions (8) and (12), the commission shall determine whether there is sufficient cause to issue formal charges. A finding of sufficient cause to issue formal charges shall require the concurrence of the majority of all commission members that there is a preponderance of credible evidence that the judge's conduct constitutes grounds for discipline.

(14) When sufficient cause is found, the commission shall issue formal charges stating those allegations as to which sufficient cause is found. A copy of the formal statement of charges shall be served promptly upon the judge and the judge shall have ten days to respond. Immediately thereafter, a copy of such formal statement of charges and of the judge's written response shall be filed with the supreme judicial court, which shall promptly appoint a hearing officer. Confidentiality shall cease upon this filing, as provided in section six, and after this filing the proceedings shall be governed by the provisions of section seven.

SECTION 6. Confidentiality

(1) Except as provided in this section, all proceedings of the commission shall be confidential until there has been a determination of sufficient cause and formal charges have been filed with the supreme judicial court. The commission shall ensure that a procedure applicable to commission members, counsel and staff is established for enforcing confidentiality.

(2) Notwithstanding the provisions of subdivision (1), the judge may waive his right to confidentiality prior to a finding of sufficient cause. In addition, in any case in which the subject matter becomes public, through independent sources or through a waiver of confidentiality by the judge, the commission may issue such statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the judge to a fair hearing without prejudgment, or to state that the judge denies the allegations.

(3) If the inquiry was initiated as a result of notoriety or because of conduct that is a matter of public record, and is subsequently terminated because there is insufficient cause to proceed, information concerning the insufficiency of cause to proceed may be released by the commission.

(4) Notwithstanding any other provision of this chapter to the contrary, proceedings pursuant to this chapter may remain confidential, even after a finding of sufficient cause, if the judge, the commission, and the complainant, if any, all concur.

(5) If any federal agency, the judicial nominating council, or any like agency for screening candidates for judicial appointment which succeeds the judicial nominating council, seeks information or written materials from the commission concerning a judge, in connection with his selection or appointment as a judge, information may be divulged in accordance with procedures prescribed by commission rule, including reasonable notice to the judge affected, unless the judge signs a waiver of the right to such notice. If, in connection with the assignment of a retired judge to judicial duties, the chief justice of the supreme judicial court or the appeals court or the chief administrative justice of the trial court seeks information or written materials from the commission about the judge, information may be divulged in accordance with procedures prescribed by commission rule, including reasonable notice to the judge affected, unless the judge signs a waiver of the right to such notice.

SECTION 7. Hearing; recommendation for discipline; attorneys' fees

(1) The commission shall schedule a hearing without undue delay after the appointment of the hearing officer by the supreme judicial court. The commission shall schedule the time and place of the hearing, and shall notify the judge and all counsel of the hearing. The judge shall be afforded ample opportunity to prepare for the hearing and may amend his written response to the charges.

(2) The judge and the commission shall each be entitled to discovery to the extent available in civil proceedings, within the time limits provided by commission rules. The judge and the commission shall each be entitled to compel by subpoena the attendance and testimony of witnesses, including the judge, and to provide for the inspection of documents, books, accounts, and other records.

(3) The formal hearing shall be public and shall be conducted before the hearing officer appointed by the supreme judicial court. At the hearing, all testimony shall be under oath, the rules of evidence applicable to civil proceedings shall apply, and the judge shall be accorded due process of law.

(4) An attorney or attorneys of the commission staff, or special counsel retained for the purpose, shall present the matter to the hearing officer. The commission shall have the burden of proving the charges by clear and convincing evidence. The judge and the commission shall be permitted to present evidence and cross-examine witnesses, subject to the rules of evidence applicable to civil proceedings.

(5) The raising of mental or physical condition as a defense constitutes a waiver of medical privilege.

(6) By leave of the commission or with the consent of the judge, the statement of charges may be amended after commencement of the hearing only if the amendment is technical in nature and the judge and his counsel are given adequate time to prepare a response.

(7) Every hearing shall be transcribed.

(8) The hearing officer shall submit to the commission and to the judge a report containing proposed findings and recommendations, the transcripts of testimony and all exhibits. Counsel for the judge and commission shall have twenty days after receipt of such report to submit written objections to the findings and recommendations, and said objections shall become part of the record.

(9) Before the commission reaches its decision, the judge and the complainant, if any, shall have the right to be heard before the commission regarding its recommendation for discipline, and their statements

shall be transcribed. Such hearing shall be public, but commission deliberations regarding such recommendation shall be conducted in executive session. The commission shall reach a decision on the basis of the full record within ninety days after such hearing, unless there is good cause for delay. Its conclusions may differ from those proposed by the hearing officer. Its decision shall state specific reasons for all conclusions and recommendations.

(10) A recommendation for discipline shall be reported to the supreme judicial court only if a majority of all members of the commission concur that discipline should be recommended. Any dissent as to the need for or the form of discipline shall be transmitted with the majority decision. A copy of said recommendation and dissent shall be given to the judge and shall become part of the public record. The entire record, including transcripts, exhibits and the hearing officer's report, shall be transmitted to the supreme judicial court.

(11) If a majority of the members of the commission concur that discipline should not be recommended, the matter shall be dismissed, and the judge and complainant, if any, shall be notified of such dismissal.

(12) The provisions of subdivisions (10) and (11) shall not be construed to prohibit the commission from disposing of the matter by informal adjustment pursuant to section eight as a result of commission deliberations regarding a recommendation for discipline.

(13) The expense of witnesses shall be borne by the party that calls them unless:

- (a) physical or mental disability of the judge is in issue, in which case the commission shall reimburse the judge for the reasonable expenses of the witnesses whose testimony related to the disability; or
- (b) the supreme judicial court determines that the imposition of costs and expert witness fees will work a financial hardship or injustice upon him and orders that those fees be reimbursed.

(14) All witnesses shall receive fees and expenses in the same manner as witnesses in civil actions before the courts. A transcript of all proceedings shall be provided to the judge without cost. Except as provided in subdivision (13), costs of all proceedings shall be at public expense.

(15) With 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.

SECTION 8. Informal adjustment; sanctions

(1) With the agreement of the judge, the commission may by informal adjustment dispose of a complaint at any stage of the proceedings by:

- (a) informing or admonishing the judge that his conduct is or may be cause for discipline;
- (b) directing professional counseling and assistance for the judge;
- (c) imposing conditions on the judge's conduct; or
- (d) persuading a judge to retire voluntarily.

(2) The commission may dismiss a sworn complaint, a statement of allegations or a formal statement of charges as unjustified or unfounded at any stage during the proceedings.

(3) The commission may issue a private reprimand with the consent of the judge.

(4) The commission may recommend to the supreme judicial court one or more of the following sanctions:

- (a) removal;
- (b) retirement;
- (c) imposition of discipline as an attorney;
- (d) imposition of limitations or conditions on the performance of judicial duties;
- (e) public or private reprimand or censure;
- (f) imposition of a fine;
- (g) assessment of costs and expenses;
- (h) imposition of any other sanction which is reasonable and lawful.

SECTION 9. Charges against supreme judicial court member

The chief justice and the six most senior justices of the appeals court other than the chief justice shall serve in the place of the supreme judicial court when charges are brought against a member of the supreme judicial court.

SECTION 10. Physical or mental disabilities

(1) The commission shall have authority to receive information, investigate, conduct hearings, and make recommendations to the court relating to mental or physical disability affecting a judge's performance.

(2) In carrying out its responsibilities regarding physical or mental disabilities, the commission shall follow the same procedures that it employs with respect to discipline for misconduct.

(3) If the judge in a matter relating to physical or mental disability is not represented by counsel, the commission shall appoint an attorney to represent him at public expense.

(4) If a complaint involves the physical or mental condition of the judge, a denial of the alleged condition shall constitute a waiver of medical privilege and the judge shall be required to produce his medical records.

(5) If medical privilege is waived, the judge shall be deemed to have consented to a physical or mental 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.

SECTION 11. Advisory committee

The supreme judicial court may establish an advisory committee on the code of judicial conduct, which may render advisory opinions to judges at their request or on its own motion.

DIX B

RULES OF THE COMMISSION ON JUDICIAL CONDUCT

Effective April 1, 1988

SCOPE AND TITLE

These rules govern the procedures of the Commission on Judicial Conduct in the exercise of its jurisdiction pursuant to Chapter 211C of the General Laws as appearing in St. 1987, c. 656, and apply to proceedings which are initiated on or after April 1, 1988. These rules shall be known and may be cited as the Rules of the Commission on Judicial Conduct (R.C.J.C.). (Any proceedings initiated prior to April 1, 1988, shall be governed by the rules which were in effect under Chapter 211C before April 1, 1988.)

RULE 1. DEFINITIONS

A. "Anonymous Complaint" means a complaint, written or oral, received by the Commission, in which the identity of the complainant is not revealed.

B. "Chairman" and "Vice Chairman" refer to members of the Commission elected as such by vote of the Commission. Whenever used in these rules, the word "Chairman" shall include, in the absence of the Chairman, the Vice Chairman or other member acting as Chairman.

C. "Commission" means the Commission on Judicial Conduct.

D. "Complainant" means a person or entity who has communicated to the Commission a complaint against a judge.

E. "Complaint" means any oral or written statement which alleges judicial misconduct or physical or mental disability of a judge.

F. "Executive Director" means the Executive Director of the Commission or a member of the Commission's staff acting under the Executive Director's supervision.

G. "Judge" means a judge or justice of any court of this Commonwealth.

H. "Notoriety" means broad public knowledge.

I. "Reasonable Information" means any information, including reports in the news media, which comes to the attention of the Commission and which contains credible allegations about a judge that, if true, would constitute misconduct or disability within the jurisdiction of the Commission under Chapter 211C.

J. "Shall" is mandatory; "may" is permissive.

K. "Special Counsel" means an attorney, appointed by the Supreme Judicial Court at the request of the Commission, to conduct investigations, to make recommendations to the Commission, and/or to present evidence at a hearing, with respect to a complaint or charges against a judge, or to take any other action related thereto which the Commission may direct.

L. "Statement of Allegations" means a clear statement of the allegations against a judge and the alleged facts forming their basis.

M. "Sworn Complaint" means a detailed written complaint which the complainant signs under oath and files, at the request of the Commission.

Amended September 14, 1999, effective October 1, 1999.

RULE 2. COMPOSITION OF COMMISSION

A. The composition of the Commission and terms of its members are as provided in Chapter 211C.

B. A member of the Commission shall not participate in any proceeding in which the impartiality of that member might reasonably be questioned. Disqualification pursuant to this section shall be by the member involved or by affirmative vote of at least five (5) members of the Commission.

(1) Upon the call of the Chairman, an alternate member shall serve in place of a member of the Commission who has been disqualified from participating in a Commission proceeding or is otherwise unable to serve. Whenever an alternate member is called to serve in the place of a member of the Commission, the judge in question and the complainant shall be so notified.

C. If a Commission member ceases to be qualified for the appointment to represent the category for which he was appointed, resigns, or becomes permanently unable to serve for any reason, a vacancy shall occur. An appointment to fill a vacancy for the duration of the unexpired term shall be made by the appropriate appointing authority forthwith.

RULE 3. ORGANIZATION OF COMMISSION

A. A Chairman and Vice Chairman shall be elected annually by the members of the Commission.

B. Meetings of the Commission shall be held upon the call of the Chairman or the written request of at least three members of the Commission. Meetings shall not be held on less than three days notice; but this requirement may be waived by consent of all the members. The Chairman shall preside at meetings of the Commission, and the Vice Chairman shall act in the absence or disqualification of the Chairman. In the absence or disqualification of both the Chairman and the Vice Chairman, the members shall select one among them as acting Chairman.

C. A quorum of the Commission shall consist of five members, including at least one judge, one member of the bar who is not a judge, and one lay person who is not a member of the bar. An affirmative vote of at least five members of the Commission is required to dismiss, informally adjust, or otherwise dispose of a proceeding; to issue formal charges against a judge; or to make recommendations to the Supreme Judicial Court regarding disciplinary action. A vote may be taken by telephone when a decision is required sooner than a meeting could be held, unless any member objects.

RULE 4. JURISDICTION OF THE COMMISSION

A. The Commission shall have the authority to receive information, conduct investigations and hearings, and make recommendations to the Supreme Judicial Court concerning allegations of judicial misconduct or disability.

B. The Commission's jurisdiction shall include the conduct of all active judges prior to, as well as during, their service in judicial office and shall also include the conduct of a retired judge who has been recalled.

RULE 5. CONFIDENTIALITY

A. All proceedings prior to a determination of sufficient cause and the filing of formal charges shall be confidential.

B. Records, files, and reports of the Commission shall be confidential, and no disclosure shall be made, except as follows:

- (1) Upon waiver in writing by the judge at any stage of the proceedings;
- (2) Upon inquiry by an appointing authority or by a state or federal agency conducting investigations on behalf of such authority in connection with the selection or appointment of judges; or upon inquiry in connection with the assignment or recall of a retired judge to judicial duties, by or on behalf of the assigning authority, in which case the Commission may:
 - (a) divulge whatever information is a matter of public record; and
 - (b) after obtaining the judge's signed waiver, divulge other relevant information; or
 - (c) divulge other relevant information after giving written notice to the judge affected of its intention to do so and allowing the judge seven (7) days to respond.
- (3) In cases in which the subject matter has become public, the Commission may issue such statements as it deems appropriate in order to confirm the pendency of the investigation, to clarify the procedural aspects of the proceedings, to explain the right of the judge to a fair hearing, or to state that the judge denies the allegations;
- (4) Upon filing of formal charges, in which case only the formal charges, the answer thereto, the evidentiary hearings thereon, and the final recommendation by the Commission as to disposition shall become public, except as provided in paragraph D below.

C. Where the circumstances necessitating the initiation of an inquiry include notoriety, or where the conduct in question is a matter of public record, information concerning the lack of cause to proceed may be released by the Commission.

D. Proceedings may remain confidential, even after a finding of sufficient cause, if the judge, the Commission, and the complainant, if any, all concur.

E. If, in the course of its proceedings, the Commission becomes aware of credible evidence that any person has committed a crime, the Commission may report such evidence to the appropriate law enforcement agency.

RULE 6. COMMISSION PROCEEDINGS: INITIAL STAGES; GENERAL PROVISIONS

A. Initiation of Proceeding. A Commission proceeding relating to the conduct of a judge is initiated when the Commission receives a written or oral complaint, or when the Commission by motion creates its own complaint, on the basis of reasonable information.

B. Screening. The Executive Director shall cause each complaint to be screened promptly upon its receipt. The screening may include communication with the complainant, if any, to clarify the contents of the complaint, but shall not include any investigation of the allegations set forth in the complaint.

C. Docketing and Notification.

(1) If the Executive Director determines after screening that the complaint does not set forth facts concerning a judge's conduct which, if true, would constitute misconduct or disability within the Commission's jurisdiction, the Executive Director shall notify the complainant that the complaint will not be docketed or investigated by the Commission.

(2) If the Executive Director determines after screening a complaint that it alleges specific facts which, if true, would constitute misconduct or disability within the Commission's jurisdiction, the Executive Director shall docket the complaint.

(3) Except as provided in Rules 6(D), 6(E), 6(F) and 6(G), the Executive Director shall notify the judge of the complaint promptly after it is docketed. Notification shall be by certified mail or registered mail, addressed to the judge's last known place of residence, unless the judge has requested a different mailing address or the use of regular mail. Except, where notice of the complaint is delayed or withheld pursuant to Rule 6(G), the Executive Director shall not conduct any inquiry into or investigation of the complaint until notice has been sent to the judge.

D. Frivolous or Unfounded Complaints. If, on the basis of screening, the Executive Director is of the opinion that a docketed complaint is frivolous or unfounded, the Executive Director shall promptly recommend its dismissal to the Commission before notifying the judge of the complaint. If a majority of the Commission votes to dismiss the complaint, the Executive Director shall promptly notify the complainant of the dismissal and the judge of both the complaint and its dismissal. If a majority of the Commission does not vote to dismiss the complaint, except as provided in Rule 6(G), the Executive Director shall promptly notify the judge of the complaint in accordance with Rule 6(C)(3).

E. Stale Complaints. When a complaint is docketed in which the allegations arise out of acts or omissions all occurring more than one year prior to the date the complaint was filed, the Executive Director shall, before notifying the judge of the complaint and before undertaking any inquiry or investigation of its allegations, make a recommendation to the Commission as to whether there exists good cause to investigate the complaint. If a majority of the Commission determines that there is not good cause to investigate the complaint, the complaint shall be dismissed without investigation, and the complainant, if any, as well as the judge, shall be so notified. If a majority of the Commission determines that there is good cause to investigate the complaint, except as provided in Rule 6(G), the Executive Director shall notify the judge of the complaint pursuant to Rule 6(C)(3). When a complaint alleges a pattern of recurring misconduct the last episode of which is alleged to have occurred less than one year prior to the filing of the complaint, a determination by the Commission of "good cause" pursuant to this Rule is not necessary.

F. Anonymous Complaints. Following the docketing of an anonymous complaint pursuant to Rule 6(C)(2), the Executive Director shall not conduct any inquiry or investigation of it unless the Commission,

upon the recommendation of the Executive Director, determines by majority vote that the allegations of the anonymous complaint would, if true, constitute misconduct or disability within the jurisdiction of the Commission, and the seriousness or the notoriety of the misconduct alleged outweighs the potential prejudicial effect of an investigation into the merits of the complaint. If the Commission does not make such a determination, the complaint shall be dismissed, and the Executive Director shall promptly notify the judge of both the complaint and its dismissal. If the Commission does make such a determination, except as provided in Rule 6(G), the Executive Director shall promptly notify the judge of the anonymous complaint in accordance with Rule 6(C)(3).

G. Withholding Notification. If the Executive Director is of the opinion that, because of the nature of the complaint or the identity of the complainant, notification to the judge would create a substantial risk that evidence material to its investigation might be lost or destroyed, or that there is a substantial danger of reprisal or retaliation by the judge against the complainant or any other person mentioned in the complaint, the Executive Director shall recommend to the Commission that notice of the complaint to the judge be delayed or that notice of certain information in the complaint be delayed. No inquiry or investigation into the complaint beyond the screening process shall take place until the Commission has voted on the Executive Director's recommendation.

(1) If a majority of the Commission does not vote to approve any delay in notifying the judge of the complaint in whole or in part, the Executive Director shall promptly notify the judge of the complaint in accordance with Rule 6(C)(2).

(2) If a majority of the Commission determines that notice to the judge of the complaint in its entirety would create a substantial risk of lost or destroyed evidence or of reprisal, the Commission shall vote to approve the delay in notifying the judge of the complaint in whole or in part. If the Commission approves a delay in providing notice to the judge of any portion of the complaint, the Executive Director shall proceed with an investigation of the complaint pursuant to Rule 6H. If the Commission approves a delay in providing notice to the judge of certain information in the complaint such as the identity of the complainant, the Executive Director shall promptly notify the judge in accordance with Rule 6(C)(3) of all portions of the complaint for which no delay was approved before proceeding with any investigation.

(3) Notice of a complaint may be delayed pursuant to this paragraph only until the Commission obtains the necessary evidence or the risk of reprisal ends.

(4) The Commission shall take reasonable steps to insure that as much notice as possible of the complaint's allegations is provided to the judge at the earliest time feasible in accordance with this Rule.

H. Investigation. Unless a complaint is dismissed pursuant to Rule 6(D), 6(E) or 6(F), and except as provided in Rule 6G, after notice is given to the judge pursuant to Rule 6(C)(3), the Executive Director shall initiate a discreet and confidential investigation and evaluation of the complaint.

I. Request for Special Counsel. If in the course of an investigation the Executive Director concludes that Special Counsel is required, the Executive Director shall recommend that the Commission request the appointment of a Special Counsel by the Supreme Judicial Court. The Commission may also take such action upon its own motion.

J. Sworn Complaint or Statement of Allegations. Within ninety (90) days after the initiation of proceedings, the Executive Director shall recommend to the Commission whether there is adequate reason to proceed to the preparation of a Sworn Complaint or Statement of Allegations.

- (1) The Commission shall so decide by majority vote.
- (2) If the Executive Director recommends that further investigation is necessary before making this determination, the Commission may vote to continue the investigation on a month-to-month basis.
- (3) If the Commission finds that there is sufficient cause to proceed, the complainant, if any, shall be asked to file a detailed, signed, Sworn Complaint against the judge. The Sworn Complaint shall state the facts constituting the alleged misconduct. Immediately upon receipt of the Sworn Complaint, the Executive Director shall make written acknowledgment thereof to the complainant.
- (4) When a Sworn Complaint is not obtained, a Statement of Allegations against the judge and the alleged facts forming their basis shall be prepared by the Executive Director. Where more than one act of misconduct is alleged, each act should be clearly set forth in the Sworn Complaint, or in the Statement of Allegations, as the case may be.
- (5) In any case where the judge has not yet been notified of the entire complaint pursuant to Rule 6(G), if the Commission determines by a majority vote that there remains an ongoing danger of reprisal, the Sworn Complaint or the Statement of Allegations may be drafted so as to conceal the complainant's identity.

K. Same; Service. The judge shall immediately be served with a copy of the Sworn Complaint or Statement of Allegations.

L. Same; Answer. Within twenty-one (21) days after the service of the Sworn Complaint or the Statement of Allegations, the judge may file a written answer with the Executive Director and may request a personal appearance before the Commission, in lieu of or in addition to a written response. If the judge elects to appear personally, his or her statement shall be recorded.

M. Same; Dismissal. After the judge's answer and personal appearance, if any, the Commission may terminate the proceeding and dismiss the complaint and, in that event, shall give notice to the judge and the complainant that it has found insufficient cause to proceed.

N. Same; Amendment. Amendment of the allegations regarding the misconduct of a judge, whether presented to the Commission in a Sworn Complaint or in a Statement of Allegations, shall be permitted prior to a finding of sufficient cause, provided that notice thereof and an opportunity further to respond within twenty-one (21) days is given to the judge.

O. Right to Counsel. The judge shall be entitled to counsel of the judge's own choice.

P. Right to Compel Attendance of Witnesses and Inspection of Records. At any stage of the proceeding, the Commission or its designee may administer oaths or affirmations and shall be entitled to compel the attendance and testimony of witnesses, including the judge himself or herself, and the production of papers, books, accounts, documents, electronic recordings, other tangible things, or any other relevant evidence or testimony.

- (1) Upon receiving the Sworn Complaint or Statement of Allegations, the judge shall become entitled to compel by subpoena the attendance and testimony of witnesses through depositions, and to provide for the inspection of documents, books, accounts, written or electronically-recorded statements, and other records.
- (2) Witnesses may be interviewed, whether or not under oath and whether or not their statements are memorialized, without the presence of other participants. In other circumstances, statements may be taken as depositions, in accordance with Rule 9.

Q. Privilege. A complaint submitted to the Commission or its staff, or testimony with respect thereto, shall be absolutely privileged. No civil action predicated on the complaint shall be instituted against a complainant or a witness, or against counsel to either of them.

R. Recommendation Concerning Assignment. At any time the Commission may recommend to the Supreme Judicial Court, or to the Chief Justice for Administration and Management and the appropriate Chief Justice, the non-assignment or special assignment of a judge, pending the final disposition of a proceeding. The Commission shall state the reasons for its recommendation. A copy of any such recommendation shall be sent by the Commission to the judge.

S. Consultation. In the course of a proceeding, the Commission may consult with the Chief Justice for Administration and Management and the appropriate Chief Justice about administrative matters.

T. Record of Commission Proceedings. The Commission shall keep a record of all proceedings concerning a judge. The Commission's findings, conclusions and recommendations shall be entered in the record.

U. Extensions of Time. The Chairman of the Commission may for good cause extend the time for the filing of an answer, discovery, commencement of a hearing, or transmittal of the Hearing Officer's report, and any other time limit set herein.

Amended September 14, 1999, effective October 1, 1999.

RULE 7. SUFFICIENT CAUSE FOR FORMAL CHARGES

A. Following the expiration of the twenty-one (21) days allowed for the judge's response, for any proceeding not dismissed, the Commission shall thereafter hold a formal meeting which shall be conducted in private, at which the rules of evidence need not be observed. The judge shall have the right to make a personal appearance with his attorney, but not to be present during the Commission deliberations.

B. At this meeting the Commission shall vote to dispose of the case in one of the following ways:

- (1) If it finds that there has been no misconduct, the Executive Director shall be instructed to send the judge and the complainant notice of dismissal.
- (2) If it finds that there has been misconduct for which a private reprimand constitutes adequate discipline, and if the judge consents, it shall issue the reprimand. The complainant shall be notified that the matter has been so resolved.
- (3) If it finds that there has been conduct that is or might be cause for discipline but for which an informal adjustment is appropriate, it may, with the agreement of the judge, so inform or admonish the judge, direct professional counseling or assistance for the judge, or impose conditions on the judge's future conduct. The complainant shall be notified that the matter has been so resolved. When either conditions or treatment is prescribed, the Commission shall provide for supervision, enforcement thereof, or both.
- (4) If it finds by a preponderance of the credible evidence that there is sufficient cause to believe that there has been misconduct of a nature requiring a formal disciplinary proceeding, the Commission shall issue formal charges against the judge. A copy of the formal charges shall be served promptly upon the judge, and the judge shall have ten (10) days to respond.

RULE 8. SCHEDULING OF FORMAL HEARING

A. Upon the filing of the judge's written response to the formal charges or the expiration of the time for its filing, a copy of the formal charges and of the judge's written response shall be filed with the Supreme Judicial Court, which shall promptly appoint a Hearing Officer.

B. Immediately upon the appointment of a Hearing Officer by the Supreme Judicial Court, the Commission shall schedule a hearing to take place in not less than thirty (30) nor more than sixty (60) days. The Commission shall immediately notify the judge and all counsel of the time and place for the hearing.

RULE 9. DISCOVERY DURING THE FORMAL PROCEEDING STAGE

A. Attached to the notice required by Rule 7B(4) shall be further notice that the Commission shall, within a reasonable time, make available for inspection upon the written request of the judge all books, papers, records, documents, electronic recordings, and other tangible things within the custody and control of the Commission which are relevant to the issues of the disciplinary proceeding, and any written or electronically recorded statements within the custody and control of the Commission which are relevant to the issues of the disciplinary proceeding. The failure of the Commission to furnish timely any such materials provided for herein shall not affect the validity of any proceedings before the Commission, provided that such failure is not substantially prejudicial to the judge.

B. Within thirty (30) days after service of the formal charges, the Commission or the judge

(1) May upon written request to the appropriate party prior to the hearing:

(a) Have made available to him for inspection and copying within a reasonable period of time all books, papers, records, documents, electronic recordings, or other tangible things which that party intends to present at a hearing.

(b) 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.

(c) Have made available to him for inspection and copying within a reasonable period of time any written or electronically recorded statements made by witnesses who will be called to give testimony at the hearing.

(2) May, upon written application to the Commission, upon such terms and conditions as the Commission may impose:

(a) Depose within or without the Commonwealth persons having relevant testimony. The complete record of the testimony so taken shall be made and preserved by stenographic record or electronic recording.

(i) The written application to the Commission 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.

(ii) Unless notice is waived, no deposition shall be taken except after at least seven (7) days notice to the other parties.

(iii) Unless otherwise directed by the Commission, 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 transcript filed by the notarial officer shall include argument or debate. Objections to questions or evidence shall be noted by the notarial officer upon the deposition, but he 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.

(b) Subpoena relevant witnesses and documents.

(c) Seek any limitation or protection for any discovery permitted by this rule.

C. Nothing in these rules shall be construed to require the discovery of any report made to the Commission by Special Counsel or other person conducting an investigation for the Commission. Furthermore, in granting discovery the Commission shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a witness or party in these proceedings.

D. Other issues relative to discovery which are not covered in these rules shall be addressed or resolved in accordance with the comparable provisions of the Massachusetts Rules of Civil Procedure.

RULE 10. FORMAL HEARING

A. The formal hearing shall be conducted before the Hearing Officer appointed by the Supreme Judicial Court.

B. The hearing shall be open to the public. The rules of evidence applicable to civil proceedings in Massachusetts shall apply, and all testimony shall be under oath. Commission attorneys, or Special Counsel retained for the purpose, shall present the case. The judge whose conduct is in question shall be permitted to adduce evidence and produce and cross-examine witnesses. The Commission shall have the burden of proving the charges by clear and convincing evidence. Every hearing shall be transcribed.

C. The formal charges may be amended after commencement of the public hearing only if the amendment is technical in nature and if the judge and his counsel are given adequate time to prepare a response.

RULE 11. POST-HEARING PROCEDURE

A. Within thirty (30) days after the conclusion of the hearing, the Hearing Officer shall submit to the Commission and to the judge a report which shall contain proposed findings and recommendations, the transcripts of testimony, and all exhibits.

B. Upon receipt of the report of the Hearing Officer, the Commission shall send a copy of the report to the complainant forthwith.

C. Within twenty (20) days after receipt of such report, counsel for the judge and for the Commission shall each be allowed to submit to the Commission written objections to the proposed findings and recommendations. Any such objections shall become part of the record.

D. Within the same twenty (20) day period the judge and the complainant, if any, may file a written request to be heard before the Commission regarding its recommendation for discipline.

E. If either participant does so request, notice shall be given to both as to the scheduled time and place for such hearing, at least seven (7) days in advance. Such hearing shall be public, but Commission deliberations regarding such recommendation shall be conducted in executive session.

F. Unless there is good cause for delay, the Commission shall reach a decision on the basis of the full record within ninety (90) days after the hearing concerning recommendation for discipline, if there is such a hearing, or otherwise within ninety (90) days after receipt of the Hearing Officer's report. Its conclusions may differ from those proposed by the Hearing Officer. Its decision shall state specific reasons for all conclusions and recommendations.

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 judge is not represented by counsel, the Commission shall appoint an attorney to represent him at public expense.

B. If a complaint or statement of allegations involves the 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 his medical records.

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.

APPENDIX C

CODE OF JUDICIAL CONDUCT (Supreme Judicial Court Rule 3:09)

CANON 1

A Judge Should Uphold the Integrity and Independence of the Judiciary

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective without any limitation upon the Supreme Judicial Court in the exercise of its power of general superintendence, whether statutory or inherent, in areas not delineated in the Code.

CANON 2

A Judge Should Avoid Impropriety and the Appearance of Impropriety in All His Activities

(A) A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

(B) A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

(C) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

Amended effective Jan. 1, 1992.

CANON 3

A Judge Should Perform the Duties of His Office Impartially and Diligently

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

(A) Adjudicative Responsibilities.

- (1) A judge should be faithful to the law and maintain professional competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.
- (2) A judge should maintain order and decorum in proceedings before him.
- (3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.
- (4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law. He should not permit private interviews, arguments or communications designed to influence his judicial action, where interests to be affected thereby are not represented before him, except in cases where provision is made by law for ex parte application.
- (5) A judge should dispose promptly of the business of the court.
- (6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(B) Administrative Responsibilities.

- (1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.
- (2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.
- (3) If a judge shall become aware of unprofessional conduct by a judge or a lawyer
 - (a) he shall, in the instance of a judge, report his knowledge to the Chief Justices of this court and of the court of which the judge in question is a member, and
 - (b) in the instance of a lawyer, he shall initiate appropriate investigative or disciplinary measures.
- (4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of service rendered.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

(6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or similar factors, are issues in the proceeding.

(C) Disqualification.

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(a) he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) he served as a lawyer in the matter of controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(c) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial or other property interest in the subject matter in controversy or in a party to the proceeding, which interest could be substantially affected by the outcome of the proceedings;

(d) he or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interest of his spouse and minor children residing in his household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system;

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a substantial legal or equitable interest, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

- (i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;
- (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization.
- (iii) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;
- (iv) ownership of government securities or of less than one-hundredth of one percent of the total shares issued and outstanding of any corporation or of its parent or subsidiary corporations is a "financial interest" in the issuer of such securities or its parent or subsidiaries only if the outcome of the proceeding could substantially affect the value of the securities.

(D) Remittal of Disqualification.

A judge disqualified by the terms of Canon 3(C)(1)(c) or Canon 3(C)(1)(d) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the lawyers, after consultation with their clients independently of the judge's participation, agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all lawyers, shall be incorporated in the record of the proceeding.

Amended Nov.10, 1982, effective Jan. 1, 1983; amended effective Jan.1, 1992; Feb.11, 1992; amended October 1, 1998, effective November 2, 1998.

CANON 4

A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

(A) He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

(B) He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.

(C) He may serve as member, officer, or director of an organization devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public

fund raising activities. He may make recommendations to public and private fund granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

CANON 5

A Judge Should Regulate His Extra-Judicial Activities to Minimize the Risk of Conflict with His Judicial Duties

(A) Avocational Activities.

A judge may write, lecture, teach, and speak on nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

(B) Civic and Charitable Activities.

A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.
- (2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civil organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization. He should not be a speaker or the guest of honor at an organization's fund raising events, but he may attend such events.
- (3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

(C) Financial Activities.

- (1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.
- (2) Subject to the requirements of subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity permitted by Canon 4, but should not serve as an officer, director, manager, advisor, or employee of any business.
- (3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious

financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) A judge may accept a gift of nominal value incident to public recognition of him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor, or loan from a relative; a gift from a wedding, engagement, confirmation, or like traditional ceremonial occasion; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(c) a judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds \$350, the judge reports it in the same manner as he reports compensation in Canon 6(C).

(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

(D) Fiduciary Activities.

A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not then interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

(E) Arbitration.

A judge should not act as an arbitrator or mediator.

(F) Practice of Law.

A judge should not practice law

(G) Extra-Judicial Appointments.

A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice. The foregoing is subject to any limitations imposed by the Constitution of the Commonwealth with respect to any such appointment. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Amended March 26, 1997, effective April 16, 1997; amended effective May 26, 1998.

CANON 6

**A Judge Should Regularly File Reports of Compensation
Received for Quasi-Judicial and Extra-Judicial Activities**

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(A) Compensation.

Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

(B) Expense Reimbursement.

Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

(C) Public Reports.

A judge should report on or before April 15 of each year, with respect to the previous calendar year, the date, place, and nature of any activity for which he received compensation, and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extra-judicial compensation to the judge. His report should be made and should be filed as a public document in the office of the Administrative Assistant to the Supreme Judicial Court (G.L. c. 211, §3A).

CANON 7

A Judge Should Refrain from Political Activity

(A) Political Conduct in General.

- (1) A judge should not:
 - (a) act as a leader or hold any office in a political organization;
 - (b) make speeches for a political organization or candidate or publicly endorse a candidate for public office;
 - (c) solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners, for functions conducted to raise money for incumbents of or for candidates for election to any political office, or for any other type of political function.
- (2) A judge should resign his office when he becomes a candidate either in a primary or in a general election for elective office. On assuming his judicial position, a judge shall resign any elective public office he then holds.
- (3) A judge may engage in activity in support or on behalf of measures to improve the law, the legal system, or the administration of justice.

Amended June 7, 1985, effective July 1, 1985.

CANON 8

Compliance with the Code of Judicial Conduct

(A) Retired Judges.

- (1) A judge whose name has been placed upon the list of retired judges eligible to perform judicial duties, pursuant to G.L. c. 32, §§ 65E-65G, should comply with all provisions of this Code of Judicial Conduct during the term of such eligibility.
- (2) A judge who has retired or resigned from judicial office should not perform court-connected dispute resolution services except on a pro bono publico basis, enter an appearance, nor accept an appointment to represent any party in any court of the Commonwealth for a period of six months following the date of retirement, resignation or most recent service as a retired judge pursuant to G.L. c. 32, §§ 65E-65G.

Amended Dec. 2, 1983, effective Jan. 1, 1984; Oct. 24, 1989, effective Jan. 1, 1990; May 1, 1998, effective June 1, 1998.

Effective Date of Compliance

The effective date of compliance of this Code is January 1, 1973.

APPENDIX D

FLOW CHART OF COMMISSION PROCEDURES

COMMISSION ON JUDICIAL CONDUCT

14 BEACON STREET SUITE 102
BOSTON, MASSACHUSETTS 02108

Phone: (617) 725-8050

Fax: (617) 248-9938

COMPLAINT FORM

CJC Complaint No. _____

This form is designed to provide the Commission with the information to screen your complaint and to begin an investigation of your allegations. Please read the accompanying materials on the Commission's function and procedures before filling out this form. ONLY ONE JUDGE MAY BE COMPLAINED OF ON EACH FORM.

PLEASE TYPE OR PRINT CLEARLY ALL INFORMATION

Your name _____

Address _____

_____ Zip Code _____

Daytime telephone _____

Name of judge _____

Court _____

Case name _____

Docket number _____

Attorneys involved _____

Date(s) of misconduct _____

Has an appeal been filed? _____

A summary of the general nature of your complaint: _____

Specific Facts:

Please describe exactly what the judge did that was misconduct, and on what date(s). YOUR COMPLAINT WILL BE SCREENED ON THE BASIS OF THIS FORM ONLY. DO NOT RELY UPON ATTACHMENTS TO MAKE YOUR ALLEGATIONS. (You may attach copies of any documents which support your allegations, for the purposes of the investigation.)

[illegible]

Please mail completed form to:

Executive Director
Commission on Judicial Conduct
14 Beacon Street, Suite 102
Boston, MA 02108

Signed: _____

Date: _____