THE COMMONWEALTH OF MASSACHUSETTS

Commission on Judicial Conduct
Annual Report
2013

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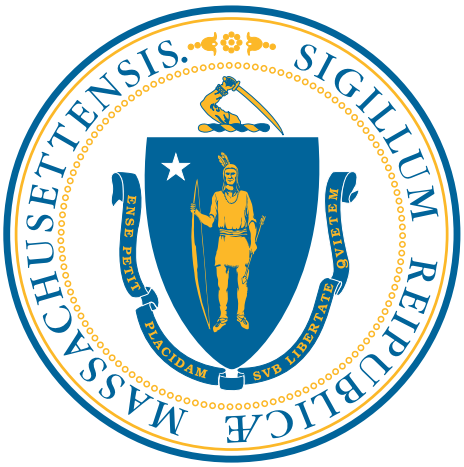


TABLE OF CONTENTS

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 Chapter 211C, as inserted by St. 1978, Chapter 478, sec. 114. In 1987, Chapter 211C was substantially amended, effective April 1, 1988. See St. 1987, Chapter 656. Since 1988, the Commission has been operating under the amended version of Chapter 211C and new procedural rules. Chapter 211C was later amended by St. 2011, Chapter 93, effective July 1, 2012 (see Appendix A). Commission Rules 1 and 6 were amended, effective October 1, 1999; and Commission Rules 1, 6, and 7 were revised and Rule 13 was added, effective July 1, 2007 (see Appendix B). The Code of Judicial Conduct (Supreme Judicial Court Rule 3:09) was rewritten, effective October 1, 2003. Section 3B(9) of the Code was amended, effective January 1, 2010; and the Commentary to Section 4 of the Code was amended on November 20, 2012, effective January 1, 2013 (see Appendix C).

This annual report covers the Commission's activities from January 1, 2013 through December 31, 2013.

1. THE COMMISSION'S JURISDICTION

The Commission is authorized to accept complaints only against Massachusetts state court judges. The Commission's jurisdiction includes the conduct of all judges, including any retired judge who is assigned to perform the duties of a judge for a temporary period, 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 or she held judicial office.

The Code of Judicial Conduct, promulgated by the Supreme Judicial Court (Rule 3:09; see Appendix C), sets forth 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 allegations of misconduct that occurred more than one year prior to the date the complaint is received unless the Commission finds "good cause" to investigate the allegations, or unless there is an alleged pattern of recurring judicial misconduct,

the last episode of which arose during the one-year period.

The Commission does not have the power to review the record of a case to determine whether a judge made the correct decision; 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 F). 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. 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. In order for a complaint to be docketed, it must allege specific facts which, if true, would constitute judicial misconduct or disability. If the complaint does not allege judicial misconduct or disability, 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" under Commission Rule 6D, the complaint goes to the Commission for consideration of whether it should be summarily dismissed.

d. Stale Complaints

If, upon screening, the Executive Director finds that a complaint alleges judicial misconduct that occurred more than one year prior to the filing of the complaint, the complaint goes to the Commission for consideration of whether there is good cause to investigate it. "Good cause" considerations include how serious and how old the allegations are, why the complaint was not filed sooner, and whether evidence and witnesses' memories of the events are likely to still 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

Before an anonymous complaint can be investigated, it must first go to the Commission to determine 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 cases, the judge is immediately notified of the complaint and invited to respond if he or she wishes. If the complaint is considered right away by the Commission for summary dismissal and the Commission votes to dismiss the complaint, notice of the complaint will be given to the judge at the same time the judge receives a letter notifying him or her of the dismissal.

If the Executive Director determines upon screening a complaint that notifying the judge 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 initial consideration of whether there exists such a risk or danger. Unless the Commission finds that there is such a risk or danger, the judge receives full notice of the complaint before the investigation is begun. If the Commission does find that there is such a risk or danger, the Commission can withhold notice of the complaint in whole or in part. The complaint is then investigated. Notice is withheld only until such risk or danger ends. The judge then receives full notice of the complaint.

g. Investigation

The staff member assigned the complaint conducts a prompt, confidential investigation, which may include listening to the audio record of court proceedings, reviewing transcripts, interviewing witnesses, reviewing documents, and conducting legal research. At the conclusion of the investigation, the Commission reviews the report of the investigation, the judge's response, if any, and any other relevant materials. The Commission then 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 vote to dismiss the complaint or to propose to the judge that the complaint be disposed of by Informal Adjustment, Private Reprimand, or Rule 13 referral to the Supreme Judicial Court.

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. Agreed Disposition/Informal Adjustment

An Agreed Disposition may take the form of an Informal Adjustment in which the Commission informs or admonishes the judge that certain conduct is or may be cause for discipline. This form of disposition requires agreement by the judge to the terms of the Informal Adjustment. In most cases, this type of disposition has a valuable, favorable effect on a judge's conduct.

The terms of such a disposition usually include a period of monitoring by the Commission and conditions imposed on the judge that are designed to prevent a repetition of the misconduct. The conditions 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.

j. Agreed Disposition/Private Reprimand

Another form of Agreed Disposition is a Private Reprimand to a judge. A Private Reprimand is considered to be a more severe discipline than the Information or Admonition mentioned in the preceding section. However, this type of disposition also requires the consent of the judge and usually includes a period of monitoring by the Commission and conditions imposed on the judge that are designed to prevent a repetition of the misconduct.

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 can vote to dispose of the matter by dismissing the complaint, by issuing Formal Charges, or by proposing to the judge that the complaint be disposed of in one of the following three ways: (1) Informal Adjustment; (2) Private Reprimand; or (3) direct submission to the Supreme Judicial Court under Rule 13.

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 and both documents become public.

m. Hearing

When Formal Charges are filed with the Supreme Judicial Court, the Commission requests that the Supreme Judicial Court appoint a Hearing Officer. The Commission then 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

Within ninety days of receiving the Hearing Officer's report, the Commission must submit its own report and recommendations to the Supreme Judicial Court. Before the Commission does so, 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; however, the Commission deliberations which follow are closed. The Commission's conclusions and recommendations may differ from those of the Hearing Officer.

o. Disposition

The Supreme Judicial Court may adopt the Commission's recommendations concerning discipline or impose greater or lesser discipline. The Commission's authority to dispose of a complaint is limited to dismissal or Agreed Disposition. 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 Supreme Judicial 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 notified of the final disposition of a complaint.

p. Direct Submission to the Supreme Judicial Court

If the Commission finds that a judge has committed judicial misconduct and an Informal Adjustment/Agreed Disposition has not been reached, but the judge does not wish to proceed to a public hearing, the Commission and the judge may agree to submit the matter directly and confidentially to the Supreme Judicial Court pursuant to Rule 13. Under Rule 13A, the Commission and the judge agree upon the facts, but not upon the discipline to be recommended, and the Supreme Judicial Court's decision is final. Under Rule 13B, the Commission and the judge agree upon the recommendation for discipline but not upon the facts. If the Supreme Judicial Court does not adopt the agreed recommendation, the matter returns to the Commission for further proceedings.

q. Physical or Mental Disabilities

In dealing with complaints that allege physical or mental disabilities that affect a judge's performance, the Commission follows the same procedures described above for proceedings on complaints alleging judicial misconduct.

3. CONFIDENTIALITY

The statute and the rules that 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 2013

Fifty-five of the 312 complaints received in 2013 fell within the Commission's jurisdiction and were docketed. Of those complaints docketed, eighteen (32.7%) were filed against judges of the District Court; seventeen (30.9%) were filed against judges of the Probate and Family Court; eleven (20.0%) were filed against judges of the Superior Court; four (7.3%) were filed against judges of the Juvenile Court; four (7.3%) were also filed against judges of the Boston Municipal Court; and one (1.8%) was filed against a judge of the Housing Court. There were no docketed complaints against the justices of the Supreme Judicial Court, the Appeals Court, or the Land Court. Chart 3 presents the distribution of complaints by court.

In 2013, litigants filed 74.5% of the complaints. Of the litigants who filed complaints, 39.0% were self-represented. Relatives of litigants filed 10.9% of the complaints. Concerned citizens filed 2.0% of the complaints, while lawyers filed 9.0% of the complaints. No complaints were filed anonymously. The Commission itself initiated three complaints in 2013. Chart 5 presents the distribution of complaints by source.

Most of the complaints filed in 2013 contained multiple allegations. The subject matter of the allegations is presented in Chart 6. The most frequent allegation was bias or prejudice, appearing in 56.3% of the complaints. Of those, 16.1% alleged gender bias: 80.0% against men and 20.0% against women. Bias against self-represented litigants appeared in 6.5% of the complaints alleging bias, while racial bias appeared in 3.2%. Bias against criminal defendants appeared in 22.6% of the complaints alleging bias. Bias against the disabled or elderly and socioeconomic bias were each alleged in 3.2% of the complaints alleging bias. Other types of bias were alleged in the remaining 45.2% of complaints alleging bias. Denial of full opportunity to be heard was the second most frequent allegation, appearing in 43.6% of the complaints. Disagreement with decisions and rulings appeared in 41.8% of the complaints (although that is not, standing alone, an allegation of misconduct). Inappropriate demeanor was alleged in 38.1% of the complaints. Denial of constitutional rights appeared in 14.5% of complaints. Failure to follow the law or incompetence was alleged in 10.9% of the complaints. Improper *ex parte* communication was alleged in 9.1% of complaints. Corruption, bribery, or extortion was alleged in 5.5% of the complaints. Coercion to settle or plead, and abuse of authority were each alleged in 3.6% of complaints. Administrative problems, cover-up, failure to maintain order, failure to properly record proceedings, acting as an advocate, mental disability, and retaliation were each alleged in 1.8% of the complaints filed in 2013.

Chart 1 presents the status of the Commission's 2013 docket. The Commission disposed of ninety-seven complaints in 2013, including some that were carried over from the previous year. Thirty-five complaints were pending at the end of 2013, including seven Informal Adjustments, twenty-five investigations, and three preliminary inquiries.

As shown in Chart 2A, the Commission dismissed ninety-two complaints outright, or 94.8% of the complaints disposed of by the Commission during 2013. Of those complaints dismissed outright, thirty-nine (42.4%) were dismissed after preliminary review; fifty-three (57.6%) were dismissed after investigation because the Commission did not find that any judicial misconduct had occurred. Two complaints (2.1% of the total disposed) were dismissed with an expression of concern following an investigation. Three complaints were Informally Adjusted and are being actively monitored by the Commission. Three Informal Adjustments were successfully closed.

CHART 1
Status of Commission Docket
2013

Complaints Pending January 1, 2013		77
Hearings in Progress	0	
Investigations in Progress	69	
Preliminary Inquiries in Progress	1	
Informal Adjustments in Progress	7	
Complaints Docketed in 2013		55
Complaints Disposed of in 2013		97
Complaints Pending as of December 31, 2013		35
Hearings in Progress	0	
Investigations in Progress	25	
Preliminary Inquiries in Progress	3	
Informal Adjustments in Progress	7	
Rule 13 SJC Orders in Progress	0	

CHART 2A
Commission Action on Complaints
2013

Complaints Before the Commission in 2013	132
Complaints Pending from Previous Year	77
Complaints Docketed in 2013	55
Complaints Under Investigation in 2013	82
Complaints Informally Resolved/Actively Monitored	3
Complaints Disposed of in 2013	97
Dismissed after Preliminary Review	39
Dismissed after Investigation	53
Dismissed with Concern (after investigation)	2
Disposed of by the Supreme Judicial Court	0
Informally Resolved/Closed with Reprimand	1
Informally Resolved/Closed Other	2

CHART 2B
Commission Action on Complaints
2013

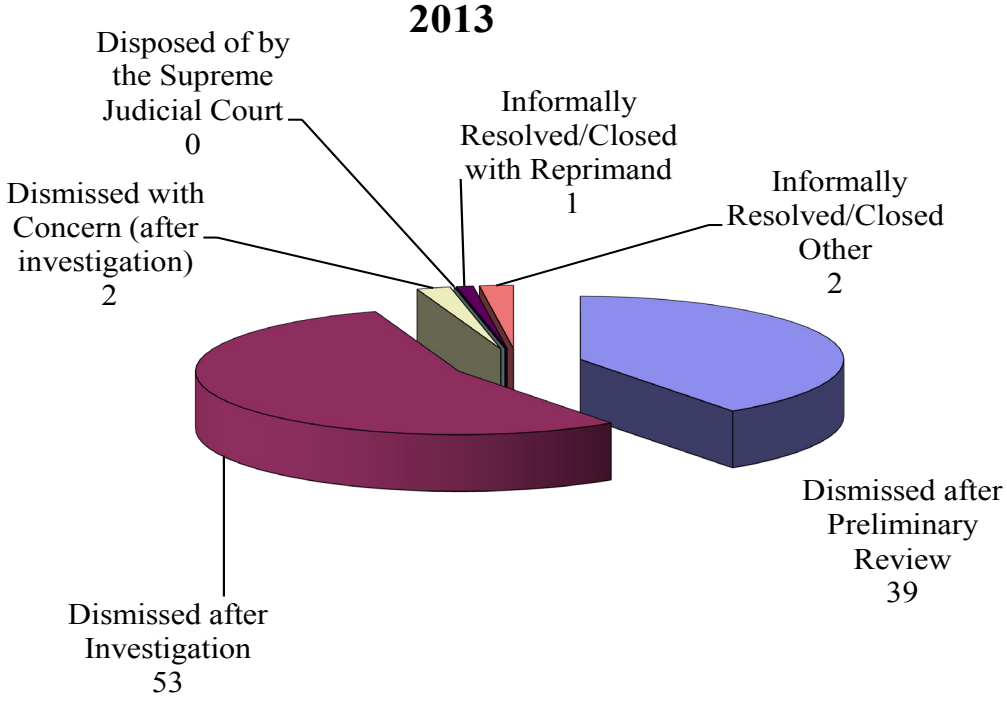


CHART 3A
Complaints by Court
2013

	N= 55
Supreme Judicial Court (7)*	0
Appeals Court (25)	0
Superior Court (82)	11
Land Court (7)	0
Probate & Family Court (51)	17
Housing Court (10)	1
District Court (158)	18
Boston Municipal Court (30)	4
Juvenile Court (41)	4

*the number of judges authorized by statute for each court

CHART 3B
Complaints by Court
2013

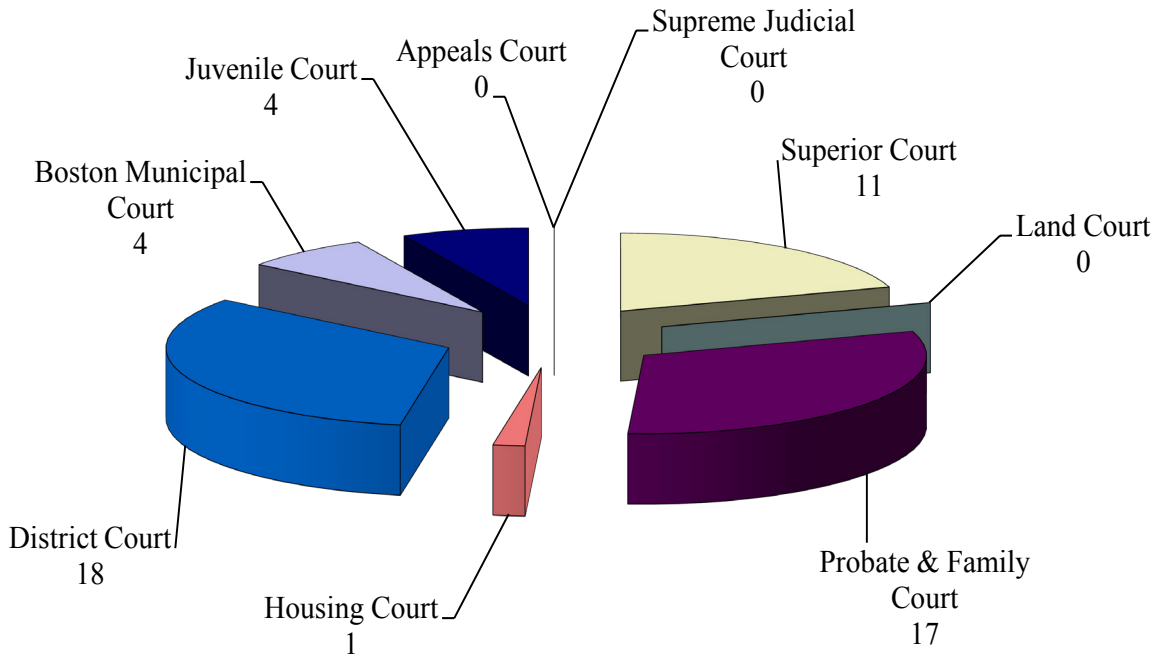


CHART 4
Type(s) of Case Involved
2013

N= 55*

Divorce, Custody, Support		15
Civil		15
• Abuse Prevention	4	
Criminal		18
Estate or Other Probate Matter		3
• Guardianship	0	
Off Bench Conduct		2
Juvenile		2
Small Claims		0

* Some complaints involve more than one case.

CHART 5
Type(s) of Complainant
2013

N= 55*

Litigant		41
Self-Represented	16	
Lawyer		5
Litigant's Relative		6
Concerned Citizen		1
Commission on Judicial Conduct		3
Witness, Victim, Victim's Relative		0
Anonymous		0
Legislator		0
Other		0

* Some complaints have more than one complainant.

CHART 6
Subject Matter of Complaints*
2013

Bias, Prejudice †			31
Gender	5		
Against Men	4		
Against Women	1		
Against Self-Represented Litigants		2	
Racial		1	
Against Criminal Defendants		7	
Against Disabled or Elderly		1	
Socioeconomic		1	
Other Bias		14	
Disagreement with Decisions and Rulings			23
Inappropriate Demeanor			21
Denial of Full Opportunity to be Heard			24
Denial of Constitutional Rights			8
Ex Parte Communication			5
Abuse of Authority			2
Corruption, Bribery, Extortion			3
Failure to Follow the Law, Incompetence			6
Administrative Problems			1
Delay		1	
Coercion to Settle or Plead			2
Cover-up			1
Retaliation			1
Failure to Record Proceedings Properly			1
Failure to Maintain Order			1
Mental Disability			1
Giving Legal Advice, Acting as an Advocate			1

*Many complaints contain more than one allegation.
†One complaint may allege more than one type of bias.

CHART 7
Summary of Commission Activity, 2009 - 2013

	2009	2010	2011	2012	2013
Complaints Pending from Previous Year	52	47	58	121	77
New Complaints Docketed	126	119	177	76	55
Complaints Under Investigation	110	112	177	146	82
Complaints Dismissed	118	102	106	112	92
Complaints Informally Resolved (in any Year) and Closed this Year	5	5	0	1	3
Complaints Informally Resolved this Year and Still Pending at the End of this Year	1	0	3	4	3
Complaints Informally Resolved this Year (Closed this Year or not)	6	3	3	4	3
Public Hearings Begun in Year	0	0	0	0	0
Reports Filed with the Supreme Judicial Court	0	0	0	0	0

IV. CASE SUMMARIES

The following case summaries represent examples of complaints on which the Commission took action during 2013.[1]

A. Dismissed without Investigation (after preliminary review)

(1) Stale

A self-represented defendant in a criminal matter alleged that a judge of the Superior Court Department failed to conduct a legally sufficient plea colloquy. The plea hearing in question took place approximately seven and one half years before the defendant filed his complaint with the Commission. The preliminary inquiry consisted of reviewing the materials submitted by the defendant and the docket sheet for the criminal matter at issue. The preliminary inquiry yielded no evidence to support this complaint. Accordingly, the Commission voted there was not good cause to investigate this stale complaint and to dismiss it.

(2) Frivolous or Unfounded

A self-represented litigant in a divorce matter alleged that a judge of the Probate and Family Court Department was biased against him due to a prior complaint the litigant had filed with the Commission. The litigant also alleged that the judge was biased against his gender and treated him discourteously. The preliminary inquiry consisted of reviewing the materials submitted by the litigant and asking the litigant for any additional evidence to support his allegations. The litigant was unable to provide any evidence, other than decisions within the legal discretion of the judge, to support his allegations. The preliminary inquiry yielded no evidence to support the allegations. Accordingly, the Commission voted to dismiss this complaint as frivolous or unfounded.

B. Dismissed after Investigation

(3) A represented defendant in a criminal matter alleged that a judge of the District Court Department was discourteous, created an appearance of bias, and improperly ruled on a motion after the judge had recused himself. The investigation included listening to the audio records of five separate court proceedings, speaking with several witnesses, and speaking with the judge. The investigation revealed that the judge exhibited no bias, and behaved courteously and professionally at all times. Regarding the allegation the judge improperly ruled on a motion in the defendant's case after he had recused himself, the investigation revealed that the judge was not aware that he had previously recused himself and that the motion related to a minor, uncontested administrative matter. Accordingly, the Commission voted to dismiss the complaint.

(4) A represented litigant in a civil matter alleged that a judge of the Housing Court Department was discourteous, created an appearance of bias, and improperly failed to recuse himself. The investigation included listening to the audio records of the proceedings at issue, reviewing materials submitted by the complainant, and speaking with a witness. The investigation revealed the judge exhibited no bias, behaved courteously and professionally at all times, and had no duty to recuse himself. Accordingly, the Commission voted to dismiss the complaint.

[1] Only masculine pronouns will be used, in order not to identify any of the participants.

(5) An attorney representing a party in a civil matter alleged that a judge of the District Court Department delayed entering judgment in his client's matter for nearly one year. The investigation included reviewing the audio records of the proceedings at issue, reviewing case materials, and speaking with the judge. The judge expressed remorse for the delay, explained that he had been dealing with a significant health issue during the period of the delay, and entered the judgment immediately upon his return from medical leave. The Commission voted to dismiss the complaint.

C. Dismissed with an Expression of Concern

(6) A represented litigant alleged that a judge demonstrated racial bias against him. The investigation included reviewing the audio records and transcripts of the proceedings at issue, interviewing numerous witnesses, and speaking with the judge. The investigation revealed that the judge made racially insensitive comments to the litigant. However, the investigation also revealed that ethnic background and cultural beliefs were relevant issues and the judge's comments amounted to poor word choices. The Commission dismissed this complaint while expressing its concern to the judge that, in the future, he consider whether comments about a party's culture or ethnicity could lead to the appearance that his decision-making was influenced by ethnic or racial considerations.

(7) The Commission initiated a complaint alleging that a judge violated the due process rights of a self-represented criminal defendant, who was in custody, by calling the defendant's criminal case in the courtroom and then continuing the case to another date without bringing the defendant into the courtroom and giving him an opportunity to be heard. The investigation included reviewing the audio records of the proceedings and speaking with the judge. The Commission dismissed the complaint while expressing its concern to the judge that he should remain mindful of the right of a self-represented criminal defendant to be heard on all matters before the court and the necessity that a defendant who represents himself and is in custody be brought into the courtroom so that he can exercise that right.

D. Informal Adjustments/Agreed Dispositions

(8) The investigation of a complaint against a judge established that the judge had improperly deprived a criminal defendant of his right to be heard, had created an appearance of bias and prejudgment against the defendant, had treated the defendant discourteously, and had ordered the defendant held without bail without any legal basis, in violation of Canons 1A, 2A, 3B(2), 3B(4), 3B(5) and 3B(7). The judge and the Commission entered into an Agreed Disposition in which the Commission privately reprimanded the judge for that misconduct. The judge agreed to be monitored by the Commission for two years and to meet regularly with a mentor judge. The complaint will be closed at the end of that two-year period and will remain confidential if all conditions are successfully completed.

(9) The investigation of a complaint against a judge established that the judge had delayed issuing findings and judgment for a total of nearly three years from the conclusion of trial, in violation of Canons 1A and 3B(8). The judge and the Commission entered into an Agreed Disposition in which the Commission privately reprimanded the judge for that misconduct. The judge agreed to be monitored by the Commission for a period of up to two years and to submit monthly reports of matters under advisement to the Commission and to his Chief Justice. The complaint will be closed at the end of the monitoring period and will remain confidential if all conditions are successfully completed.

(10) The investigation of a complaint against a judge established that the judge engaged in inappropriate conduct toward members of the opposite sex, in violation of the Massachusetts Trial Court

Policy and Procedure for the Elimination of Sexual and Gender Harassment in the Workplace, and treated certain parties appearing before him discourteously, in violation of Canons 1A, 2A, 3B(3), 3B(4), 3B(5) and 3C. The judge and the Commission entered into an Agreed Disposition in which the Commission privately admonished the judge for that misconduct. The judge agreed to be monitored by the Commission for a period of up to two years and to meet regularly with a mentor judge. The complaint will be closed at the end of the monitoring period and will remain confidential if all conditions are successfully completed.

V. 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 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. Commission members 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, as follows:

Joseph D. Steinfield, Esq., Chairman

Hon. Judith Fabricant, Vice Chairman

Hon. Mary Anne Sahagian

Hon. Roberto Ronquillo, Jr. (until December 9, 2013)

Susan M. Finegan, Esq.

John J. Carroll, Jr., Esq.

Elizabeth W. Vorenberg

Rosemary J. Corley

Quinton B. Dale

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 2013 were, as follows:

Hon. Jeffrey M. Winik

2. BUDGET

The Commission is an independent office within the Judicial Branch, funded through a line-item in the budget of the Supreme Judicial Court. The Commission received an appropriation of $592,597 for fiscal year 2013.

3. STAFF

Executive Director:	Howard V. Neff, III, Esq.
Staff Attorneys:	Craig J. MacLellan, Esq. (until July 9, 2013)
	Audrey E. Cosgrove, Esq.
	Stephanie W. Perret, Esq.
	Bryan F. Duggan, Esq. (since November 8, 2013)
Executive Assistant:	Anthony M. Santoro, Esq.
Administrative Secretary:	Darlene Graves

4. MEETINGS

The Commission generally meets monthly on the second Tuesday of the month, except in August, and holds special meetings as needed. The Commission met eleven times in 2013.

APPENDIX A

Massachusetts General Laws Chapter 211C, as amended by St. 1987, c. 656 and St. 2011, c. 93, sec. 62[1].

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 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 selected 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 the commission and to the supreme judicial court;

(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 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.

[1] The amendments in St. 2011, c. 93, sec. 62 became effective on July 1, 2012.

APPENDIX 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. "Conditions on the Judge's Conduct," for purposes of G.L. c.211C, section 8(1)(c), shall include but not be limited to:

(1) education;
(2) training;
(3) mentoring;
(4) foreclosing eligibility for recall;
(5) an agreed upon press release to be issued, with no other public comment on the matter by either party;
(6) requiring that a decision in a court case be issued by a certain date;
(7) periodic status reports;
(8) meeting with Commission members and/or staff;
(9) writing an apology to a person or to the public;
(10) requiring the judge to caution the judge's family members regarding misuse of their relationship to the judge;
(11) agreeing never to mediate, hear or rule on any matters involving the attorneys who investigated and prosecuted the matter, or their firms;
(12) insuring that official audio equipment is recording at all times during court proceedings;
(13) holding conferences on the record;
(14) otherwise requiring a judge to comply with the law, the Code of Judicial Conduct and other rules, regulations, orders and procedures.
(15) If the Commission finds that a condition not specified herein would be appropriate, the Commission may file under seal a request with the Supreme Judicial Court to rule within fourteen days as to whether that condition is permissible in this category, without disclosing the identity of the judge.

(a) If the Court does not rule within fourteen days, the Commission may assume that the condition is permissible in this category.

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

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

I. "Notoriety" means broad public knowledge.

J. "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.

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

L. "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.

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

N. "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; amended May 8, 2007, effective July 1, 2007.

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 6D, 6E, 6F and 6G, 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 6G, 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 6G, the Executive Director shall promptly notify the judge of the complaint in accordance with Rule 6C(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 6G, the Executive Director shall notify the judge of the complaint pursuant to Rule 6C(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 6C(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 6G, the Executive Director shall promptly notify the judge of the anonymous complaint in accordance with Rule 6C(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 6C(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 6C(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 6D, 6E or 6F, and except as provided in Rule 6G, after notice is given to the judge pursuant to Rule 6C(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 6G, if the Commission determines by 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[1] 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[2] 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.

V. Enforcement of an agreement for Informal Adjustment shall be by the Commission, or, upon application by the Commission to the Supreme Judicial Court, by the Court.

Amended September 14, 1999, effective October 1, 1999; amended May 8, 2007, effective July 1, 2007.

[1, 2] Pursuant to St. 2011, c. 93, sec. 137, effective July 1, 2012, the position of Chief Justice for Administration and Management was replaced with the position of Chief Justice of the Trial Court. This change is not yet reflected in the Commission's rules.

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.

(5) If it finds that there has been conduct that is or might be cause for discipline and for which direct submission to the Supreme Judicial Court is appropriate, it may, with the agreement of the judge, make a direct submission in accordance with Rule 13.

Amended May 8, 2007, effective July 1, 2007.

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.

RULE 13. DIRECT SUBMISSION TO THE SUPREME JUDICIAL COURT

At any stage of a proceeding the Commission may, with the agreement of the judge, elect one of the following methods for direct submission to the Supreme Judicial Court.

A. Final Submission Upon Agreed Facts.

(1) The Commission and the judge will prepare and sign an Agreement for Final Submission to the Supreme Judicial Court Upon Agreed Facts. The Agreement will contain:

(a) A waiver by the judge of the right to a formal hearing.

(b) A stipulation by the judge to facts sufficient, in the judgment of the Commission, to establish judicial misconduct.

(c) A statement of the section(s) of the Code of Judicial Conduct which the Commission alleges, and the judge agrees, the judge has violated.

(d) Statements by the Commission and by the judge of their joint or disparate recommendations for discipline by the Supreme Judicial Court.

(e) Agreement by the Commission and the judge that the Supreme Judicial Court may accept or reject the recommendations of the Commission or the judge or may impose whatever discipline it deems appropriate.

(f) Acknowledgment by the Commission and the judge that the decision of the Supreme Judicial Court will constitute the final disposition of the case.

(g) A waiver by the judge of any confidentiality rights that would preclude submission of the matter to, or disclosure of the matter by, the Supreme Judicial Court, including the items to be submitted as specified herein, and

the Supreme Judicial Court's disposition of the case.

(2) The Commission will submit to the Supreme Judicial Court under seal:

(a) The Agreement for Final Submission Upon Agreed Facts.

(b) A copy of the complaint, statement of allegations and formal charges, if any, and all responses.

(c) Any other information agreed to by the parties.

(3) The Supreme Judicial Court may accept or reject the recommendation of either the Commission or the judge or may impose whatever discipline it deems appropriate.

B. Conditional Submission Upon Acknowledged Evidence.

(1) The Commission and the judge will prepare and sign an Agreement for Conditional Submission to the Supreme Judicial Court Upon Acknowledged Evidence. The Agreement will contain:

(a) A waiver by the judge of the right to a formal hearing.

(b) A Statement of Evidence which in the Commission's view provides a basis for a finding of misconduct. The Statement of Evidence will identify the section(s) of the Code of Judicial Conduct which the Commission alleges the judge to have violated.

(c) An acknowledgment by the judge that the evidence set forth in the Statement of Evidence, if presented to and accepted by a Hearing Officer at a formal hearing as clear and convincing, would support a finding of such misconduct.

(d) A recommendation to the Supreme Judicial Court, agreed to by both the Commission and the judge regarding appropriate discipline.

(e) Agreement by the Commission and the judge that (i) if the Supreme Judicial Court accepts their agreed recommendation for discipline, the decision of the Supreme Judicial Court will constitute the final disposition of the case; and (ii) if the Supreme Judicial Court does not accept their agreed recommendation, the Commission will proceed to consider and dispose of the complaint in accordance with these Rules, which disposition may include issuance of formal charges.

(f) A waiver by the judge of any confidentiality rights that would preclude submission of the matter to the Supreme Judicial Court, including the items to be submitted as specified herein.

(g) Agreement by the Commission and the judge that the submission will be made on condition that it be impounded by the Supreme Judicial Court.

(2) The Commission will submit to the Supreme Judicial Court:

(a) The Agreement for Conditional Submission Upon Acknowledged Evidence.

(b) A copy of the complaint, statement of allegations and formal charges, if any, and all responses.

(c) Any other information agreed to by the parties.

(3) The Supreme Judicial Court may accept or reject the recommended discipline agreed to by the Commission and the judge but may not at this stage impose other discipline.

C. The Supreme Judicial Court may request additional information from the parties or schedule oral argument before acting on a final or conditional submission.

D. If the Commission and the judge fail to agree upon an Agreement for Final or Conditional Submission to the Supreme Judicial Court under either 13.A. or 13.B. above, the Commission will proceed to consider and dispose of the complaint in accordance with these Rules, which disposition may include issuance of formal charges.

Approved May 8, 2007, effective July 1, 2007.

APPENDIX C

Code of Judicial Conduct
(Supreme Judicial Court Rule 3:09)
(effective October 1, 2003)

PREAMBLE

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. It consists of broad statements called Canons, specific rules set forth in Sections under each Canon, a Terminology Section, and Commentary. The text of the Canons and the Sections, including the Terminology Section, is authoritative, that is, it is intended to impose binding obligations the violation of which can result in disciplinary action. The Commentary, by explanation and example, provides interpretive guidance with respect to the obligations of the Canons and Sections. At times the Commentary also offers aspirational goals.

When the text of the Canons, Sections, or Commentary uses "shall" or "shall not," it is intended to be authoritative. When "should" or "should not" is used (in Commentary) the text is intended as hortatory and as a statement of what is or is not appropriate conduct but not as a binding rule under which a judge may be disciplined. When "may" is used, it denotes permissible discretion or, depending on the context, it refers to action that is not covered by specific proscriptions.

The Code must be read as a whole. Judges must be alert to the possibility that more than one Canon or Section may apply to a particular situation. As an example, before concluding that an action appears to be permitted by one of the more detailed provisions of the Code, the judge should consider whether, in the circumstances, the action is improper when measured against a more general provision, for instance, Section 2A. Occasionally a provision of the Code is explicitly stated as being "subject to the requirements of this Code," or similar language. The absence of language to that effect elsewhere should not lull the judge into indifference to the rest of the Code when the judge focuses on a particular provision; every provision is subject to every other provision.

The Canons and Sections are rules of reason. Some conduct that may literally violate a provision of this Code will be permissible because it does not violate the policy behind the prohibition or is de minimis. In addition, not every violation of the Code should result in disciplinary action. Whether disciplinary action is appropriate, and, if it is, what degree of discipline should be imposed, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the violation, the existence (or not) of a pattern of improper activity, and the effect of the improper activity on others, on the public perception of others, or on the judicial system.

The Code is not intended as an exhaustive guide for the conduct of judges. For example, judges' conduct is also governed by constitutional requirements, statutes, court rules, and decisional law. The Code is to be construed so as not to impinge on the essential independence of judges in making judicial decisions. The Code is intended to state basic standards which govern the conduct of all judges and to assist judges in establishing and maintaining high standards of judicial and personal conduct.

TERMINOLOGY

Terms explained below are noted with an asterisk (*) in the Sections where they appear. In addition, the Sections where the terms appear are referred to after the explanation of each term below. Terms are not asterisked in Commentary or in this Terminology Section.

"**Court personnel**" does not include the lawyers in a proceeding before a judge. See Sections 3B(4), 3B(5), 3B(7)(c), 3B(7)(c)(i), 3B(9), 3C(1), and 3C(2).

"**De minimis**" denotes an insignificant interest and therefore one that does not raise a reasonable question as to a judge's impartiality. See Sections 3E(1)(f), (g) and (h).

"**Economic interest**" denotes ownership of a more than de minimis legal or equitable interest, except that:

(i) ownership in a mutual or common investment fund that holds securities is not an "economic interest" in such securities unless the judge participates in the management of the fund; a judge is not required to inquire as to the identity of the securities held by the fund.

(ii) service by a judge as an officer, director, advisor or other active participant in an educational, religious, charitable, fraternal or civic organization, or service by a judge's spouse or child wherever residing, or by any other member of the judge's family residing in the judge's household, as an officer, director, advisor or other active participant in any organization does not create an "economic interest" in securities held by that organization;

(iii) a deposit in a financial institution, the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or of a member of a credit union, or a similar proprietary interest, is not an "economic interest" in the organization unless a proceeding pending or impending before the judge could substantially affect the value of the interest;

(iv) ownership of government securities is not an "economic interest" in the issuer unless a proceeding pending or impending before the judge could substantially affect the value of the securities. See Sections 3E(1)(f) and (g).

"**Ex parte communication**" denotes a communication, which occurs without notice to or participation by all other parties or lawyers for all other parties to the proceeding, between a judge (or by court staff on behalf of a judge) and (i) a party or a party's lawyer or (ii) another person who is not a participant in the proceeding. See Sections 3B(7), 3B(7)(a), 3B(7)(a) (i) and (ii) and 3B(7)(e).

"**Fiduciary**" denotes an executor, administrator, trustee, guardian and other similar positions. See Sections 3E(1)(f), 4E, 4E(2), and 4E(3).

"**Knowingly**," "**knowledge**," "**known**" or "**knows**" denote actual knowledge of the fact in question. That a person has actual knowledge may be inferred from circumstances. See Sections 3B(7)(c)(iv), 3B(11), 3D(1), 3D(2), 3E(1)(d),(e),(f),(g) and (h).

"**Law**" denotes court rules as well as statutes, constitutional provisions, and decisional law. See Sections 2A, 3A, 3B(2), 3B(7), 3B(7)(b), 3B(7)(e), 3B(11), 4C(1), 4C(2), 4C(3), 4C(3)(b)(ii), 4D(5)(a), 4H(2), 4I, and 5A(3).

"**Member of the judge's family residing in the judge's household**" denotes any relative of a judge by blood, adoption, or marriage, a domestic partner, or a person with whom the judge maintains a close familial relationship, who resides in the judge's household. See Sections 3E(1)(g), 4D(5), and 4D(5)(b).

"**Political organization**" denotes a political party or other group, the principal purpose of which is to further the election or appointment of candidates to political office or passage of ballot questions. See Sections 5A(1)(a), (b), and (c).

"**Relationship interest**" denotes a relationship as an officer, director, advisor, or other active participant in the affairs of a party that has more than a de minimis legal or equitable interest. See Sections 3E(1)(f) and (g).

"**Require**." The rules prescribing that a judge "require" certain conduct of others are, like all of the rules in this Code, rules of reason. The use of the term "require" in that context means a judge is to exercise reasonable direction and control over the conduct of those persons subject to the judge's direction and control. See Sections 3B(4), 3B(5), 3B(6), 3B(9) and 3C(2).

"**Third degree of relationship**." The following persons are relatives within the third degree of relationship: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, or niece. See Section 3E(1)(h).

CANON 1
A JUDGE SHALL UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

1A. An independent and honorable judiciary is indispensable to justice in our society. A judge shall participate in establishing, maintaining, and enforcing high standards of conduct and shall personally observe those standards, so that the integrity and independence of the judiciary will be preserved. The provisions of this Code are to be construed and applied to further that objective.

Amended June 5, 2003, effective October 1, 2003.

Commentary:

Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favor. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

A judicial decision or action determined by an appellate court to be incorrect either as a matter of law or as an abuse of discretion is not a violation of this Code unless the decision or action is committed knowingly and in bad faith.

CANON 2
A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

2A. A judge shall respect and comply with the law* and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

2B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness in an adjudicatory proceeding.

2C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, ethnicity, or sexual orientation. As long as membership does not violate any other provision of this Code, nothing in this Section bars membership in any official United States military organization, in any religious organization, or in any organization that is in fact and effect an intimate, purely private organization.

Commentary:

Section 2A: Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. The test for imposition of sanction for violation of this Canon is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

Section 2B: Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as deferential treatment when stopped by a police officer for a traffic offense. Similarly, judicial letterhead and the judicial title must not be used in conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writing, a judge should retain control over the advertising to avoid exploitation of the judge's office. As to the acceptance of awards, see Section 4D(5)(a) and Commentary.

A judge should be careful to avoid developing excessively close relationships with frequent litigants – such as municipal attorneys, police prosecutors, assistant district attorneys, and public defenders – in any court where the judge often sits, if such relationships could reasonably tend to create either an appearance of partiality or the likely need for later disqualification under Section 3E(1)

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. A recommendation, written or otherwise, should not be made if the person who is the subject of the letter is or is likely to be a litigant in a contested proceeding before the judge's court.

Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration, by responding to official inquiries concerning a person being considered for a judgeship, and by providing letters of recommendation and testimony, whether solicited or not, for judicial nominees. See also Canon 5 regarding use of a judge's name in political activities.

A judge must not testify voluntarily as a character witness in an adjudicatory proceeding because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness. Adjudicatory proceedings include not only proceedings before courts but also before administrative agencies, including disciplinary bodies.

Section 2C: Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Section 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges must be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members that do not stigmatize any excluded persons as inferior and therefore unworthy of membership.

Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from its membership or activities on the basis of race, sex, religion, national origin, ethnicity or sexual orientation,

persons who would otherwise be admitted to its membership or activities. The purpose of Section 2C is to prohibit judges from joining organizations practicing invidious discrimination, whether or not their membership practices are constitutionally protected.

Although Section 2C relates only to membership, it would be a violation of Canon 2 and Section 2A for a judge to arrange a meeting at a club that the judge knows or should know practices invidious discrimination on the basis of race, sex, religion, national origin, ethnicity or sexual orientation in its membership or other policies, or for the judge regularly to use such a club. Moreover, public communication by a judge approving of invidious discrimination referred to in Section 2C gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity of the judiciary, in violation of Section 2A.

Amended effective January 1, 1992; amended June 5, 2003, effective October 1, 2003.

CANON 3
A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

3A. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law.* In the performance of these duties, the following standards apply.

3B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which the judge is disqualified.

(2) A judge shall be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall maintain order and decorum in proceedings before the judge.

(4) A judge shall be patient and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require* similar conduct of court personnel* and others.

(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, ethnicity, disability, age, sexual orientation, or socioeconomic status, and shall require* court personnel*and others not 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, ethnicity, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law*. A judge shall not initiate, permit, or consider any ex parte communication* concerning a pending or impending proceeding, except that:

(a) Where circumstances require, an ex parte communication* is authorized when it does not deal with substantive matters and is for scheduling or administrative purposes or emergencies provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication*, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication* and allows them an opportunity to respond.

(b) [reserved]

(c) A judge may consult with court personnel* whose function is to aid the judge in carrying out the judge's adjudicative

responsibilities, or with other judges, subject to the following:

(i) a judge shall take all reasonable steps to avoid receiving from court personnel* or other judges factual information concerning a case that is not part of the case record. If court personnel* or another judge nevertheless bring non-record information about a case to the judge's attention, the judge may not base a decision on it without giving the parties notice of that information and a reasonable opportunity to respond. Consultation is permitted between a judge, clerk-magistrate or other appropriate court personnel and a judge taking over the same case or session in which the case is pending with regard to information learned from prior proceedings in the case that may assist in maintaining continuity in handling the case;

(ii) when a judge consults with a probation officer about a party in a pending or impending criminal or juvenile case, the consultation shall take place in the presence of the parties who have availed themselves of the opportunity to appear and respond;

(iii) a judge shall not consult with an appellate judge, or a judge in a different trial court department, about a case that the judge being consulted might review on appeal; and

(iv) no judge shall consult with another judge about a case pending before one of them when the judge initiating the consultation knows* the other judge has a financial, personal or other interest which would preclude the other judge from hearing the case, and no judge shall engage in such a consultation when the judge knows* he or she has such an interest.

(d) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle civil matters pending before the judge.

(e) A judge may initiate, permit, or consider any ex parte communication* when authorized by law* to do so.

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

(9) Except as otherwise provided in this section, a judge shall abstain from public comment about a pending or impending proceeding in any Massachusetts court, and shall require similar abstention on the part of court personnel.

(a) This section does not apply to any oral or written statement made by a judge in the course of his or her adjudicative duties.

(b) A judge is permitted to explain for public information the procedures of the court, general legal principles, or what may be learned from the public record in a case.

(c) A judge is permitted to speak, write, or teach about cases and issues pending in appellate courts when such comments are made in legal education programs and materials, scholarly presentations and related materials, or learned treatises, academic journals and bar publications. This educational exemption does not apply, however, to comments or discussions that might interfere with a fair hearing of the case.

(d) A judge is permitted to make public comment concerning his or her conduct provided that such comments do not reasonably call into question the judge's impartiality and do not address the merits of any pending or impending judicial decision.

(e) This section does not apply to proceedings in which a judge is a litigant in a personal capacity.

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, information acquired in a judicial capacity that by law* is not available to the public. When a judge, in a judicial capacity, acquires information, including material contained in the public record that is not

yet generally known*, the judge must not use the information in financial dealings for private gain. Notwithstanding the provisions of Section 3B(9), a judge shall not disclose or use, for any purpose unrelated to judicial duties, information that, although part of the public record, is not yet generally known*, if such information would be expected unnecessarily to embarrass or otherwise harm any person participating or mentioned in court proceedings.

3C. Administrative Responsibilities.

(1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration, and cooperate with other judges and court personnel*.

(2) A judge shall require* court personnel*, including personnel who are directly involved in courtroom proceedings over which the judge presides, to observe the standards of fidelity and diligence that apply to the judge.

(3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments of counsel and staff. The judge shall exercise the power of appointment only on the basis of merit, avoiding appointments based on nepotism or personal or political favoritism. The judge shall not approve compensation of appointees beyond the fair value of service rendered.

3D. Disciplinary Responsibilities.

(1) A judge having knowledge* of facts indicating a substantial likelihood that another judge has committed a violation of the Code that raises a significant question about that judge's honesty, integrity, trustworthiness, or fitness for judicial office shall inform the Chief Justice of this court and of that judge's court. A judge having knowledge* of facts indicating a substantial likelihood that another judge has committed a violation of the Code that does not raise a significant question of that judge's honesty, integrity, trustworthiness, or fitness for judicial office shall take appropriate action.

(2) A judge having knowledge* of facts indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct that raises a significant question as to that lawyer's honesty, integrity, trustworthiness, or fitness as a lawyer shall inform the Bar Counsel's office of the Board of Bar Overseers.

(3) [reserved]

3E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer;

(b) the judge served as a lawyer in the matter in controversy;

(c) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter in controversy;

(d) the judge has been, or is to the judge's knowledge* likely to be, a material witness concerning the matter in controversy;

(e) the judge has personal knowledge* of disputed evidentiary facts concerning the matter in controversy;

(f) the judge is a party to the proceeding or an officer, director, or trustee of a party or the judge knows*, or reasonably should know*, that he or she, individually or as a fiduciary*, has (i) an economic 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

proceeding, (ii) a relationship interest* to a party to the proceeding where the party could be substantially affected by the outcome of the proceeding or (iii) any other more than de minimis* interest that could be substantially affected by the outcome of the proceeding;

(g) the judge knows*, or reasonably should know*, that the judge's spouse or child wherever residing, or any other member of the judge's family residing in the judge's household,* has (i) an economic 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 proceeding, (ii) a relationship interest* to a party to the proceeding where the party could be substantially affected by the outcome of the proceeding or (iii) any other more than de minimis* interest that could be substantially affected by the outcome of the proceeding; or

(h) the judge's spouse or domestic partner, as well as a person within the third degree of relationship* to the judge, the judge's spouse, or the judge's domestic partner, or a spouse or domestic partner of such other 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 any more than de minimis* interest that could be substantially affected by the outcome of the proceeding, or (iv) is to the judge's knowledge* likely to be a material witness in the proceeding.

(2) [reserved]

3F. Remittal of Disqualification.

(1) A judge disqualified by the terms of Section 3E may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge's disqualification and ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If, following disclosure of any basis for disqualification other than for cases in which remittal is not available, the parties and lawyers, without participation of the judge, all agree that the judge should not be disqualified, the judge may participate in the proceeding. The judge shall permit an opportunity for the attorneys to consult with their clients regarding this issue. The agreement shall be incorporated in the record of the proceeding.

(2) Remittal is not available in cases in which the judge is disqualified under Sections 3E(1)(a), (b), or (d).

Commentary:

Section 3B(1): The obligation to hear and decide all assigned matters should not be construed to preclude a judge from requesting not to be assigned to a particular case or class of cases because of strongly held personal or moral beliefs.

Section 3B(4): The duty to conduct proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

Section 3B(5): A judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as evidencing bias or prejudice and must require the same standard of conduct of others subject to the judge's direction and control, including those who are directly involved in courtroom proceedings.

A judge must perform judicial duties impartially and fairly. A judge who manifests any bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communications, can give to parties or lawyers in the proceeding, jurors, the media, and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as biased or prejudicial.

Section 3B(6): This section does not preclude legitimate advocacy when race, sex, religion, national origin, ethnicity, disability, age,

sexual orientation, or socioeconomic status are issues in the proceeding.

Section 3B(7): Section 3B(7) proscribes ex parte communications concerning a proceeding except to the limited extent permitted in Section 3B(7)(a) through (e).

Whenever the presence of a party or notice to a party is required by Section 3B(7), it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

A judge must make reasonable efforts, including the provision of appropriate supervision, to ensure that the general prohibition against ex parte communications is not violated through law clerks and other court personnel.

Section 3B(7)(c): Section 3B(7)(c) authorizes consultation between a judge and court personnel whose job entails or includes assisting the judge in performing the judge's adjudicative responsibilities, for example clerk magistrates and their assistants, registers of probate and their assistants, and law clerks. A judge may discuss the facts of a pending or impending proceeding with such court personnel, but in view of the judge's obligation to decide a case only on the evidence presented, the judge's factual discussion may be based only on information in the case record. Accordingly, a judge may not solicit non-record factual information from court personnel about a case and must take reasonable steps to avoid receiving unsolicited non-record factual information from them. If, despite such efforts, the judge receives non-record factual information about a pending or impending case from court personnel (or indeed from any source), the judge may not base any decision in the case in whole or in part on that information unless the judge first gives the parties notice and an opportunity to respond.

Probation officers, like clerk magistrates, registers and their assistants, are court personnel who assist the judge in performing the judge's adjudicative responsibilities. However, probation officers often work independently of the judge, since one of their most significant responsibilities is the community supervision of persons sentenced to probation by the court. From their work in the community, probation officers regularly obtain or receive factual information that is not part of a case record but that may have a direct bearing on a particular party in a case. In light of this fact, Section 3B(7)(c)(ii) provides that any consultation between a judge and a probation officer about a party in a specific criminal or juvenile case take place in the presence of the parties (or their counsel) who have availed themselves of the opportunity to attend, so that there is an opportunity to hear and respond to any information being conveyed by the probation officer. However, a judge may discuss with a probation officer ex parte the specifics of various available programs as long as there is no discussion about the suitability of the program for a particular party.

Section 3B(7)(c) permits a judge to consult with other judges, subject to the limitations set forth there. This is so whether or not the judges serve on the same court. A judge may not consult about a case with an appellate judge who might be called upon to review that case on appeal. The same holds true with respect to those instances in which a judge in one department of the trial court may be called upon to review a case decided by a judge in a different department; a criminal case in which the defendant seeks a review by a judge in the Superior Court of the bail determination made by a judge in the District Court is an example. The appellate divisions of the Boston Municipal Court and of the District Court present a special situation. The judges who sit as members of these appellate divisions review on appeal cases decided by judges who serve in the same court department. However, the designation of judges to sit on the appellate divisions changes quite frequently; every judge on the Boston Municipal Court will, and every judge on the District Court may, serve for some time as a member of that court's appellate division. In recognition of this fact, Section 3B(7)(c)(iii) does not bar judges in the same court department from consulting with each other about a case, despite the possibility

that one of the judges may later review the case on appeal. However, when a judge is serving on an appellate division, the judge may not review any case that the judge has previously discussed with the judge who decided it; recusal is required.

Consultation between or among judges, if otherwise permitted under Section 3B(7)(c), is appropriate only if the judge before whom the case is pending does not abrogate the responsibility personally to decide it.

Section 3B(7)(d): Section 3B(7)(d) implicitly acknowledges the public policy that favors the settlement of civil cases and the understanding that a judge can play an important role in the settlement process. In settlement discussions, a judge may, with the prior consent of all parties, meet with parties and their counsel separately. The judge must inform all parties of any such meetings, but need not disclose what was discussed.

Section 3B(7)(e): Section 3B(7)(e) refers to an ex parte communication authorized by law. Examples include: the issuance of a temporary restraining order in certain circumstances, see, e.g., G. L. c. 209A, § 4 ; Mass. R. Civ. P. 65(a); the issuance of a prejudgment attachment or trustee process, see Mass. R. Civ. P. 4.1(f), 4.2(g); the determination of fees and expenses for indigent persons, see G. L. c 261, §§ 27A - 27G; the issuance of temporary orders related to child custody or vacation of the marital home where conditions warrant, see G. L. c. 208, §§ 28A, 34B; and an ex parte communication authorized or required under the Rules of Professional Conduct (S.J.C. Rule 3:07).

Section 3B(8): In disposing of matters promptly, efficiently, and fairly, a judge must give due regard to the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. When a judge encourages and seeks to facilitate settlement, the judge should not coerce the parties into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court personnel and litigants and their lawyers cooperate with the judge to that end.

Section 3B(9): The section's restrictions on judicial speech are essential to the maintenance of the independence, impartiality, and integrity of the judiciary.

For purposes of this section, public comment is any oral or written statement about a case made by a judge other than statements made in the course of the judge's adjudicative duties. The requirement that a judge abstain from public comment regarding a pending proceeding continues during any appellate process and until final disposition. A case is impending for purposes of this section if it seems probable that a case will be filed, if charges are being investigated, or if someone has been arrested although not yet charged. This rule does not require a judge to abstain from public comment about a proceeding in a Massachusetts court that is not pending or impending.

"Any Massachusetts court" for purposes of this section means any state or federal court within the Commonwealth of Massachusetts.

Consistent with section (a), a judge may speak or write about a pending or impending case in the course of his or her adjudicative duties. A judge's oral statements from the bench during court proceedings and written orders or memoranda of decision filed in the case are made "in the course of his or her adjudicative duties."[1] Judges are encouraged to explain the basis for their decisions on the record. In some instances, such as decisions regarding bail, the use of prepared forms which become part of the public record may assist judges in this task. By helping litigants to understand the basis for

[1] For guidance as to a memorandum issued by a judge that provides or supplements an earlier order (an explanatory memorandum), see Supreme Judicial Court Guidance Regarding the Issuance of Explanatory Memoranda contained in Appendix A [of this Code].

decisions in cases, the judge also promotes public understanding of judicial proceedings.

Section (b) permits the dissemination of public information to educate and inform the public, while assuring the public that cases are tried only in the judicial forum devoted to that purpose. A judge may explain to the media or general public the procedures of the court and general legal principles; for example, the procedures and standards governing a "dangerousness hearing" under G. L. c. 276, §58A or restraining orders under G. L. c. 209A. A judge may also explain to the media or the general public what may be learned from the public record in a particular case. For example, a judge may respond to questions from a reporter about a judicial action that was taken and may correct an incorrect or incomplete media report by referring to matters that may be learned from the pleadings, documentary evidence, and proceedings held in open court. Section (b) permits similar responsive comments or explanations by a judge acting in accordance with administrative duties, including statements made by a judge who serves as part of a court department's judicial response team.

When speaking, writing, or teaching about cases or issues, as permitted under Section (c), a judge must take care that his or her comments do not impair public confidence in the impartiality of the judiciary.

"Conduct" as used in subsection (d) refers to the manner in which a judge behaves and not the substance of a judge's rulings. For example, an allegation that the judge consistently fails to work a full day is an example of conduct contemplated by subsection (d).

Speaking to a journalist is a public comment even where it is agreed that the comments are "off the record."

The authorization to comment is permissive; there is no requirement that a judge respond to statements in the media or elsewhere. Depending on the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond.

Section 3B(10): Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case. Commendations or criticisms of verdicts may also call into question the judge's ability to rule impartially on any post-trial motions, or on remand, in the same case.

Section 3B(11): Information that by law is not available to the public includes but is not limited to information that is sealed by statute, court rule, or court order, all of which is absolutely non-disclosable for any purpose unrelated to judicial duties.

Among the factors to be considered in determining whether the information "contained in the public record that is not generally known" would be expected unnecessarily to embarrass or otherwise harm a person are whether there is a valid public purpose for disclosure or whether the disclosure is idle chatter or gossip.

There are other rules (for example, Section 2A), that relate to the subject matter of this rule.

Section 3C(4): Appointments made by the judge include, but are not limited to, counsel, persons such as guardians *ad litem* and special masters, and court personnel subject to appointment by the judge. See S.J.C. Rule 1:07 regarding fee generating appointments and the maintenance of appointment dockets.

Section 3D: This Section requires judges to report conduct indicating a substantial likelihood of a serious violation of professional conduct by judges or lawyers together with the factual basis for this conclusion. Even an apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. The word "significant" in the Section refers to the seriousness of the possible offense and not the quantum of evidence of which the judge is aware.

Judges are required by this Section to participate actively in maintaining and preserving the integrity of the judicial system. The rule is necessary because judges make up a significant group that may have information about colleagues' misconduct. For this reason, judges have an opportunity and a special duty to protect the public from the consequences of serious misconduct and the potential harmful results of other violations of the Code.

The following examples are not exhaustive but include misconduct that has been found in particular factual circumstances to raise a significant question about honesty, integrity, trustworthiness, or fitness for judicial office: tampering with or attempting to influence improperly a judicial action of another judge; giving false testimony under oath; tampering with or falsifying court papers to support judicial action; grossly abusing the bail statutes; failing to recuse at a hearing when the judge is engaged in a personal financial venture with lawyers or parties; misusing appointment power to show favoritism; using court employees during regular work hours for private benefit; engaging in inappropriate political activity, such as attending fundraisers, soliciting money for candidates or causes, and lobbying except on matters concerning the law, the legal system, or the administration of justice; engaging in a pattern of any of the following activities: abuse of alcohol in public, indifference to case law or facts, use of injudicious or abusive language on the bench, or failure to devote full-time to judicial work.

Other Code violations by a judge that are less serious still require appropriate action by the judge who has knowledge of them. Examples include but are not limited to: speaking or being the guest of honor at an organization's fund-raising event; serving as a director of a family business; serving as the executor of an estate of a relative or person with whom the judge had no close familial relationship; frequently starting court business late or stopping it early; soliciting advice about pending cases from a friend who is a law professor without disclosure; placing or leaving a bumper sticker for a political candidate on a vehicle the judge regularly drives; frequently delaying making decisions in cases. Appropriate action by a judge who has knowledge of these less serious Code violations may include: speaking to the other judge directly; asking someone else who may be more appropriate to speak to that judge; reporting to the presiding judge of the court where the violation occurred or where that judge often sits; reporting to the Chief Justice of that judge's court; and speaking to Judges Concerned for Judges or calling the judicial hotline maintained by Lawyers Concerned For Lawyers, Inc. This list of actions is illustrative and not meant to be limiting.

While a measure of judgment is required in complying with this Section, a judge must report lawyer misconduct that, if proven and without regard to mitigation, would likely result in an order of suspension or disbarment, including knowingly making false statements of fact or law to a tribunal, suborning perjury, or engaging in misconduct that would constitute a serious crime. A serious crime is any felony, or a misdemeanor a necessary element of which includes misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit the above crimes. Section 3D(2) does not preclude a judge from reporting a violation of the Massachusetts Rules of Professional Conduct in circumstances where a report is not mandatory. Reporting a violation is especially important where the victim is unlikely to discover the offense. If the lawyer is appearing before the judge, a judge may defer making a report under this Section until the matter has been concluded, but the report should be made as soon as practicable thereafter. However, an immediate report is compelled when a person will likely be injured by a delay in reporting, such as where the judge has knowledge that a lawyer has embezzled client or fiduciary funds and delay may impair the ability to recover the funds.

Section 3E: Under this rule, a judge shall disqualify himself or herself whenever the judge's impartiality might reasonably be questioned, regardless of whether any specific

rules in Sections 3E(1) (a) through (h) apply. For example, even though a judge may not be required to disqualify himself or herself because of an economic or relationship interest, the judge may be required to do so on other grounds. A more than de minimis interest, under Sections 3E(1)(f)(iii), (g)(iii), and (h)(iii) may include non-financial interests; as an example, support by the judge of an organization advocating a particular position, where the interests of the organization could be substantially affected by the outcome of the proceeding.

If the judge believes there is no real basis for disqualification, a judge may, but is not required to, disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification. See Commentary to Section 3F.

A judge is not necessarily disqualified if a lawyer in a proceeding is affiliated with a legal organization with which the spouse or a relative of the judge is affiliated. Disqualification may be required in appropriate circumstances, including the closeness of the relationship of the relative with the judge, where the judge's impartiality might reasonably be questioned. Disqualification may also be required where the judge knows that the judge's spouse or relative has an interest in a legal organization and that the organization could be substantially affected by the outcome of the proceeding. See Sections 3(E)(1)(g)(iii) and (h)(iii).

In determining whether an interest could raise a reasonable question as to a judge's impartiality, the judge should consider, among other factors, the dollar value of the interest and whether the interest comprises a substantial portion of the judge's total economic holdings.

In particular circumstances, a judge may need to consider carefully relationships other than those specifically mentioned in Section 3E(1) - for example, a fiancé (or fianceé) or a very close friend - to determine whether disqualification is required.

A lawyer in a government agency does not ordinarily have an association with other lawyers employed by that agency within the meaning of Section 3E(1)(c). A judge formerly employed by a government agency, however, should disqualify himself or herself in a proceeding if the judge's impartiality might reasonably be questioned because of such association.

By decisional law, the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and, unless remittal under Section 3F is available, appropriate, and accomplished, use reasonable efforts to transfer the matter to another judge as soon as possible.

If a judge were in the process of negotiating for employment with a law firm or other entity, the judge would be disqualified from any matters in which the law firm or other entity appeared, unless remittal under Section 3F is available, appropriate, and accomplished.

Section 3F: A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. To assure that consideration of the question of remittal is made independently of the judge, a judge must not hear comment on possible remittal unless the lawyers jointly propose remittal after consultation as provided in the Section. A party may act through counsel if counsel represents on the record that the party has been consulted and consents. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement. There are circumstances when other provisions, such as Section 2A, may override the remittal procedure of Section 3F. An example would be where a judge's close relative has supervisory responsibility over attorneys prosecuting criminal cases in the county where the judge is sitting.

Amended November 10, 1982, effective January 1, 1983; amended effective January 1, 1992; February 11, 1992; amended October 1, 1998, effective November 2, 1998; amended June 5, 2003, effective October 1, 2003; amended November 30, 2009, effective January 1, 2010.

CANON 4
A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRAJUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

4A. Extrajudicial Activities in General. A judge shall conduct all of the judge's extrajudicial activities so that they do not:

(1) cast reasonable doubt on the judge's capacity to act impartially as a judge; or

(2) [reserved]

(3) interfere with the proper performance of judicial duties.

4B. Avocational Activities. Subject to the requirements of this Code, a judge may speak, write, lecture, and teach concerning legal and nonlegal matters and may participate in legal and nonlegal activities.

4C. Governmental, Civic or Charitable Activities.

(1) A judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law*, the legal system, or the administration of justice or except when acting pro se.

(2) A judge shall not accept appointment to any governmental position, including a governmental committee or commission, that is concerned with matters other than the improvement of the law*, the legal system, or the administration of justice. A judge may, however, represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.

(3) A judge may serve as an officer, director, trustee, or non-legal advisor of an organization or agency devoted to the improvement of the law*, the legal system, or the administration of justice; or of any educational, religious, charitable, fraternal, or civic organization that is not conducted for profit or for the economic or political advantage of its members, subject to the following limitations and the other requirements of this Code.

(a) A judge:

(i) shall not contribute to, or be a member of, such an organization, except a religious organization, if it is likely that the organization will be engaged frequently in adversary proceedings in the court on which the judge serves; and

(ii) shall not serve as an officer, director, trustee, or nonlegal advisor of such an organization if it is likely that the organization will be engaged in proceedings that would ordinarily come before the judge or will be engaged frequently in adversary proceedings in any court, state or federal, in the Commonwealth.

(b) A judge as an officer, director, trustee, non-legal advisor, or member of an organization described in Section 4C(3) or in any other capacity as to such an organization:

(i) shall not participate in the management and investment of the organization's funds, shall not assist such an organization in planning fund-raising, and shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;

(ii) may make recommendations to public and private fundgranting organizations on projects and programs concerning the law*, the legal system, or the administration of justice;

(iii) shall not personally participate in membership solicitation if the solicitation might reasonably be perceived

as coercive or, except as permitted in Section 4C(3)(b)(i), if the membership solicitation is essentially a fund-raising mechanism;

(iv) shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

(4) Subject to the requirements of this Code, a judge may serve as an officer, director, trustee, or non-legal advisor of an organization composed entirely or predominantly of judges that exists to further the educational or professional interests of judges. A judge may assist such an organization in planning fund-raising and may participate in the management and investment of the organization's funds, but may not personally participate in the solicitation of funds, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority.

4D. Financial Activities.

(1) A judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, that may interfere with the proper performance of the judge's judicial position, that may reasonably be perceived to exploit the judge's judicial position, or that may involve the judge in frequent transactions or continuing business relationships with those lawyers or other persons likely to come before the court on which the judge serves.

(2) Subject to the requirements of this Code, a judge may hold and manage investments, including real estate, and receive compensation as set forth in Section 4H, but shall not serve, with or without remuneration, as an officer, director, manager, general partner, advisor or employee of any business.

(3) [reserved].

(4) A judge shall manage his or her investments and other financial interests to minimize the number of cases in which disqualification is required or advisable. As soon as the judge can do so without serious financial detriment, the judge shall divest himself or herself of investments and other financial interests that might require frequent disqualification.

(5) A judge shall not accept, and shall urge members of the judge's family residing in the judge's household* not to accept, a gift, bequest, favor, or loan from anyone except for:

(a) a gift incident to public recognition of the judge, provided the value of the gift does not exceed the amount requiring reporting under Section 4D(5)(h) and provided the donor is not an organization whose members comprise or frequently represent the same side in litigation (or is not an individual or individuals so situated); a gift of books, tapes and other resource materials supplied by publishers on a complimentary basis for official use; or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law*, the legal system, or the administration of justice, provided that if the value of the invitation and any food, travel, and lodging associated with the invitation exceeds the amount requiring reporting under Section 4D(5)(h), the value of the invitation and such associated items shall be reported under Section 4H.

(b) a gift, award, or benefit incident to the business, profession, or other separate activity of a spouse or other member of the judge's family residing in the judge's household*, including gifts, awards, and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award, or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary, or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor, or loan from a relative or close personal friend whose appearance or interest in a case would require disqualification under Section 3E.

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants; or

(h) any other gift, bequest, favor or loan, only if: the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; and, if its value exceeds $350.00, the judge reports it in the same manner as the judge reports compensation in Section 4H. However, a gift, bequest, favor, or loan of the type set forth in Sections 4D(5)(a), 4D(5)(b), 4D(5)(f) or 4D(5)(g) that does not meet the requirements set forth there may not be accepted under the authority of this Section 4D(5)(h).

4E. Fiduciary* Activities. A judge shall not serve as an executor, administrator, trustee, guardian, or other fiduciary*, except for the estate, trust, or person of the judge's spouse, domestic partner, child, grandchild, parent, or grandparent, as well as another relative or person with whom the judge maintains a close familial relationship. As such a family fiduciary* a judge is subject to the following restrictions:

(1) The judge shall not serve if such service will interfere with the proper performance of judicial duties;

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

(3) While acting as a fiduciary* a judge is subject to the same restrictions on financial activities that apply to the judge in the judge's personal capacity.

4F. Arbitration and Mediation. A judge shall not act as an arbitrator or mediator in a private capacity.

4G. Practice of Law. A judge shall not practice law. Notwithstanding this prohibition, a judge may act pro se.

4H. Compensation, Reimbursement, and Reporting.

(1) Compensation and reimbursement. A judge may receive compensation and reimbursement of expenses for the extrajudicial activities not prohibited by this Code, if the source or amount of such payments does not give the appearance of influencing the judge's performance of judicial duties or otherwise give the appearance of impropriety, subject also to the following restrictions:

(a) Compensation shall not exceed a reasonable amount.

(b) Expense reimbursement shall be limited to the actual cost of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's guest. Any payment in excess of such an amount is compensation.

(2) Public reports. A judge shall 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 the judge received compensation, the name of the payor, the amount of compensation so received, and such other information as is required by the Supreme Judicial Court or by law*. Compensation or income of a spouse attributed to the judge by operation of a community property law is not extrajudicial compensation to the judge. The judge's report shall be filed as a public document in the office of the Administrative Assistant to the Supreme Judicial Court (G. L. c. 211, § 3A).

4I. Disclosure of a judge's income, debts, investments, or other assets is required only to the extent provided in this Canon and in Sections 3E and F or as otherwise required by law*.

Commentary:

Section 4A: Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. The appropriateness of a judge's participation in any activity, whether law-related or not, must be assessed in light of the obligations of a judge to perform the duties of judicial office impartially and diligently. See Canon 3. Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's judicial duties, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals on the basis of their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status.

Section 4B: General Considerations: As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the integrity of the legal profession and to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law and improvement of civil, criminal, and juvenile justice. To the extent that time permits, a judge is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law. In all circumstances, a judge must avoid conduct that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Speaking to the Public about the Administration of Justice: To further public understanding of the essential role of the judicial branch in our system of government, judges are particularly encouraged to speak to the public, including business and community groups, about issues relating to the administration of justice. A judge must avoid giving the impression that the group or its members are in a special position to influence the judge, and where appropriate, a judge must avoid giving the impression that the judge favors the group's mission.

Section 4C(1): See Section 2B regarding the obligation to avoid improper influence.

Section 4C(2): Section 4C(2) prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice as authorized by Section 4C(3). Judges should not accept governmental appointments that are likely to interfere with their effectiveness and independence. Any permission to accept extrajudicial appointments contained in this Code is subject to applicable restrictions relating to multiple office-holding contained in the Constitution of the Commonwealth. See Part 2, Chapter 6, Article two for restrictions on justices of the Supreme Judicial Court and judges of the Probate and Family Court and Article VIII of the Amendments to the Constitution.

Section 4C(2) does not govern a judge's service in a nongovernmental position. See Section 4C(3) permitting service by a judge with organizations devoted to the improvement of the law, the legal system, or the administration of justice and with educational, religious, charitable, fraternal, or civic organizations not conducted for profit. For example, service on the board of a public hospital or public education institution, unless it is a law school, would be prohibited under Section 4C(2), but service on the board of a public law school or any private educational or other institution described in Section 4C(3) would generally be permitted under Section 4C(3).

Section 4C(3): Section 4C(3) does not apply to a judge's service in a governmental position unconnected with the improvement of the law, the legal system, or the administration of justice; see Section 4C(2). As an illustration of the need to be cognizant of all provisions of the Code, service by a judge on the board of an

organization described in Section 4C(3) may be prohibited under Section 2C if the organization practices invidious discrimination or under Section 4A if service on the board otherwise casts doubt on the judge's capacity to act impartially as a judge.

Section 4C(3)(a): The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated as an officer, director, trustee, or nonlegal advisor to determine if it is proper for the judge to continue the affiliation. For example, non-profit hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that imply commitment to causes that may come before the courts for adjudication.

A bar association is an organization "devoted to the law, the legal system, or the administration of justice" and therefore qualifies as an organization on which a judge may serve as an officer, director, trustee, or non-legal advisor. That permission, however, is qualified by the requirement in Section 4A that such service not "cast reasonable doubt on the judge's capacity to act impartially as a judge" and that it not "interfere with the proper performance of judicial duties." For example, many bar associations have become active in litigation, filing amicus briefs that take sides on a wide range of controversial issues. The more that a judge takes a leadership role or a role as spokesperson in such an organization, the more likely it is that the restrictions contained in Section 4A would prohibit assuming one of the positions mentioned in Section 4C(3). The same considerations would also hold true with respect to holding office in the other organizations mentioned in Section 4C(3).

Section 4C(3)(b): Solicitation of funds for an organization and solicitation of memberships involve the danger that the person solicited will feel obligated to respond favorably to the solicitor if the solicitor is in a position of influence or control. A judge may solicit membership for or endorse or encourage membership efforts of an organization devoted to the improvement of the law, the legal system, or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially a fund-raising mechanism.

Use of an organization letterhead listing a judge's name for fund-raising or membership solicitation violates Section 4C(3)(b). A judge must also make reasonable efforts to ensure that court personnel and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, charitable or otherwise.

A judge must not be a speaker or guest of honor at an organization's fund-raising event, but mere attendance at such an event is permissible if otherwise consistent with this Code. A fund-raising event is one where the sponsors' aim is to raise money to support the organization's activities beyond the event itself. A laudatory reference to a judge, not announced in advance, does not make the judge a "guest of honor" for purposes of this rule. (Judges should also consult the testimonial dinner law, G. L. c. 268, § 9A in relevant cases.)

Section 4(C)(4): A judge may also engage in substantial leadership and budget activities with respect to the judge-controlled organizations described in Section 4C(4), but may not engage in personal solicitation of funds except from other judges over whom the judge does not exercise supervisory or appellate authority. However, the fund-raising activities of judge-controlled organizations must be carried out in a way that does not violate other provisions of this Code, such as Sections 2A and 2B. The names of those who contribute or decline to contribute must not be disclosed publicly or to the judges in the organization, and that policy must be disclosed to those solicited. In some circumstances, fund-raising, even if anonymous, might subsequently require recusal of a judge because of the risk of the appearance of impropriety should the fact of

a substantial donation by a party or its lawyer become known.

Section 4D(2): For new judges, Section 6B postpones the time for compliance with certain provisions of this Section in some cases.

Participation by a judge in financial and business dealings is subject to the general prohibition in Section 4A against activities that tend to reflect adversely on impartiality or interfere with the proper performance of judicial duties. Such participation is also subject to the general prohibition in Canon 2 against activities involving impropriety or the appearance of impropriety and the prohibition in Section 2B against the misuse of the prestige of judicial office. In addition, a judge must maintain high standards of conduct in all of the judge's activities, as set forth in Canon 1.

Section 4D(5): Because a gift, bequest, favor, or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot, however, reasonably be expected to know or control all of the financial or business activities of all family members residing in the judge's household.

Section 4D(5)(a): An exception allowed under Sections 4D(5)(a) through 4D(5)(g) is not subject to the qualification and reporting requirements of Section 4D(5)(h), but is otherwise subject to the requirements of this Code. See in particular Sections 2A, 2B and Section 4A(1).

Examples of organizations which frequently represent the same side in litigation are a bar association comprised of insurance defense attorneys or of plaintiffs' personal injury attorneys. In addition to applying to organizations, the prohibition also applies to a public recognition gift from an individual or individuals who frequently comprise or represent the same side in litigation.

The acceptance of invitations is an area of special sensitivity, and judges are reminded particularly in that context of the interrelation of all the provisions of the Code, particularly Sections 2A, 2B, and 4A(1), and the avoidance of the appearance of impropriety as well as impropriety itself. All the facts relating to the invitation must be examined by the judge, including the identity of the donor, the amount of time to be devoted to bar-related or similar activities at the event, the costs assumed by the invitor, the duration of the function, and its locale. Examples of facts that singly or in combination, could suggest conflict with Sections 2A, 2B, and 4A(1), are a function during tourist season, a lavish function, a function in a popular tourist locale, or a function distant from the Commonwealth. If there is such a conflict, the taint of impropriety or its appearance exists no matter how assiduously the judge would in fact attend to bar or similar activities at the function. The fact that a function is reported under Section 4H does not obviate the examination just described.

Section 4D(5)(c): In accepting ordinary social hospitality from members of the bar, a judge should carefully weigh acceptance of the hospitality to avoid any appearance of bias.

Section 4D(5)(d): A gift to a judge, or to a member of the judge's family living in the judge's household, that is excessive in value raises questions about the judge's impartiality and the integrity of the judicial office and might require disqualification of the judge where disqualification would not otherwise be required. See, however, Section 4D(5)(e).

Section 4D(5)(e): The reference to a "close personal friend" is intended to contrast with someone who is a professional or business friend.

Section 4D(5)(h): Section 4D(5)(h) prohibits judges from accepting gifts, bequests, favors, or loans from lawyers or their firms if they have come or are likely to come before the judge; it also prohibits gifts, bequests, favors, or loans from clients of lawyers or their firms when

the clients' interests have come or are likely to come before the judge.

Under the last sentence of Section 4D(5)(h), some gifts may not be accepted even if they meet the requirements of Section 4D(5)(h). For example, a gift incident to public recognition of the judge in excess of the reporting amount in Section 4D(5)(h), or a loan on terms available only to judges, may not be accepted even though the donor or lender is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge; but extraordinary social hospitality, or a gift from a friend not for a special occasion, may be accepted if the donor is not a party or other person who has come or is likely to come or whose interests have come or are likely to come before the judge (and the judge reports the gift if the amount requires it.)

Section 4E: For new judges, Section 6B postpones the time for compliance with certain provisions of this Section in some cases.

Acting under a durable power of attorney or health care proxy are examples of service by the judge as an "other fiduciary" within Section 4E.

The restrictions imposed by this Section may conflict with the judge's obligation as a fiduciary. For example, a judge shall resign as trustee if detriment to the trust would result from divestiture of holdings the retention of which would place the judge in violation of Section 4D(4).

Section 4G: This prohibition refers to the practice of law in a representative capacity and not in a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before, or other dealings with, legislative and other governmental bodies. In acting pro se, a judge must not abuse the prestige of office to advance the interests of the judge. An illustration of such abuse would be appearing before a local zoning board in a matter relating to the judge's property and referring to the judge's judicial capacity.

Section 4H: See Section 4D(5)(h) regarding reporting of gifts, bequests, favors and loans. The Code does not prohibit a judge from receiving compensation from teaching or from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge shall ensure, however, that no conflicts are created by the arrangement. A judge must not appear to trade on the judicial position for personal advantage. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial. An illustration of the requirement that compensation not exceed what a person who is not a judge would receive for the same activity would be that a judge's compensation for teaching a law school course shall not be higher than that of other teachers merely because of the judge's status as a judge.

Section 4I: A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations are established by law and this Code. Disclosure of economic or relationship interests is required under Section 3E if a disqualification is to be overridden because of necessity and under Section 3F if remittal of disqualification is to be considered.

Amended June 5, 2003, effective October 1, 2003; amended November 20, 2012, effective January 1, 2013.

CANON 5
A JUDGE SHALL REFRAIN FROM POLITICAL ACTIVITY

5A. Political Conduct in General.

(1) A judge shall not:

(a) act as a leader of, 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 holders of political office or for candidates for election to any political office, or for any other type of political function.

(2) A judge shall resign from the judicial position held when the judge becomes a candidate either in a primary or in a general election for elective office. On assuming a judicial position, a judge shall resign any elective public office then held.

(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.

Commentary:

While it is recognized that judges have the right to vote, participate as citizens in their communities, and not be isolated from the society in which they live, those rights must be viewed in light of Section 2A which requires that a judge conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

A judge's participation in partisan politics may give the appearance of affecting his or her judicial actions or might actually affect the judge's judicial actions. A judge's endorsement of a candidate or appearance of an endorsement might well be viewed as judicial endorsement, and thus would advance the "private interests" of that person. Such activity would also create doubt about a judge's impartiality towards persons, organizations, or factual issues that may come before the judge.

A judge may not attend an event that is run to raise money or gather support for or opposition to a political candidate or party. The judge may not attend an event that is partisan in nature. The judge may not engage in any partisan displays of public support, such as driving an automobile with a partisan bumper sticker, posting a campaign sign outside of the judge's residence, signing nomination papers for a political candidate or a ballot issue, carrying a campaign sign, distributing campaign literature, or encouraging people to vote for or give money to a particular candidate or political party.

A judge has the right to be an informed citizen. As such, it would be permissible for a judge to attend an event that is non-partisan, such as a forum that is open to all candidates and is intended to inform the public. Furthermore, in order to participate in an electoral primary, a judge may register as a member of a political party, but may not permit or encourage anyone to make that registration known.

A judge may not avoid the restrictions imposed by this Section by making contributions through a spouse or other family member. Political contributions by the judge's spouse must result from the independent choice of the spouse, and checks by which such contributions are made shall not include the name of the judge.

Amended March 26, 1997, effective April 16, 1997; amended effective May 26, 1998; amended June 5, 2003, effective October 1, 2003.

CANON 6
COMPLIANCE WITH THIS CODE

6A. 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, shall comply with all provisions of this Code during the term of such eligibility.

(2) A judge who has retired or resigned from judicial office shall not, 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, perform court-connected dispute resolution services except on a pro bono publico basis, enter an appearance, or accept an appointment to represent any party in any court of the Commonwealth.

6B. Time for Compliance

A person to whom this Code becomes applicable shall comply immediately with all its provisions except Sections 4D(2), 4D(3), and 4E and shall comply with those Sections as soon as reasonably possible and in any event within one year.

Amended June 5, 2003, effective October 1, 2003.

EFFECTIVE DATE OF COMPLIANCE
The effective date of compliance of this Code is October 1, 2003.

APPENDIX A [to Canon 3B(9)]

SUPREME JUDICIAL COURT GUIDANCE REGARDING THE ISSUANCE OF EXPLANATORY MEMORANDA

We have carefully considered whether Section 3B(9) of our Code of Judicial Conduct should apply to a memorandum issued by a judge that provides or supplements the reasons in support of an earlier order (an explanatory memorandum). We have determined that, in all but the most unusual circumstances, the decision whether to issue an explanatory memorandum is left to the sound judgment of the individual judge and is not an appropriate ground for judicial discipline under Section 3B(9). We provide guidance here to assist a judge in exercising that sound judgment.

We encourage judges to explain the basis for their decisions on the record at the time the decisions are made, including decisions concerning bail and sentencing. By helping litigants to understand the basis for decisions in cases, the judge also promotes public understanding of judicial proceedings. In some instances, such as decisions regarding bail, where the volume of matters may make it difficult always to articulate detailed findings, judges should set forth their reasons on forms prepared for this purpose. When a judge orally renders a decision and intends to explain his or her reasons in a written memorandum of law, the judge should inform the parties that an explanatory memorandum will be forthcoming.

When the judge has not indicated at the time he or she issues the underlying order that a written explanatory memorandum will be forthcoming, and such a memorandum has not been requested by a party or by an appellate single justice or court, a judge should issue an explanatory memorandum only after careful consideration, weighing, at a minimum, the following factors:

• the importance of avoiding or alleviating the parties' or the public's misunderstanding or confusion by supplementing the record to reflect in more detail the reasons in support of the judge's earlier decision;

• the amount of time that has elapsed since the order was issued and the extent to which the judge's reasons for the decision remain fresh in his or her mind;

• the risk that an explanatory memorandum may unfairly affect the rights of a party or appellate review of the underlying order; and

• the danger that the issuance of an explanatory memorandum would suggest that judicial decisions are influenced by public opinion or criticism voiced by third parties, and would not promote confidence in the courts and in the independence and impartiality of judges.

An explanatory memorandum is appropriate only if issued within a reasonable time of the underlying order and if the judge clearly recalls his or her reasons for the decision. An explanatory memorandum should not be issued solely to respond to public criticism of the decision, and should not rely on any information that was not within the record before the judge at the time of the underlying order.

A judge may not issue an explanatory memorandum if the court no longer has authority to alter or amend the underlying order. By

way of example, a judge may not issue an explanatory memorandum when:

• the underlying order is the subject of an interlocutory appeal, report, or other appellate proceeding that has already been docketed in the appellate court, unless such a memorandum has been requested by an appellate single justice or court;

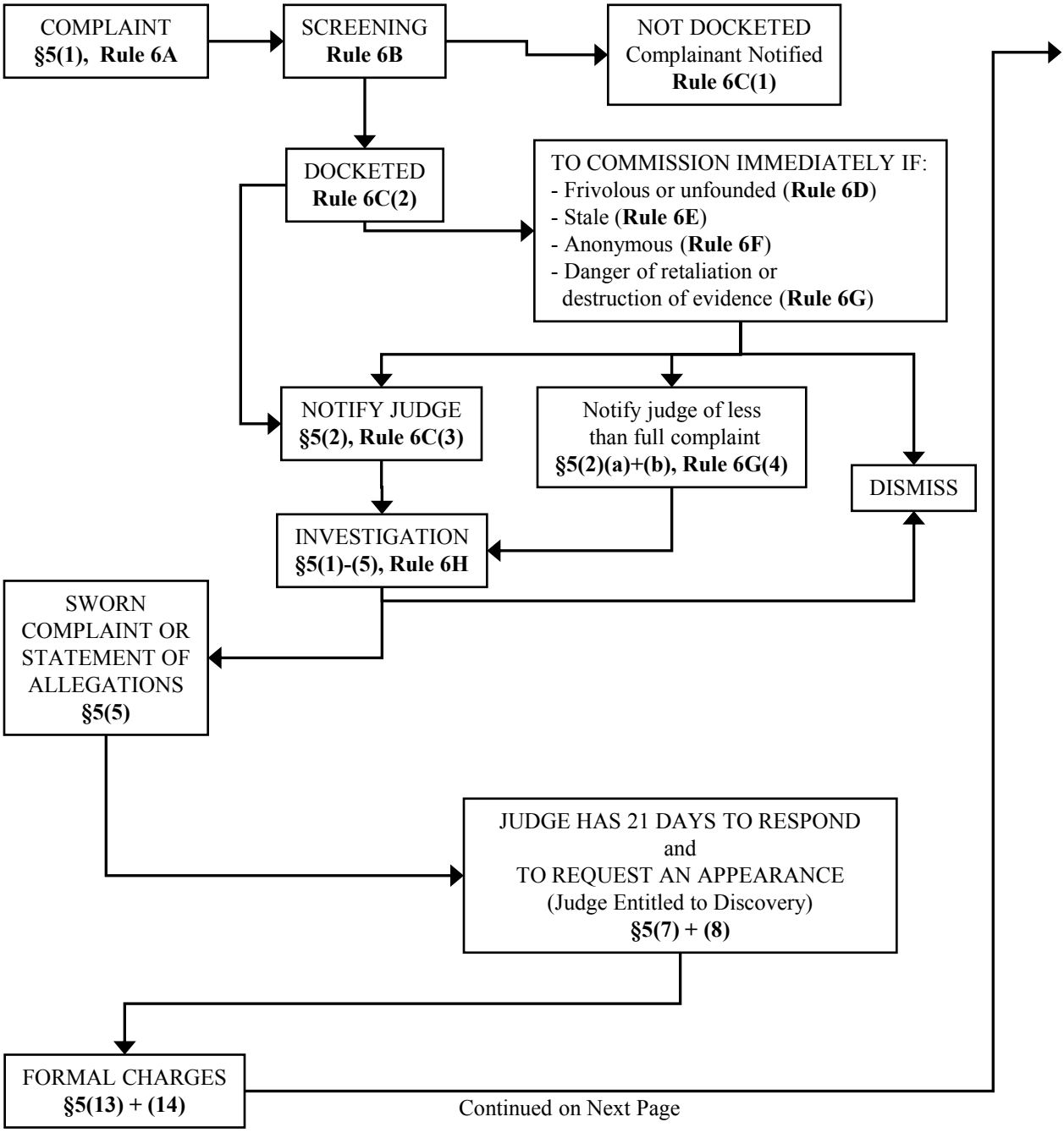
• the case has been finally adjudicated in the trial court, no timely-filed postjudgment motions are pending, and the time within which the court may modify its orders and judgments on its own initiative has passed;

• in cases where an appeal has been taken from a final order or judgment, the appeal has been docketed in the appellate court.

APPENDIX D

FLOW CHART OF COMMISSION PROCEDURES

FLOW CHART OF COMMISSION PROCEDURES



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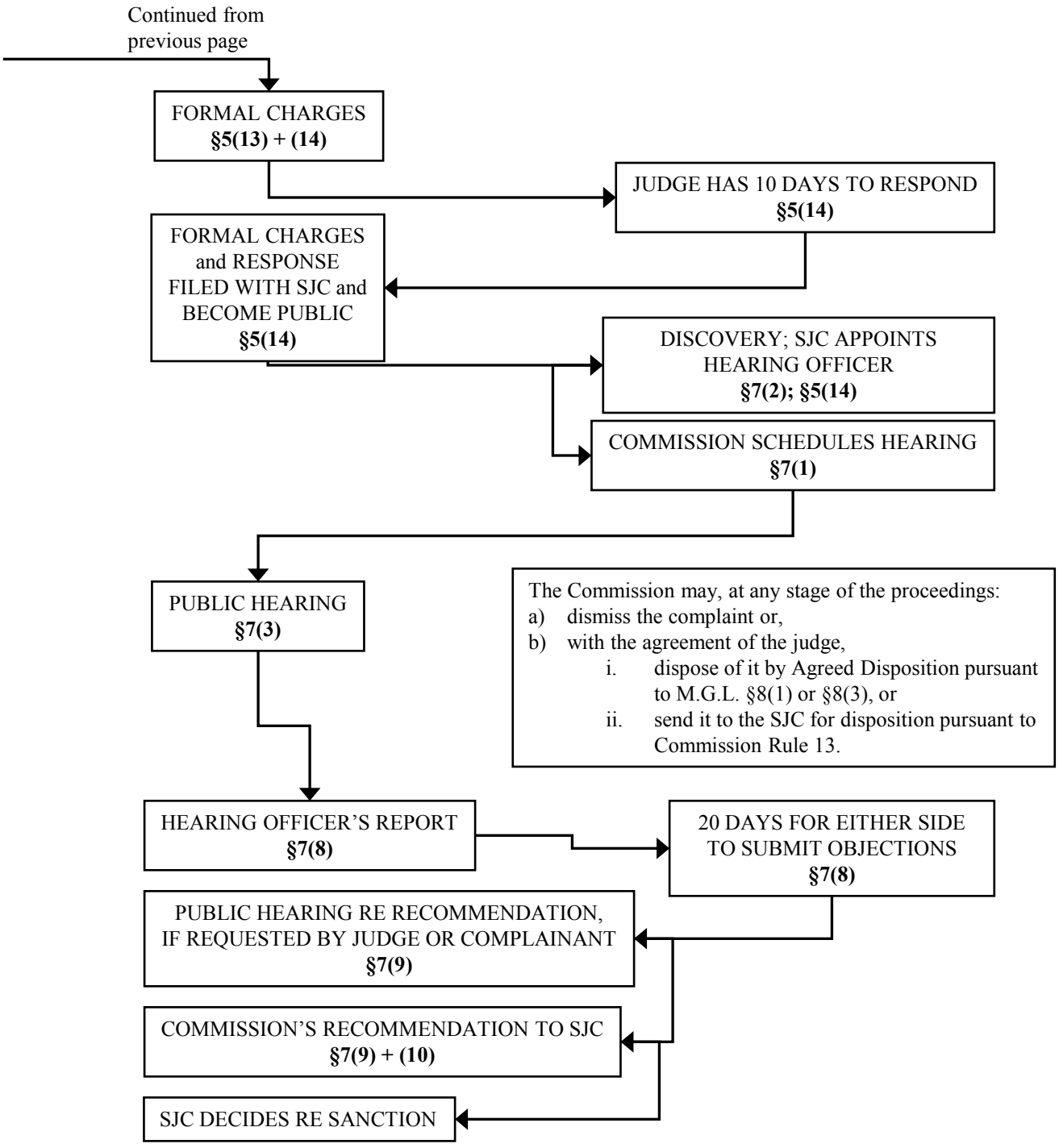

Simplified for purposes of explication. M.G.L. c. 211C and Commission Rules govern.

APPENDIX E

COMPLAINT FORM

COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT
11 BEACON STREET, SUITE 525
BOSTON, MASSACHUSETTS 02108-3006
Phone: (617) 725-8050
Fax: (617) 248-9938

COMPLAINT FORM

CJC Complaint Number: _____

This form is designed to provide the Commission with information necessary to determine whether your complaint falls within the Commission's jurisdiction, pursuant to M.G.L. Chapter 211C, and whether an investigation or further action should be taken. Please review the Code of Judicial Conduct (SJC Rule 3:09) and the rules of the Commission, both of which are available on the Commission's website at www.mass.gov/cjc, before filling out this form. ONLY ONE JUDGE MAY BE COMPLAINED OF ON EACH FORM.

PLEASE TYPE OR PRINT CLEARLY ALL INFORMATION

Your name:_____

Your address:_____

_____

Daytime telephone number:_____

Name of judge:_____

Court:_____

Case name:_____

Docket number:_____

Attorney(s) involved:_____

Date(s) of misconduct: _____

Has an appeal been filed?_____

Please summarize the general nature of your complaint:

_____

_____

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Specific Facts: Please describe exactly what the judge did that you believe constitutes judicial misconduct or evidence of disability, 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. Please delete anyone's personal identifying information, such as social security number, bank account information, or credit card information.)

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I understand that this complaint and any other communication to or from the Commission on Judicial Conduct must remain confidential to the extent required by M.G.L. Chapter 211C, Section 6, and Commission Rule 5. I also understand that this complaint and any attachments I send to the Commission become the property of the Commission and will not be returned to me.

Signed: _____

Date: _____

Please mail completed form to:

Executive Director
Commission on Judicial Conduct
11 Beacon Street, Suite 525
Boston, MA 02108-3006