



The Commonwealth of Massachusetts
COMMISSION ON JUDICIAL CONDUCT

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May 22, 2015

Committee to Study the Code of Judicial Conduct
Supreme Judicial Court
John Adams Courthouse
One Pemberton Square, Suite 2500
Boston, MA 02108

RE: Comments on proposed amendments to the Massachusetts Code of Judicial Conduct

Dear Committee Members:

The Commission on Judicial Conduct (Commission) thanks the Committee to Study the Code of Judicial Conduct (Committee) for the opportunity to comment on the Committee's proposed amendments to the Massachusetts Code of Judicial Conduct (Code).

The Commission appreciates and fully supports the Committee's efforts to clarify certain aspects of the current Code and provide judges with more detailed guidance to assist them in adhering to their duties under the Code.

The Commission respectfully submits the following comments on the proposed amendments for the Committee's consideration:

1. Rule 1.3

The Commission suggests that use of the word "abuse" in Rule 1.3 is a redundant and potentially confusing modifier given the text of the remainder of the rule. The Commission suggests substituting the word "abuse" with either "use" or "lend."

Similarly, the Commission suggests that the phrase in the third sentence in Comment 1 to Rule 1.3, "to gain an advantage," is an unnecessary and potentially confusing modifier, and should be omitted. The Commission foresees few, if any, circumstances when it would be appropriate or a judge to use judicial letterhead in his or her "personal business."

2. Rule 2.2

The Commission suggests that the third sentence in Comment 3 to Rule 2.2 should be amended so that it is consistent with General Laws Chapter 211C, Section 2(4). The Commission suggests that the phrase "unless the judge acted in bad faith" should be replaced with the following phrase from Section 2(4): "[i]n the absence of fraud, corrupt motive, bad faith, or a clear indication that the judge's conduct violates the code of judicial conduct."



3. Rule 2.5

Because the first sentence in Comment 3 to Rule 2.5 refers to “[p]rompt disposition of the court’s business,” the Commission suggests that, in order to be consistent and avoid confusion, Rule 2.5(A) should be amended by inserting the word “promptly” between duties and competently.

4. Rule 3.7

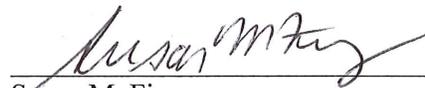
The Commission suggests that the word “may” in Rule 3.7(A)(4) should be replaced with “shall” to clarify that the conduct described in this section is prohibited.

The Commission appreciates the great value in encouraging judges to become more active participants in the legal community and permitting them to speak and be honored at non-fundraising events, as would be explicitly permitted by Rule 3.7(A)(6). However, the Commission worries that permitting a judge’s title to be used to promote a fundraising event could potentially be precarious for a judge, depending on the circumstances. Considering how small the Massachusetts legal community can sometimes be, a judge who follows the guidance of Rule 3.7(A)(6A) and permits “an organization concerned with the law” (or another law-orientated organization) to use his/her office to promote a fundraiser may still run a substantial risk of inadvertently creating an appearance of bias, in violation of Rule 3.1.

In closing, the Commission recognizes and appreciates the enormous amount of time, effort, and attention the members of the Committee have devoted to the proposed amendments to the Code. The Commission offers the foregoing comments in an effort to help the Committee prepare a new Code that best serves the interests of the public and the judiciary.

If members of the Committee have any questions regarding the Commission’s comments, please feel free to contact the Commission’s Executive Director, Howard V. Neff, III.

Sincerely,



Susan M. Finegan
Chair



Howard V. Neff, III
Executive Director