

**SENATE . . . . . No. 1567**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***Frederick E. Berry, (BY REQUEST)***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the duties of judges..

\_\_\_\_\_

PETITION OF:

NAME:

DISTRICT/ADDRESS:

\_\_\_\_\_  
*Stefano Picciotto*

\_\_\_\_\_  
*Melita Picciotto*

**SENATE . . . . . No. 1567**

[Pin Slip]

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Nine**

An Act relative to the duties of judges..

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 220 § 2, is amended by adding the following new paragraphs as

2 SECTION 2A.:

3 2A. A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE  
4 IMPARTIALLY AND DILIGENTLY

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

8 B. Adjudicative Responsibilities.

9 A judge shall hear and decide matters assigned to the judge except those in which the  
10 judge is disqualified.

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

13 A judge shall maintain order and decorum in proceedings before the judge.

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

17 (5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in  
18 the performance of judicial duties, by words or conduct, manifest bias or prejudice, including but  
19 not limited to bias or prejudice based upon race, sex, religion, national origin, ethnicity,  
20 disability, age, sexual orientation, or socioeconomic status, and shall require court personnel and  
21 others not to do so.

22 (6) A judge shall require lawyers in proceedings before the judge to refrain from  
23 manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national  
24 origin, ethnicity, disability, age, sexual orientation, or socioeconomic status, against parties,  
25 witnesses, counsel, or others.

26 (a) A judge shall not allow attorneys to pass candies, gifts or memorabilia of any kind to  
27 jurors.

28 A judge shall not allow jurors to come to court dressed in Halloween costumes or similar  
29 inappropriate attire.

30 A judge shall not allow a cast list to be passed to jurors as to who will play them in a  
31 movie.

32 A judge shall not openly joke in court that Hollywood might make a movie of the case.

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

37 Where circumstances require, an ex parte communication is authorized when it does not  
38 deal

39 with substantive matters and is for scheduling or administrative purposes or emergencies  
40 provided:

41 the judge reasonably believes that no party will gain a procedural or tactical advantage as  
42 a result of the ex parte communication, and

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

45 (b) A judge may consult with court personnel whose function is to aid the judge in  
46 carrying out the judge's adjudicative responsibilities, or with other judges, subject to the  
47 following:

48 (i) a judge shall take all reasonable steps to avoid receiving from court personnel or other  
49 judges factual information concerning a case that is not part of the case record. If court personnel  
50 or another judge nevertheless bring non-record information about a case to the judge's attention,  
51 the judge may not base a decision on it without giving the parties notice of that information and a  
52 reasonable opportunity to respond. Consultation is permitted between a judge, clerk-magistrate  
53 or other appropriate court personnel and a judge taking over the same case or session in which

54 the case is pending with regard to information learned from prior proceedings in the case that  
55 may assist in maintaining continuity in handling the case;

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

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

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

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

67 A judge may initiate, permit, or consider any ex parte communication when authorized  
68 by law to do so.

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

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

73 (a) A judge is permitted to make public statements in the course of his or her official  
74 duties or to explain for public information the procedures of the court, general legal principles, or  
75 what may be learned from the public record in a case.

76 (b) This Section does not prohibit judges from discussing, in legal education programs  
77 and materials, cases and issues pending in appellate courts. This education exemption does not  
78 apply, however, to comments or discussions that might interfere with a fair hearing of the case.

79 (c) This Section does not apply to proceedings in which the judge is a litigant in a  
80 personal capacity.

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

84 (11) A judge shall not disclose or use, for any purpose unrelated to judicial duties,  
85 information acquired in a judicial capacity that by law is not available to the public. When a  
86 judge, in a judicial capacity, acquires information, including material contained in the public  
87 record that is not yet generally known, the judge must not use the information in financial  
88 dealings for private gain. Notwithstanding the provisions of Section 3B(9), a judge shall not  
89 disclose or use, for any purpose unrelated to judicial duties, information that, although part of the  
90 public record, is not yet generally known, if such information would be expected unnecessarily  
91 to embarrass or otherwise harm any person participating or mentioned in court proceedings.

92 C. Administrative Responsibilities.

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

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

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

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

106 D. Disciplinary Responsibilities.

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

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

118 E. Disqualification.

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

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

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

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

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

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

129 (f) the judge is a party to the proceeding or an officer, director, or trustee of a party or the  
130 judge knows, or reasonably should know, that he or she, individually or as a fiduciary, has (i) an  
131 economic interest in the subject matter in controversy or in a party to the proceeding, which  
132 interest could be substantially affected by the outcome of the proceeding, (ii) a relationship  
133 interest to a party to the proceeding where the party could be substantially affected by the



134 outcome of the proceeding or (iii) any other more than de minimis interest that could be  
135 substantially affected by the outcome of the proceeding;

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

143 (h) the judge's spouse or domestic partner, as well as a person within the third degree of  
144 relationship to the judge, the judge's spouse, or the judge's domestic partner, or a spouse or  
145 domestic partner of such other person, (i) is a party to the proceeding or an officer, director, or  
146 trustee of a party, (ii) is acting as a lawyer in the proceeding, (iii) is known by the judge to have  
147 any more than de minimis interest that could be substantially affected by the outcome of the  
148 proceeding, or (iv) is to the judge's knowledge likely to be a material witness in the proceeding.

149 (i) Failure to adhere to the provisions of this section shall constitute a violation of due  
150 process.