

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Frederick E. Berry (BY REQUEST)

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 passage of the accompanying bill:

An Act relative to the duties of judges.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Stefano Picciotto	418 Lafayette Street Salem, MA 01970
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The Commonwealth of Massachusetts

In the Year Two Thousand and 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

3 2A.:

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5 2A. A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND
6 DILIGENTLY

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

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12 B. Adjudicative Responsibilities.

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

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

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

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

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

31

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

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

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40 (b) A judge shall not allow jurors to come to court dressed in Halloween costumes or similar
41 inappropriate attire.

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43 (c) A judge shall not allow a cast list to be passed to jurors as to who will play them in a
44 movie.

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46 (d) A judge shall not openly joke in court that Hollywood might make a movie of the case.

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

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53 (a) Where circumstances require, an ex parte communication is authorized when it does not
54 deal

55 with substantive matters and is for scheduling or administrative purposes or emergencies
56 provided:

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

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

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

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

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

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

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

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

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90 (c) A judge may initiate, permit, or consider any ex parte communication when authorized by
91 law
92 to do so.

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

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

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

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

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

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

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

123

124 C. Administrative Responsibilities.

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

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

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

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

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142 D. Disciplinary Responsibilities.

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

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

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157 E. Disqualification.

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

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

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

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

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

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

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175 (f) the judge is a party to the proceeding or an officer, director, or trustee of a party or the
176 judge knows, or reasonably should know, that he or she, individually or as a fiduciary, has (i) an
177 economic interest in the subject matter in controversy or in a party to the proceeding, which
178 interest could be substantially affected by the outcome of the proceeding, (ii) a relationship
179 interest to a party to the proceeding where the party could be substantially affected by the
180 outcome of the proceeding or (iii) any other more than de minimis interest that could be
181 substantially affected by the outcome of the proceeding;

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

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

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

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