HOUSE DOCKET, NO. 535 FILED ON: 1/18/2011

HOUSE . . . . . No. 444

The Commonwealth of Massachusetts

PRESENTED BY:

***John D. Keenan*, (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:

An Act relative to the duties of judges.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Stefano Picciotto	*418 Lafayette Street* *Salem, MA 01970*

HOUSE DOCKET, NO. 535 FILED ON: 1/18/2011

HOUSE . . . . . No. 444

By Mr. Keenan of Salem (by request), a petition (accompanied by bill, House, No. 444) of Stefano Picciotto relative to the duties of judges and the preservation of decorum in the courts of the Commonwealth. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1477* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

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

2A.:

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

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.

B. Adjudicative Responsibilities.

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.

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

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

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

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

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

28 jurors.

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

30 inappropriate attire.

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

32 movie.

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

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

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

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

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

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

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

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

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

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

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

66 A judge may, with the consent of the parties, confer separately with the parties and their
67 lawyers

68 in an effort to mediate or settle civil matters pending before the judge.

69 A judge may initiate, permit, or consider any ex parte communication when authorized
70 by law

71 to do so.

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

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

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

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

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

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

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

95 C. Administrative Responsibilities.

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

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

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

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

109 D. Disciplinary Responsibilities.

110 (1) A judge having knowledge of facts indicating a substantial likelihood that another
111 judge has committed a violation of the Code that raises a significant question about that judge's
112 honesty, integrity, trustworthiness, or fitness for judicial office shall inform the Chief Justice of

113 this court and of that judge's court. A judge having knowledge of facts indicating a substantial
114 likelihood that another judge has committed a violation of the Code that does not raise a
115 significant question of that judge's honesty, integrity, trustworthiness, or fitness for judicial
116 office shall take appropriate action.

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

121 E. Disqualification.

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

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

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

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

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

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

132 (f) the judge is a party to the proceeding or an officer, director, or trustee of a party or the
133 judge knows, or reasonably should know, that he or she, individually or as a fiduciary, has (i) an
134 economic interest in the subject matter in controversy or in a party to the proceeding, which
135 interest could be substantially affected by the outcome of the proceeding, (ii) a relationship
136 interest to a party to the proceeding where the party could be substantially affected by the
137 outcome of the proceeding or (iii) any other more than de minimis interest that could be
138 substantially affected by the outcome of the proceeding;

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

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

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