SENATE DOCKET, NO. 1573 FILED ON: 1/21/2011

SENATE . . . . . No. 650

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:

An Act relative to the duties of judges.

PETITION OF:

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

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SENATE . . . . . No. 650

By Mr. Berry (by request), a petition (accompanied by bill, Senate, No. 650) of [PETITIONERS LIST] for legislation relative to the duties of judges. The Judiciary.

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

A. 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.

(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

22 origin, ethnicity, disability, age, sexual orientation, or socioeconomic status, and shall require
23 court personnel and others not to do so.

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

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

30 (b) A judge shall not allow jurors to come to court dressed in
31 Halloween costumes or similar

32 inappropriate attire.

33 (c) A judge shall not allow a cast list to be passed to jurors as to who
34 will play them in a

35 movie.

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

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

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

44 with substantive matters and is for scheduling or administrative purposes or emergencies
45 provided:

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

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

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

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

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

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

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

73 (b) A judge may, with the consent of the parties, confer
74 separately with the parties and their lawyers

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

76 (c) A judge may initiate, permit, or consider any ex parte
77 communication when authorized by law

78 to do so.

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

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

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

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

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

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

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

104 C. Administrative Responsibilities.

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

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

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

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

118 D. Disciplinary Responsibilities.

119 (1) A judge having knowledge of facts indicating a substantial
120 likelihood that another judge has committed a violation of the Code that raises a significant

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

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

130 E. Disqualification.

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

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

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

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

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

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

144 (f) the judge is a party to the proceeding or an officer,
145 director, or trustee of a party or the judge knows, or reasonably should know, that he or she,
146 individually or as a fiduciary, has (i) an economic interest in the subject matter in controversy or
147 in a party to the proceeding, which interest could be substantially affected by the outcome of the
148 proceeding, (ii) a relationship interest to a party to the proceeding where the party could be
149 substantially affected by the outcome of the proceeding or (iii) any other more than de minimis
150 interest that could be substantially affected by the outcome of the proceeding;

151 (g) the judge knows, or reasonably should know, that the
152 judge's spouse or child wherever residing, or any other member of the judge's family residing in
153 the judge's household, has (i) an economic interest in the subject matter in controversy or in a
154 party to the proceeding, which interest could be substantially affected by the outcome of the

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

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

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