

HOUSE No. 00444

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 bill:

An Act relative to the duties of judges..

PETITION OF:

NAME:

John D. Keenan

DISTRICT/ADDRESS:

7th Essex

HOUSE No. 00444

By Mr. John D Keenan of Salem (by request), petition (accompanied by bill, House, No. 00444) of John D Keenan relative to the duties of judges and the preservation of decorum in the courts of the Commonwealth. Joint Committee on the Judiciary.

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

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 SECTION

2 2A.:

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

4 AND DILIGENTLY

5 The judicial duties of a judge take precedence over all the judge's other activities. The judge's

6 judicial duties include all the duties of the judge's office prescribed by law. In the performance

7 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 judge is
10 disqualified.

11 (2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall
12 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 others with
15 whom the judge deals in an official capacity, and shall require similar conduct of court
16 personnel and others.

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

22 (6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by
23 words or conduct, bias or prejudice based upon race, sex, religion, national origin, ethnicity,
24 disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or
25 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 person's
34 lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider any
35 ex parte communication concerning a pending or impending proceeding, except that:

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

37 with substantive matters and is for scheduling or administrative purposes or emergencies

38 provided:

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

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

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

45 (i) a judge shall take all reasonable steps to avoid receiving from court personnel or other judges
46 factual information concerning a case that is not part of the case record. If court personnel or
47 another judge nevertheless bring non-record information about a case to the judge's attention, the
48 judge may not base a decision on it without giving the parties notice of that information and a

49 reasonable opportunity to respond. Consultation is permitted between a judge, clerk-magistrate
50 or other appropriate court personnel and a judge taking over the same case or session in which
51 the case is pending with regard to information learned from prior proceedings in the case that
52 may assist in maintaining continuity in handling the case;

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

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

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

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

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

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

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

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

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

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

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

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

89 C. Administrative Responsibilities.

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

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

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

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

103 D. Disciplinary Responsibilities.

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

109 question of that judge's honesty, integrity, trustworthiness, or fitness for judicial office shall take
110 appropriate action.

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

115 E. Disqualification.

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

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

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

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

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

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

126 (f) the judge is a party to the proceeding or an officer, director, or trustee of a party or the judge
127 knows, or reasonably should know, that he or she, individually or as a fiduciary, has (i) an
128 economic interest in the subject matter in controversy or in a party to the proceeding, which

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

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

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

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