



16 Beacon Street  
Boston, MA 02108

Phone (617) 742-0615  
Fax (617) 523-0127  
www.bostonbar.org

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October 6, 2017

Attorney Christine P. Burak  
Legal Counsel to the Chief Justice  
John Adams Courthouse  
One Pemberton Square  
Boston, MA 02108

**Re: Comments on the Proposed Amendments to SJC Rule 3:12:  
Code of Professional Responsibility for Clerks of the Courts**

Dear Attorney Burak,

On behalf of the Boston Bar Association (“BBA”), we thank you for the opportunity to comment on the proposed amendments to Supreme Judicial Court (“SJC”) Rule 3:12: Code of Professional Responsibility for Clerks of the Courts.

The invitation to comment was distributed to all BBA Sections, and the Ethics Committee discussed them at length and proposed the attached comments. Please note that the enclosed document does not constitute a position of the BBA as a whole but rather reflects the views of the individual members of the Ethics Committee. We hope they may be useful to the Rules Committee as it considers the proposed revisions.

Thank you for providing members of the bar with an opportunity to weigh in on these important amendments, and please feel free to contact me should you have any questions or concerns.

Very truly yours,

Mark Smith  
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**Comments of the Boston Bar Association's Ethics Committee on Proposed Amendments to SJC  
Rule 3:12: Code of Professional Responsibility for Clerks of the Courts  
(October 6, 2017)**

In response to an invitation for comments from the Supreme Judicial Court ("SJC") Rules Committee ("Rules Committee"), the Boston Bar Association's ("BBA") Ethics Committee reviewed the Proposed Amendments to SJC Rule 3:12. The BBA notes that these comments do not represent a formal position of the Association but rather are a collection of comments from interested Committee members intended to help the Rules Committee in its consideration of the proposed amendments.

Members of the Ethics Committee felt that the proposed amendments were generally reasonable but did contain a few ambiguities. For example, members discussed the addition in Canon 3(A)(4), providing that "a Clerk Magistrate may make reasonable efforts to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard." The Committee commended the attempt to make sure that all litigants have a fair opportunity to be heard but felt that the meaning of "reasonable efforts" was quite vague and open to interpretation. For example, would the Clerk Magistrate be obligated to obtain an interpreter/translator for litigants who do not speak English? In addition, some members expressed confusion as to why this sentence used the permissive "may," instead of "shall," especially when the preceding requirement provides that a Clerk Magistrate "shall" allow everyone a right to be heard. Overall, members felt the rule could benefit from offering more clarity as to the scope and meaning of this amendment.

Members of the Ethics Committee also felt the addition in Canon 5(F) was somewhat unclear, expressing confusion as to why the conditions explaining when a Clerk Magistrate could accept free or discounted legal services were listed with the conjunctive "and," instead of the disjunctive "or." Some members were also unsure, based on the language of the amendment, as to what situation or issue it was the Canon was hoping to address. Specifically, the meaning of Canon 5(F)(1) read as particularly confusing and worth further explanation. Relatedly, some members felt that Canon 5(F)(2) could benefit from offering more clarity as to the meaning of "similarly situated persons who are not Clerk Magistrates."