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PROFESSIONAL CONDUCT RULES

Rules of the Advisory Committee on Ethical Opinions for Clerks of Courts

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Rule 1. Opinion requests

Requests for advisory opinions should be made by letter, addressed to Christine Burak, Esquire, Secretary, Advisory Committee on Ethical Opinions for Clerks of Court, 1350 New Courthouse, Boston, Massachusetts 02108. A request may only be made by a Clerk-Magistrate or a person who has been nominated to be a Clerk-Magistrate as that term is defined in Canon I of [Supreme Judicial Court Rule](#)

[3:12 \(/supreme-judicial-court-rules/supreme-judicial-court-rule-312-code-of-professional-responsibility\)](#).

Rule 2. Form of request

The letter should be signed by the Clerk-Magistrate requesting the advice and should set forth fully all facts bearing on the question or questions on which the Clerk-Magistrate requests advice.

Because [Supreme Judicial Court Rule](#)

[3:14\(2\) \(/supreme-judicial-court-rules/supreme-judicial-court-rule-314-advisory-committee-on-ethical-opinions\)](#)

precludes the committee from rendering opinions "on issues pending before or under consideration by a judicial authority, unless that authority so requests, or by a court, agency, or commission," the request should contain an affirmation that, to the best of the information and belief of the Clerk-Magistrate requesting the opinion, no issue raised thereby, whether in reference to the Clerk-Magistrate or to any other person, is presently pending before or under consideration by any judicial authority, court, agency, or commission.

Rule 3. Scope of question

Under [Supreme Judicial Court Rule](#)

[3:14 \(/supreme-judicial-court-rules/supreme-judicial-court-rule-314-advisory-committee-on-ethical-opinions\)](#), advisory opinion requests must relate "to the interpretation of rules of court relating to the ethical and professional conduct of Clerk-Magistrates." The committee will not render opinions on hypothetical questions, questions relating solely to past conduct or questions relating to the conduct of persons other than the requesting Clerk-Magistrate,

Rule 4. Opinion

Opinions of the committee require the affirmative vote of at least three members and, except for emergency opinions, will be rendered in writing. The committee shall publish its opinions but the name of the Clerk-Magistrate requesting the opinion and any other identifying information shall not be included in a published opinion unless the requester consents to such inclusion. Pursuant to [Supreme Judicial Court Rule](#)

[3:14 \(/supreme-judicial-court-rules/supreme-judicial-court-rule-314-advisory-committee-on-ethical-opinions\)](#), if "a Clerk-Magistrate did not omit or misstate any material fact in the request for an opinion, the Clerk-Magistrate may rely on the written opinion until and unless revised or revoked" by the committee or by the Supreme Judicial Court or superseded by law.

Rule 5. Emergency opinions

To offer guidance to Clerk-Magistrates faced unexpectedly with questions within the committee's jurisdiction that require an immediate response, the secretary, with the approval of the chairperson of the committee (or if the chairperson is unavailable, of one other member of the committee), or the chairperson, with the concurrence of one other member of the committee, may give advice on an emergency basis. Whenever possible, the request for advice shall be in writing. The emergency advice will be given orally or in writing, as seems appropriate. Emergency advice shall be submitted to the full committee for action. If the committee agrees with the advice given, it will issue a written confirming opinion to the inquirer. If it disagrees, it will issue a written opinion to the inquirer setting forth the emergency advice that was given so that the Clerk-Magistrate will have the benefit of the protection given by [S.J.C. Rule 3:14 \(/supreme-judicial-court-rules/supreme-judicial-court-rule-314-advisory-committee-on-ethical-opinions\)](#) as to conduct undertaken in reliance on that advice, but it will also set forth the view of the full committee on the issue presented. The view of the full committee will supersede all inconsistent emergency advice.

Rule 6. Decision to refuse opinion

In addition to the reasons state in rules 1, 2, and 3, the committee may decline to render an opinion for any other reason which it deems sufficient.

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