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Maria Peña  
Associate Court Administrator/General Counsel  
Superior Court Administrative Office  
13<sup>th</sup> Floor, Three Pemberton Square  
Boston, MA 02108

**Re: Comments on Proposed Revisions to Superior Court Rules**

Dear Superior Court Rules Committee,

On behalf of the Boston Bar Association (BBA), I thank you for the opportunity to comment on the proposed Superior Court Rules revisions. The BBA appreciates and recognizes the efforts put forth by the Superior Court Rules Committee in recommending these revisions.

The proposed initiatives were distributed to all BBA Sections and its Ethics Committee, which discussed them at length. Members of the Business and Commercial Litigation, Delivery of Legal Services, and Diversity and Inclusion Section Steering Committees and Ethics Committee 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 individual members of the aforementioned groups. We hope that they may be useful to the Superior Court as it considers the proposed revisions.

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

Very truly yours,



Carol Starkey  
President

**Comments of the Boston Bar Association's Business and Commercial Litigation, Delivery  
of Legal Services, and Diversity and Inclusion Sections and Ethics Committee on Proposed  
Superior Court Rules 18 and 23  
(10/18/2016)**

In response to an invitation for comments from the Superior Court, the Boston Bar Association's Business and Commercial Litigation, Delivery of Legal Services, and Diversity and Inclusion Sections and Ethics Committee reviewed proposed Superior Court Rules 18 and 23 and discussed them at their steering committee meeting.

Proposed Superior Court Rule 18

Members of the Diversity and Inclusion Section were generally supportive of this rule, and noted that their concern might not be best addressed by its amendment. However, they were hoping to point out an inconsistency they felt merited consideration – that in Superior Court child abuse and neglect cases records are presumptively considered a matter of public record and their impoundment varies on a case-by-case basis, whereas other similar cases are automatically impounded in Juvenile Court and the records of the appeals of these abuse and neglect cases and other similar cases are automatically impounded in the Appeals Courts. Members of this Section felt that the records in Superior Court child abuse and neglect cases should generally be impounded to protect the privacy of litigants and that the Court should consider amending proposed Rule 18 or another rule or drafting a new rule or standing order to assure greater consistency on this issue.

Proposed Superior Court Rule 23

Members of all aforementioned Sections and the Ethics Committee unanimously noted their support for the Rule as a policy matter. They applauded the Court for taking steps to increase access to justice and expand legal practice options, and fully supported the adoption of a rule to permit and clarify Limited Assistance Representation (LAR) practice in Superior Court.

Members of the Sections and Ethics Committee also discussed some concerns, stressing that they hoped these could be addressed in a final rule and not be a bar to the adoption of LAR in the Superior Court. The biggest concern, shared by most members, was over the potential application of Rule 11 of the Massachusetts Rule of Civil Procedure (MRCP) or Rule 3.1 of the Massachusetts Rules of Professional Conduct (MRPC). Members felt it was not clear under the proposed rule whether attorneys providing LAR, especially when "ghostwriting," would be subject to the sanctions provided under MRCP Rule 11 or MRPC Rule 3.1 for pleadings submitted for baseless or dilatory purposes.

Members discussed potential solutions including adding language to the proposed rule explicitly making "ghostwriters" subject to MRCP Rule 11 and MRPC Rule 3.1 and/or stating that judges are permitted to ask a party for the name of their drafter. However, some members felt that reference to MRCP Rule 11 may result in an overreaching of judicial sanctioning power to attorneys who are not making an appearance. They noted that this issue is also complicated by potential editing of pleadings by the client after completion by the lawyer and consideration of whether it was actually "reasonable" under any circumstances for a lawyer to stop their assistance at ghostwriting without then arguing the pleading before the court.

Members also questioned why this rule differs from some of the Standing Orders on the same issue in other courts, specifically, why it did not include blank notices of limited appearance and withdrawal and why it permitted lawyers to become qualified without having to complete a training course. They noted that the SJC and most court departments require completion of a course on LAR for qualification, and they supported this measure to assure that lawyers are aware of the practical and ethical issues involved in LAR representation.