

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:
Mr. Tarr

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 judicial recusal.

PETITION OF:

NAME:

Mr. Tarr

DISTRICT/ADDRESS:

First Essex and Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO JUDICIAL RECUSAL.

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 21. Recusal of Judges

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3 (a) Whenever a party to any proceeding makes and files a timely and sufficient affidavit that
4 the judge before whom the matter is pending has a personal bias or prejudice either
5 against him or in favor of any adverse party, such judge shall proceed no further therein,
6 but another judge shall be assigned to hear such proceeding.

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8 The affidavit shall state the facts and the reasons for the belief that bias or prejudice
9 exists, and shall be filed not less than ten days before the beginning of the term at which
10 the proceeding is to be heard, or good cause shall be shown for failure to file it within
11 such time. A party may file only one such affidavit in any case. It shall be accompanied
12 by a certificate of counsel of record stating that it is made in good faith.

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14 (b) (1) Any justice judge or magistrate judge of the Commonwealth of Massachusetts shall
15 disqualify himself in any proceeding in which his impartiality might reasonably be
16 questioned.

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(2) He shall also disqualify himself in the following circumstances:

(A) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(B) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(C) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(D) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

40 (E) He or his spouse, or a person within the third degree of
41 relationship to either of them, or the spouse of such a person:

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43 (i) Is a party to the proceeding, or an officer, director,
44 or trustee of a party;

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46 (ii) Is acting as a lawyer in the proceeding;

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48 (iii) Is known by the judge to have an interest that could
49 be substantially affected by the outcome of the proceeding;

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51 (iv) Is to the judge's knowledge likely to be a material
52 witness in the proceeding.

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54 (3) A judge should inform himself about his personal and fiduciary
55 financial interests, and make a reasonable effort to inform himself
56 about the personal financial interests of his spouse and minor children
57 residing in his household.

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59 (4) For the purposes of this section the following words or phrases
60 shall have the meaning indicated:

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62 (A) ``proceeding'' includes pretrial, trial, appellate review,

63 or other stages of litigation;

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65 (B) the degree of relationship is calculated according to the
66 civil law system;

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68 (C) "fiduciary" includes such relationships as executor,
69 administrator, trustee, and guardian;

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71 (D) "financial interest" means ownership of a legal or
72 equitable interest, however small, or a relationship as director,
73 adviser, or other active participant in the affairs of a party,
74 except that:

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76 (i) Ownership in a mutual or common investment fund that
77 holds securities is not a "financial interest" in such
78 securities unless the judge participates in the management of
79 the fund;

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81 (ii) An office in an educational, religious, charitable,
82 fraternal, or civic organization is not a "financial interest"
83 in securities held by the organization;

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85 (iii) The proprietary interest of a policyholder in a mutual

86 insurance company, of a depositor in a mutual savings
87 association, or a similar proprietary interest, is a "financial
88 interest" in the organization only if the outcome of the
89 proceeding could substantially affect the value of the interest;

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91 (iv) Ownership of government securities is a "financial
92 interest" in the issuer only if the outcome of the proceeding
93 could substantially affect the value of the securities.

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95 (5) No justice, judge, or magistrate judge shall accept from the
96 parties to the proceeding a waiver of any ground for disqualification
97 enumerated in subsection (b). Where the ground for disqualification
98 arises only under subsection (a), waiver may be accepted provided it is
99 preceded by a full disclosure on the record of the basis for disqualification.