SENATE DOCKET, NO. 662 FILED ON: 1/20/2011

SENATE . . . . . No. 877

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. 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:

An Act relative to judicial recusal..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Bruce E. Tarr	
	☐ *[District]*
	☐

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SENATE . . . . . No. 877

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 877) of Bruce E. Tarr for legislation relative to judicial recusal. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
SENATE
, NO. *1807* OF 2009-2010.]

The Commonwealth of Massachusetts

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:

Section 21. Recusal of Judges

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

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

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

(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;

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

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

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

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

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

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

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

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

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

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

39 (A) ``proceeding'' includes pretrial, trial, appellate review, or other stages of litigation;

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

41 (C) ``fiduciary'' includes such relationships as executor, administrator, trustee, and
42 guardian;

43 (D) ``financial interest'' means ownership of a legal or equitable interest, however
44 small, or a relationship as director,

45 adviser, or other active participant in the affairs of a party, except that:

46 (i) Ownership in a mutual or common investment fund that holds
47 securities is not a ``financial interest'' in such

48 securities unless the judge participates in the management of the fund;

49 (ii) An office in an educational, religious, charitable, fraternal, or
50 civic organization is not a ``financial interest'' in securities held by the organization;

51 (iii) The proprietary interest of a policyholder in a mutual insurance
52 company, of a depositor in a mutual savings

53 association, or a similar proprietary interest, is a ``financial interest'' in the organization
54 only if the outcome of the proceeding could substantially affect the value of the interest;

55 (iv) Ownership of government securities is a ``financial interest'' in
56 the issuer only if the outcome of the proceeding

57 could substantially affect the value of the securities.

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