

SENATE No. 1807

The Commonwealth of Massachusetts

In the Year Two Thousand 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

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

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

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

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

- 14 (A) Where he has a personal bias or prejudice concerning a
15 party, or personal knowledge of disputed evidentiary facts
16 concerning the proceeding;
- 17 (B) Where in private practice he served as lawyer in the matter
18 in controversy, or a lawyer with whom he previously practiced law
19 served during such association as a lawyer concerning the matter, or
20 the judge or such lawyer has been a material witness concerning it;
- 21 (C) Where he has served in governmental employment and in such
22 capacity participated as counsel, adviser or material witness
23 concerning the proceeding or expressed an opinion concerning the
24 merits of the particular case in controversy;
- 25 (D) He knows that he, individually or as a fiduciary, or his
26 spouse or minor child residing in his household, has a financial
27 interest in the subject matter in controversy or in a party to the
28 proceeding, or any other interest that could be substantially
29 affected by the outcome of the proceeding;
- 30 (E) He or his spouse, or a person within the third degree of

31 relationship to either of them, or the spouse of such a person:

32 (i) Is a party to the proceeding, or an officer, director,

33 or trustee of a party;

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

35 (iii) Is known by the judge to have an interest that could

36 be substantially affected by the outcome of the proceeding;

37 (iv) Is to the judge's knowledge likely to be a material

38 witness in the proceeding.

39 (3) A judge should inform himself about his personal and fiduciary

40 financial interests, and make a reasonable effort to inform himself

41 about the personal financial interests of his spouse and minor children

42 residing in his household.

43 (4) For the purposes of this section the following words or phrases

44 shall have the meaning indicated:

45 (A) "proceeding" includes pretrial, trial, appellate review,

46 or other stages of litigation;

47 (B) the degree of relationship is calculated according to the

48 civil law system;

49 (C) "fiduciary" includes such relationships as executor,

50 administrator, trustee, and guardian;

51 (D) "financial interest" means ownership of a legal or

52 equitable interest, however small, or a relationship as director,

53 adviser, or other active participant in the affairs of a party,

54 except that:

55 (i) Ownership in a mutual or common investment fund that

56 holds securities is not a "financial interest" in such

57 securities unless the judge participates in the management of

58 the fund;

59 (ii) An office in an educational, religious, charitable,

60 fraternal, or civic organization is not a "financial interest"

61 in securities held by the organization;

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

63 insurance company, of a depositor in a mutual savings

64 association, or a similar proprietary interest, is a "financial

65 interest" in the organization only if the outcome of the
66 proceeding could substantially affect the value of the interest;

67 (iv) Ownership of government securities is a ``financial
68 interest" in the issuer only if the outcome of the proceeding
69 could substantially affect the value of the securities.

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