

SENATE No. 1131

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr, (BY REQUEST)

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 adoption of the accompanying bill:

An Act to strengthen rules governing attorney conduct; penalties for misconduct.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Joyce Tomaselli</i>		
<i>Gracemarie Tomaselli</i>		
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>3/16/2023</i>

SENATE No. 1131

By Mr. Tarr (by request), a petition (accompanied by bill, Senate, No. 1131) of Joyce Tomaselli and Gracemarie Tomaselli for legislation to strengthen rules governing attorney conduct; penalties for misconduct. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1017 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to strengthen rules governing attorney conduct; penalties for misconduct.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 221 of the General Laws is hereby amended by striking out section 40 and
2 inserting in place thereof the following new section:-

3 Section 40. Penalty for deceit or collusion; damages; disbarment

4 Section 40. (a) An attorney who is guilty of deceit or collusion, or consents thereto, with
5 intent to deceive a court or judge, or party to an action or proceeding, or who knowingly makes a
6 false statement of fact or law to a tribunal or fails to correct a false statement of material fact or
7 law previously made to the tribunal by the attorney, or who knowingly fails to disclose to the
8 tribunal legal authority in the controlling jurisdiction known to the attorney to be directly adverse
9 to the position of the client and not disclosed by opposing counsel, or who knowingly offers

10 evidence that the attorney knows to be false, except as provided in Massachusetts Rules of
11 Professional Conduct Rule 3.3(e) with respect to criminal proceedings, is subject to discipline,
12 and shall forfeit to the injured party treble damages to be recovered in a civil action. An attorney
13 must comply with the rules provided in the Massachusetts Rules of Professional Conduct and the
14 analysis of precedent and the evaluation of evidence in accordance with the American Bar
15 Association.

16 (b) All attorneys, officers of the court, counselors, including government attorneys,
17 municipal counsel, town counsel, counsel for a city, employed to prosecute or defend claims,
18 actions or proceedings by or on behalf of any municipal entity or agency, even if a private law
19 firm is retained as municipal counsel, who violate their oath, are involved in any activity related
20 to the judicial phase of a proceeding, commit perjury, suborn perjury, fail to disclose material
21 evidence, submit or fabricate evidence, submit tainted evidence, intentionally misrepresent
22 material facts, misrepresent case law, abuse the legal process, obstruct justice, are involved in
23 deceit, concealment or nondisclosure of relevant information or material facts or relevant
24 documents or collusion meant to deceive the court or any opposing party, deceive a party in an
25 action or proceeding, commence an action or proceedings unjustifiably and without basis, engage
26 in gross misconduct or egregious conduct that is willful, malicious, in bad-faith or deliberate
27 betrayal of their special obligation to protect the integrity of the court and foster their truth-
28 seeking function or that is prejudicial to the administration of justice, tamper with administration
29 of justice involving dishonesty, fraud, deceit or misrepresentation to a court, commit fraud on the
30 court, tell falsehoods or consent to present any falsehoods, or present to the court warped and
31 distorted facts as to create an erroneous impression in the minds of those who observe them as

32 true and genuine which leads directly to incorrect results causing harm to the opposing party
33 shall:

34 (i) never be granted absolute immunity;

35 (ii) never be granted the litigation privilege;

36 (iii) not be granted qualified immunity and shall be held accountable when they
37 irresponsibly exercise power or violate the law;

38 (iv) be liable for a single violation even though no pattern or practice of prior violations
39 exist;

40 (v) be liable for their wrongful act that obtained a judgment under circumstances which
41 would make it inequitable for them to retain its benefit;

42 (vi) be liable for assisting their client in a fraudulent act that resulted in harm to the
43 opposing party or parties.

44 (c) Monetary damages awarded in civil legal action for attorney misconduct pursuant to
45 this section shall be given to the person(s) wronged by the attorney's action(s), including, but not
46 limited to, compensatory and punitive treble damages for the harmed person(s) losses or
47 potential losses. Every litigant, whether defendant or plaintiff, as the victim of the attorney's
48 wrongdoings specified in this section, has standing to bring a civil action for treble damages.

49 (d) This law carries no time limit to file civil action for damages caused by the attorney.

50 (e) An attorney may be removed by the supreme judicial or superior court for fraud on
51 the court, deceit, malpractice, knowingly making a false statement of fact or law to a tribunal or

52 failing to correct a false statement of material fact or law previously made to the tribunal by the
53 attorney, knowingly failing to disclose to the tribunal legal authority in the controlling
54 jurisdiction known to the attorney to be directly adverse to the position of the client and not
55 disclosed by opposing counsel, knowingly offering evidence that the attorney knows to be false,
56 except as provided in Massachusetts Rules of Professional Conduct Rule 3.3(e) with respect to
57 criminal proceedings, or other gross misconduct, and shall also be liable for treble damages to
58 the person injured thereby, and to such other punishment as may be provided by law. Whenever
59 a petition is filed for the removal of an attorney, the proceedings thereafter shall be conducted by
60 an attorney to be designated by the court. The expenses of the inquiry and proceedings in either
61 court shall be paid as in criminal prosecutions in the superior court.