

POPULAR, Inc.

Campaign Headquarters:

3790 Martin Luther King Jr. Boulevard Suite B1
Washington, D. C. 20032
Phone/Fax: 202.370.6635

Administrative Offices:

7519 W. 77th Avenue
Crown Point, Indiana 46307
Toll Free: 1.888.478.4439 Ext. 2
Fax: 219.865.6355
Email: admin@popular4people.org

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Proposed Judicial Whistleblower Protection

WHEREAS it is a lawyer's duty to, when necessary, challenge the rectitude of official action while upholding legal process; and

WHEREAS as a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession; and

WHEREAS a lawyer should cultivate knowledge of the law beyond its use for clients and employ that knowledge in reform of the law; and

WHEREAS a judge and some lesser judicial officials are uniquely poised to improve the law, the legal profession, the legal system and the administration of justice; and

WHEREAS lawyers, judges and some lesser judicial officials are usually regulated by some if not all of the same courts, judicial officers, and quasi-judicial officials they may be ethically bound to critique and/or criticize; and

WHEREAS through such regulation said lawyers, judges and lesser judicial officials may suffer a loss of liberty, including but not limited to the loss of their learned profession or position and a corresponding loss of reputation, stature and/or livelihood; and

WHEREAS “. . . history shows that speech is suppressed when either the speaker or the message is critical of those who enforce the law.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030 at 1051 (1991). (internal citations omitted); and

WHEREAS “. . . it is important . . . to ensure not only that . . . substantive First Amendment standards are sound, but also that they are applied through reliable procedures.” *Waters v. Churchill*, 511 U.S. 661 at 666 (1994); and

WHEREAS federal whistleblower protection is afforded by statute to employees of federally regulated businesses and occupations and to various employees of the executive branch for the United States of America; and

WHEREAS the present legislation provides for evidentiary trial or hearing by jury as an appropriate check on the judicial branch of America and its states, reducing the risk that some of their most effective critics will be unduly silenced through disciplinary action or the threat thereof or forced to undertake a debilitating crusade for vindication; and

WHEREAS this legislative action is taken in the interest of preserving those rights accorded by the First and Fifth Amendment of the U.S. Constitution, also as they are applied to the various states of this country under the Fourteenth Amendment of the U.S. Constitution;

Be it Resolved by the Senate and House of Representatives of the United States of America in Congress assembled; That this Public Law shall be commonly known as “The ----- Act”:

- No attorney or lawyer licensed to practice the profession of law and to represent clients before any court of the United States, a state, territory, commonwealth, trust territory, any extraterritorial jurisdiction under Article I of the Constitution, or the District of Columbia as well as any other judicial body, quasi-judicial body, or administrative agency having quasi-judicial authority; shall be disbarred or suspended thirty (30) days or more, with or without automatic reinstatement or less than thirty (30) days without automatic reinstatement or assessed a fine, costs or other monetary penalty exceeding one thousand dollars (\$1,000.00); for reason of any grievance, charge, complaint, show cause order or other such charging or accusatory instrument having been filed, docketed or otherwise processed based on the accused attorney or lawyer having made or allegedly having made one (1) or more false or reckless statement(s) about the qualifications, integrity and/or competence of any court, tribunal, judge, magistrate, referee, judge pro-tem, associate judge, special judge, appointed master or any other judicial officer or candidate for said office as well as any arm, branch, or extension of any such court or tribunal, or any member thereof acting in a judicial, quasi-judicial, or appointed or delegated investigative capacity unless:

1. the date, time, place, content, and any alleged falsity of the targeted statement(s) as well as any corresponding malice, intent, knowledge, recklessness and other relevant conditions of mind be specifically averred by that charging or accusatory instrument and any amendment thereof;
2. that charging or accusatory instrument is appropriately served on the subject attorney or lawyer within sixty (60) days of its underlying statement(s);
3. at an appropriate time for pleading or otherwise responding to that charging or accusatory instrument or an amendment thereof, the subject attorney or lawyer may request an evidentiary trial or hearing of the matter before a regularly sitting, federal or state grand jury;
4. said evidentiary trial or hearing takes place within thirty (30) days of it being requested unless the same is continued for good cause shown;
5. the responding attorney or lawyer may make a limited offer of proof in the hearing of the jury, if any, thereby showing the character of evidence excluded by the presiding judge or officer, the form in which it was offered by the attorney or lawyer, the objection made to it and the ruling thereon. Such offer of proof is to be made in succinct, narrative form and not in question and answer form;
6. in the case of evidentiary trial or hearing before a jury, the question of whether an attorney or lawyer is guilty of any or all violation(s) averred by that charging or accusatory instrument or any amendment thereof is resolved by unanimous verdict;
7. that charging or accusatory instrument and any amendment thereof specifically advises the subject attorney or lawyer of his or her rights and obligations under this Act.

- In no event may an attorney or lawyer, so determined not guilty by unanimous jury verdict, be fined, taxed costs or otherwise subjected to monetary penalty or suffer a suspension or other exclusion from the bar for more than thirty (30) days upon appeal of the underlying matter;

- In no event shall any portion of costs for a sitting grand jury be imposed upon an attorney or lawyer subject to discipline triggering application of this Act;
- To the extent this Act relates to the discipline, taxation or fining of an attorney or lawyer, it correspondingly relates to the discipline, taxation or fining of a judge or lesser judicial official.

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