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By Mr. McKenna, a petition (accompanied by bill, Senate, No. 1049) of Denis L. McKenna for legislation to provide for a certain hearing for attorneys accused of malpractice. The Judiciary.

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The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-three.

AN ACT PROVIDING FOR A CERTAIN HEARING FOR ATTORNEYS  
ACCUSED OF MALPRACTICE.

*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  
2 inserting after section 40, the following section: —

3 *Section 40A.* Every action for malpractice, error or mis-  
4 take against an attorney shall be heard by a tribunal con-  
5 sisting of a single justice of the superior court, and two at-  
6 torneys authorized to practice law in the commonwealth, at  
7 which hearing the plaintiff shall present an offer of proof  
8 and said tribunal shall determine if the evidence presented, if  
9 properly substantiated, is sufficient to raise a legitimate ques-  
10 tion of liability appropriated for judicial inquiry or whether  
11 the plaintiff's case is merely an unfortunate legal result.

12 Said attorneys shall be selected by the single justice from  
13 a list submitted by the Massachusetts Bar Association. The  
14 list submitted to the single justice shall consist only of at-  
15 torneys who practice law outside the county where the de-  
16 fendant practices or resides.

17 The attorneys shall, subject to appropriation, each be com-  
18 pensated in the amount of fifty dollars.

19 Each such action for malpractice shall be heard by said  
20 tribunal within fifteen days after the defendant's answer has  
21 been filed. Substantial evidence shall mean such evidence as  
22 a reasonable person might accept as adequate to support a  
23 conclusion. The tribunal may upon the application of either  
24 party or upon its own decision summon or subpoena any such  
25 records or individuals to substantiate or clarify any evidence

26 which has been presented before it.

27 If a finding is made for the defendant, the plaintiff may  
28 pursue the claim through the usual judicial process only upon  
29 filing bond in the amount of two thousand dollars secured by  
30 cash or its equivalent with the clerk of the court in which the  
31 case is pending, payable to the defendant for costs assessed,  
32 including witness and experts fees and attorneys fees if the  
33 plaintiff does not prevail in the final judgment. Said single  
34 justice may, within his discretion, increase the amount of the  
35 bond required to be filed. If said bond is not posted within  
36 thirty days of the tribunal's finding the action shall be dis-  
37 missed. Upon motion filed by the plaintiff, and a determina-  
38 tion by the court that the plaintiff is indigent said justice  
39 may reduce the amount of the bond but may not eliminate  
40 the requirement thereof.

41 The expenses and compensation of said tribunal shall be  
42 paid by the commonwealth.