SENATE BILL NO. 48

INTRODUCED BY C. GLIMM

BY REQUEST OF THE SENATE SELECT COMMITTEE ON JUDICIAL OVERSIGHT AND REFORM

A BILL FOR AN ACT ENTITLED: “AN ACT REVISING COMPLAINT PROCESSES WITH THE JUDICIAL STANDARDS COMMISSION TO ALLOW A CITIZEN TO MAKE PUBLIC THE CITIZEN'S COMPLAINTS CONCERNING A JUDGE AT ANY TIME; AND AMENDING SECTIONS 3-1-1106 AND 3-1-1123, MCA.”

WHEREAS, the Judicial Standards Commission generally requires the complaint process against judicial officers to be confidential, including requiring confidentiality from the citizen making the complaint; and

WHEREAS, the Legislature maintains that a citizen should not be forced to choose between filing a complaint against a judicial officer and the citizen's right of free speech concerning the alleged misconduct of the judicial officer.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 3-1-1106, MCA, is amended to read:

"**3-1-1106. Investigation of judicial officers -- complaint -- hearing -- recommendations.** (1) (a) The commission, upon the filing of a written complaint by any citizen of the state, shall initiate an investigation of any judicial officer in the state to determine if there are grounds for conducting additional proceedings before the commission. If the commission's investigation indicates that additional proceedings before the commission may be justified, the commission shall require the citizen who filed the original written complaint to sign a verified written complaint by affidavit before conducting additional proceedings. <u>A citizen has the right to make public the citizen's complaints concerning a judicial officer at any time.</u>

(b) The commission shall give the judicial officer written notice of the citizen's complaint and of the initiation of an investigation. Notice must also be given if a verified written complaint by affidavit is filed and must include the charges made, the grounds for the charges, and a statement that the judicial officer may file an answer. The notice must be signed by the commission.

(2) The commission, after an investigation that it considers necessary and on a finding of good cause, shall:

(a) order a hearing to be held before it concerning the censure, suspension, removal, or retirement of a judicial officer;

(b) publicly advise the judicial officer and the supreme court, in writing, that the complaint will be dismissed if the judicial officer files with the commission a letter stating that the officer will take corrective action satisfactory to the commission; or

(c) request that the supreme court appoint one or more special masters who are judges of courts of record to hear and take evidence and to report to the commission.

(3) If after a hearing or after considering the record and the report of the masters the commission finds the charges true, it shall publicly recommend to the supreme court the censure, suspension, removal, or disability retirement of the judicial officer."

**Section 2.** Section 3-1-1123, MCA, is amended to read:

"**3-1-1123. Public statements by commission.** In any case in which the subject matter becomes public, through the citizen complainant, through independent sources, through a waiver of confidentiality by the judge against whom the complaint has been filed, or under other circumstances as the commission considers appropriate, the commission may issue statements as it considers appropriate in order to:

(1) confirm the pendency of the investigation;

(2) clarify the procedural aspects of the disciplinary proceedings;

(3) explain the right of the judge to a fair hearing without prejudgment;

(4) state that the judge denies the allegations; or

(5) declare that there is insufficient evidence for a finding of good cause."

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