

SENATE BILL NO. 313

INTRODUCED BY K. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE JUDICIAL STANDARDS COMMISSION; REMOVING CERTAIN CONFIDENTIALITY PROVISIONS CONCERNING THE PROCEDURES OF THE JUDICIAL STANDARDS COMMISSION; AND AMENDING SECTIONS 3-1-1105, 3-1-1106, 3-1-1121, 3-1-1123, 3-1-1124, AND 3-1-1126, MCA; ~~AND REPEALING SECTION 3-1-1122, MCA.~~"

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

Section 1. Section 3-1-1105, MCA, is amended to read:

"3-1-1105. Confidential proceedings -- rules for commission. (1) Except as provided in 3-1-1107 and 3-1-1121 through 3-1-1126, all papers filed with and proceedings before the commission or masters are confidential and the filing of papers with and the testimony given before the commission or masters is privileged communication.

(2) The commission shall make rules for the conduct of its affairs and the enforcement of confidentiality and provide public disclosure when appropriate consistent with this part.

~~(3) A complainant is not required to keep their complaint confidential."~~

Section 2. 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, may 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 before conducting additional proceedings.

(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 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 ~~upon~~on a finding of good cause, ~~may~~ shall:

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

(b) ~~confidentially~~ publicly ~~confidentially~~ 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.

(4) (a) The final decision of the commission must be made by written order with copies given to the interested parties.

(b) Portions of the order may be kept under seal if, in view of the commission, it is necessary to protect privacy matters related to the health or family members of the judicial officer.

(c) The order issued by the commission required in subsection (4)(a) must be made available to the public within 10 workings days after it is issued."

Section 3. Section 3-1-1121, MCA, is amended to read:

"3-1-1121. Public disclosure required. ~~(1)~~ If the commission finds good cause to order a hearing pursuant to 3-1-1106(2), the commission shall allow public access to:

~~(1)(a)(1)~~ all papers pertaining to each finding of good cause, including charges that are later determined not to be grounds for recommending retirement or disciplinary action to the supreme court;

~~(2)(b)(2)~~ the proceedings in which the commission or masters hear the charges against a judge; and

(3)(e)(3) all transcripts or recordings of proceedings before the commission or masters
pertaining to the matters described in subsections (1) (1)(a) (1) and (2) (1)(b) (2).

(2) A complaint must be made public on request by a member of the public 5 years after
dismissal."

Section 4. 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 independent sources or, 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."

Section 5. Section 3-1-1124, MCA, is amended to read:

"3-1-1124. Disclosure for judicial selection -- appointment or assignment. If in connection with
the selection or appointment of a judge, any state or federal agency seeks information or written materials from
the commission concerning that judge, information ~~may~~must be divulged in accordance with procedures
prescribed by the commission, including reasonable notice to the judge affected ~~unless the judge signs a
waiver of notice~~ unless the judge signs a waiver of notice. If in connection with the assignment of a retired judge
to judicial duties, any appropriate authority seeks information or written materials from the commission about
that judge, information ~~may~~must be divulged in accordance with procedures prescribed by the commission,
including reasonable notice to the judge affected ~~unless the judge signs a waiver of notice~~ unless the judge
signs a waiver of notice."

Section 6. Section 3-1-1126, MCA, is amended to read:

1 **"3-1-1126. Commission report to legislature.** ~~(1)-(1)~~ The commission shall, as provided in 5-11-
2 210, submit to the legislature a report containing the following information:

3 ~~(a)-(1)(a)~~ identification of each complaint, whether or not verified, received by the commission
4 during the preceding biennium by a separate number ~~that in no way reveals the identity of the judge~~
5 ~~complained against that reveals the identity of the judge complained against that in no way reveals the identity~~
6 of the judge complained against;

7 ~~(b)-(2)(b)~~ the date each complaint was filed;

8 ~~(c)-(3)(c)~~ the general nature of each complaint, including the type of complaint, the issues
9 involved, and the basic facts making up the complaint;

10 ~~(d)-(4)(d)~~ whether there have been previous complaints against the same judge and, if so, the
11 general nature of the previous complaints;

12 ~~(e)-(5)(e)~~ the present status of all complaints filed with or pending before the commission during
13 the preceding biennium; ~~and~~

14 ~~(f)-(6)(f)~~ whenever a final disposition of a complaint has been made during the preceding biennium, the
15 nature of the disposition, the commission's recommendation, if any, to the supreme court, and the action taken
16 by the supreme court.; and

17 (7)(g) how each commission member voted.

18 ~~(2) The commission must observe the confidentiality provisions of this part in fulfilling the~~
19 ~~requirements of this section.~~

20 (2) The president of the senate and the speaker of the house may appoint a select committee of
21 no more than four legislators who are authorized to personally observe all hearings and meetings of the
22 commission.

23 (3) The commission and the members of the select committee appointed pursuant to this section
24 shall observe the confidentiality provisions of this part in fulfilling the requirements of this section."
25

26 ~~NEW SECTION. Section 7. Repealer. The following section of the Montana Code Annotated is~~
27 ~~repealed:~~

28 ~~3-1-1122. Judge's waiver of confidentiality hearing made public.~~

