

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; 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~~ 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.

(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

1 must include the charges made, the grounds for the charges, and a statement that the judicial officer may file  
2 an answer. The notice must be signed by the commission.

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

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

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

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

12 (3) If after a hearing or after considering the record and the report of the masters the commission  
13 finds the charges true, it shall publicly recommend to the supreme court the censure, suspension, removal, or  
14 disability retirement of the judicial officer."  
15

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

17 **"3-1-1121. Public disclosure required.** (1) If the commission finds good cause to order a hearing  
18 pursuant to 3-1-1106(2), the commission must allow public access to:

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

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

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

24 (2) A complaint must be made public on request by a member of the public ~~5~~ 12 years after  
25 dismissal."  
26

27 **Section 4.** Section 3-1-1123, MCA, is amended to read:

28 **"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~~. 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~~."

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

**"3-1-1126. Commission report to legislature.** ~~(4)~~The commission shall, as provided in 5-11-210, submit to the legislature a report containing the following information:

- ~~(a)~~(1) identification of each complaint, whether or not verified, received by the commission during the preceding biennium by a separate number ~~that in no way reveals the identity of the judge complained against~~ that reveals the identity of the judge complained against;
- ~~(b)~~(2) the date each complaint was filed;
- ~~(c)~~(3) the general nature of each complaint, including the type of complaint, the issues involved, and the basic facts making up the complaint;

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

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

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

(7) how each commission member voted.

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

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

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

NEW SECTION. Section 8. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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