

## Montana Code Annotated 2003

EXHIBIT 2  
DATE 1/25/05  
HB 2

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### Montana Constitution, Article VII

**Section 11. Removal and discipline.** (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, and make rules implementing this section. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, violation of canons of judicial ethics adopted by the supreme court of the state of Montana, or habitual intemperance.

(4) The proceedings of the commission are confidential except as provided by statute.

*Provided by Montana Legislative Services*

approval or rejection, the incumbent shall serve until the day before the first Monday of January following the election, at which time the office is vacant and another selection and appointment must be made.

**History:** En. Sec. 10, Ch. 470, L. 1973; R.C.M. 1947, 93-714; amd. Sec. 13, Ch. 21, L. 1979; amd. Sec. 2, Ch. 377, L. 1993.

## Part 11 Judicial Standards Commission

### Part Cross-References

Removal and discipline of judges, Art. VII, sec. 11, Mont. Const.

**3-1-1101. Creation and composition of commission.** There is created a judicial standards commission consisting of five members as follows:

(1) two district court judges from different judicial districts, elected by the district judges under an elective procedure initiated by and conducted by the supreme court, and their election must be certified by the chief justice of the supreme court, which for the purpose of this part is considered as an appointment;

(2) one attorney who has practiced law in this state for at least 10 years, appointed by the supreme court;

(3) two citizens who are not attorneys or judges of any court, active or retired, appointed by the governor.

**History:** En. Sec. 1, Ch. 95, L. 1973; R.C.M. 1947, 93-718; amd. Sec. 8, Ch. 52, L. 1993.

**3-1-1102. Staggered terms of members.** (1) The first appointments made under this part are as follows:

(a) The supreme court shall designate by certificate of the chief justice one district court judge to serve for 4 years and one to serve for 2 years.

(b) The attorney shall serve for 4 years.

(c) The governor shall appoint one citizen to serve for 4 years and one to serve for 2 years.

(2) Thereafter, all terms shall be for 4 years.

**History:** En. Sec. 2, Ch. 95, L. 1973; R.C.M. 1947, 93-719.

**3-1-1103. Terminated membership — vacancies.** (1) Commission membership terminates if a member ceases to hold the position that qualified him for appointment.

(2) In the event a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

**History:** En. Sec. 3, Ch. 95, L. 1973; R.C.M. 1947, 93-720.

**3-1-1104. No compensation — travel expenses.** A commission member is not entitled to compensation for his services but is entitled to travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in the performance of his duties.

**History:** En. Sec. 4, Ch. 95, L. 1973; amd. Sec. 30, Ch. 453, L. 1977; R.C.M. 1947, 93-721.

**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 consistent with this part.

**History:** En. Sec. 6, Ch. 95, L. 1973; R.C.M. 1947, 93-723; amd. Sec. 1, Ch. 441, L. 1981.

**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 such 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 such investigation as it considers necessary and upon a finding of good cause, may:

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

(b) 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 he will take corrective action satisfactory to the commission; or

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

**History:** En. Sec. 5, Ch. 95, L. 1973; R.C.M. 1947, 93-722; amd. Sec. 1, Ch. 334, L. 1983; amd. Sec. 1, Ch. 386, L. 1991.

**Cross-References**

Supreme Court Justice or District Court Judge not to run for office, 3-1-607.  
Forced vacancy, 3-1-608.

**3-1-1107. Action by supreme court.** (1) The supreme court shall review the record of the proceedings and shall make such determination as it finds just and proper and may:

(a) order censure, suspension, removal, or retirement of a judicial officer; or

(b) wholly reject the recommendation.

(2) Any hearing conducted before the supreme court relative to a recommendation by the commission, together with all papers pertaining to such recommendation, shall be accessible to the public.

**History:** En. Sec. 7, Ch. 95, L. 1973; R.C.M. 1947, 93-724; amd. Sec. 3, Ch. 441, L. 1981.

**3-1-1108. Nonparticipation of interested judicial officer.** A judicial officer who is a member of the commission or of the supreme court may not participate in any proceeding involving his own censure, suspension, removal, or retirement or that of his spouse, a relative within the sixth degree of consanguinity, or the spouse of such a relative.

**History:** En. Sec. 8, Ch. 95, L. 1973; amd. Sec. 31, Ch. 344, L. 1977; R.C.M. 1947, 93-725.

**Cross-References**

Relationship by affinity, 1-1-219.  
Degrees of kindred, 72-11-102 through 72-11-104.

**3-1-1109. Interim disqualification of judicial officer.** (1) A judicial officer must be disqualified from serving as a judicial officer, without loss of salary, while there is pending an indictment or an information charging him with a crime punishable as a felony under Montana or federal law.

(2) When the commission files with the supreme court a recommendation that a judicial officer be removed or retired, the judicial officer must be disqualified from serving as a judicial officer, without loss of salary, pending the supreme court's review of the record and proceedings.

**History:** En. Sec. 9, Ch. 95, L. 1973; amd. Sec. 32, Ch. 344, L. 1977; R.C.M. 1947, 93-726; amd. Sec. 2, Ch. 386, L. 1991.

**Cross-References**

Expenses of Acting Justice of the Peace, 3-10-234.

**3-1-1110. Procedure when convicted of crime.** (1) On recommendation of the commission, the supreme court may suspend a judicial officer from office without salary when he pleads guilty or no contest or is found guilty of a crime punishable as a felony under Montana or federal law or of any other crime involving moral turpitude.

(2) If his conviction is reversed, suspension terminates and he shall be paid his salary for the period of suspension.

(3) If he is suspended and his conviction becomes final, the supreme court shall remove him from office.

**History:** En. Sec. 10, Ch. 95, L. 1973; R.C.M. 1947, 93-727.

**Cross-References**

Expenses of Acting Justice of the Peace, 3-10-234.

**3-1-1111. Orders for retirement or removal.** (1) Upon an order for retirement, the judicial officer shall be retired with the same rights and privileges as if he retired pursuant to statute.

(2) Upon an order for removal, the judicial officer shall be removed from office and his salary shall cease from the date of the order. He shall be ineligible for any other judicial office and pending further order of the court is suspended from practicing law.

**History:** En. Sec. 11, Ch. 95, L. 1973; R.C.M. 1947, 93-728.

**Cross-References**

Montana judges' retirement system, Title 19, ch. 5.

**3-1-1112 through 3-1-1120 reserved.**

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

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

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

**History:** En. Sec. 2, Ch. 441, L. 1981.

**3-1-1122. Judge's waiver of confidentiality — hearing made public.** In addition to the public disclosure required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126, the commission must allow public access to all papers filed with and testimony and hearings before the commission or masters in a given case if the judge against whom a complaint has been filed waives his right of confidentiality and requests in writing that the proceedings be accessible to the public. Public disclosure of information required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126 is not contingent upon a waiver under this section.

**History:** En. Sec. 4, Ch. 441, L. 1981; amd. Sec. 3, Ch. 386, L. 1991.

**Cross-References**

Right to know, Art. II, sec. 9, Mont. Const.  
Right of privacy, Art. II, sec. 10, Mont. Const.

**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, 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 prejudice;
- (4) state that the judge denies the allegations; or
- (5) declare that there is insufficient evidence for a finding of good cause.

**History:** En. Sec. 5, Ch. 441, L. 1981.

**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 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 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.

**History:** En. Sec. 6, Ch. 441, L. 1981.

**3-1-1125. Efficiency and effectiveness — audit authorized.** (1) The legislative auditor may audit the commission to determine whether it is efficiently and effectively processing complaints against judicial officers in the state in accordance with this part.

# SUPREME COURT ORDER UNIFYING THE STATE BAR

No. 12616  
IN THE SUPREME COURT IN THE STATE OF MONTANA  
1973

In the Matter of the Application of the President of the Montana Bar Association for the Making of Rules Governing Admission to the Bar and the Conduct of its Members, and for Unification of the Bar of the State of Montana to Administer Such Rules.

EXHIBIT 4  
DATE 1/25/05  
HB 0

ORIGINAL PROCEEDING: Submitted: December 17, 1973; Decided: January 29, 1974; Filed: January, 29 1974

## PER CURIAM:

On October 16, 1973 an original petition was filed herein requesting this Court (1) to order unification of the Montana Bar and (2) to direct such Unified Bar to present to this Court for adoption proposed rules for its government, admission of attorneys to the practice of law, and for the conduct of its members.

The petition and objections thereto came on for hearing on December 17, 1973. Numerous briefs were filed, oral arguments were heard, and the matter was taken under advisement.

The power of this Court to order unification of the bar is clear. Its inherent power to order unification is established by the following cases: In re Unification of the Montana Bar Ass'n (1939), 107 Mont. 559, 87 P.2d 172; In re Unification of Bar of this Court (1947), 119 Mont. 494, 175 P.2d 773; Application of the Montana Bar Ass'n (1962), 140 Mont. 101, 368 P.2d 158; Application of the Montana Bar Ass'n (1963), 142 Mont. 351, 385 P.2d 99; In re Petition for the Unification of the Montana Bar (1971), 156 Mont. 515, 485 P.2d 945. The 1972 Montana Constitution specifically grants this Court the power to make rules governing admission to the bar and the conduct of its members. Art. VII, Sec. 2, 1972 Montana Constitution.

Previous applications for unification have been denied for the following reasons: (1) Failure to show a need for unification (in re Unification of the Montana Bar Ass'n (1939); In re Unification of Bar of this Court 1947). (2) Members of the Bar did not desire unification (Application of the Montana Bar Ass'n (1963)). (3) A divided and disinterested bar and a divided Court on the issue of unification (In re Petition for the Unification of the Montana Bar (1971)).

Approximately thirty of the fifty states of the United States now have unified bars including our neighboring states of North Dakota, Wyoming, and Idaho, and a substantial majority of all western states.

Arguments advanced by proponents of a unified bar, both in this state and elsewhere, include: (1) the legal profession is better able to police and regulate itself; (2) a unified bar has greater influence in promoting necessary legal reform; (3) a unified bar promotes greater participation, diversity of views and quality of work from the legal profession; (4) local bar associations are promoted by unification; and (5) unification eliminates "freeloaders" and nonparticipants in the obligations of the legal profession such as protection of the public by client security funds, making legal services available to all in need by lawyer referral plans, and similar public obligations and services.

Arguments advanced by opponents of unification include: (1) no necessity exists for unification; (2) compulsory membership deprives an attorney of the fundamental liberty of freedom of choice; (3) conditions have not changed since the last denial of unification in Montana; (4) workable and proven rules for admission to practice and the conduct of attorneys exist outside the framework of unification; and (5) unification deprives an attorney of his property without due process of law and places him in a condition of involuntary servitude in violation of constitutional guarantees.

The controlling consideration on the issue of unification is direct and clear: How is the public best served?

The practice of law is not a private preserve maintained for the benefit of attorneys. An attorney has neither a vested right nor a property right in the practice of law. In re Isserman, 345 U.S. 286, 73 S.Ct. 676, 97 L ed 1013; Bradwell v. The State, 16 Wallace 130 (83 U.S.); Ex parte Garland, 4 Wallace 333 (71 U.S.) Constitutional guarantees do not prohibit unification. Lathrop v. Donohue, 367 U.S., 820, 81 S.Ct. 1826, 6 L ed 2d 1191.

The practice of law exists to provide a needed service to the public. To accomplish this purpose, one who wishes to practice law must initially, meet required standards of character; required standards of education, knowledge and ability; and required standards of ethical conduct hence rules are required for admission to the bar. Equally important is the continuing nature of these obligations and standards throughout the professional life of an attorney hence rules are required governing the conduct of those engaged in the legal profession. The vast majority of attorneys practicing in Montana recognizes these requirements and standards and conforms its qualifications and conduct accordingly. But, individual abuses do exist which damage the legal profession as a whole and render it unable to fulfill its obligations to the public in the highest degree. We would be blinding ourselves to reality were we not to recognize the increasing incidence of such abuses by some individuals in the profession.

The practice of law is a privilege burdened with conditions. Matter of Rouss, 221, N.Y. 81, 116 N.E. 782, quoted with approval in Theard v. United States, 345 U.S. 278, 77 S.Ct. 1274, 1 L ed 2d 1342. Such conditions include: protection of the public from unethical practitioners; continuing legal education; providing for the availability of legal services to all; promoting needed legal reform; to name a few.

Are all practitioners in Montana meeting these obligations? Do all attorneys: Contribute to client security funds? Participate in lawyer referral plans? Initiate or even participate in needed legal reforms? Face the problems of unethical conduct by fellow practitioners? Of course not! Unification of the bar appears to be the best available method of correcting the foregoing abuses and conditions which have, in our view, become worse since the last application was heard. This Court considers action at this time imperative.

Accordingly, it is ORDERED:

(1) Pursuant to the powers of the Montana Supreme Court to govern and control the practice of law in Montana, all persons admitted to the practice of law in this state are hereby unified into an organization to be known as the Unified Bar of Montana which shall be organized in this manner:

- a) The name of the organization shall be "The Unified Bar of Montana".
- b) The purposes of the Unified Bar of Montana shall be to aid the courts in maintaining and improving the administration of justice; to foster and maintain on the part of those engaged in the practice of law high standards of integrity, learning, competence, public service, and conduct; to safeguard proper professional interests of members of the bar; to encourage the formation, maintenance, and activities of local bar associations; to provide a forum for the discussion of and effective action concerning subjects pertaining to the practice of law, the science of jurisprudence and law reform, and relations of the bar to the public; and to insure that the responsibilities of the legal profession to the public are more effectively discharged.
- c) All persons now or hereafter admitted to practice law before the Supreme Court of this state, excluding judges of courts of record, are declared to be active members of the Unified Bar of Montana. Each active member shall pay the annual attorney license fee provided by law and shall pay such membership dues in the Unified Bar of Montana as are approved by the Montana Supreme Court and contained in the by-laws. Nonpayment of membership dues shall result in suspension of membership and the right to practice law until payment.
- d) A Board of Trustees shall be elected as the governing body of the Unified Bar of Montana from the active members thereof. Such Board shall consist of sixteen trustees, two from each area designated in the order establishing the Commission on Practice contained in the order in Supreme Court Cause No. 10910, dated January 5, 1965. The principle of proportional and area representation as contained therein shall be followed and the establishment and election of the Board shall be in similar manner as in the order in Supreme Court cause No. 10910, dated January 5, 1965.
- e) Officers of the Unified Bar of Montana shall include a President, a President-Elect, and a Secretary-Treasurer. They shall be nominated and elected annually. The President and President-Elect shall be nominated and elected by the active members of the Unified Bar of Montana. The Secretary-Treasurer shall be nominated and elected by the Board of Trustees but need not be a member of such Board. The duties, powers, qualifications, nominations and election of officers shall be provided for in appropriate by-laws.
- f) The Montana Supreme Court shall possess and retain original and exclusive jurisdiction in the enforcement of professional ethics and conduct of members of the Unified Bar of Montana, as provided in the Code of Professional Responsibility as now existing or which may hereafter be adopted. The practice and procedure of the Commission on Practice of the Supreme Court of the State of Montana as provided in the existing order covering the same in Supreme Court cause No. 10910, dated January 5, 1965, or as the same may hereafter be amended, shall be retained.

(2) An organizational committee shall be named to draft a proposed Constitution for the government of the Unified Bar of Montana: proposed by-laws in conformity herewith and covering such other subjects as it deems appropriate; and an implemental schedule. The same shall be submitted to the Montana Supreme Court for approval not later than December 1, 1974.

(3) The organizational committee shall be appointed by the Supreme Court.

(4) Notice shall be given by mailing a copy of this order to each attorney licensed to practice by this Court.

Dated this 29<sup>th</sup> day of January 1974.