

EXHIBIT 3  
DATE 2/15/05  
HB 602

DOUG OLSON  
P.O. Box 5581  
Helena, MT 59604

February 15, 2005

House Judiciary Committee  
59<sup>th</sup> Legislative Assembly  
Room 137  
State Capitol  
Helena, MT 59620

Re: support for HB 602  
Requiring Judges to issue decisions in 90 days

Dear Chairwoman Rice & Committee members:

My name is Doug Olson, I am from Helena and I am appearing before you as an individual in support of HB 602, (sponsored by Rep. John Ward and others). I am a graduate of the University of Montana Law School and I have been licensed to practice law in Montana since 1977.

This bill will, if supported by the legislature, enable Montana citizens to decide if the constitution should be amended to require justices, judges and justices of the peace ("judges") to once again issue their decisions on matters submitted to them within a prescribed period of time. At the present time, there is no time frame within which members of the judiciary are required to decide and issue their rulings on causes, motions and proceedings pending before them. Judges may issue an opinion in a pending legal matter in a matter of months or they may take a year or more. Parties awaiting decisions often suffer anxiety and emotional distress as well as financial hardship with assets and property tied up.

This bill would as a matter of public policy set deadlines for a judge to take action after a matter has been submitted for a decision. The Montana legislature in 1917 first found the need to set a standard for a judge to complete the court's decision or face a suspension in pay. The timeframe set was 90 days and it remained relatively unchanged until 1981.

The 1981 legislature was presented with two bills that year, one by Rep. Hanna of Billings and Senator Brown of Helena. In 1981, the legislature acted to tighten up the law and provided that a judge who did not comply absent casualty or sickness after 120 days would forfeit a month's pay.

One district court Judge challenged the constitutionality of the law and another district court judge ruled in favor of the plaintiff judge finding the law unconstitutional and unenforceable. The Supreme Court subsequently upheld the lower district court ruling in

1983 and Montana has been without any standards for when judges must issue their decisions for over 20 years.

I have spoken to many attorneys about the concept of this legislation and without exception have heard responses such as "we used to have a 90 day standard" or I sure wish we had one today so that our clients' would have a reasonable idea of how long it would take for the court to act. Unfortunately it is not uncommon to hear from attorney's stories of submitted cases that took 8 months or longer for the judge to issue a decision.

Because the Montana courts' found the previous statutory laws unconstitutional, the Montana legislative branch, absent a constitutional amendment, is powerless to act. Many legislatures in other states have acted to establish performance standards for judges to issue their decisions ranging from Alaska, Arizona, California, Minnesota, Oregon, and Washington to name a few. California has had a constitutionally prescribed timeframe of 90 days since 1879.

Many individuals clearly experience anxiety and emotional distress in waiting for decisions that seem to take forever to be issued in some cases. Assets of individuals and businesses have been tied up in some cases that have forced citizens to declare bankruptcy according to testimony before the legislature in the past.

Is this a problem statewide or just with certain lower courts? Unfortunately, no records are now collected by the Montana Supreme Court on the performance of lower court decisions on pending matters statewide.

The issue raised by House Bill 602 should be viewed as non-partisan. Good government, I submit, calls for the public to have notice of how long government officials including the judiciary have to take action. How many days is enough time for a judge to render a decision is a matter of public policy that I will defer to you as legislators to make in framing the proposed constitutional amendment. Some state's laws require judicial action in 60 days while others allow 90 days or more.

I have contacted the State Bar of Montana, the Montana Defense Trial Lawyers' Association, the Montana Trial Lawyers' Association, the Montana Supreme Court Administrator's Office, the Montana Legal Services Association, the Montana Chamber of Commerce, AARP, and a representative of the Montana Judge's Association for information and to publicize House Bill 602. Hopefully you will receive some testimony about the appropriateness of the time frame specified in this bill.

The sanction proposed for non-compliance is not a forfeiture of pay but a suspension of judicial salary as is the case in other states. Judicial pay would be restored upon issuance of the overdue decision. The mechanism for overseeing judicial compliance is an affidavit each judge would routinely file. Clerks of court would be required to report causes, motions or proceedings submitted for a decision and pending over 90 days.

House Bill 602 if passed will refer this matter to the citizens for a vote. The Montana Supreme Court has not acted since 1983 when it found the state laws unconstitutional to establish court rules or deadlines for when matters submitted for decisions by judges should be rendered. A constitutional amendment through House Bill 602 is therefore warranted.

As one case in California interpreting its constitutional and statutory provisions governing this issue stated, the 90 day period "...affords a reasonable time within which to expect a trial judge to carry out the basic responsibility of a judge to decide cases." Mardikian v. Commission on Judicial Performance, 709 P.2d 854 n.4 (Cal. 1985).

If this proposed constitutional amendment passes, future reports on judges' performance and compliance can be used to assess judicial workloads and the needs of the judiciary as a whole for adequate funding. House Bill 602 also authorizes the legislature to adopt any needed laws to implement this constitutional provision.

I am attaching copies of the now unconstitutional former Montana statutes governing when judges had to issue decisions in submitted cases from 1917 and 1981 as well as some of the similar laws from other states for your information.

My testimony today can be summarized in a few points:

1. good public policy calls for citizens to be able to quantify how long it will likely take for judge to issue a ruling on a submitted case;
- 2 precedent exists in Montana as well as in other states to impose reasonable timeframes for judges to decide submitted legal cases;
3. what constitutes a reasonable time for deciding a case is up to you to decide after considering all the testimony;

Thank you for the opportunity to present my views on the need for reasonable enforceable standards in Montana as to when a judge should complete his or her work and issue opinions on matters submitted to them for a decision. I will gladly respond to any questions that you may have regarding my testimony or materials that I am submitting today.

Sincerely,



Doug Olson

Attachments:

Re: House Bill 602  
2/15/05  
House judiciary Committee

Montana Law as passed in 1917

**93-304. (8815) Salaries of judges not to be paid until certain affidavit filed.** The state auditor shall not draw a warrant in payment of the services of any justice of the supreme court or judge of the district court until such justice or judge shall have filed with the auditor an affidavit that no cause, motion, or other proceeding in his court remains pending and undecided for a period of ninety days after the same shall have been submitted for decision, unless casualty or sickness shall have intervened.

**History:** En. Sec. 1, Ch. 85, L. 1917; Judges<sup>22</sup>.  
re-en. Sec. 8815, R. C. M. 1921. 48 C.J.S. Judges § 37.

**References**

National Bank v. American Brewing Co.,  
79 M 605, 614, 257 P 1043.

Montana law as recodified from Revised Codes of Montana 1947 to the Montana Code Annotated (MCA) in 1979

**3-2-104. Salaries — affidavit required for payment — expenses.** (1) The salaries of justices of the supreme court are provided for in 2-16-405.

(2) The state auditor shall not draw a warrant in payment of the services of any justice of the supreme court until such justice shall have filed with the auditor an affidavit that no cause, motion, or other proceeding in his court remains pending and undecided for a period of 90 days after the same shall have been submitted for decision unless casualty or sickness shall have intervened.

(3) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties.

**History:** (1)En. by Code Commissioner, 1979; (2)En. Sec. 1, Ch. 85, L. 1917; re-en. Sec. 8815, R.C.M. 1921; re-en. Sec. 8815, R.C.M. 1935; Sec. 93-304, R.C.M. 1947; R.C.M. 1947, 93-304(part); amd. Sec. 1, Ch. 528, L. 1979.

**Compiler's Comments**

**Transition.** Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the

expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

**Severability.** Sec. 17, Ch. 528, L. 1979, was a severability section.

HB 602

exhibit of previous Mt Law as amended in 1981 and later  
found unconstititutional by the Montana Supreme Court in 1983

3-2-104 applied to the Montana Supreme Court

3-2-212 applied to district court judges

**3-2-104. Salaries — expenses.** (1) The salaries of justices of the supreme court are provided for in 2-16-405.

(2) If any cause, motion, or other proceeding remains pending and undecided for a period of 90 days after submission for decision, the justice of the supreme court who has been assigned to write the opinion, order, or decision of the court shall submit an affidavit on or before the 90th day to the chief justice setting forth the case name, cause number, and the reason the matter has not been decided. Copies of the affidavit must be furnished to all parties to the matter pending. A cause, motion, or other proceeding is considered submitted for decision when all hearings have been held and final briefs have been submitted by all parties to the matter pending. Upon the filing of the affidavit, the justice shall have an additional 30 days to decide the matter which has been submitted. No cause, motion, or other proceeding may remain undecided for more than 120 days after submission for decision without the approval of a majority of the other members of the supreme court for good cause shown in an affidavit requesting additional time. If a justice of the supreme court violates the provisions of this section, any party to a matter pending in violation of this section or, by a majority vote, the other members of the supreme court may refer the matter to the judicial standards commission. If the court, acting upon the recommendation of the commission, determines the justice is not in compliance with this section, it shall order that the state auditor not issue a warrant for payment of services for 1 month, which pay is forfeited by the justice.

(3) Actual and necessary travel expenses of the justices of the supreme court shall be the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of their official duties.

*History:* (1)En. by Code Commissioner, 1979; (2)En. Sec. 1, Ch. 85, L. 1917; re-en. Sec. 8815, R.C.M. 1921; re-en. Sec. 8815, R.C.M. 1935; Sec. 93-304, R.C.M. 1947; R.C.M. 1947, 93-304(part); (3)En. Sec. 1, Ch. 528, L. 1979; amd. Sec. 1, Ch. 375, L. 1981.

**Compiler's Comments**

*1981 Amendment:* Deleted former subsection (2) which provided that the state auditor would not pay a justice until receiving an affidavit that the justice's work load was not delinquent; inserted subsection (2).

*Effective Date:* Section 3, Ch. 375, L. 1981, provided: "This act is effective on passage and approval." Approved April 15, 1981.

*Transition:* Sec. 16, Ch. 528, L. 1979, provided: "A judicial officer, as defined in 1-1-202,

who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."

*Severability:* Sec. 17, Ch. 528, L. 1979, was a severability section.

re: House Bill 602  
House Judiciary Committee  
02/15/05

Montana law as amended in 1981 regarding district judges' salaries.  
The Montana Supreme Court in 1983 ruled this statute unconstitutional.

**3-5-212. Submission of affidavit — payment of salary — commission to determine compliance.** (1) If any cause, motion, or other proceeding remains pending and undecided for a period of 90 days after submission for decision, the district court judge before whom the matter is pending shall submit an affidavit on or before the 90th day to the chief justice of the supreme court setting forth the case name, cause number, and the reason the matter has not been decided. Copies of the affidavit must be furnished to all parties to the matter pending. A cause, motion, or other proceeding is considered submitted for decision when all hearings have been held and final briefs have been submitted by all parties to the matter pending. Upon the filing of the affidavit, the district judge shall have an additional 30 days to decide the matter which has been submitted. No cause, motion, or other proceeding may remain undecided for more than 120 days after submission for decision without the approval of a majority of the supreme court for good cause shown in an affidavit requesting additional time.

(2) If a district judge violates the provisions of this section, any party to a matter pending in violation of this section or, by a majority vote, the supreme court may refer the matter to the judicial standards commission.

(3) If the supreme court, acting upon the recommendation of the commission, determines that the judge is not in compliance with this section, it shall order that the state auditor not issue a warrant for payment of services for 1 month, which pay is forfeited by the judge.

History: En. Sec. 1, Ch. 85, L. 1917; re-en. Sec. 8815, R.C.M. 1921; re-en. Sec. 8815, R.C.M. 1935; R.C.M. 1947, 93-304(part); amd. Sec. 2, Ch. 375, L. 1981.

**Compiler's Comments**

**1981 Amendment:** Deleted former section which provided: "The state auditor shall not draw a warrant in payment of the services of any judge of the district court until such judge shall have filed with the auditor an affidavit that no cause, motion, or other proceeding in his court remains pending and undecided for a

period of 90 days after the same shall have been submitted for decision unless casualty or sickness shall have intervened." in its entirety; inserted existing language.

**Effective Date:** Section 3, Ch. 375, L. 1981, provided: "This act is effective on passage and approval." Approved April 15, 1981.

## *California*

### **§ 68210. Affidavit prerequisite to receipt of salary**

No judge of a court of record shall receive his salary unless he shall make and subscribe before an officer entitled to administer oaths, an affidavit stating that no cause before him remains pending and undetermined for 90 days after it has been submitted for decision.

(Added by Stats.1966, 1st Ex.Sess., c. 161, p. 715, § 11, operative Nov. 8, 1966.)

## *Minnesota*

### **546.27. Decision by the court**

**Subdivision 1. Written decisions required.** (a) When an issue of fact has been tried by the court, the decision shall be in writing, the facts found and the conclusion of law shall be separately stated, and judgment shall be entered accordingly. Except as provided in paragraph (b), all questions of fact and law, and all motions and matters submitted to a judge for a decision in trial and appellate matters, shall be disposed of and the decision filed with the court administrator within 90 days after such submission, unless sickness or casualty shall prevent, or the time be extended by written consent of the parties. No part of the salary of any judge shall be paid unless the voucher therefor be accompanied by a certificate of the judge that there has been full compliance with the requirements of this section.

(b) If a hearing has been held on a petition under chapter 260 involving physical or sexual abuse of a child who is alleged to be in need of protection or services or neglected and in foster care, the decision must be filed within 15 days after the matter is submitted to the judge.

**Subd. 2. Board of judicial standards review.** At least annually, the board on judicial standards shall review the compliance of each district, county, or municipal judge with the provisions of subdivision 1. To facilitate this review, the director of the state judicial information system shall notify the executive secretary of the state board on judicial standards when a matter exceeds 90 days without a disposition. The board shall notify the commissioner of finance of each judge not in compliance. If the board finds that a judge has compelling reasons for noncompliance, it may decide not to issue the notice. Upon notification that a judge is not in compliance, the commissioner of finance shall not pay the salary of that judge. The board may cancel a notice of noncompliance upon finding that a judge is in compliance, but in no event shall a judge be paid a salary for the period in which the notification of noncompliance was in effect.

Amended by Laws 1969, c. 1034, § 1; Laws 1979, c. 333, § 106; Laws 1981, c. 356, § 359; Laws 1983, c. 301, § 219; Laws 1986, 1st Sp., c. 3, art. 1, § 82; Laws 1992, c. 571, art. 7, § 11; Laws 1995, c. 189, § 8; Laws 1996, c. 277, § 1.