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The Montana Supreme Court Regulates the Practice of Law; the Legislature Does Not

- The constitutional principle of separation of powers would be undermined if the Supreme Court were stripped of its authority to regulate the practice of law.
- Lawyers should be regulated by the judicial branch of government because they are officers of the court, accountable to the system of justice.
- An independent legal profession, whose members are not dependent upon the legislative or executive branches for the privilege of practicing law, helps to secure individual rights and to prevent governmental abuse.
- Existing Bar programs and activities, designed to serve the people of Montana pursuant to Supreme Court directives, might be jeopardized by legislative regulation of the practice of law.

A fundamental principle of our system of government is the separation of powers of the three branches of government. Each branch is independent and co-equal and is immune from the control of the other two branches of government in the absence of express constitutional authority to the contrary. Article III, Sec. 1 of the Montana Constitution enumerates this principle.

It is the role of lawyers to oppose when opposition is in order. It is the role of lawyers to challenge the executive, legislative and even judicial branches on behalf of the individual. To strip lawyers of their independence is to eliminate a critical tool in maintaining the balance of power. Lawyers' duties go far beyond representing a client and practicing law competently. They have duties to the system of justice itself.

Montana Constitution Article VII, Section 2, Cl. 3 provides that the Montana Supreme Court may "make rules governing...admission to the bar and the conduct of its members." The Montana Supreme Court has construed this provision to give the Court "exclusive authority to promulgate such rules." Matter of Petitions of McCabe and Zeman, 168 Mont. 334, 339, 544 P.2d 825, 827-828 (1975). The judiciary acknowledges the importance of this responsibility in In the Matter of the Application of Kimberly A. Kradolfer v. Ed Smith, 246 Mont. 210, 805 P.2d 1266 (1990): "Even before the adoption of article VII, Section 2, Clause 3, we had held that the admission and regulation of attorneys in Montana is a matter peculiarly within the inherent power of this Court. Goetz v. Harrison (1960), 153 Mont. 403, 404, 457 P.2d 911, 912. Any attempt by another branch of government to interfere with this constitutional prerogative interferes with the doctrine of separation of powers as codified in Mont. Const. Art. III, Section 1."

The Montana Supreme Court most recently reaffirmed its constitutional duty to govern and control the practice of law and the members of the Bar in In re the Petition of the State Bar of Montana for a Dues Increase, 2001 MT 108, 305 Mont. 279. The Court's Opinion and Order reaffirmed its constitutional duty to govern and to control the practice of law. Also, a 1974 legislative effort to regulate lawyers was ruled an unconstitutional abrogation of the Montana Constitution in In the Matter of Senate Bill No. 630, 164 Mont. 366, 523 P.2d 484 (1974). (The Court invalidated a statute that purported to regulate the admission of attorneys.)