

## 1 SENATE BILL NO. 366

2 INTRODUCED BY C. GLIMM

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING THE JUDICIAL  
 5 STANDARDS COMMISSION COMPLAINT PROCESS; PROVIDING THAT A WRITTEN COMPLAINT MUST  
 6 HAVE A SWORN AFFIDAVIT AND ALL WRITTEN COMPLAINTS WITH AFFIDAVITS MUST BE  
 7 INVESTIGATED; PROVIDING THAT THE JUDICIAL OFFICER SHALL FILE A RESPONSE AND THAT THE  
 8 RESPONSE BE PROVIDED TO THE CITIZEN; REMOVING CONFIDENTIALITY PROVISIONS; PROVIDING  
 9 THAT A HEARING MUST BE HELD WITH THE CITIZEN PRESENT; ALLOWING THE CITIZEN THE RIGHT  
 10 TO REBUT THE JUDICIAL OFFICER, APPEAL A DECISION, AND MAKE PUBLIC THE COMPLAINT ABOUT  
 11 THE JUDICIAL OFFICER; PROVIDING THAT ALL HEARINGS ARE PUBLIC; PROVIDING THAT THE NAME  
 12 OF THE JUDICIAL OFFICER AGAINST WHOM A COMPLAINT IS FILED WILL BE INCLUDED IN A REPORT  
 13 TO THE LEGISLATURE; AND AMENDING SECTIONS 3-1-1105, 3-1-1106, 3-1-1121, 3-1-1122, 3-1-1123, 3-  
 14 1-1124, 3-1-1125, AND 3-1-1126, MCA."

15

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

17

18 NEW SECTION. **Section 1. Selection of chair of commission.** The commission shall appoint as its  
 19 presiding officer one of the citizens on the commission at any time, but it shall appoint one if the presiding  
 20 officer has been a judge or attorney the previous 8 years, unless the citizen refuses to be the presiding officer.

21

22 **Section 2.** Section 3-1-1105, MCA, is amended to read:23 **"3-1-1105. Confidential proceedings -- some proceedings public -- rules for commission.** (1)

24 ~~Except as provided in 3-1-1107 and 3-1-1121 through 3-1-1126, all~~ All papers filed with and proceedings before  
 25 the commission or masters following investigation and a finding of good cause by the commission as provided  
 26 in 3-1-1106(2) are confidential and the filing of papers with and the testimony given before the commission or  
 27 masters is privileged communication matters of public record and available for disclosure.

28 (2) The commission shall make rules for the conduct of its affairs ~~and the enforcement of~~

1 confidentiality consistent with this part."

2

3 **Section 3.** Section 3-1-1106, MCA, is amended to read:

4 **"3-1-1106. Investigation of judicial officers -- complaint -- hearing -- recommendations.** (1) (a)

5 ~~The commission, upon the filing of a written complaint by any citizen of the state, may initiate an investigation of~~  
 6 ~~any judicial officer in the state to determine if there are grounds for conducting additional proceedings before~~  
 7 ~~the commission. If the commission's investigation indicates that additional proceedings before the commission~~  
 8 ~~may be justified, the commission shall require the citizen who filed the original written complaint to sign a~~  
 9 ~~verified written complaint before conducting additional proceedings. A citizen of the state may initiate an~~  
 10 investigation of a judicial officer in the state by filing a written complaint with the commission. The complaint  
 11 must have an attached sworn affidavit attesting to the veracity of the complaint. No other written complaint or  
 12 document is necessary to initiate an investigation. The filing of the complaint with the sworn affidavit initiates  
 13 the investigation of the judicial officer. If the complaint does not include an attached sworn affidavit, it must be  
 14 dismissed.

15 (b) The written complaint is limited to the following assertions:

16 (i) intemperance;

17 (ii) violating the oath of office by continuously issuing unlawful and unconstitutional orders or decisions;

18 (iii) unethical conduct;

19 (iv) implied, judicial, or actual bias;

20 (v) misconduct;

21 (vi) impropriety when off the bench;

22 (vii) physical or mental disability;

23 (viii) ex parte communications, except for those allowed by statute; and

24 (ix) violating the code of judicial conduct.

25 ~~(b)(c)~~ The commission shall give the judicial officer written notice of the citizen's complaint and of the  
 26 initiation of an investigation. Notice must also ~~be given if a verified written complaint is filed and must include~~  
 27 the charges made, the grounds for the charges, and a statement that the judicial officer ~~may~~ shall file an  
 28 answer. The notice must be signed by all members of the commission. A complaint may not be dismissed

1 without obtaining a written response from the judicial officer and providing the written response to the citizen.

2 The citizen must be allowed to respond to the written response of the judicial officer.

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

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

7 (b) ~~confidentially~~ advise the judicial officer and the ~~supreme court~~ citizen, in writing, that the complaint  
8 ~~will may~~ 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 of  
11 record to hear and take evidence and to report to the commission. The citizen has the right to rebut the report  
12 of the special master.

13 (d) provide the citizen with an opportunity at a hearing before the commission to present rebuttal  
14 testimony and arguments to the commission; and

15 (e) when good cause is found under subsection (2) and the complaint concerns a violation of the oath  
16 of office, the commission may appoint an attorney to prosecute or support the charges against the judicial  
17 officer.

18 (3) Following the investigation and on a finding of good cause by the commission:

19 (a) all documents related to the complaint become public; and

20 (b) if the commission does not find good cause to proceed, all documents related to the complaint  
21 remain confidential.

22 ~~(3)(4)~~ If after a hearing or after considering the record and the report of the masters the commission  
23 finds the charges true, it shall recommend to the supreme court the censure, suspension, removal, or disability  
24 retirement of the judicial officer and notify the citizen.

25 (5) The citizen has the right to investigate any possible bias or partiality of the members of the  
26 commission and the special master and, if there is any perceived or implied bias, to request the commission  
27 member to be recused or disqualified. If a commission member is recused, the remaining members of the  
28 commission shall replace the recused member with a person from the same member category as the member

1 who is recused.

2 (6) (a) If the citizen complaint has been dismissed for any reason other than the failure to include a  
 3 sworn affidavit, the commission shall set forth in writing the reasons for dismissal. The commission shall make  
 4 its votes or concurrence with a decision available to the citizen.

5 (b) Dissents to the decision are allowed by commission members.

6 (c) The citizen has the right to appeal the dismissal to a three-member panel of the commission  
 7 consisting of the two citizen members and the attorney member. The appeal must state the facts and the legal  
 8 analysis regarding why the complaint should not have been dismissed. If the decision of the three members by  
 9 majority vote is to reinstate the complaint, a hearing must be held within 30 days before the full commission to  
 10 reexamine the complaint and make a final determination as to the veracity of the complaint and to consider  
 11 whether censure, suspension, removal, or retirement of a judicial officer is appropriate.

12 (7) A commission member or special master may not wear judicial robes in front of the citizen during  
 13 a hearing.

14 (8) A citizen has the right to make public the citizen's complaints concerning a judicial officer at any  
 15 time. A citizen or attorney running for office against a judicial officer has the right to refer to any complaints that  
 16 became public under subsection (2) filed against the judicial officer that were accompanied by a sworn affidavit.  
 17 Charges may not be considered against the citizen or attorney as a violation of Montana law, the Montana  
 18 Rules of Professional Conduct, or the Montana Code of Judicial Conduct.

19 (9) If a judicial officer does not follow through with the corrective action, the citizen may reopen the  
 20 original complaint by a sworn affidavit stating that the corrective action has not been taken. The commission, on  
 21 a finding that the allegation in the sworn affidavit is true, shall immediately recommend further corrective action  
 22 to the supreme court."

23

24 **Section 4.** Section 3-1-1121, MCA, is amended to read:

25 **"3-1-1121. Public disclosure required.** If the commission finds good cause ~~to order a hearing~~  
 26 pursuant to 3-1-1106(2), the commission ~~must~~ shall allow public access to:

27 (1) all papers filed at any time and pertaining to each finding of good cause, including charges that  
 28 are later determined not to be grounds for recommending retirement or disciplinary action to the supreme court;

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

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

4

5 **Section 5.** Section 3-1-1122, MCA, is amended to read:

6 **"3-1-1122. Judge's waiver of confidentiality -- hearing Hearing made public.** In addition to the  
7 public disclosure required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126, the The commission shall  
8 allow public access to all papers filed with and testimony and hearings before the commission or masters in a  
9 given case if the judge against whom a complaint has been filed waives the right of confidentiality and requests  
10 in writing that the proceedings be accessible to the public when a complaint was filed with a sworn affidavit  
11 attesting to the veracity of the complaint. Public disclosure of information required under 3-1-1107, 3-1-1121,  
12 and 3-1-1123 through 3-1-1126 is not contingent upon a waiver under this section."

13

14 **Section 6.** Section 3-1-1123, MCA, is amended to read:

15 **"3-1-1123. Public statements by commission.** In any case in which the subject matter becomes  
16 public, through independent sources or through a waiver of confidentiality by the judge against whom the  
17 complaint has been filed, the there is a finding of good cause under 3-1-1106(2), the commission may issue  
18 statements as it considers appropriate in order to:

- 19 (1) confirm the pendency of the investigation;
- 20 (2) clarify the procedural aspects of the disciplinary proceedings;
- 21 (3) explain the right of the judge to a fair hearing without prejudice;
- 22 (4) state that the judge denies the allegations; or
- 23 (5) declare that there is insufficient evidence for a finding of good cause."

24

25 **Section 7.** Section 3-1-1124, MCA, is amended to read:

26 **"3-1-1124. Disclosure for judicial selection -- appointment or assignment.** If in connection with  
27 the selection or appointment of a judge, any state or federal agency seeks information or written materials from  
28 the commission concerning that judge, information may be divulged in accordance with procedures prescribed

1 ~~by the commission, including reasonable notice to the judge affected unless the judge signs a waiver of notice~~  
 2 ~~at any time.~~ If in connection with the assignment of a retired judge to judicial duties, any appropriate authority  
 3 seeks information or written materials from the commission about that judge, information may be divulged ~~in~~  
 4 ~~accordance with procedures prescribed by the commission, including reasonable notice to the judge affected~~  
 5 ~~unless the judge signs a waiver of notice at any time."~~

6

7 **Section 8.** Section 3-1-1125, MCA, is amended to read:

8 **"3-1-1125. Efficiency and effectiveness -- audit authorized.** (1) The legislative auditor may audit  
 9 the commission to determine whether it is efficiently and effectively processing complaints against judicial  
 10 officers in the state in accordance with this part.

11 (2) ~~The confidentiality provisions of this part do not bar the legislative auditor from obtaining~~ must be  
 12 given access to any information possessed by the commission ~~that is necessary to the legislative audit function~~  
 13 ~~so long as confidential information is kept confidential by the legislative auditor."~~

14

15 **Section 9.** Section 3-1-1126, MCA, is amended to read:

16 **"3-1-1126. Commission report to legislature.** ~~(4)~~The commission shall, as provided in 5-11-210,  
 17 submit to the legislature a report containing the following information:

18 ~~(a) (1) identification of each complaint, whether or not verified, filed with a sworn affidavit attesting to~~  
 19 ~~the veracity of the complaint that was received by the commission during the preceding biennium by a separate~~  
 20 ~~number that in no way reveals the identity of the judge complained against if a finding of good cause was made~~  
 21 ~~under 3-1-1106(2) and providing the identity of the judge against whom the complaint was filed;~~

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

23 ~~(c)(3) the general nature of each complaint;~~

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

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

28 ~~(f)(6) whenever a final disposition of a complaint has been made during the preceding biennium, the~~

1 nature of the disposition, the commission's recommendation, if any, to the supreme court, and the action taken  
2 by the supreme court.

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

5  
6 **NEW SECTION. Section 10. Codification instruction.** [Section 1] is intended to be codified as an  
7 integral part of Title 3, chapter 1, part 11, and the provisions of Title 3, chapter 1, part 11, apply to [section 1].

8 - END -