

HOUSE BILL NO. 486

INTRODUCED BY B. BROWN

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

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16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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Section 1. Section 3-1-1105, MCA, is amended to read:

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19 **"3-1-1105. Confidential proceedings -- rules All proceedings public -- rules for commission.** (1)
20 ~~Except as provided in 3-1-1107 and 3-1-1121 through 3-1-1126, all~~ All papers filed with and proceedings before
21 the commission or masters at any time ~~are confidential and the filing of papers with and the testimony given~~
22 ~~before the commission or masters is privileged communication~~ matters of public record and available for
23 disclosure.

24 (2) The commission shall make rules for the conduct of its affairs ~~and the enforcement of confidentiality~~
25 ~~consistent with this part.~~"

Section 2. Section 3-1-1106, MCA, is amended to read:

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27 **"3-1-1106. Investigation of judicial officers -- complaint -- hearing -- recommendations.** (1) (a) ~~The~~
28 ~~commission, upon the filing of a written complaint by any citizen of the state, may initiate an investigation of any~~
29 ~~judicial officer in the state to determine if there are grounds for conducting additional proceedings before the~~

1 commission. If the commission's investigation indicates that additional proceedings before the commission may
 2 be justified, the commission shall require the citizen who filed the original written complaint to sign a verified
 3 written complaint before conducting additional proceedings. Any citizen of the state may initiate an investigation
 4 of any judicial officer in the state by filing a written complaint with the commission. The complaint must have an
 5 attached sworn affidavit attesting to the veracity of the complaint. No other written complaint or document is
 6 necessary to initiate an investigation. The filing of the complaint with the sworn affidavit initiates the investigation
 7 of the judicial officer. If the complaint does not include an attached sworn affidavit, it must be dismissed.

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

9 (i) intemperance;

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

11 (iii) unethical conduct;

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

13 (v) misconduct;

14 (vi) impropriety when off the bench; and

15 (vii) physical or mental disability.

16 ~~(b)~~(c) The commission shall give the judicial officer written notice of the citizen's complaint and of the
 17 initiation of an investigation. Notice must also be given if a verified written complaint is filed and must include the
 18 charges made, the grounds for the charges, and a statement that the judicial officer ~~may~~ must file an answer. The
 19 notice must be signed by all members of the commission. A complaint may not be dismissed without obtaining
 20 a written response from the judicial officer and providing the written response to the citizen. The citizen must be
 21 allowed to respond to the written response of the judicial officer.

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

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

26 (b) ~~confidentially advise~~ advise the judicial officer and ~~the supreme court~~ the citizen, in writing, that the
 27 complaint ~~will~~ may be dismissed if the judicial officer files with the commission a letter stating that the officer will
 28 take corrective action satisfactory to the commission; ~~or~~

29 (c) request that the supreme court appoint one or more special masters who are judges of courts of
 30 record to hear and take evidence and to report to the commission. The citizen has the right to rebut the report

1 of the special master.

2 (d) provide the citizen with an opportunity at any hearing before the commission to present rebuttal
3 testimony and arguments to the commission.

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

7 (4) The citizen has the right to investigate any possible bias or partiality of the members of the
8 commission and the special master and, if there is any perceived or implied bias, to request the commission
9 member to be recused or disqualified. If a commission member is recused, the remaining members of the
10 commission shall replace the recused member with a person from the same member category as the member
11 who is recused.

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

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

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

22 (6) A commission member or special master may not wear judicial robes in front of the citizen during any
23 hearing.

24 (7) Any citizen has the right to make public the citizen's complaints concerning a judicial officer at any
25 time. Any citizen or attorney running for office against a judicial officer has the right to refer to any complaints filed
26 against the judicial officer that were accompanied by a sworn affidavit. Charges may not be considered against
27 the citizen or attorney as a violation of Montana law, the Montana Rules of Professional Conduct, or the Montana
28 Code of Judicial Conduct.

29 (8) If a judicial officer does not follow through with the corrective action, the citizen may reopen the
30 original complaint by a sworn affidavit stating that the corrective action has not been taken. The commission,

1 upon a finding that the allegation in the sworn affidavit is true, shall immediately recommend further corrective
 2 action to the supreme court."

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 4 **Section 3.** Section 3-1-1121, MCA, is amended to read:
 5 **"3-1-1121. Public disclosure required.** ~~If the commission finds good cause to order a hearing pursuant~~
 6 ~~to 3-1-1106(2), the~~ The commission must shall allow public access to:

- 7 (1) all papers filed at any time and pertaining to each finding of good cause, including charges that are
 8 later determined not to be grounds for recommending retirement or disciplinary action to the supreme court;
 9 (2) the proceedings in which the commission or masters hear the charges against a judge; and
 10 (3) all transcripts or recordings of proceedings before the commission or masters pertaining to the
 11 matters described in subsections (1) and (2)."

12
 13 **Section 4.** Section 3-1-1122, MCA, is amended to read:
 14 **"3-1-1122. Judge's waiver of confidentiality -- hearing Hearing made public.** ~~In addition to the public~~
 15 ~~disclosure required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126, the~~ The commission shall allow
 16 public access to all papers filed with and testimony and hearings before the commission or masters in a given
 17 case if the judge against whom a complaint has been filed ~~waives the right of confidentiality and requests in~~
 18 ~~writing that the proceedings be accessible to the public when a complaint was filed with a sworn affidavit attesting~~
 19 to the veracity of the complaint. ~~Public disclosure of information required under 3-1-1107, 3-1-1121, and 3-1-1123~~
 20 ~~through 3-1-1126 is not contingent upon a waiver under this section."~~

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 22 **Section 5.** Section 3-1-1123, MCA, is amended to read:
 23 **"3-1-1123. Public statements by commission.** ~~In any case in which the subject matter becomes public,~~
 24 ~~through independent sources or through a waiver of confidentiality by the judge against whom the complaint has~~
 25 ~~been filed, the~~ The commission may issue statements as it considers appropriate in any case in order to:
 26 (1) confirm the pendency of the investigation;
 27 (2) clarify the procedural aspects of the disciplinary proceedings;
 28 (3) explain the right of the judge to a fair hearing without prejudgment;
 29 (4) state that the judge denies the allegations; or
 30 (5) declare that there is insufficient evidence for a finding of good cause."

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2 **Section 6.** Section 3-1-1124, MCA, is amended to read:

3 **"3-1-1124. Disclosure for judicial selection -- appointment or assignment.** If in connection with the
4 selection or appointment of a judge, any state or federal agency seeks information or written materials from the
5 commission concerning that judge, information may be divulged ~~in accordance with procedures prescribed by~~
6 ~~the commission, including reasonable notice to the judge affected unless the judge signs a waiver of notice at~~
7 any time. If in connection with the assignment of a retired judge to judicial duties, any appropriate authority seeks
8 information or written materials from the commission about that judge, information may be divulged ~~in accordance~~
9 ~~with procedures prescribed by the commission, including reasonable notice to the judge affected unless the judge~~
10 ~~signs a waiver of notice at any time.~~"

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

13 **"3-1-1125. Efficiency and effectiveness -- audit authorized.** (1) The legislative auditor may audit the
14 commission to determine whether it is efficiently and effectively processing complaints against judicial officers
15 in the state in accordance with this part.

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

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20 **Section 8.** Section 3-1-1126, MCA, is amended to read:

21 **"3-1-1126. Commission report to legislature.** (4) The commission shall, as provided in 5-11-210,
22 submit to the legislature a report containing the following information:

23 ~~(a)(1) identification of each complaint, whether or not verified, filed with a sworn affidavit attesting to the~~
24 veracity of the complaint that was received by the commission during the preceding biennium by a separate
25 number that in no way reveals the identity of the judge complained against and providing the identity of the judge
26 against whom the complaint was filed;

27 (b)(2) the date each complaint was filed;

28 (c)(3) the general nature of each complaint;

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

