

MALFEASANCE IN OFFICE FOR JUDICIALMontana Code Annotated

Title 5 Legislative Branch

Legislative Procedures

Chapter 5

Part 4

IMPEACHMENT5-5-401. Officers

liable to impeachment. The governor, executive officers, heads of state departments, and judicial officers are liable to impeachment for felonies and misdemeanors or malfeasance in office.

(1) Malfeasance in Office for Judicial Officers.

- (a) Judicial officer. Any person that takes the oath of office within the judiciary of Montana, is a judicial officer.
- (b) No intent required. Malfeasance in office may occur through mere ignorance, sheer inattention, basic negligence or unforgivable mistake. Thus, Malfeasance in Office is a Strict Liability Offense, whereby No Intent State May be Shown. While malfeasance in office may also occur purposefully, intentionally, knowingly, fraudulently, with deliberate malice, or though other intent states, these intent states are **NOT** required for a Conviction in the Montana State Senate on Impeachment of a Judicial Officer.
- (c) Bad faith not required. Malfeasance in office may occur through good faith. Bad faith is not required.
- (d) Actions or inaction barred. Malfeasance in office consists of the doing of an act which a judicial officer had no legal right to do, or the refraining from doing an act which they are required to perform. Actions include, but are not limited to: adding to the law, omitting the law, making new law, ignoring the law, changing the law, misinterpreting the law, subverting the law, distorting the law, or similar actions. Inaction occurs when a judicial officer fails to take appropriate action when they are affirmatively required to act as a judicial officer.
- (e) Required interpretation of this subsection. In whatever forum this statute is interpreted, the Plain Meaning Doctrine Shall Rule the Construction of this Statute, and the Plain Meaning Doctrine Must and Shall Apply. No other Construction or Interpretation may be used to interpret this Statute.
- (f) Legislative intent. The Supreme Power and Will of the State of Montana is held by the People of Montana. The Montana Legislature is the governmental entity through which the Supreme Will of the State of Montana is manifested. Malfeasance in Office by a Judicial Officer constitutes a serious intrusion which severely compromises and weakens the Republic of the State of Montana. Montana, by virtue of its dual construction as both a Sovereign State, and a State included within the United States of America, must protect and defend its status as a Republic at all times. Malfeasance in Office by a Judicial Officer threatens the very nature of the purpose and structure of the of the Republic of Montana as a Sovereign State, and as a Republic within the Union of States of the United States of America. Malfeasance in Office for Judicial Officers is intended to protect the public trust beholden to the limited positions of power Judicial Officers hold in the Republic of the State of Montana. When a Judicial Officer fails to strictly adhere to the solemn will of the Supreme Power of Montana --- **the People** --- as expressed by the duly elected Legislature of Montana in the Montana Code Annotated, and in the Constitution of State of Montana, that Judicial Officer **Violates** their solemn oath of office to abide by, protect and defend the Constitution and Laws of Montana and the United States of America, and they also

# **MALFEASANCE IN OFFICE FOR JUDICIAL OFFICERS, DEFINED.**

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**5-5-401.    Officers**

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violate the Constitution of Montana, Article III, Part III, Section 1, Separation of Powers, and are thereby Guilty of Malfeasance in Office which warrants their immediate removal from office. Malfeasance in Office by a Judicial Officer, is a criminal offense, and is subject to criminal penalties by imprisonment in the state prison for any term not to exceed 10 years or punishment by a fine of not more than \$50,000, or both.

- (g) Criminal penalty. Malfeasance in Office by a Judicial Officer, is a criminal offense. It is a Strict Liability Offense, and NO intent state need be shown. A person Convicted on Impeachment for Malfeasance in Office, SHALL BE subject to criminal prosecution, and if convicted, SHALL BE punished by imprisonment in the state prison for any term not to exceed 10 years or punishment by a fine of not more than \$50,000, or both. (*See, for example, 45-7-201(2), MCA, Perjury*).

## **NO INSERTING OR OMITTING LAW ALLOWED IN MONTANA!**

### **The Duty and Necessity of Legislative Action to Prevent Judicial Usurpation of the Supreme Power of the State of Montana**

- ✓ The Legislative Power Clause of the Montana Constitution, Article V, Part V, Section 1, requires that the Legislative Power of the State of Montana vests, or resides in, a Legislature consisting of a Senate and a House of Representative. A duly elected Legislature makes the Laws of the State of Montana.
- ✓ The Popular Sovereignty Clause of the Montana Constitution, Article II, Part II, Section 1, provides that all Political Power is vested in and derived from the People of Montana.
- ✓ The Self-Government Clause of the Montana Constitution, Article II, Part II, Section 2, provides that the People of Montana have the exclusive right of governing themselves as a free, sovereign, and independent state.
- ✓ The first statute in the Montana Code is The Definition of Law in Montana, 1-1-101, MCA, which states that Law "is a solemn expression of the will of the supreme power of the state." The second statute in the Montana Code Annotated, 1-1-102 states how the Law of Montana is expressed, which is through the Constitution and the Statutes of Montana. And, pursuant to 2-1-101, MCA, the sovereignty of the State of Montana resides in the People thereof.
- ✓ The Judicial Power Clause of the Montana Constitution, Article VII, Part VII, Section 1, requires that the Judicial Power of the State of Montana vests, or resides in, one supreme court, district courts, and such other courts as may be provided by law.
- ✓ The Separation of Powers Clause of the Montana Constitution, Article III, Part III, Section 1, states that no person charged with exercising power in one branch of government shall exercise the power of another branch of government.
- ✓ The Oath of Office Clause of the Montana Constitution, Article III, Part III, Section 3, requires all Ministerial and Judicial Officers to Take and Subscribe to a Solemn promise to support, protect and defend the Constitution of the United States and the Constitution of Montana, and to Solemnly promise to discharge their duties as Ministerial and Judicial Officers with fidelity. Fidelity is defined as faithfulness and loyalty.
- ✓ The Role of the Judge has been determined by the Montana Legislature through two laws, one at 1-2-101, MCA, and one at 1-4-101, MCA, both of which provide that when construing an instrument, the office of the judge "is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted."
- ✓ Any Judicial Officer **VIOLATES SIX CLAUSES** of The Constitution of the State of Montana (namely, The Legislative Power Clause, The Popular Sovereignty Clause, The Self-Government Clause, The Judicial Power Clause, The Separation of Powers Clause, and the Oath of Office Clause), and also **VIOLATES FIVE LAWS** of the State of Montana, namely 1-1-101; 1-1-102; 1-2-101; 1-4-101; 2-1-101, MCA; when they refuse to remain within their judicial office, and instead violate the Separation of Powers Clause and usurp the Supreme Power of the State of Montana when construing an instrument by inserting what has been omitted, or by omitting what has been inserted.

### **THE TAKEAWAY**

The Montana Legislature **MUST** Enact a Law to Enforce Impeachment of Judicial Officers that Commit Malfeasance in Office when they Omit the Law or Insert the Law.

## IN THEIR OWN WORDS

### Brave State Supreme Court Justices Agree with Malfeasance in Office

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- ✓ The Supreme Court of Montana validated their **CLEAR UNDERSTANDING** of the Statutory Role of a Judge in *City of Missoula v. Iosefo*, 330 P. 3d 1180 (2014), wherein Justice Beth Baker admitted that when considering the construction of instruments, the Supreme Court of Montana was required to: “[A]pply the plain language of the statute...; we cannot ‘insert what has been omitted.’ Section 1-2-101, MCA.”
- ✓ Nevertheless, former Chief Justice, Karla M. Gray, in *Montana Trout Unlimited v. Montana DNRX*, 133 P. 3d, 224 (2006), complained in a dissenting opinion of the Montana Supreme Court, that “The Court totally ignores (a) portion of § 85-2-343(2)(a), MCA... I further submit that this kind of rationale --- accepted by the Court here --- likely will mark the beginning of the end of administrative processes, remedies and judicial review as they have existed in Montana... I cannot agree with the whole repudiation of the statutory procedures and remedies provided by the Legislature in (this) critical area.”
- ✓ Additionally, current Justice Jim Rice, in *Bates v. Neva*, 339 P. 3d 1265 (2014), complained in a dissenting opinion that the Supreme Court of Montana had “read into § 49-2-305, MCA, an expansive and altogether new application of the statute that the Legislature did not provide... [T]he Court’s interpretation distorts the plain wording of the statute.”
- ✓ Furthermore, former Justice James C. Nelson, in *Sports Shooting Ass’n v. State, MT. Dept. of FWP*, 185 P. 3d 1003, complained in a dissenting opinion of the Montana Supreme Court, that “the Court decides that the statute does not...mean what it says. [T]he Court’s assumption that we may rewrite a statute...is incorrect. The task of...(legislation) falls on the Legislature, not us... [T]he Court remanufactured (a) version of § 87-1-204, MCA...in a way that allows what it specifically prohibits, in order to achieve a (different) result... We...should not judicially create...what the statute clearly prohibits.”
- ✓ Thus, several Supreme Court Justices themselves, including a former Chief Justice of the State Supreme Court, have issued a **Clarion Call** for Legislative Action to save the People of the State of Montana from Judicial Usurpation of the Rights of the People through insertion and omission of the law which constitutes Malfeasance in Office. The warnings of those brave Supreme Court Justices must not go unheeded by the Legislature!

## THE TAKEAWAY

Malfeasance in Office by Judicial Officers includes exceeding the role of the judge as provided in 1-2-101, MCA, by inserting what has been omitted or omitting what as been inserted. The above statements by JUSTICES of the MONTANA STATE SUPREME COURT, give ample warning of the dire necessity that the Montana Legislature **MUST Act Now** to Preserve the Constitutional Integrity of Montana, by Enacting a Bill Stating that Conviction on Impeachment for Malfeasance in Office occurs when a Judicial Officer Inserts or Omits Law.



# Montana Judge Extends Deadline for Returning Mailed Ballots

District Judge Donald Harris says uneven U.S. Postal Service delivery times could result in ballots being delayed

BY ASSOCIATED PRESS // SEP 27, 2020

HELENA – A Montana judge has extended the state's deadline for returning 2020 general election ballots by mail, saying that uneven U.S. Postal Service delivery times could result in ballots being delayed, unfairly requiring some people to vote earlier than others or requiring voters to risk exposure to COVID-19 to return their ballots in person.

"The COVID-19 pandemic presents an untenable problem for voters who wish to have all the available information prior to casting their ballot, who wish to reduce potential COVID-19 exposure, and who also wish to have their vote counted," District Judge Donald Harris wrote late Friday. "Moving the Election Day receipt deadline to a postmark deadline would alleviate the pressures voters are facing in the November 2020 general election and result in less disenfranchised voters."

Harris said all valid Montana ballots postmarked by Election Day for this election must be counted as long as they are received by county election offices by the following Monday.

"This will provide an additional safeguard for Montana voters to ensure that their votes are counted," said Robyn Driscoll, chair of the Montana Democratic Party. The party and the Democratic Senatorial Campaign Committee challenged the law that requires ballots be received in election offices by 8 p.m. on Election Day in order to be counted.

Ballots are to be mailed to voters starting on Oct. 9. Driscoll urged voters to return their ballots as soon as possible "to be on the safe side."

Montana has highly competitive races for U.S. Senate and governor. Democratic Gov. Steve Bullock is challenging Republican U.S. Sen. Steve Daines while Lt. Gov. Mike Cooney and Republican U.S. Rep. Greg Gianforte are battling for the open governor's seat. The Bullock-Daines race could be key in determining the majority party in the U.S. Senate while a Gianforte win in the governor's race would likely put the House, Senate and governor's seat all in Republican hands.

The ballot deadline case is among a handful of lawsuits related to Montana's election this year.

The campaign of President Donald Trump is challenging in federal court the governor's emergency suspension of a state law that requires polling places to be open for general elections. Because of the coronavirus pandemic, counties were given the option to mail ballots to all active voters.

Forty-five of Montana's 56 counties have decided to mail ballots. People in those counties will still have options to vote in person starting on Oct. 2. Eleven counties will open traditional polling places on Nov. 3, will mail requested absentee ballots and will offer early in-person voting starting on Oct. 5.

Oral arguments in the case brought by Trump's campaign and Republican Party groups were held Tuesday in Missoula. U.S. District Judge Dana Christensen has not yet made a ruling.

In state court, the Democratic groups also challenged the deadline by which voters must correct deficiencies in a returned ballot and challenged a 2018 law that restricted third-party collection of absentee ballots.

Just for the 2020 election, Harris also ordered that voters be given until Nov. 12 to correct any issues with mailed ballots, such as a missing or mismatched signature. State law gives voters until 3 p.m. on the day after Election Day to correct such deficiencies.

Harris also found a voter-approved law that restricted third-party collection of absentee ballots is unconstitutional. District Judge Jessica Fehr ruled earlier Friday that the Ballot Interference Protection Act was unconstitutional in a separate case brought by Native American groups.

“The burdens BIPA places on voting fall disproportionately on the poor; the elderly; the disabled; inexperienced voters; those who cannot miss work to vote; Native Americans, especially those living on rural Native American tribal lands; students; and those whose work and family care responsibilities significantly limit their ability to return their absentee ballot on their own,” Harris wrote.

The arguments in the lawsuit brought by the Democrats wrapped up Tuesday. Harris said then that changing the ballot receipt deadline and the ballot deficiency correction deadline for the 2020 election would give the Montana Legislature time to review the state’s election deadlines and determine if changes were needed, The Billings Gazette reported.

The Secretary of State’s Office did not return a request for comment on Fehr’s ruling on Friday or a weekend request for comment on Harris’ ruling.