

SENATE BILL NO. 402

INTRODUCED BY C. SMITH, J. ELLSWORTH

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE JUDICIARY; PROVIDING THAT JUDGES MAY NOT PRESIDE IN CERTAIN SITUATIONS; PROVIDING THAT THE JUDICIAL NOMINATING COMMISSION INCLUDE EIGHT ADDITIONAL LAY MEMBERS; INCREASING THE FEE FOR ENTRY OF JUDGMENT; AMENDING SECTIONS 3-1-1001 AND 25-1-201, MCA; AND PROVIDING EFFECTIVE DATES."

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

NEW SECTION. SECTION 1. RESTRICTIONS ON JUDICIAL OFFICERS PRESIDING OVER MATTERS IN WHICH THEY HAVE PREVIOUSLY ASSERTED POSITION. (1) THIS SECTION APPLIES TO ALL JUDICIAL OFFICERS, AS DEFINED IN 1-1-202.

(2) JUDICIAL OFFICERS MAY NOT PARTICIPATE IN ANY ACTION OR PROCEEDING INVOLVING THE CONSTITUTIONALITY OF A PROVISION OF A BILL IF:

(A) ~~WHEN~~ THE JUDICIAL OFFICER HAS APPEARED BEFORE THE MONTANA LEGISLATURE OR OTHERWISE CONTACTED A LEGISLATOR OR ANOTHER GOVERNMENTAL ENTITY IN SUPPORT OR OPPOSITION OF A BILL INVOLVING THE SAME OR A SIMILAR POLICY MATTER THAT LATER COMES BEFORE THE COURT LEGISLATION IF IT IS AT ISSUE IN A CASE IN WHICH THE JUDICIAL OFFICER PRESIDES;

(B) ~~WHEN~~ THE JUDICIAL OFFICER HAS SERVED ON THE LEGISLATIVE A COMMITTEE OF THE MONTANA JUDGES ASSOCIATION AND THE MONTANA JUDGES ASSOCIATION EXPRESSED SUPPORT OR OPPOSITION ON THE ISSUE OR BILL DURING THE JUDGE'S SERVICE ON THE LEGISLATIVE COMMITTEE OR GROUP DESIGNED TO EVALUATE LEGISLATION WHEN THE COMMITTEE OR GROUP EXPRESSED SUPPORT OR OPPOSITION ON A BILL DURING THE JUDICIAL OFFICER'S SERVICE ON THE COMMITTEE OR OTHER GROUP AND A CASE INVOLVING THE SAME OR A SIMILAR POLICY MATTER LATER COMES BEFORE THE COURT IN WHICH THE JUDICIAL OFFICER PRESIDES LEGISLATION IS PENDING BEFORE THE JUDICIAL OFFICER;

OR

(C) ~~WHEN~~ THE JUDICIAL OFFICER HAS PUBLICLY SUPPORTED OR OPPOSED AN ISSUE OR BILL AT THE REQUEST



1 OF THE MONTANA JUDGES ASSOCIATION OR ANOTHER ENTITY AND A CASE INVOLVING THE ~~SAME OR A SIMILAR POLICY~~  
 2 MATTER LATER COMES BEFORE THE COURT IN WHICH THE JUDICIAL OFFICER PRESIDES LEGISLATION IS PENDING BEFORE  
 3 THE JUDICIAL OFFICER.

4

5 **Section 2.** Section 3-1-1001, MCA, is amended to read:

6 **"3-1-1001. Creation, composition, and function of commission.** (1) A judicial nomination  
 7 commission for the state is created. Its function is to provide the governor with a list of candidates for  
 8 appointment to fill any vacancy on the supreme court or any district court and to provide the chief justice of the  
 9 supreme court with a list of candidates for appointment to fill any term or vacancy for the chief water judge or  
 10 associate water judge pursuant to 3-7-221. The commission is composed of ~~seven~~15 members as follows:

11 (a) ~~four~~12 lay members who are neither judges nor attorneys, active or retired, who reside in different  
 12 geographical areas of the state, and each of whom is representative of a different industry, business, or  
 13 profession, whether actively engaged or retired, who are appointed by the governor;

14 (b) two attorneys actively engaged in the practice of law, one from that part of the state that is  
 15 composed of judicial districts 1 through 5, 9, 11, and 18 through 21 and one from that part of the state that is  
 16 composed of judicial districts 6 through 8, 10, 12 through 17, and 22, who are appointed by the supreme court;

17 (c) one district judge elected by the district judges under an elective procedure initiated and  
 18 conducted by the supreme court and certified to election by the chief justice of the supreme court. The election  
 19 is considered an appointment for the purposes of this part.

20 (2) Appointments provided for in this section must be made within 30 days of the completion of the  
 21 preceding terms."

22

23 **Section 3.** Section 25-1-201, MCA, is amended to read:

24 **"25-1-201. Fees of clerk of district court.** (1) The clerk of district court shall collect the following  
 25 fees:

26 (a) at the commencement of each action or proceeding, except a petition for dissolution of marriage,  
 27 from the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a  
 28 petition for dissolution of marriage, \$170; for filing a petition for legal separation, \$150; and for filing a petition

- 1 for a contested amendment of a final parenting plan, \$120;
- 2 (b) from each defendant or respondent, on appearance, \$60;
- 3 (c) on the entry of judgment, from the prevailing party, ~~\$45~~ \$50;
- 4 (d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's
- 5 office in all criminal and civil proceedings, \$1 a page for the first 10 pages of each file, for each request, and 50
- 6 cents for each additional page;
- 7 (ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;
- 8 (iii) for providing copies of papers on file in the clerk's office by facsimile, e-mail, or other electronic
- 9 means in all criminal and civil proceedings, 25 cents per page;
- 10 (e) for each certificate, with seal, \$2;
- 11 (f) for oath and jurat, with seal, \$1;
- 12 (g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7
- 13 years, and an additional \$1 for each name for any additional year searched;
- 14 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the
- 15 fee for entry of judgment provided for in subsection (1)(c);
- 16 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;
- 17 (j) for transmission of records or files or transfer of a case to another court, \$5;
- 18 (k) for filing and entering papers received by transfer from other courts, \$10;
- 19 (l) for issuing a marriage license, \$53;
- 20 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment of
- 21 a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the
- 22 applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 23 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of
- 24 the estate of a nonresident decedent, \$55;
- 25 (o) for filing a declaration of marriage without solemnization, \$53;
- 26 (p) for filing a motion for substitution of a judge, \$100;
- 27 (q) for filing a petition for adoption, \$75;
- 28 (r) for filing a pleading by facsimile or e-mail in all criminal and civil proceedings, 50 cents per page.

1           (2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district  
2 court must be deposited in the state general fund as specified by the supreme court administrator.

3           (3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's  
4 trust fund account established in 52-7-102, \$19 must be deposited in the civil legal assistance for indigent  
5 victims of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and  
6 family member assault intervention and treatment fund established in 40-15-110.

7           (b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund  
8 account established in 52-7-102 and \$30 must be deposited in the partner and family member assault  
9 intervention and treatment fund established in 40-15-110.

10           (4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an  
11 amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court  
12 may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan  
13 under subsection (1)(a).

14           (5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must  
15 be deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-  
16 714.

17           (6) The fees collected under subsections (1)(d), (1)(g), (1)(j), and (1)(r) must be deposited in the  
18 county district court fund. If a district court fund does not exist, the fees must be deposited in the county general  
19 fund to be used for district court operations.

20           (7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without  
21 solemnization, \$13 must be deposited in the domestic violence intervention account established by 44-7-202  
22 and \$10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must  
23 be deposited in the county general fund to be used for district court operations.

24           (8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not  
25 otherwise specifically allocated must be deposited in the state general fund."  
26

27           NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE CODIFIED AS AN  
28 INTEGRAL PART OF TITLE 3, CHAPTER 1, PART 6, AND THE PROVISIONS OF TITLE 3, CHAPTER 1, PART 6, APPLY TO

1 [SECTION 1].

2

3 NEW SECTION. SECTION 5. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID PARTS THAT ARE  
4 SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT] IS INVALID IN ONE OR MORE OF ITS  
5 APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID  
6 APPLICATIONS.

7

8 NEW SECTION. Section 6. Effective date -- contingency. (1) Except as provided in subsection (2),  
9 [this act] is effective on passage and approval.

10 (2) ~~[Section 4]~~ [SECTION 2] is effective on the date that the clerk of the Montana supreme court  
11 certifies to the code commissioner that Senate Bill No. 140 is found unconstitutional or otherwise invalid. The  
12 clerk of the Montana supreme court shall submit certification within 5 days of the occurrence of the contingency.

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