

Montana Constitution

**Article VII, Section 11. Removal and discipline.** (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.

(2) The commission shall investigate complaints, and make rules implementing this section. It may subpoena witnesses and documents.

(3) Upon recommendation of the commission, the supreme court may:

(a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or

(b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, violation of canons of judicial ethics adopted by the supreme court of the state of Montana, or habitual intemperance.

(4) The proceedings of the commission are confidential except as provided by statute.

History: Amd. Const. Amend. No. 9, approved Nov. 4, 1980; amd. Const. Amend. No. 13, approved Nov. 6, 1984.

Montana Statutes, 2021 – Title 3, Chapter 1, Part 11

**\*\*\*Current version of section 3-1-1101:**

**3-1-1101. Creation and composition of commission.** There is created a judicial standards commission consisting of five members as follows:

(1) two district court judges from different judicial districts, elected by the district judges under an elective procedure initiated by and conducted by the supreme court, and their election must be certified by the chief justice of the supreme court, which for the purpose of this part is considered as an appointment;

(2) one attorney who has practiced law in this state for at least 10 years, appointed by the supreme court;

(3) two citizens who are not attorneys or judges of any court, active or retired, appointed by the governor.

History: En. Sec. 1, Ch. 95, L. 1973; R.C.M. 1947, 93-718; amd. Sec. 8, Ch. 52, L. 1993.

**\*\*\*Version of section 3-1-1101 that will be effective on October 1, 2021:**

**3-1-1101. Creation and composition of commission.** There is created a judicial standards commission consisting of five members as follows:

(1) two district court judges from different judicial districts, elected by the district judges under an elective procedure initiated by and conducted by the supreme court. The election must be certified by the chief justice of the supreme court, which for the purpose of this part is considered as an appointment. After the chief justice certifies the election, each judge must be confirmed by the senate.

(2) one attorney who has practiced law in this state for at least 10 years, appointed by the supreme court and confirmed by the senate; and

(3) two citizens who are not attorneys or judges of any court, active or retired, appointed by the governor and confirmed by the senate.

**3-1-1102. Staggered terms of members.** (1) The first appointments made under this part are as follows:

(a) The supreme court shall designate by certificate of the chief justice one district court judge to serve for 4 years and one to serve for 2 years.

(b) The attorney shall serve for 4 years.

(c) The governor shall appoint one citizen to serve for 4 years and one to serve for 2 years.

(2) Thereafter, all terms shall be for 4 years.

History: En. Sec. 2, Ch. 95, L. 1973; R.C.M. 1947, 93-719.

**3-1-1103. Terminated membership — vacancies.** (1) Commission membership terminates if a member ceases to hold the position that qualified the person for appointment.

(2) If a vacancy occurs on the commission, the appointing authority of the vacated seat shall designate a successor.

History: En. Sec. 3, Ch. 95, L. 1973; R.C.M. 1947, 93-720; amd. Sec. 150, Ch. 61, L. 2007.

**3-1-1104. No compensation — travel expenses.** A commission member is not entitled to compensation for the member's services but is entitled to travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in the performance of the member's duties.

History: En. Sec. 4, Ch. 95, L. 1973; amd. Sec. 30, Ch. 453, L. 1977; R.C.M. 1947, 93-721; amd. Sec. 151, Ch. 61, L. 2007.

**3-1-1105. Confidential proceedings — rules for commission.** (1) Except as provided in 3-1-1107 and 3-1-1121 through 3-1-1126, all papers filed with and proceedings before the commission or masters are confidential and the filing of papers with and the testimony given before the commission or masters is privileged communication.

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

History: En. Sec. 6, Ch. 95, L. 1973; R.C.M. 1947, 93-723; amd. Sec. 1, Ch. 441, L. 1981.

**3-1-1106. Investigation of judicial officers — complaint — hearing — recommendations.** (1)

(a) The commission, upon the filing of a written complaint by any citizen of the state, may initiate an investigation of any judicial officer in the state to determine if there are grounds for conducting additional proceedings before the commission. If the commission's investigation indicates that additional proceedings before the commission may be justified, the commission shall require the citizen who filed the original written complaint to sign a verified written complaint before conducting additional proceedings.

(b) The commission shall give the judicial officer written notice of the citizen's complaint and of the initiation of an investigation. Notice must also be given if a verified written complaint is filed and must include the charges made, the grounds for the charges, and a statement that the judicial officer may file an answer. The notice must be signed by the commission.

(2) The commission, after an investigation that it considers necessary and upon a finding of good cause, may:

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

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

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

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

History: En. Sec. 5, Ch. 95, L. 1973; R.C.M. 1947, 93-722; amd. Sec. 1, Ch. 334, L. 1983; amd. Sec. 1, Ch. 386, L. 1991; amd. Sec. 152, Ch. 61, L. 2007.

**3-1-1107. Action by supreme court.** (1) The supreme court shall review the record of the proceedings and shall make such determination as it finds just and proper and may:

(a) order censure, suspension, removal, or retirement of a judicial officer; or

(b) wholly reject the recommendation.

(2) Any hearing conducted before the supreme court relative to a recommendation by the commission, together with all papers pertaining to such recommendation, shall be accessible to the public.

History: En. Sec. 7, Ch. 95, L. 1973; R.C.M. 1947, 93-724; amd. Sec. 3, Ch. 441, L. 1981.

**3-1-1108. Nonparticipation of interested judicial officer.** A judicial officer who is a member of the commission or of the supreme court may not participate in any proceeding involving the officer's own censure, suspension, removal, or retirement or that of the officer's spouse, a relative within the sixth degree of consanguinity, or the spouse of a relative related within the sixth degree.

History: En. Sec. 8, Ch. 95, L. 1973; amd. Sec. 31, Ch. 344, L. 1977; R.C.M. 1947, 93-725; amd. Sec. 153, Ch. 61, L. 2007.

**3-1-1109. Interim disqualification of judicial officer.** (1) A judicial officer must be disqualified from serving as a judicial officer, without loss of salary, while there is pending an indictment or an information charging the officer with a crime punishable as a felony under Montana or federal law.

(2) When the commission files with the supreme court a recommendation that a judicial officer be removed or retired, the judicial officer must be disqualified from serving as a judicial officer, without loss of salary, pending the supreme court's review of the record and proceedings.

History: En. Sec. 9, Ch. 95, L. 1973; amd. Sec. 32, Ch. 344, L. 1977; R.C.M. 1947, 93-726; amd. Sec. 2, Ch. 386, L. 1991; amd. Sec. 154, Ch. 61, L. 2007.

**3-1-1110. Procedure when convicted of crime.** (1) On recommendation of the commission, the supreme court may suspend a judicial officer from office without salary when the officer pleads

guilty or no contest or is found guilty of a crime punishable as a felony under Montana or federal law or of any other crime involving moral turpitude.

(2) If the judicial officer's conviction is reversed, suspension terminates and the officer must be paid the officer's salary for the period of suspension.

(3) If the judicial officer is suspended and a conviction becomes final, the supreme court shall remove the officer from office.

History: En. Sec. 10, Ch. 95, L. 1973; R.C.M. 1947, 93-727; amd. Sec. 155, Ch. 61, L. 2007.

**3-1-1111. Orders for retirement or removal.** (1) Upon an order for retirement, the judicial officer must be retired with the same rights and privileges as if the officer retired pursuant to statute.

(2) Upon an order for removal, the judicial officer must be removed from office and the officer's salary must cease from the date of the order. The officer is ineligible for any other judicial office and pending a further order of the court is suspended from practicing law.

History: En. Sec. 11, Ch. 95, L. 1973; R.C.M. 1947, 93-728; amd. Sec. 156, Ch. 61, L. 2007.

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

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

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

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

History: En. Sec. 2, Ch. 441, L. 1981.

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

History: En. Sec. 4, Ch. 441, L. 1981; amd. Sec. 3, Ch. 386, L. 1991; amd. Sec. 157, Ch. 61, L. 2007.

**3-1-1123. Public statements by commission.** In any case in which the subject matter becomes public, through independent sources or through a waiver of confidentiality by the judge against whom the complaint has been filed, the commission may issue statements as it considers appropriate in order to:

(1) confirm the pendency of the investigation;

(2) clarify the procedural aspects of the disciplinary proceedings;

(3) explain the right of the judge to a fair hearing without prejudgment;

- (4) state that the judge denies the allegations; or
  - (5) declare that there is insufficient evidence for a finding of good cause.
- History: En. Sec. 5, Ch. 441, L. 1981.

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

History: En. Sec. 6, Ch. 441, L. 1981.

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

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

History: En. Sec. 7, Ch. 441, L. 1981.

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

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

History: En. Sec. 7, Ch. 441, L. 1981.

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

(a) identification of each complaint, whether or not verified, received by the commission during the preceding biennium by a separate number that in no way reveals the identity of the judge complained against;

(b) the date each complaint was filed;

(c) the general nature of each complaint;

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

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

(f) whenever a final disposition of a complaint has been made during the preceding biennium, the nature of the disposition, the commission's recommendation, if any, to the supreme court, and the action taken by the supreme court.

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

History: En. Sec. 8, Ch. 441, L. 1981; amd. Sec. 14, Ch. 112, L. 1991.