

HJ 40 STUDY: BACKGROUND ON THE JUDICIAL STANDARDS COMMISSION

BACKGROUND

The Judicial Standards Commission ("commission" or JSC) is a five-member body established by the Montana Constitution to receive and investigate complaints about judges and, if necessary, make discipline recommendations to the Montana Supreme Court.

The commissioners are two district court judges elected by other district court judges, one attorney appointed by the Supreme Court, and two public members appointed by the Governor.

The Montana Constitution establishes the Judicial Standards Commission in Article VII, Section 11.

THINGS TO KNOW ABOUT:

THE MONTANA JUDICIAL STANDARDS COMMISSION

- Any Montana citizen may file a written complaint with the JSC to investigate a judicial officer to determine if there are grounds for conducting additional proceedings.
- If the commission makes a disciplinary recommendation to the Montana Supreme Court, the Supreme Court has several options:
 - retire any justice or judge for disability that seriously interferes with the performance of the duties of the justice or judge; or
 - censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform the duties of the justice or judge, violation of the canons of judicial ethics, or habitual intemperance.
- Prior to the creation of the JSC in the 1972 Constitution, impeachment was the only method to remove a judge from office.
- Transcripts of the Montana Constitutional Convention indicate the delegates created the commission based on similar bodies in New Mexico and California.

HJ 40: Things to Know About the Judicial Standards Commission

- Article VII, Section 11, of the Montana Constitution has been amended twice since 1972.
 - In November 1980, Montana voters amended the Constitution to allow the Legislature to create exceptions to the confidentiality of JSC proceedings and documents.
 - In November 1984, Montana voters amended the Constitution to allow a justice or judge to be disciplined for a violation of the canons of judicial ethics that are adopted by the Supreme Court.
- The Legislative Auditor has statutory authority to audit the JSC to determine whether it is efficiently and effectively processing complaints, including the authority to access otherwise confidential materials.
- The commission is required to provide each Legislature a public report detailing certain information regarding complaints and dispositions of those complaints. The most recent report is from January 2021.
- The 2021 Legislature enacted House Bill 380, which requires Senate confirmation of commission members.

JUDICIAL CONDUCT COMMISSIONS IN OTHER STATES

Unless otherwise noted, the source for the Things to Know in this section is "How Judicial Conduct Commissions Work," by Cynthia Gray. The number at the end of bullet point refers to the Gray article's page.

- All 50 states have an entity that investigates and prosecutes complaints against judges, though the structures and processes differ (405).
- The majority of judicial conduct commissions (28 states) are created by state constitutional provisions, including Montana's (406-407).
- The number of judicial conduct commission members in other states range from 3 in Oklahoma to 28 in Ohio (IAALS report, p. 5).
- All states grant confidentiality for commission proceedings though some, including Montana, allow for certain exceptions (409-414). Thirty-four states, including Montana, end confidentiality if a formal disciplinary proceeding occurs (414).

*The May 2022 version of this memo has been updated to correct an erroneous description of the commission's membership. A September 2021 version stated that one member of the commission is an attorney appointed by the Governor. The May 2022 version is corrected to state that one member of the commission is an attorney appointed by the Montana Supreme Court.

SOURCES

- Article VII, Section 11, Montana Constitution, and Title 3, Chapter 1, Part 11, Montana Code Annotated: <https://leg.mt.gov/content/Committees/Interim/2021-2022/Law-and-Justice/Studies/HJ-40/hj40-commission-constitution-statutes-ljic-september-2021.pdf>
- Montana Constitutional Convention transcripts, vol. 4, pages 1122-1127: https://courts.mt.gov/external/library/mt_cons_convention/vol4.pdf.
- Voter Information for 1980 Amendments, Referendums, Initiatives, Constitutional Amendment No. 9, November 1980: <https://leg.mt.gov/content/Committees/Interim/2021-2022/Law-and-Justice/Studies/HJ-40/hj40-1980-constitutional-amendment-voter-information-pamphlet.pdf>
- Voter Information for 1984 Amendments, Referendums, Initiatives, Constitutional Amendment No. 13, November 1984: <https://leg.mt.gov/content/Committees/Interim/2021-2022/Law-and-Justice/Studies/HJ-40/hj40-1984-constitutional-amendment-voter-information-pamphlet.pdf>
- Judicial Standards Commission report to the 2021 Legislature, January 2021: <https://leg.mt.gov/content/Committees/Interim/2021-2022/Law-and-Justice/Agency-Oversight/Required-Reports/2020-judicial-standards-commission-report.pdf>
- Chapter 433, Laws of Montana 2021 (HB 380): <https://leg.mt.gov/bills/2021/billhtml/HB0380.htm>.
- Montana Judicial Standards Commission website: <https://courts.mt.gov/Courts/boards/JudicialStandardsCommission>
- Cynthia Gray, "How Judicial Conduct Commissions Work," *The Justice System Journal*, vol. 28, number 3, pages 405-418, 2007, <https://www.jstor.org/stable/27977363>.
- University of Denver's Institute for the Advancement of the Legal System (IAALS), "Recommendations for Judicial Discipline Systems," July 2018: https://iaals.du.edu/sites/default/files/documents/publications/recommendations_for_judicial_discipline_systems.pdf