



SETTING THE BAR

A STUDY OF ATTORNEY
REGULATION AND THE
STATE BAR OF MONTANA

DRAFT FINAL REPORT TO
THE 69TH LEGISLATURE

Law and Justice Interim Committee

Sara Hess

2023-2024



P.O. Box 201706
Helena, MT 59620-1706
Phone: (406) 444-3064
Fax: (406) 444-3971

Website: <https://leg.mt.gov/committees/interim/LJIC>

TABLE OF CONTENTS

Overview.....	1
Findings and Recommendations.....	1
Study process.....	2
The State Bar of Montana.....	2
Attorney Regulation.....	2
Interest on Lawyer’s Trust Accounts (IOLTA).....	3
Pathways to Admission.....	3
Online Learning and Access To Justice.....	3
Action in other States.....	3
Appendix A: law and justice Interim Committee Members.....	i
House Members.....	i
Senate Members.....	i

This report is a summary of the work of the XXX Interim Committee, specific to the Law & Justice Interim Committee’s 2023-2024 study as outlined in the Law & Justice Interim Committee’s 2023-2024 work plan and Senate Joint Resolution 31 (2023). Members received additional information and public testimony on the subject, and this report is an effort to highlight key information and the processes followed by the Law & Justice Interim Committee in reaching its conclusions. To review additional information, including audio minutes, and exhibits, visit the Law & Justice Interim Committee website:

<https://leg.mt.gov/committees/interim/ljic/>

A full report, including links to the documents referenced in this print report, is available at the Law & Justice Interim Committee website: <https://leg.mt.gov/committees/interim/ljic/>



SETTING THE BAR: A STUDY OF ATTORNEY REGULATION AND THE STATE BAR OF MONTANA

OVERVIEW

[Senate Joint Resolution 31](#) requested an interim study of attorney regulation and the State Bar. In a poll of lawmakers following the 2023 Legislative Session, the SJ 31 study ranked #5 out of the 6 study resolutions that were passed by the Legislature. The study was assigned to the Law and Justice Interim Committee, who opted to direct approximately 15% of their time to this topic.

SJ 31 suggested that the committee review:

- the functions of the State Bar of Montana, including any programs for the public;
- the history, structure, and rationale for the unified bar in the United States and the State Bar of Montana and the independent regulation of the legal profession under the Montana Constitution and the Montana Supreme Court, including but not limited to:
 - the legal authorization of the bar association, such as statute, order, or rule;
 - the oversight of the bar association and its funding; and
 - any state or federal case law related to the role, structure, and operation of bar associations and the regulation of attorneys;
- the role of attorneys as officers of the court;
- the Montana Rules of Professional Conduct, the attorney admissions process, and the discipline process for attorneys;
- national trends and best practices in legal regulation and how other states regulate attorneys, including but not limited to the "next-gen" bar examination, the role of the uniform bar examination and its effectiveness, alternative pathways to bar admission, including reading the law and apprenticeship bar admission, and limited licensure options;
- the regulation, oversight, and scrutiny of the State Bar of Montana of the conduct, speech, activities, and association of attorneys licensed to practice in the state; and
- the purpose and operation of Interest on Lawyers' Trust Accounts.

FINDINGS AND RECOMMENDATIONS

DRAFT (not adopted by committee) – The committee gained a greater understanding of the State Bar of Montana and how it interacts with the Montana Supreme Court and other entities within the legal system. The committee discussed alternative pathways to bar admission and the potential for remote legal education in Montana. The committee did not produce draft legislation or adopt formal recommendations from this study.

STUDY PROCESS

In the course of the SJ 31 study, the committee learned about the history and role of the State Bar of Montana, along with the various boards and commissions established by the Montana Supreme Court to help carry out its constitutional authority. The committee also learned about alternative pathways to bar admission.

THE STATE BAR OF MONTANA

The State Bar was [established](#) to assist the Montana Supreme Court in administering its constitutional authority. The committee received a [background paper](#) outlining the role and structure of the State Bar, and received a [memo](#) and [presentation](#) on the duties and programs the State Bar administers for attorneys and the public.

Montana is among approximately 30 other states that have unified bar associations, meaning a person must be a member to practice law in the state. Members are subject to the [Rules of Professional Conduct](#) and must pay dues and obtain continuing education credits to remain in good standing.

The State Bar is governed by a Board of Trustees and is organized into **sections** that offer education and guidance to members in specific areas of practice, and **committees** that work on broader topics like ethics or mandatory education.

The State Bar administers programs aimed at aiding and protecting the public:

- **Fee Arbitration Program** helps settle disputes between attorneys and clients over legal fees.
- **Lawyer’s Fund for Client Protection** provides for reimbursement of a client injured by dishonest conduct of an attorney.
- **Lawyer Assistance Program** offers support to attorneys experiencing addiction or mental health challenges.

ATTORNEY REGULATION

Attorney regulation in Montana can be thought of in three categories: admission to the bar, continuing education, and discipline. The State Bar of Montana provides some administrative support in each of these areas, but there are many other [boards and commissions](#) involved whose decisions are ultimately subject to review by the Montana Supreme Court. These boards and commissions include:

- Commission on Character and Fitness
- Board of Bar Examiners
- Commission on Mandatory Continuing Legal Education
- Office of Disciplinary Counsel
- Commission on Practice

The Montana Constitution tasks the Montana Supreme Court with regulating “admission to the bar and the conduct of its members” (*Article VII, Part VII, Section 2*). This is accomplished with the help of various Court Commissions and the State Bar of Montana.

The committee received a [briefing paper](#) outlining these entities and the roles they play in attorney regulation.

INTEREST ON LAWYER'S TRUST ACCOUNTS (IOLTA)

As required by Rule 1.15 of the Montana Rules of Professional Conduct, attorneys may not mingle their own funds with those of their clients, so they often place client funds in a trust account that earns interest for the client. When client funds are small and will only be held for a short period of time, the administrative costs of calculating the interest could outweigh the interest earned. An attorney may utilize interest-bearing IOLTA accounts in these circumstances so that interest can be collected for charitable purposes. In Montana, the interest collected goes to the [Montana Justice Foundation](#) to administer grants promoting access to justice.

PATHWAYS TO ADMISSION

After learning about the [process of admission](#) to the State Bar in Montana, which requires applicants to hold a degree from an ABA-accredited law school and to pass the Uniform Bar Exam [among other measures](#), the committee requested information on alternative pathways to bar admission. The committee heard from a [panel](#) of professionals representing different perspectives on legal education and access to justice.

In Montana, a person may petition the Montana Supreme Court for waiver of the typical rules of admission. According to the Clerk of the Montana Supreme Court, 182 motions to waive various admission rules were granted between June 2006 and February 2024.

ONLINE LEARNING AND ACCESS TO JUSTICE

Many Montana residents experience challenges in accessing legal representation, particularly in rural communities. The Dean of Montana's only law school, the Alexander Blewett III School of Law, [testified](#) that the school is increasing its graduating class sizes to combat the state's growing legal needs and exploring the option of offering online learning for prospective students who cannot relocate to Missoula.

The committee received [testimony](#) that there are 17 ABA-accredited law schools approved to offer online law programs. Current ABA standards do not allow fully online law schools to seek accreditation, but a council member from the Section of Legal Education and Admission to the Bar of the American Bar Association [testified](#) that changes to this standard have been [proposed](#) and could be implemented by 2026. The State Bar of Montana has expressed support for this measure.

The committee also heard [testimony](#) from the Dean of Purdue Global, a non-ABA accredited, fully online law school based in California. While the panelists agreed on the potential for online law programs to expand access to justice, they were divided on issue of requiring ABA-accreditation as a criteria for admission to the State Bar.

ACTION IN OTHER STATES

The committee received a [briefing paper](#) on alternative licensure options being implemented or considered in other states. Eighteen states are already slated to offer the [Next Generation Bar Exam](#), a new exam which is still in development by the National Conference of Bar Examiners but is set to debut in 2026.

Several states are pursuing options for law school graduates to forgo the traditional bar exam in favor of various experiential learning models and alternative exams.

- **New Hampshire** law school graduates can be evaluated on their performance in a two-year immersive program that provides real and simulated experience in legal practice.
- **Wisconsin** allows participating law schools to certify a graduate's legal competence and character and fitness in lieu of taking the bar exam.
- **Oregon** is developing two exam models that will allow law school graduates to work in supervised apprenticeship settings or take specific experiential curriculum.
- **California** is experimenting with a Provisional Licensure Program that allows students to practice under the supervision of a licensed attorney, and a pilot Portfolio Bar Exam which would assess a student's minimum competence to practice law.

APPENDIX A: LAW AND JUSTICE INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, House and Senate leadership appoint lawmakers to interim committees. The members of the Law and Justice Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

SENATE MEMBERS

Senator John Esp

(Committee member from July 2023-May 2024)

PO Box 1024

Big Timber, MT 59011-1024

Ph: (406) 932-5662

Email: John.Esp@legmt.gov

Senator Chris Friedel

3302 2nd Ave N

Billings, MT 59101-2005

Ph: (406) 272-2245

Email: Chris.Friedel@legmt.gov

Senator Ryan Lynch

PO Box 934

Butte, MT 59703-0934

Ph: (406) 498-6625

Email: Ryan.Lynch@legmt.gov

Senator Keith Regier

1078 Stillwater Rd

Kalispell, MT 59901-6902

Ph: (406) 756-6141

Email: Keith.Regier@legmt.gov

Senator Barry Usher

(Committee member from May 2024-September 2024)

6900 S Frontage Rd

Billings, MT 59101-6220

Ph: (406) 252-2888

Email: Barry.Usher@legmt.gov

HOUSE MEMBERS

Representative Amy Regier, Chair

PO Box 10466

Kalispell, MT 59904-3466

Ph: (406) 253-8421

Email: Amy.Regier@legmt.gov

Representative Donavon Hawk, Vice Chair

PO Box 3791

Butte, MT 59702-3791

Ph: (406) 578-1233

Email: Donavon.Hawk@legmt.gov

Representative Jodee Etchart

PO Box 22014

Billings, MT 59104-2014

Ph: (406) 318-9773

Email: Jodee.Etchart@legmt.gov

Representative Caleb Hinkle

PO Box 468

Belgrade, MT 59714-0468

Email: Caleb.Hinkle@legmt.gov

Law and Justice Interim Committee Staff

Julianne Burkhardt, Attorney | Sara Hess, Legislative Research Analyst | Ania Alduenda, Secretary