

SENATE BILL NO. 366

INTRODUCED BY C. GLIMM

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING THE JUDICIAL STANDARDS COMMISSION COMPLAINT PROCESS; PROVIDING THAT A WRITTEN COMPLAINT MUST HAVE A SWORN AFFIDAVIT AND ALL WRITTEN COMPLAINTS WITH AFFIDAVITS MUST BE INVESTIGATED; PROVIDING THAT THE JUDICIAL OFFICER SHALL FILE A RESPONSE AND THAT THE RESPONSE BE PROVIDED TO THE CITIZEN; REMOVING CONFIDENTIALITY PROVISIONS; PROVIDING THAT A HEARING MUST BE HELD WITH THE CITIZEN PRESENT; ALLOWING THE CITIZEN THE RIGHT TO REBUT THE JUDICIAL OFFICER, APPEAL A DECISION, AND MAKE PUBLIC THE COMPLAINT ABOUT THE JUDICIAL OFFICER; PROVIDING THAT ALL HEARINGS ARE PUBLIC; PROVIDING THAT THE NAME OF THE JUDICIAL OFFICER AGAINST WHOM A COMPLAINT IS FILED WILL BE INCLUDED IN A REPORT TO THE LEGISLATURE; AND AMENDING SECTIONS 3-1-1105, 3-1-1106, 3-1-1121, 3-1-1122, 3-1-1123, 3-1-1124, 3-1-1125, AND 3-1-1126, MCA."

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

NEW SECTION. **Section 1. Selection of chair of commission.** The commission shall appoint as its presiding officer one of the citizens on the commission at any time, but it shall appoint one if the presiding officer has been a judge or attorney the previous 8 years, unless the citizen refuses to be the presiding officer.

**Section 2.** Section 3-1-1105, MCA, is amended to read:

**"3-1-1105. Confidential proceedings -- some proceedings public -- rules for commission.** (1)  
~~Except as provided in 3-1-1107 and 3-1-1121 through 3-1-1126, all~~ All papers filed with and proceedings before the commission or masters following investigation and a finding of good cause by the commission as provided in 3-1-1106(2) are confidential and the filing of papers with and the testimony given before the commission or masters is privileged communication matters of public record and available for disclosure.

(2) The commission shall make rules for the conduct of its affairs ~~and the enforcement of~~

1 without obtaining a written response from the judicial officer and providing the written response to the citizen.

2 The citizen must be allowed to respond to the written response of the judicial officer.

3 (2) The commission, ~~after~~when an investigation ~~that it considers necessary~~is initiated and upon a  
4 finding of good cause, ~~may~~shall:

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

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

10 (c) request that the supreme court appoint one or more special masters who are judges of courts of  
11 record to hear and take evidence and to report to the commission. The citizen has the right to rebut the report  
12 of the special master.

13 (d) provide the citizen with an opportunity at a hearing before the commission to present rebuttal  
14 testimony and arguments to the commission; and

15 (e) when good cause is found under subsection (2) and the complaint concerns a violation of the oath  
16 of office, the commission may appoint an attorney to prosecute or support the charges against the judicial  
17 officer.

18 (3) Following the investigation and on a finding of good cause by the commission:

19 (a) all documents related to the complaint become public; and

20 (b) if the commission does not find good cause to proceed, all documents related to the complaint  
21 remain confidential.

22 (3)(4) If after a hearing or after considering the record and the report of the masters the commission  
23 finds the charges true, it shall recommend to the supreme court the censure, suspension, removal, or disability  
24 retirement of the judicial officer and notify the citizen.

25 (5) The citizen has the right to investigate any possible bias or partiality of the members of the  
26 commission and the special master and, if there is any perceived or implied bias, to request the commission  
27 member to be recused or disqualified. If a commission member is recused, the remaining members of the  
28 commission shall replace the recused member with a person from the same member category as the member

- 1 (2) the proceedings in which the commission or masters hear the charges against a judge; and  
 2 (3) all transcripts or recordings of proceedings before the commission or masters pertaining to the  
 3 matters described in subsections (1) and (2)."

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 5 **Section 5.** Section 3-1-1122, MCA, is amended to read:

6 **"3-1-1122. Judge's waiver of confidentiality -- hearing**~~Hearing~~ **made public.** In addition to the  
 7 public disclosure required under 3-1-1107, 3-1-1121, and 3-1-1123 through 3-1-1126, the The commission shall  
 8 allow public access to all papers filed with and testimony and hearings before the commission or masters in a  
 9 given case if the judge against whom a complaint has been filed ~~waives the right of confidentiality and requests~~  
 10 in writing that the proceedings be accessible to the public when a complaint was filed with a sworn affidavit  
 11 attesting to the veracity of the complaint. Public disclosure of information required under 3-1-1107, 3-1-1121,  
 12 and 3-1-1123 through 3-1-1126 is not contingent upon a waiver under this section."

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14 **Section 6.** Section 3-1-1123, MCA, is amended to read:

15 **"3-1-1123. Public statements by commission.** In any case in which ~~the subject matter becomes~~  
 16 ~~public, through independent sources or through a waiver of confidentiality by the judge against whom the~~  
 17 ~~complaint has been filed, the~~ there is a finding of good cause under 3-1-1106(2), the commission may issue  
 18 statements as it considers appropriate in order to:

- 19 (1) confirm the pendency of the investigation;  
 20 (2) clarify the procedural aspects of the disciplinary proceedings;  
 21 (3) explain the right of the judge to a fair hearing without prejudgment;  
 22 (4) state that the judge denies the allegations; or  
 23 (5) declare that there is insufficient evidence for a finding of good cause."

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25 **Section 7.** Section 3-1-1124, MCA, is amended to read:

26 **"3-1-1124. Disclosure for judicial selection -- appointment or assignment.** If in connection with  
 27 the selection or appointment of a judge, any state or federal agency seeks information or written materials from  
 28 the commission concerning that judge, information may be divulged ~~in accordance with procedures prescribed~~

1 nature of the disposition, the commission's recommendation, if any, to the supreme court, and the action taken  
2 by the supreme court.

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

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6 NEW SECTION. Section 10. Codification instruction. [Section 1] is intended to be codified as an  
7 integral part of Title 3, chapter 1, part 11, and the provisions of Title 3, chapter 1, part 11, apply to [section 1].

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