

He also explained that this bill included that the commission shall submit a report to the legislature, the governor and the supreme court each year the legislature meets in regular session.

Senator Brown submitted a letter from James L. Schwind, of Helena; (See Exhibit A) and also referred to a letter from Roger B. Porter, 495 15th Avenue South, Great Falls.

Mr. Hal Stearns, representing himself as an individual and also as a lobbyist for the Montana Press Association, gave a statement in support of this bill. He stated that he thinks there is a need for the public to have trust and faith in their agencies and officials of the government and this is very important in the effectiveness of a democracy.

Mr. J. C. Weingartner, representing the State Bar Association in Montana, spoke in opposition to this bill. He stated that, at the present time, the supreme court has sole authority over the members of the bar - they can admit the members and throw them out. He stated that the people say the power should stay in the supreme court. He said that he was opposed to the way that this bill tries to go about it and thought that the constitution would become a hodge-podge of amendments and felt that we are going slowly and surely back to the old ways of amending the constitution. He stated that he had commented with Chief Justice Haswell; and that he had no problem with putting lay people on the commission and wondered why do we have to go to the time and expense of a constitutional amendment when all we have to do is go to the supreme court to take care of this matter.

He further commented that the supreme court has the sole authority to regulate attorneys and he felt that the selection of people on this commission should be as apolitical as possible and that the supreme court is a lot more apolitical than the legislative branch and the executive branch of the government. He felt that this is a question of the separation of powers and this bill would tend to erode away these powers.

He also felt that there is an attorney-client privilege and if the supreme court had to allow the public to inspect all their material that this would violate this attorney-client privilege. He also felt that a resolution could be submitted to the supreme court saying that the committee would like this to be done and let the supreme court do it.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 2, 1979

The twenty-fourth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in room 331 of the capitol building on the above date at 9:35 a.m.

ROLL CALL:

All members were present with the exception of Senator Turnage, who came in later.

CONSIDERATION OF SENATE BILL 211:

Senator Brown gave an explanation of this bill, which is an act to submit to the qualified electors of Montana a constitutional amendment to provide for the statutory creation of a commission on practices, etc. He stated that he was concerned about the image of his profession as he is sure that many lawyers are today. He felt that this legislation would enhance the image and restore confidence in this profession, and it would involve people to a limited extent.

He explained that the commission can recommend private disciplinary action or it can recommend public disciplinary action. He pointed out that Judge Haswell, Chief Justice of the Montana Supreme Court, had processed ninety-one complaints in the first eight months of 1978. He proposed to involve the public by creating a commission on practices consisting of a nine-member board of six lawyers appointed by the supreme court and three members, who are not attorneys and who shall be appointed by the governor.

He noted that today the recommendation is to place lay people on all professional and licensing boards. He also stated that his proposal is consistent with the judicial standards procedure. He also referred to section (4) (a) wherein it allows public inspection of all records concerning any lawyer that the supreme court has publicly disciplined. He said that once a public employee has been disciplined, he felt it is important to have the entire slate before the public so that their questions are answered and maybe in this way, the public will know if the attorney has been cleared on some other charges, etc. He also stated that this does not rule out the ability of the supreme court to act in private and that it still has the option of privacy in disciplining the attorney. He felt that this was consistent with the right-to-know provisions of the state of Montana.

L. Morris Ormseth, president-elect of the state Bar Association of Montana, stated that his position is more of a lawyer who happened to be the president-elect of the bar and said that this is not an official position. He said that the concept of putting lay people on the boards is best expressed by the saying, "Don't have the fox guard the chickens" and he felt that many things that are relevant to lawyers' ethics are just not understood by the public. He gave an example of the Goldman case, wherein he was disbarred for three months for unethical practice because of giving false and misleading medical reports and he felt that the line is not clear when the lawyer is doing the best he can for the client but when doing it unethically that it corrodes the system of justice and he wondered if lay people can be made to understand some of those concepts. He also stated that there is a lawyer in his office who serves on the commission and last year he spent 147 hours and that some have spent more time than he does and with his time figured at what they bill for him an hour it was worth about \$8,000.00.

Francis Gallagher, a member of the Commission on Practices, stated that he agreed with the statements against making this a constitutional amendment and all other things down to having lay people on the commission. He stated that commission members devote a large amount of time on these matters, it involves legal expertise such as a judge would have, that it would like a person who would be able to be a writer of the decisions, he wondered what role they would play in the workings of the commission, that it involved filings of actions, interpretation of law and court and also ethics. He stated that a lay person may not understand rules and concepts of confidentiality, and he would not mind trying this operating with less people on it.

He further said that he felt that the provision in the bill that requires that the entire file of a public disciplinary action should be opened to the public is a terrible mistake; and he felt that the reputations of totally innocent people could be totally damaged. He further stated that the commission handles its cases much more expeditiously than it has in the past, he felt that the bill was bad, the supreme court is willing to try out the lay people idea, that the other parts of the bill are so subject to abuse and that they do not think the way to go is by a constitutional amendment.

Greg Morgan, Chairman of the Board of the Bar Association and also representing himself as a private lawyer, gave

a statement opposing this bill. He said that a bill like this is politically popular and he thought it was wrong for these kinds of issues to be legislated. He felt that the supreme court is not unresponsive to these things.

Senator Brown gave a closing statement in which he said that he would have to disagree with a lot of the arguments. He said the legislative review only comes into play after disciplinary action has been taken. He also stated that a resolution does not have the same effect as a law and is not binding on the supreme court. He noted that in the matter of lay people being on the commission that at first the bar was totally opposed to it and now they are lukewarm because this bill was introduced. In regards to their argument of lay people not being able to understand, he commented that the whole concept of our society is using lay people - juries, etc., - and that lay people are perfectly able to make these kinds of judgments.

There was no further discussion and the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 232:

This is an act to submit to the qualified electors of Montana an amendment to Article VII, Section 11, of the Montana Constitution to require that certain documents of the Judicial Standards Commission be available for public inspection, etc.

Senator Brown gave an explanation of this bill. He stated that the commission was established by law to recommend disciplinary actions against judges.

There were no further proponents and no opponents.

J. C. Weingartner, representing the State Bar Association of Montana, gave a statement opposing this bill for the same reasons as he did in Senate Bill 211.

There were no further opponents. Questions or comments were requested on either bill.

Senator Towe questioned if he intended for all of the commission's reports and transcriptions to be included. Senator Brown responded yes, everything that was finally disposed of, and he stated that in the workmen's compensation act the rumors were running rampant and he felt that the record should be cleared.

Senator Van Valkenburg commented that in connection with discipline of a public official, a judge is an elected official who undertakes a responsibility in the course of doing that function for the public and that he thinks this is entirely different than someone pursuing an occupation.

J. C. Weingartner commented that they should scale down what has to be disclosed and Senator Van Valkenburg stated why should anything not be disclosed about a public official who is not doing his job properly. J. C. Weingartner commented what about something that is suspicious or someone who is trying to figure out how they are going to get that guy.

Senator O'Hara questioned as to how many received public or private disciplinary actions last year. Mr. Gallagher said that he would have to guess, but last year in 1978, they probably censored two publicly, several had private censures, several admonitions and he did not think there were any disciplinary actions.

Mr. Gallagher stated that he had just gone to the supreme court office and told them he wanted to see the reports on the Goldman matter - what would they give me of the entire transcript, etc., - and they gave him a file from 12 to 18 inches thick.

Senator Towe questioned what about the attorneys - are they informed when a complaint is filed against them and how much is available to them.

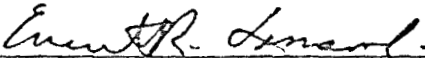
Mr. Gallagher stated that the procedure has developed now when a complaint is filed against a lawyer, a copy of the complaint is mailed to him, they ask the lawyer if he will permit them to furnish a copy of his response to the complaint, and if that satisfies the complainant, that ends the case. If it does not, it is referred to a grievance committee and they get a report back from them and send a letter stating that a formal complaint has been filed and ultimately there is a hearing.

Senator Galt questioned Senator Brown as to whether he is convinced that they have to have a constitutional amendment or could it be handled otherwise. Senator Brown stated that if they would open it up, that would be fine; if they want to confirm that it will be done, he felt they would have to go with the bill.

Minutes - February 2, 1979
Senate Judiciary Committee
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There was no further discussion on the bill and the hearing was closed.

There being no further business, the meeting adjourned at 11:28 a.m.



SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 2/2/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Please note bill no.

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPOSE
Jervis DeLoach	Comm on Practices	211		X
Ken Rutter	Senate Aide	211-232	X	
Karlson / Roe	Myself			
S. Morris Ormseth	STATE BAR	211		X
Greg Morgan	State Bar	211-232		X
Mike Abley	Supreme Court	211-232		
J. Q. WENGER	state bar			X
Harold A Stegner	Mont Press Assoc		X	
John McLeod	Mont Coalition of Ag. Soc.			

Bill Summary for Friday Feb. 2
SB 211 and 232

SB 211. Amend Article VII, section 2 of the Montana Constitution -
Supreme Court jurisdiction

current law - Article VII, section 2 of the Montana Constitution gives the supreme court the power to make rules governing admission to the bar and conduct of attorneys. Under this authority, the supreme court adopted a rule in 1965 establishing a commission on practice. This commission is made up solely of attorneys elected from each district by the attorneys in the district. The commission investigates complaints about attorneys. Proceedings by the commission are confidential unless and until disciplinary proceedings are begun in court. Under 37-61-301, the supreme court has the exclusive jurisdiction to remove or suspend attorneys.

proposed bill - provides for a constitutional amendment to be submitted to the voters which would create a new section 12 to Article VII, section 2, giving the legislature power to appoint a commission on practice.

Section 1. amend Article VII, section 2(3)

proposed bill - would make the supreme court's power subject to new section 12.

Section 2. new section 12. Discipline of attorneys.

proposed bill - directs the legislature to create a commission on practice made up of 6 attorneys appointed by the supreme court and 3 non-attorneys appointed by the governor, all appointments must be confirmed by the senate. The commission would have authority to investigate complaints and make rules. The commission could make recommendations to the supreme court for discipline of attorneys, including disbarment, suspension, and censure. The supreme court would have the discretion to take disciplinary action upon recommendation of the commission. Proceedings of the commission would be confidential except when an attorney is publicly disciplined by the supreme court. The commission would make biennial reports to the legislature, governor and supreme court; such reports could not reveal information about any proceeding that did not result in public discipline by the supreme court.

Section 3. New Effective date - Jan. 1, 1981.

Section 4. New Submission to electors.
Sections (1) and (2) are to be submitted to the electors in the general election to be held November 4, 1980.

SB 232. Amend Article VII, section 11 of the Montana Constitution -
the judiciary - removal and discipline.

Section 1. Amend Article VII, section 11 of the Montana Constitution

current law - under the current section 11, the legislature can create a judicial standards commission to investigate complaints about judges, make rules, and recommend discipline; commission proceedings are to be kept confidential.

proposed bill - provides that all appointments to the commission must be confirmed by the senate; deletes the language making commission proceedings confidential and adds new language which provides that proceedings will be confidential except when the supreme court retires or disciplines a judge, in which case, the commission's transcripts and documents concerning that judge shall be made available for public inspection; requires the commission to make biennial reports to the legislature, governor, and supreme court, such reports cannot reveal information of proceedings that did not result in disciplinary action.

Section 2. New.

Effective date - Jan. 1, 1981.

Section 3. New.

Submission to electors.

Proposed constitutional amendment to be submitted to the voters at the general election to be held in November, 1980.

(ACB)

1916 Wilder

Helena Montana 59601

January 25, 1979

Dear Steve,

I wanted to write you about my experience with the Commission on Practice. I filed a notarized complaint about several lawyers and judges in 1975 and so far they haven't taken any action to my knowledge. Patrick Hooks, Tom Hounsome, the secretary for the commission told him, and I approached him on several occasions about this. He said they can't. He gave me the run around each time. He told me the only way to get help with the Workers' Compensation board. Workers' Health and Safety Commission. If the Commission hasn't taken any action by now, they would be a Wiley complaint in 411-13.

Another thing I want to tell you about that I think affects the Commission is the press. I think the press is a large factor in what the Commission investigates. I think you will agree, Steve, that if a story takes front page news, the Commission will investigate it. In, they never listened to. Steve, I think you've heard some stories from people who got the shaft and no body listened to them. To those people the Commission may be their last hope. So, Steve, full speed ahead on 38122.

Yours truly,

James L. Schwind

Exhibit A

(#20)

Senator Steve Brown
Montana State Senate
State Capitol Building
Helena, Mont. 59601

Jan. 17, 1979

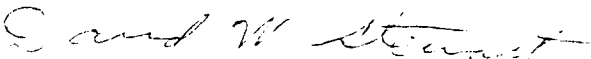
Dear Steve,

Thank you for sending the draft of the two bills to me regarding the Commission on Practice and Judicial Standards Commission. I have reviewed them and I have some thoughts I would like to share with you.

Regarding the appointment of laymen to both commissions. Perhaps it may be desirable to add that they do not serve at the pleasure of either the Governor or Senate or perhaps simply not at the pleasure of the Governor. This would effectively remove them from politics.

I am also afraid that you won't accomplish your objective by leaving the authority to discipline Attorneys with the Supreme Court. If this authority were vested in the commission on practice, the Attorney would still have the right to appeal to the court if he thought it right to do so. The people too would have a direct voice in the enforcement of the Code of Professional Conduct. Since the proceedings are confidential, the laymen could be muzzled and buried by a 6 to 3 vote on all complaints more easily if procedures are left as they are now. The Supreme Court says it is overburdened with work, this would remove some of their caseload. On appeal, an Attorney from the commission on practice could defend the commissions action.

Thank you for your time Steve and I look forward to attending the hearings.



David W. Stewart
2315 National Ave.
Helena, Mont. 59601

PROPOSED AMENDMENTS TO S.B. 211

Section 2 Strike "Governor", and add "Supreme Court".
Line 15

Line 15 & Strike: "All appointees shall be subject to confirmation by
16, Page 2 the Senate."

Line 1, (a) When the Supreme Court publicly disciplines an attorney, all
Page 3 of the Commission's transcripts of official proceedings and recom-
mended decision of the Commission concerning that attorney shall
be available for public inspection. The Commission shall assure
that the attorney-client privilege is preserved and shall not dis-
close the names of any complaintants that have communicated with
the Commission. Only that material directly relating to the charge
or charges on which the Supreme Court takes action can be made
public.

