

MINUTES OF THE JUDICIARY COMMITTEE
March 1, 1983

The meeting of the House Judiciary Committee was called to order by Chairman Dave Brown in room 224A of the Capitol building, Helena, Montana at 9:00 a.m. All members were present with the exception of Representative Eudaily, who was excused, and Representative Ramirez.

SENATE BILL 326

SENATOR CHET BLAYLOCK, District 35, said that this bill was a proposed change in the constitution and he was a member of the constitutional convention and felt they had written a perfect document, but now he wants to change it. He testified that this bill would submit to the voters of Montana an amendment to the constitution that would allow the Montana Supreme Court to discipline a justice or a judge for violation of canons of judicial ethics. He submitted to the committee copies of the Biennial Report of the Judicial Standards Commission to the 1983 Legislative Assembly. See EXHIBIT A. He explained to the committee that this bill came about because of the Shea case and he feels that judges are among the most powerful people in our society, they should be in a position where they render fair, impartial decisions according to the law but that there should be a better way to discipline a judge when he is truly out of line.

STEVE BROWN, a former Senator, emphasized that he was appearing in support of this bill on his own behalf; even though he was a lobbyist for the Montana Judges Association, they had not taken a position on this bill. He indicated that he was concerned about the impact of the Shea case on the ability of the judicial system to do its job, and he said that the judges were about three to one in favor of this bill. He stated that the supreme court probably correctly interpreted the constitutional provision in the law in the Shea case and he felt that the supreme court was correct in ruling that a judge should not be charged with judicial misconduct because of what he says in an opinion.

There were no further proponents and no opponents.

SENATOR BLAYLOCK said that he wanted to point out to the committee that they had 29 votes in favor of this bill in the Senate.

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REPRESENTATIVE HANNAH wondered if this was a bill of fare for the judicial standards commission and if they are not just a paper tiger. MR. BROWN responded no, they are not out to hold any judges up to public ridicule, but without this bill, the only complaints they could consider would be those that really constitute willful misconduct. He testified that the ethical violations could not even be considered by the commission.

REPRESENTATIVE BERGENE requested that she be given some more information concerning the Shea case. MR. BROWN responded that this was a case that unfortunately got wrapped up in personalities and he stated that, quite frankly, the commission was not without blame on how they handled it. He explained that it involved allegations concerning a portion of the opinion that Justice Shea wrote in the McKenzie decision, in which he accused the majority of intellectual dishonesty (Slippery use of the facts) and there was an allegation that he was involved in the parking ticket affair in Missoula - that it was not his wife who was driving the car and it really got down to some basic clashes. He told the committee that the complaint was filed by an ex-district judge over in Missoula, who did not like Justice Shea. He said that the court determined that the commission had no power to expand the grounds on judging misconduct, and the end result was that the court determined that these complaints really did not deal with willful misconduct or having to do with abuse of his office and the commission had no power to investigate the things that might relate to ethical violations.

REPRESENTATIVE CURTISS said that one of the recommendations was that the commission members be permitted to attend some seminars and she wondered why there was nothing providing reimbursement. MR. BROWN replied that that would have to be done through the budget process.

CHAIRMAN DAVE BROWN wondered why the Senate only had 29 votes on this. SENATOR BLAYLOCK answered that Senator Turnage had concerns about the way this should be done, and when he expresses doubt, he takes away a lot of votes.

CHAIRMAN DAVE BROWN wondered if he felt that this was a reasonable objection. SENATOR BLAYLOCK replied that there are a lot of people who are worried that the judicial standards commission will go too far and become a witch-hunting group. He stated that he did not feel that fear because of all of the proceedings

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are confidential until those things are turned over to the supreme court and it is only at that point where there is a hearing and the supreme court makes the final determination as to what is going to be done to that judge. He continued that if we do not have this, there is no way of really touching a judge.

MR. BROWN expanded saying that he felt this was a basic issue here and that if Senator Turnage did not want to depart from the supreme court interpretation of the constitution, he would prefer to have judges only disciplined for willful misconduct.

REPRESENTATIVE DAILY asked MR. BROWN if he felt that this goes back to the old adage, "Never vote against the judges." MR. BROWN replied if you vote for their judicial retirement and their salary increases, you can vote against them occasionally.

REPRESENTATIVE ADDY noted that on page 4 of the biennial report that it points out that the court's decision removes the canon of judicial ethics from the commission's purview, and then the commission does not take any position at all and he wondered if they knew where the commission is on this proposal. MR. BROWN explained that the commission's feeling was that they should not attempt to influence in any way what the Legislature does, because as soon as they start doing that, the commission loses its independence as an investigative body.

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

EXECUTIVE SESSION

SENATE BILL 326

REPRESENTATIVE KEYSER moved that the bill DO PASS. The motion was seconded by REPRESENTATIVE IVERSON. MS. DESMOND offered an amendment to this bill and explained the reason for this amendment. See EXHIBIT B.

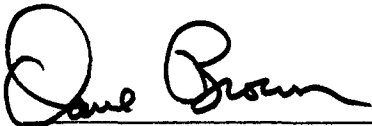
REPRESENTATIVE CURTISS moved the adoption of the amendments. REPRESENTATIVE DAILY seconded the motion. The motion carried unanimously.

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REPRESENTATIVE KEYSER moved that the bill DO PASS AS AMENDED. The motion was seconded by REPRESENTATIVE IVERSON. The motion carried with REPRESENTATIVE DAILY voting no.

CHAIRMAN BROWN informed the committee that on Monday, March 7, they will have an opportunity to tour the new justice building and to review the judicial system.

There being no further business, the meeting adjourned at 9:34 a.m.



DAVE BROWN, Chairman



Alice Omang, Secretary

STANDING COMMITTEE REPORT

March 1, 1983

MR. **SPEAKER:**

We, your committee on **JUDICIARY**

having had under consideration **SENATE** Bill No. **326**

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A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 11, OF THE MONTANA CONSTITUTION TO ALLOW THE MONTANA SUPREME COURT TO DISCIPLINE A JUSTICE OR JUDGE FOR VIOLATION OF CANONS OF JUDICIAL ETHICS ADOPTED BY THE COURT."

Respectfully report as follows: That **SENATE** Bill No. **326**

BE AMENDED AS FOLLOWS:

1. Page 2, following line 23.

Insert: "Section 4. Coordination Instruction. If HB 629 introduced in the 48th Legislature is passed and approved, the date 'November 8, 1983', in sections 2 and 3 of this act is changed to 'November 6, 1984'."

~~DO PASS~~

AND AS AMENDED
BE CONCURRED IN

STATE PUB. CO.
Helena, Mont.

DAVE BROWN,

Chairman.

COMMITTEE SECRETARY

2nd
1 Lawyer

SB326
3/1/83

BIENNIAL REPORT OF THE JUDICIAL STANDARDS COMMISSION TO
THE 1983 LEGISLATIVE ASSEMBLY

By: A. B. Martin, Chairman

In compliance with Section 3-1-1126, M.C.A., the
Judicial Standards Commission renders its report concerning
eighteen (18) complaints submitted to the commission for
the years 1981 and 1982, and one (1) complaint pending
prior to that period.

Also included is a summation of the reported com-
plaints and a paper entitled "Problem Areas of the Commission."

Summary of Biennial Report

Number of Complaints docketed	18
Complaints pending January 1, 1981	<u>1</u>
	19
Number of verified complaints	8
Number of unverified complaints	<u>11</u>
	19
Number of complaints dismissed	16
Number of complaints pending further inquiry or under advisement	<u>3</u>
	19
Number of complaints against Justices of Supreme Court	2
District Judges	11
Justice of Peace or City Court Judges	<u>6</u>
	19
Number of judges against whom more than one complaint filed	2

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Commission Members

Hon. Arthur B. Martin - Miles City, Montana
Hon. Leonard Langen - Glasgow, Montana
Jean R. Anderson - Billings, Montana
Mel Ruder - Columbia Falls, Montana
Victor Valgenti - Missoula, Montana

1 Problem Areas of the Commission

2 The Constitution of Montana, Article VII, Section 11,
3 provides that the judicial standards commission shall in-
4 vestigate complaints and make rules implementing the
5 commission's functions. It further provides that upon
6 recommendation of the commission, the Supreme Court may
7 censure, suspend or remove any justice or judge for willful
8 misconduct in office, willful and persistent failure to
9 perform his duties, or habitual intemperance.

11 Section 3-1-1106, M.C.A. provides that the commission
12 or any citizen of the state may, upon good cause shown,
13 initiate an investigation of any judicial officer by filing
14 a verified complaint with the commission.

16 In the case of State ex rel Shea vs the Judicial
17 Standards Commission, 643 P2 210, decided by the Supreme
18 Court, March 18, 1982, it is held that a verified complaint
19 is a prerequisite for initiation of an investigation by the
20 Judicial Standards Commission. The Supreme Court decision
21 is based upon the language of Section 3-1-1106, M.C.A.,
22 supra.

24 A rule adopted by the commission provides that the
25 commission might initiate an investigation on its own motion
26 but Section 3-1-1106, as interpreted by the Court, prohibits
27 this unless the commission first files a verified complaint
28 showing good cause, which it cannot do without making a
29 preliminary investigation. The commission's rule 8(b) is
30 therefore nullified.)

32 The result is that a procedural rule within the

1 constitutional power of the commission to adopt is over-
2 thrown by the legislative rule contained in Section
3 3-1-1106, M.C.A.

4 There is a question if the legislature actually in-
5 tended to interfere with commission procedure. This is
6 evidenced by the enactment in 1981 of Section 3-1-1106,
7 M.C.A. providing in substance that the commission report to
8 the legislature the number, nature and disposition of un-
9 verified complaints. This section implies that the commission
10 give consideration to unverified complaints. To give that
11 consideration requires some investigation.

12
13 The commission is between the proverbial rock and the
14 hard spot. By Section 3-1-1126, M.C.A. the legislature asks
15 for an investigation of unverified complaints but by Section
16 3-1-1106, M.C.A., it prohibits an investigation of unverified
17 complaints.

18
19 There are valid reasons for verification of complaints
20 and that requirement should not be totally abrogated, but
21 consideration should be given to the rules of the commission
22 providing for due process, notice and showing of good cause,
23 the underlying reasons for verification. (See Rules 9 and
24 10) The commission is a ~~very~~ unique body, possessing a
25 combination of investigative, prosecutorial and adjudicative
26 functions. To separate these functions, rules must be
27 carefully framed to insure due process. Ignoring the rules
28 or interference with their application exacerbates the tasks
29 assigned the commission.

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32 Another matter of which the legislature should be

1 aware is that the Supreme Court in Shea (supra) held that
2 "conduct prejudicial to the administration of justice that
3 brings the judicial office into disrespect" is not a ground
4 for judicial discipline. The court held that the consti-
5 tutional ground of "willful misconduct in office" does not
6 embrace the aforesaid standard which had been incorporated
7 in the rules of the commission.
8

9 The court's decision removes from the purview of the
10 commission violations of the canons of judicial ethics
11 and off-bench misconduct that unfavorably reflects upon the
12 judiciary. The commission does not take a position with
13 this aspect of the court's decision.
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15 The foregoing report demonstrates that the commission,
16 the legislature and the courts are struggling in an uncharted
17 area of the law. The Montana Commission consists of two
18 district judges, one attorney and two lay persons, serving
19 staggered terms of four years. The commission has no staff
20 to provide expertise or administrative assistance. All
21 background work, administrative and legal, devolves upon the
22 chairman who by rule must be one of the judge members.
23

24 When new members come to the board they have no
25 knowledge of the problems peculiar to the commission's
26 functions. For that reason the Montana Commission became
27 a member of The Center for Judicial Conduct Organizations, at
28 an annual membership fee of \$1,000.00, ~~which was~~. This organi-
29 zation was created under sponsorship of the American
30 Judicature Society to provide educational guidance. The
31 Center regularly provides members with information concerning
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1 the work of other states in the area of judicial discipline.

2 One valuable service of the Center is national and
3 regional seminars. I consider it important that the State
4 of Montana afford the members of the commission the
5 opportunity to attend some of these seminars without cost
6 to the members. Commission members serve without compensa-
7 tion but are reimbursed for expenses on a per diem rate
8 fixed by law, which from my experience falls considerably
9 short of actual expenses. Reimbursement of actual expenses
10 would be an encouragement for members to attend.
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12 Respectfully submitted,

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15 A. B. MARTIN, Chairman
16 Judicial Standards Commission
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Exhibit B
SB 326
3-1-83

Proposed Amendment to SB 326

1. Page 2, following line 23.

Insert: "Section 4. Coordination Instruction. If HB 629 introduced in the 48th Legislature is passed and approved, the date 'November 8, 1983', in sections 2 and 3 of this act is changed to 'November 6, 1984'."