MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

March 21, 1985

The fifty-fourth meeting of the Senate Judiciary Committee was called to order at 10:07 a.m. on March 21, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present.

CONSIDERATION OF HB 609: Representative Jack Ramirez, sponsor of HB 609, testified this bill does not require a whole lot of concern. The National Commission on Uniform Laws recommended this legislation regarding durable powers of attorneys. We have the law on the books already. It is a very important law. This will save the expense of people who have relatives who become incapacitated. With a durable power of attorney, they are able to deal without the tremendous expense of a conservatorship.

PROPONENTS: Doug Olson, of the State of Montana Seniors' Office, presented written testimony in support of the bill (Exhibit 1).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: Representative Ramirez stated he had some written material from the Commission of Uniform Laws if anyone wanted to see it.

Hearing on HB 609 was closed.

ACTION ON HB 609: Senator Pinsoneault moved HB 609 be recommended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HB 541: Representative Paula Darko, sponsor of HB 541, testified this bill was submitted at the request of several district court judges (see correspondence regarding bill request, Exhibit 2). What this bill says is any person who multiplies legal proceedings is responsible for the payment of costs. There were questions in the House committee that the court would invoke this reprimand. There is some federal case law cited in the material provided to the committee.

PROPONENTS: None.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 541 was closed.

CONSIDERATION OF HB 594: Representative John Cobb, sponsor of HB 594, testified this is a simple bill. There is a gap in the law. There is no notice requirement here. This came out of the Landlord-Tenant Act. He gave this to the Department of Natural Resources and Conservation before he filed it, and they said they didn't have any problems with the bill.

PROPONENTS: Alan Eck, representing Montana Farm Bureau Federation, presented written testimony in support of the bill (Exhibit 3).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 594 was closed.

CONSIDERATION OF HB 622: Representative Bob Thoft, sponsor of HB 622, testified this is called the bad check bill. Under present law, if a person purchases goods or services and gives that person a check and the check is no good, it is considered a bad check. However, if that person puts those goods on an account and gives the person a bad check as payment on the account, it is not considered a bad check.

PROPONENTS: Riley Johnson, representing the National Federation of Independent Business, testified they feel this bill is a good companion to the bad check in a civil action, but it only provided for the civil remedy for the goods and services. This would provide a second alternative for larger checks and payments on account. It would help the small businesses that have to carry these accounts. Don Ingels, on behalf of Lake Milling Inc. in Hamilton, presented written testimony in support of the bill (Exhibit 4).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Blaylock asked if they come in and give a check that does not have sufficient funds to cover it, but they have taken the goods because they are on account, would this apply?

Mr. Johnson replied its on the account. You can take action on the customer in court for non-collection of account, but not for a bad check.

CLOSING STATEMENT: None.

Hearing on HB 622 was closed.

CONSIDERATION OF HJR 37: Representative Tom Hannah, sponsor of HJR 37, testified he introduced this resolution at the request of the House Judiciary Committee. The resolution arose out of a frustration they had trying to deal with a bill by Representative Bradley that dealt with videotaping children and whether that evidence could be used in trial. They could not resolve the question of the rights of the accused which say the accused has the right to confront those that are accusing him. There are rules of evidence that deal with that. They killed Representative Bradley's bill which would have allowed for the videotaping of sexually abused children and brought forth this resolution to request that the supreme court do a study and research the rules of evidence and, in particular, this instance.

PROPONENTS: None.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe stated the only thing he is a little nervous about is page 3, lines 17-18. In effect you are saying if the supreme court believes the present hearsay rules can be amended, that the court be urgently requested to adopt such amendments. The legislature is thereby taking a firm position that they need to be amended. Representative Hannah replied the whereas and wherefore clauses explain what they recommend be done. The committee felt strongly about the issue before them. They felt it was a very important issue. Senator Towe stated his concern was not that the language was too strong, but wanted to know what part of them they wanted to amend. Representative Hannah replied just so videotapes could be used. Senator Mazurek asked if he would object if they made the request of the supreme court's commission on evidence. Representative Hannah replied no.

CLOSING STATEMENT: None.

Hearing on HJR 37 was closed.

CONSIDERATION OF HB 809: Representative Harry Fritz, sponsor of HB 809, testified he hopes this bill saves the state $2,000-3,000. This stems from a situation 10 years ago during the workmen's compensation problem

saying the state will cover the cost of some trials. The law sat dormant, but recently some of the public defenders started to bill the state for some costs despite their fund in their own county. The bill was properly amended in the House to cover when the state itself incurs these expenses.

PROPONENTS: Kim Kradolfer, Assistant Attorney General, representing the Montana Highway Patrol, testified they became aware of this when they started getting bills. With no exceptions, all of the payments have been made to the Lake County public defenders. The state has no part in these defenses. They amended this statute to provide the state agency causing that arrest would incur the defense costs. That is not okay when you are not involved. They want to only pay the costs when they are prosecuting the cases and can scrutinize what is going on. There is no real way for them to stay on top of it when they are not out there prosecuting.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe asked what kind of cases would be covered by the amendment. It says if the agency is still prosecuting, then the same thing still applies. Ms. Kradolfer replied it would be along the lines of a workers' compensation case. It would be prosecuted through their office. Senator Towe asked if it would be used very often. Ms. Kradolfer replied no; she did not think it was originally intended to be used very often. Senator Towe asked who paid for these defense costs for Fish, Wildlife and Parks prosecutions in other counties. Ms. Kradolfer responded generally, it just goes to the public defender.

CLOSING STATEMENT: Representative Fritz said the department is not trying to avoid legitimate expenses, but it should have control over its budget.

Hearing on HB 809 was closed.

ACTION ON HB 809: Senator Daniels moved HB 809 be recommended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HB 840: Representative Marian Hanson, sponsor of HB 840, testified this is already on the books. It puts in a penalty of $250. All counties have not been good about releasing their records at the courthouse.

PROPONENTS: Senator Larry Tveit testified the reason for the penalty is what happens when oil brokers lease the land is they can drop portions of the lease or the whole lease and not take it off the record. The

property sits their leased, and it is up to the mineral holder to go and see if it is off record. He thinks this would clear it up and get them to release that record. They would then be able to re-lease the property.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HB 840 was closed.

CONSIDERATION OF HB 722: Representative Jerry Nisbet, sponsor of HB 722, testified this bill was introduced at the request of a member of the city advisory committee working with the City of Great Falls which is in the process of acquiring a public access channel. There was a question which came up regarding liability. This bill extends the same liability for radio broadcasters and includes television stations in that.

PROPONENTS: Jerry Loendorf, representing Montana Broadcasters Association, testified this bill extends the same immunity to television broadcasters that radio broadcasters have had for years.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Towe stated he is nervous about how this is constructed. Obviously the concern is a valid one. If you are required by FCC rules to grant equal time to somebody, you don't have time to clear in advance what is being said. What if a television station specifically intends to bring in an issue which they have a pretty good reason to believe will involve some libelous or inflammatory statements? Should we let them off the hook altogether? Mr. Loendorf replied he didn't think there was a total absence of protection. The question raised is whether that factual situation constitutes malice. You have to look at all of the facts. The converse of that is to go the other way. Then you limit the full discussion of issues which seemed to him to be of greater detriment. He didn't think this particular bill was really different than the constitutional requirement. Senator Towe stated on page 2, it says nothing contained herein relieves the individual owner from liability under the law of defamation on account of any transmission. Mr. Loendorf responded if he makes a defammatory statement himself or if any of his employees make it he is on the hook. Senator Towe asked how that would apply to the General Westmoreland case. Mr. Loendorf replied he did not follow that too closely. Senator Towe explained the station interviewed a bunch of people, but there was

a theme to their interview. They just put them all together so that the total picture looked bad for General Westmoreland. Mr. Loendorf stated all he had to do was show malice. Senator Towe asked if we should preclude somebody who has been defamed. Mr. Loendorf responded we have always done that with respect to radio broadcasters. Senator Towe stated that is a pretty significant exception to the defamation statute. With television, you can splice things together. Senator Towe stated he is not sure it's good for radio, but he has even more concerns with television. Mr. Loendorf responded that possibility is there, and there is nothing he can do to remove it. It is better to allow free speech than to put clamps on them that would be less than a showing of malice.

CLOSING STATEMENT: None.

Hearing on HB 722 was closed.

ACTION ON HB 310: Proposed amendments were distributed to the committee (Exhibit 5). Mr. Petesch explained the change from yesterday is in amendment No. 4, and this provides that the order would be immediately reviewable by the judge at chambers, and any case in which an order has been issued would be removable on filing of a notice of appeal. Senator Mazurek stated the effect would be to reinsert the justices of the peace. Senator Towe thought that was great. Now it makes good sense, addresses the question, and gives adequate protection. Now, you can show up in the district judge's chambers and have authority to do something. Senator Mazurek asked if they saw a potential for abuse here. One side will use this to gain an advantage in the custody problem. Senator Towe responded that is what worries him about throwing this on the justices of the peace who have no conception about this type of things but now you can go to the district court. Senator Daniels stated that should be confined to where there is real physical abuse. Senator Mazurek wondered if threat should be taken out. Senator Towe agreed. Senator Blaylock stated speaking as a non-lawyer, if it is a really big guy and he is threatening to beat up a small woman, that could be pretty frightening. Senator Mazurek asked if we were going to give a restraining order when there is a mere threat. Senator Towe agreed with Senator Mazurek. In the situation where a party is about to get divorced and the wife decides she is going to get the kids so she figures all she has to do is get the justice of the peace to give her an order keeping him out of the house and then he will be so happy to get that taken care of, he will be willing to bargain. She won't let him in for his belongings until he agrees to give her custody of the kids. Senator Pinsoneault commented there are too many lawyers around the committee table. What we are basically saying is if you come in with a black eye and a bleeding nose, there is no question a restraining order is appropriate. Maybe what they are suggesting is a possibility. The

justice of the peace knows these fellows and knows what has been going on. He is going to use commonsense. He does not believe the justices of the peace will issue restraining orders arbitrarily. After the damage is done, it's done, so you don't need a restraining order. Senator Yellowtail agreed with Senator Pinsoneault that performance is worth the consideration. In the case just described, if you place the language in about the district judges, any disadvantage has been overturned. Senator Towe stated on the other side of the coin, you might have someone who is threatened each time the guy comes home but she can't produce any bruises. Senator Yellowtail moved adoption of the amendments. The motion carried with Senator Mazurek voting in opposition. Senator Pinsoneault asked if it went too far. Senator Daniels thought it went pretty far. It provides a method of abusing it, but like Senator Pinsoneault says, you have the justices of the peace who know these things. Senator Mazurek commented that might be true in small areas, but not in large areas like Helena. Senator Towe moved HB 310 be amended as follows:

Page 5, lines 3 and 4.
Following: "INJURY" on line 3
Strike: remainder of line 3 through "INJURY" on line 4

Senator Yellowtail asked if by doing that we say the individual must actually suffer abuse for a temporary restraining order to be issued, and if that is the case, he does not think it is conscionable. Senator Mazurek pointed out that is the law now. Senator Yellowtail responded then we should correct the situation. Senator Brown stated this bill includes the justices of the peace now where the existing law doesn't. Maybe this is something that ought to be addressed on its merits in a separate piece of legislation. Are you extending some further jurisdiction in the small areas? When you get into threat, you are giving them more things to worry about. Senator Yellowtail stated he had difficulty separating the issue. The issues are one and the same. This bill hopes to prevent actual abuse. Senator Mazurek stated it was presented because someone needs immediate attention. Evidence of someone's having been beaten in the past should not mean anything. Senator Towe stated the people who come in are generally scared to death because their husbands have threatened to use a weapon, but they are just terrified. Senator Pinsoneault stated he could see a situation where a judge has a distraught spouse and says my husband has threatened to kill me if something isn't done. He may get some input from the other spouse. Senator Mazurek reminded the committee of Senator Regan's bill where we have situations where arrests can take place in the household. You couldn't get a restraining order on the basis of a threat, but you can call the sheriff to make an arrest. The motion to amend carried with Senators Pinsoneault, Shaw, and Yellowtail voting in

opposition. Senator Towe moved HB 310 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 781: Senator Daniels moved HB 781 be recommended BE NOT CONCURRED IN. He reasoning was these are misdemeanors, and you can't carry these things on forever. They are not felonies. If the prosecution and the judge don't get along, that is tough. Senator Pinsoneault stated not all of our justices of the peace have legal training, and the state should have a right to appeal from the decision, and he doesn't have that much problem. The motion failed (see roll call vote attached as Exhibit 6). Senator Pinsoneault moved HB 781 be recommended BE CONCURRED IN. The motion carried (see roll call vote attached as Exhibit 7).

ACTION ON HB 476: Senator Blaylock stated the argument was to get these out of the district court because the judge is already too busy and district judges are too light on third offense DUIs. Senator Daniels moved HB 476 be recommended BE CONCURRED IN. The motion carried with Senator Crippen moving in opposition.

ACTION ON HB 341: A proposed amendment was distributed to the committee (Exhibit 8). Senator Towe moved adoption of the amendment. Mr. Petesch explained this would require a fraudulent intent to defeat the lien or to defraud the payee of the check. Senator Towe stated his concern was when there is no good faith dispute, it does not cover all of the amendments, the the amendment covers it. The motion carried unanimously. Senator Daniels moved HB 341 be recommended BE NOT CONCURRED IN AS AMENDED. He thought you were just throwing a lot of things on a county attorney. He has enough to do without all of the commercial transactions. Senator Mazurek stated the idea is to take it off the county attorney and make it a civil offense. Senator Blaylock moved as a substitute motion that HB 341 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senators Daniels and Shaw voting in opposition.

ACTION ON HB 579: Senator Towe stated there was discussion about what confirmation means on page 2. Senator Mazurek responded they were trying to eliminate the necessity of a confirmation in every instance. Senator Towe stated he was anxious we have something to show that if they do it by telephone, they have something in the file to go back to. Senator Mazurek commented that would be appropriate for rules. Senator Daniels moved HB 579 be amended as follows:

Statement of Intent.
Page 1, line 18.
Following: line 17

Insert: "(1) adoption of a procedure requiring a written statement signed by an authorized person from the community mental health center either before or at the time the confirmation is obtained;"
Renumber: subsequent subsections

The motion carried unanimously. Senator Towe moved HB 579 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 340: Proposed amendments were distributed to the committee (Exhibit 9). Senator Mazurek stated these amendments would allow the landlord to collect storage costs or damage to the premises and to deduct those before the tenant takes the property. Senator Pinsoneault moved adoption of the amendments. Senator Towe asked how we solved the problem about abandoned property. How can it be abandoned when he really wants it, but he can't get it because the storage costs are too high? Mr. Petesch responded he has to respond within 15 days, but if he doesn't, you have to presume he has abandoned. Senator Pinsoneault pointed out that is all the leverage he has. Senator Towe stated it is covered, because he only has to respond that he intends to remove it, but he does not have to remove it and pay the storage costs. The motion carried unanimously. Senator Pinsoneault moved HB 340 be recommended BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON HB 507: Senator Shaw moved HB 507 be recommended BE CONCURRED IN. Senator Towe stated he has some real problem understanding how anyone can seriously inject the idea it is a plain and simple discrimination. They can defend the theory a woman is different in physical makeup and live longer, but someday someone will come up with another argument proving it is lifestyle and not genetics. The argument we heard here is not a lot different than what we heard years ago about rape. If we can carve out a group of people that will live longer and get them cheaper insurance rates, then we ought to carve out Indians and blacks and Quakers. Senator Crippen stated we can be here all morning and all afternoon. Senator Towe sees this as the basis of an intentional discrimination, and it is not. If you follow your logic to its conclusion, then why discriminate between a person age 52 and age 53 in insurance. Why shouldn't they have the same rates? Senator Pinsoneault stated we put this law in place, and we come in two years later and turn it around. Was it voted in unanimously last time? Senator Towe stated it was close then. Senator Crippen pointed out it was very, very close. Senator Towe stated the reason we don't discriminate on the basis of age is we don't have a public policy against that. The problem with the whole concept of setting up rate mortality tables is it is an average, but you might be the exception, but because of this law, you have no choice. He doesn't like to pay more insurance premiums than someone

just because he is a smoker. On a statistical basis, he agrees, but on a particular individual basis, he disagrees. Senator Mazurek stated the question he has is you are right, but how does the insurance company make a determination about your son. Are they going to calculate a rate for every individual policyholder? Senator Towe responded just because he is a male should not come into it. Senator Mazurek stated what he keeps hearing is those are the factors he can't change. I can say I am only going to drive five miles, but I drive 500. Senator Towe responded the enforcement is different. Maybe there are other criteria that will come along that will make it even better than mileage. There are a lot of people who have no choice, but because of an accident of birth they pay higher or lesser insurance premiums. The motion failed (see roll call vote attached as Exhibit 10). Senator Towe moved HB 507 be recommended BE NOT CONCURRED IN. The motion carried (see roll call vote attached as Exhibit 11).

ACTION ON HB 366: Senator Towe moved HB 366 be recommended BE NOT CONCURRED IN. Senator Pinsoneault stated in the state employer health plan, it is his understanding for the female employee is there is more premium paid by the employer than for the male employee. Senator Towe responded he is not entirely certain, but he thinks it used to be in a pension plan or an employee plan where there is an annuity, the question is how do you handle the annuity. The state pays in so much and the employees pay in so much. They don't have to pay in so much for a male because they are not expected to live as long. The United States Supreme Court case said if it is a state pension plan, you cannot discriminate because the state is providing an annuity for one or the other. Senator Pinsoneault stated that is on an annuity, but in health insurance, that is one of your major costs. There is more paid in by an employer for a female. Senator Crippen stated they have to have the same benefits, but actuarily you can show a female is going to have more costs, but the contributions are the same. That wouldn't make the premium any different. Even though they have the same benefits and contributions, when you underwrite these things, you look at them as a whole. Senator Towe commented if all state employees were male, it wouldn't cost us as much. Mr. Petesch commented he thought Senator Crippen was correct. When they look at the group as a whole, they look at the makeup of the whole; and everyone pays the same, and someone is subsidizing someone else, but the contribution of the whole is the same. The motion carried (see roll call vote attached as Exhibit 12).

ACTION ON HB 155: Proposed amendments were distributed to the committee (Exhibit 13). Mr. Petesch explained amendment No. 1 would still allow snake fights or fish fights. You left man in or you would be prohibiting kangaroo boxing or bear wrestling at the fair. Amendment No. 2 stated you wouldn't want to have that mental intent which is presently an

offense to own or allow these creatures to fight. You had a double intent standard. Amendment No. 5 allows falconing and training of dogs for hunting. Senator Towe moved adoption of the amendments. The motion carried unanimously. Senator Mazurek stated the other problem we still have is it is a felony to be in attendance. Senator Towe moved HB 155 be amended as follows:

Page 2, line 24.
Following: (c)
Insert: "knowingly"

The motion carried unanimously. Senator Pinsoneault moved HB 155 be recommended BE CONCURRED IN AS AMENDED. The motion carried with Senators Crippen and Daniels voting in opposition.

There being no further business to come before the committee, the meeting was adjourned at 12:05 p.m.

Committee Chairman

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 03/21/85

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

DATE 3/21

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Oppose
Don Hoyle	Mt. Chamber of Commerce	H622	X	
Allan Eck - MT Farm Bu	MT Farm Bureau	SB 94	X	
Jim T Jacobsen	Mt. Cattlewomen assn	H722	✓	
Riley Johnson	NFIB	H622	✓	
Doug Olson	Senior Office - Legal Service	609	X	
Kim Buckley	Attorney General's Office	509	X	

(Please leave prepared statement with Secretary.)

SENIORS' OFFICE

LEGAL AND OMBUDSMAN SERVICES

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HELENA, MONTANA 59620

March 21, 1985

Senators
Senate Judiciary Committee
49th Legislative Session
Montana Legislature
State Capitol
Helena, Montana 59620

re: House Bill 609

Dear Chairman Mazurek & Committee Members:

My name is Doug Olson and I serve as the attorney for the State charged with the responsibility under the federal Older Americans Act for coordinating and developing legal services for senior citizens. In addition, I provide legal counsel to the State Long-term Care Ombudsman who represents the institutionalized elderly in nursing homes, personal care homes and some boarding homes.

One of the legal mechanisms that I encourage senior citizens to consider setting up to deal with the likelihood that they may at sometime in their future be unable to direct their own affairs is a "durable power-of-attorney". Under common law a power-of-attorney ceased to operate at the time the principal, or creator of the relationship, became disabled. A durable power-of-attorney or one that continues or comes into being at the time a person becomes disabled did not exist at common-law but is now recognized through statutory law. The Uniform Probate Code which Montana had adopted in the mid-1970's recognized durable powers-of-attorney but the language of the statutes found in Title 72, Chapter 5, Part 5, has been confusing. It also did not utilize the generally accepted terminology of a "durable power-of-attorney" but spoke instead of powers not affected by disability.

House Bill 609 introduced by Rep. Ramirez will clarify the power-of-attorney statutes found in Montana's Probate Code and make the concept of a durable power-of-attorney more readily understandable. The clearer this concept becomes the greater the liklihood that it will be more widely utilized. A timely executed durable power-of-attorney may preclude more costly guardianship or conservatorship hearings at a later date.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 032185
BILL NO. HB 609

publications & graphics

Many families are confronted with relatives that are diagnosed as suffering from Alzheimer's disease that results in a person's gradual deterioration of the brain and nervous system. By encouraging the execution of durable powers-of-attorneys at the early stages of this disease, the victim can have a voice in how his affairs will be managed when he is no longer able to do so.

I would urge that your Committee when it takes action on House Bill 609 issue a report urging its passage. Thank you for listening to my comments on this bill.

Sincerely,

Douglas B. Olson
Attorney
Seniors' Office of Legal &
Ombudsman Services

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 032185
BILL NO. HB 609

Nineteenth Judicial District

Lincoln County

ROBERT M. HOLTER
DISTRICT JUDGE

March 4, 1985

Representative Paula Darko
House of Representatives
Capitol Station
Helena, Montana 59620

Re: House Bill 541

Dear Paula,

Thank you for the copy of HB 541 as passed by the House.

I have no objection to the amendment of the bill to conform to the U. S. Code section.

One deletion might be significant. The bill you originally purposed contained the item "or losses". The reason for the inclusion of "losses" is that pettifoggery can be used to withhold property from it's rightful owner, or in some way cause a loss to the other party which is not costs, expenses or attorney's fees, and for which no redress is available in the present law.

If the word "losses" was re-instated between costs and expenses, that would be significant.

All of these items, costs, losses, attorney's fees and expenses would have to be proved by the party claiming them before the Court could award them.

In any event "losses" is not worth losing HB 541 over. As passed by the House, HB 541 will correct almost all of the problems that have existed in the past.

Thank you again for your interest in this matter and the great support you have given it.

Very truly yours,

Robert M. Holter
District Judge

RMH:ps

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 032185
BILL NO. HB 541

COURTHOUSE • LIBBY, MONTANA 59923 • PHONE 293-7781

COMMENT

By: Robert M. Holter
District Judge
Libby, Montana 59923
1-406-293-7781

HB 541

The Bill as introduced reads:

> A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A PARTY WHO UNREASONABLY AND VEXATIOUSLY MULTIPLIES LEGAL PROCEEDINGS IS RESPONSIBLE FOR PAYMENT OF INCREASED COURT COSTS, ATTORNEY FEES, AND OTHER EXPENSES AND LOSSES RESULTING FROM SUCH CONDUCT."
>
> BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
>
> Section 1. Litigant's liability for excess costs. An attorney or party to any court proceeding who, in the determination of the court, unreasonably and vexatiously multiplies the proceedings in any cause and thereby increases any party's court costs, attorney's fees, or other expense or losses may be required by the court to personally satisfy such additional costs, fees, expenses, or losses.

The source of this bill is 28USCS §1927, which reads:

> Counsel's liability for excessive costs
>
> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case as to increase costs unreasonably and vexatiously may be required by the court to satisfy personally such excess costs.
> (June 25, 1948, c.646, §1, 62 Stat. 957.)

There are some changes in HB 541 from the Federal statute. These were done to clearly cover the pro se litigant as well as attorneys. Further, HB 541 clearly sets out which damages can be awarded. "Costs" in Montana has been narrowly construed to mean filing fees and other statutory fees paid by a litigant. Attorney's fees, expenses, other expenses and losses makes it clear that the wronged litigant will be made whole.

As I told the committee, I do not regard this an "anti-lawyer" bill. What HB 541 does is protect the good lawyer and his client from the pettifogger.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 032185
BILL NO. HB541

At present there is no practical method of redress to a person who is the victim of vexatious and harassing conduct by the other party. The three usual routes are:

(1) Contempt. This is an inherent power of the court. It may be used to punish wrongdoers but does not restore the victim.

(2) Malicious prosecution. This is only available if the whole action is malicious and must be brought as a separate action.

(3) Abuse of Process. This is a narrow action which only contemplates misusing court process. The process was issued rightfully but misused.

There was concern at the committee hearing that the very presence of this statute would only increase the evil it was designed to cure. In other words, in every case where a lawyer didn't like what the other was doing, he would claim the other party was harassing him. Be assured that before any damages could be awarded under this statute, the court must hear facts and make a determination the conduct was "vexatious and harassing". That requires proof which is highly evident. In attachment "A", I have included 12 American Law Reports, Federal (ALR Fed.) pages 910 to 916. They contain several instances of use to award losses; but at pages 914 and 915 appear clear showings of when the statute is not applicable.

Attached hereto are the following:

Attachment A. 12 ALR Fed pages 910 to 916, noted above.

Attachment B. 42 State Reporter 173. This very recent case shows the magnitude of the problem of pro se litigants lashing out recklessly against public officials. If a public official is sued by these tactics, HB 541 will afford that official relief from personal expense. The case noted does not show the basis of the Supreme Court's award of fees.

Attachment C. 41 State Reporter 1879. In is case, disqualification was used oppressively for ulterior purposes. The Supreme Court did not sustain the award of attorney's fees or fine because the court rule on disqualification does not authorize fees, but otherwise sustained the trial judge. It is hard to determine the distinction between B and C, which points the need for HB 541.

Attachment D. A portion of page 9 of the Daily Missoulian for January 30, 1985. The willingness of Lance to embroil anyone in sight in litigation deserves to be at his own expense.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 032185
BILL NO. HB 541

In conclusion, I would urge the enactment of HB 541. I do not contemplate it will be something used in the everyday conduct of court affairs. In may own career, I can recall but one instance in 22 years as a practicing attorney when it would have been applicable. As a Judge of about 8 years, I have come across six to eight instances where it might have applied. I can state without reservation that in each of those six to eight instances, a party innocent of any wrongdoing, such as Mrs. Gahr, was financially hurt by the vexatious and harassing tactics of the other side.

If a party decides to conduct their courtroom "ballgame" by intentional fouls, the court cannot award "free throws". But the court, if HB 541 is enacted, can restore the victim's monetary losses.

Respectfully submitted,

Robert M. Holter
District Judge

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
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Annotation

CONSTRUCTION AND APPLICATION OF 28 USCS § 1927 AUTHORIZING IMPOSITION OF LIABILITY FOR EXCESS COSTS ON COUNSEL WHO MULTIPLIES THE PROCEEDINGS UNREASONABLY AND VEXATIOUSLY

By

Walter W. Jones, Jr., J.D.

This annotation collects and analyzes the federal cases which construe and apply 28 USCS § 1927[1] authorizing imposition of liability for excess costs[2] upon counsel, personally,[3] who multiplies the proceedings

1. 28 USCS § 1927 is based on former 28 USCS § 829 (RS § 982) and has had substantially similar wording throughout its history. Because of the substantial similarity between the present statute and its predecessor, cases decided under the predecessor statute are included herein.

2. Rule 54(d) of the Federal Rules of Civil Procedure provides, in pertinent part, that except when express provision therefor is made either in a statute of the United States or in these Rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs. Section 1927 thus represents one exception to this Rule.

3. The predecessor of 28 USCS § 1927 provided only that an attorney was to be required to satisfy excess costs, and the word "personally" was inserted in the present statute upon the authority of Motion Picture Patents Co. v Steiner (1912, CA2 NY) 201 F 93 (according to the historical note to the statute as found in the United States Code Service).

Total Client-Service Library® References

20 Am Jur 2d, Costs § 30

7 Am Jur Pl & Pr Forms (Rev ed), Costs, Forms 96, 109; 11 Am Jur Pl & Pr Forms (Rev ed), Federal Practice and Procedure, Forms 1791–1794

ALR Digests, Attorneys § 32, Costs and Fees § 25

US L Ed Digest, Attorneys § 13, Costs and Fees §§ 1, 25, 28

ALR Quick Index, Attorneys; Costs or Expenses

Federal Quick Index, Attorneys; Costs

unreasonably and vexatiously. The full text of 28 USCS § 1927 reads as follows:

§ 1927. Counsel's liability for excessive costs.

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case as to increase costs unreasonably and vexatiously may be required by the court to satisfy personally such excess costs.

In the following cases, where, under § 1927 or the predecessor statute, costs resulting from attorney's unreasonable and vexatious prolongation of proceedings, were sought from the attorneys responsible for the unjustifiable delays, the courts have held that, under the particular circumstances involved, such attorneys were personally liable for the excess expenses.

Thus affirming the judgment entered for the plaintiff after the second trial of her cause, the court in Kiefel v Las Vegas Hacienda, Inc. (1968, CA7 Ill) 404 F2d 1163, 12 ALR Fed 895, cert den 395 US 908, 23 L Ed 2d 221, 89 S Ct 1750, reh den 395 US 987, 23 L Ed 2d 776, 89 S Ct 2128, ordering that defendant's attorney have imposed upon him personally, under § 1927, certain costs resulting from the misconduct of the attorney, held that the power of the courts to impose such excess costs personally on attorneys should be exercised only in instances of a serious and studied disregard for the orderly processes of justice, and that the attorney's conduct was clearly within the restrictive standards of § 1927. The plaintiff sued a Las Vegas hotel in tort and breach of contract for personal injuries suffered when an unknown assailant broke into her hotel room and struck her with a bottle of champagne. The trial judge granted her motion for a new trial, after the jury in the first trial returned a verdict for the defendant, saying that he was convinced that the plaintiff had not had a fair trial because of the unprofessional conduct of defendant's attorney. The second trial resulted in a jury verdict for the plaintiff. After the conclusion of the first trial, the plaintiff filed a successful motion in the trial court to assess costs and attorney's fees against the defendant and defendant's attorney, jointly and severally, from which the defendant and the defendant's attorney appealed. As to that appeal, the court pointed out that the specific items taxable as costs were limited by the express language of § 1927, that § 1927 relieved the defendant hotel of any responsibility for costs assessed by the trial judge, and that any costs assessed were taxable to the attorney personally. The court noted that during the first trial, the defendant's attorney had engaged in much professional misconduct, specifically including using harassing and obstructionist tactics in pretrial proceedings; that during the second trial, the attorney, not satisfied with the lesson he should have learned from the outcome of the first trial, drew a reprimand from the trial judge for, among other things, seeking numerous postponements of the second trial and then appearing on the date specifically set asking for a stay due to the appeal on the plaintiff's motion for assessment of costs, which the attorney had been preparing all along but of which he had never notified the trial court, and that the attorney in previous cases had engaged in quite similar opprobrious conduct, including repeatedly making known meritless objections both in the trial

and in the pretrial phases of the cases for the purpose of harassment. Asserting that there could be no doubt that the attorney was aware that his conduct could lead to an assessment of costs against him in view of the fact that in Ryan v Monson (1961) 33 Ill App 2d 406, 179 NE2d 449, —a case in which he had been criticized by the Illinois Appellate Court for unprofessional conduct—a remand was had for that very purpose, the court ordered that the District Court assess against the attorney personally, under § 1927, the expenses of printing the plaintiff's 54-page brief and the additional appendix in the present action, and a sum no greater than one-third of the plaintiff's attorneys' fees incurred in both the appeal of the two jury trials and the present appeal from the order assessing costs against him.

☆ COMMENT: Pursuant to the mandate of the Court of Appeals in the Kiefel Case, supra, the District Court entered a judgment against the attorney for $4,000 "as and for one-third of the appeal attorneys' fees." On appeal this judgment was upheld by the Court of Appeals, and a petition for certiorari was once again denied by the Supreme Court in Hubbard v Kiefel (1971) 402 US 930, 28 L Ed 2d 864, 91 S Ct 1527.

Where a portion of the findings of the District Court in a suit to enjoin patent infringement recited that the defendant's counsel, in the taking of certain depositions, excessively cross-examined two of the plaintiff's witnesses, unwarrantable instructed another witness not to answer proper questions put to him on direct examination, and thus increased the plaintiff's cost unreasonably and vexatiously, rendering his attempt to take the deposition futile and ineffective, and that counsel's conduct in this regard was obnoxious to the orderly, reasonable, and proper conduct of an examination, the court in Toledo Metal Wheel Co. v Foyer Bros. & Co. (1915, CA6 Ohio) 223 F 350, held that the trial court's order to counsel, which was presumably made pursuant to the predecessor statute and which apparently instructed him not to engage in such behavior further, was manifestly made to shield the plaintiff from excessive costs, and must therefore be sustained. Entering an order, not expressly based upon the predecessor statute, that the plaintiff pay all costs except those portions of such costs in terms imposed upon counsel, the court additionally noted that the power of the courts to protect a litigant against costs so created by his counsel would exist independently of the predecessor statute inasmuch as the rule at common law was broad enough to redress such a matter through summary proceedings.

See Weiss v United States (1955, CA2 NY) 227 F2d 72, cert den 350 US 936, 100 L Ed 817, 76 S Ct 308, reh den 350 US 977, 100 L Ed 847, 76 S Ct 431, an action representing the fourth attempt to collect the proceeds of two life insurance policies, wherein the court, pointing out that the plaintiff beneficiary's arguments had been unacceptable in the first action, that the second and third unsuccessful actions were only slight variations from the original thesis, and that the present action was based on some alleged further variation in theory so slight as to be perceived only with difficulty, warned that further vexatious litigation to reopen the "hopeless" case would subject the attorney personally to the costs there-

of as provided in § 1927, affirming the summary judgment entered against the plaintiff in the court below.

The courts in the following cases have held that, under the particular circumstances, attorneys alleged to have unreasonably and vexatiously multiplied proceedings could not, under § 1927 or its predecessor statute, be held personally liable for the excess costs occasioned by the delay.

Where the defendant, in the trial court, objected to certain proceedings on behalf of the plaintiff on the ground that the plaintiff's bill was vitally defective and where the defendant alleged that the plaintiff nevertheless proceeded in taking testimony which put the defendant to considerable expense in attending, preparing for, and cross-examining a witness, the court in Motion Picture Patents Co. v Steiner (1912, CA2 NY) 201 F 63, in connection with its ruling that the predecessor statute did not authorize the trial judge to insert an arbitrary sum in the judgment to be paid by the plaintiff to the defendant, thus reforming the decree of the trial judge in allowing defendant $300 as excess costs and expenses while otherwise affirming the judgment below, held that there was nothing in the record to show that the plaintiff's attorney had unnecessarily multiplied the proceedings or added improperly to the costs since there was neither a statement of the amount of the costs nor indication that the amount of the alleged increase was occasioned by the misconduct of the plaintiff's attorney. The court said that the predecessor statute applied only to the attorney, proctor, or other person admitted to practice in the federal courts, that it could be invoked only when such attorney, proctor, or other person multiplied the proceedings in the cause so as to increase costs unreasonably and vexatiously; that although the attorney's conduct might be so contumacious as to justify proceedings for contempt, he could not be punished under the predecessor statute unless he had increased the costs and had done so unreasonably and vexatiously; and that the court could not direct the offending attorney to pay all the costs, but only the excess of costs which excess was occasioned by his unreasonable and vexatious conduct. The court further said that the predecessor statute did not apply to the client, no matter how reprehensible his conduct might be, and that it was designed to punish the pettifogger, or at least to make him pay the expenses occasioned by his misconduct.

In Brislin v Killanna Holding Corp. (1936, CA2 NY) 85 F2d 667, the court, holding that the trial judge had not improperly refused to award costs against an attorney personally, under the predecessor statute, despite the inordinate length of the record on the rehearing of an involuntary petition in bankruptcy, observed that it was a matter peculiarly for the discretion of the trial judge to determine to what extent an attorney before him had vexatiously and unreasonably increased costs by multiplying the proceedings.

Where the debtor in a petition for voluntary reorganization under the Bankruptcy Act sought to have taxed as costs against certain creditors or their attorney a docket fee and stenographic costs, and sought an additional allowance under the predecessor statute to cover expenses

incurred by the debtor in opposing the creditor's overruled objections, the court in Re Realty Associates Secur. Corp. (1943, **DC NY**) 53 F Supp 1013, denying the request for the additional allowance, held that the predecessor statute neither created any penalty in favor of the prevailing party nor sanctioned the taxing of any additions over regular costs.

See West Virginia v Chas. Pfizer & Co. (1971, **CA2 NY**) 440 F2d 1079, cert den 404 **US** 871, 30 L Ed 2d 115, 92 S Ct 81, where, in a class action to recover treble damages under the antitrust laws, the court, noting that § 1927 provided that a court could award costs in cases of frivolous and vexatious appeals, said that the imposition of such sanctions was highly unusual and required a clear showing of bad faith, of which there was insufficient evidence in the record.

See also Gamble v Pope & Talbot, Inc. (1962, **CA3 Pa**) 307 F2d 729, cert den 371 **US** 888, 9 L Ed 2d 123, 83 S Ct 187, a case involving an appeal by counsel for defendant, in an action to recover for personal injuries, taken after the District Judge imposed a fine upon counsel, payable to the United States, for his unintentional 10-month delay in filing a pretrial memorandum, the delay violating a standing order of the District Court for the Eastern District of Pennsylvania permitting the imposition of sanctions, including fines, against counsel who failed to appear at a pretrial conference, or to participate therein or prepare therefor, wherein the Court of Appeals, in connection with its holding that there was nothing in the Federal Rules of Criminal Procedure which authorized sanctions in the form of penalties to be imposed upon an attorney in a civil litigation, remarked that while the District Judge justified the imposition of the fine by saying that the time of judicial employees was wasted by counsel's oversight, this was of no moment in determining cost under § 1927, that § 1927 was applicable only when excess costs were shown to exist, and that the costs were not payable to the United States as a fine but might be payable to the United States as a party litigant whose costs were increased by virtue of the attorney's conduct.

See further, Miles v Dickson (1967, **CA5 Ala**) 387 F2d 716, wherein the court, although remarking that the trial judge was correct in concluding that there was no genuine issue as to any material fact, said that it was convinced that the plaintiffs' attorneys acted in good faith upon written authorization from their clients, that it was not determining whether the District Judge had power, either inherently or under § 1927, to require the plaintiffs' attorneys personally to pay the court costs, but that it simply held that the facts and circumstances did not present such an extreme case as would permit the court to tax the costs against the attorneys, accordingly reversing that part of the judgment below which taxed costs against the attorneys and otherwise affirming the entering of summary judgment for the defendants.

And, finally, see Coyne & Delany Co. v G. W. Onthank Co. (1950, **DC Iowa**) 10 FRD 435, wherein the court, overruling the defendants' motion under § 1927 to protect them against the costs of preparation to defend those claims on which the plain-

fact alleged infringements of patents, but which upon the trial of the cause, the plaintiffs might abandon so far as proof or attempted proof by evidence was concerned, said that to grant the motion at that stage of the proceedings would in effect amount to a predetermination of liability under § 1927 and would clearly constitute an abuse of judicial discretion that attorneys in good standing were presumed to be acting in good faith and with no intent to knowingly and deliberately increase the costs in any litigation unless and until the contrary was clearly shown; and that whether costs should or should not be taxed as provided for in § 1927 would be determined upon proper motion at the time of the final submission of the cause.

The court in the following case held that § 1927 did not authorize the imposition of excess costs for unreasonable and vexatious multiplication of proceedings upon one who had at all times appeared in court in his own behalf, without counsel.

Thus, where, in relation to a series of actions on a promissory note and for specific performance or foreclosure of a land contract, the seller sought, by motion, under § 1927, to impose upon the buyer, who at all times had conducted the actions on his own behalf, without counsel, "special costs" for fees and disbursements of the seller's attorney, the court in 1507 Corp. v Henderson (1971, CA7 Wis) 447 F2d 540, agreeing with the conclusion of the District Court that § 1927 did not authorize ordering recovery of costs from a party, but only from an attorney or an otherwise admitted representative of a party, held that § 1927 did not deal with the question of the nature or amount of costs to be allowed, but authorized imposition of otherwise allowable costs on counsel personally in place of the party for whom he had appeared where the circumstances mentioned in the section had occurred. Various lawsuits had been commenced in the District Court with respect to the land contract and promissory note, and while these actions were pending, the buyer had raised the subject matter of these earlier actions in pleadings filed in three other courts of original jurisdiction and in two courts of appeal. About half of the amount sought under § 1927 was allegedly incurred in defending the seller against the claims raised in these multiplicious actions, while the other half of the fees and expenses sought were allegedly incurred in proceedings to collect the seller's judgment against the buyer, made necessary by the buyer's unreasonable and vexatious conduct in an effort to avoid collection. However, the court noted that although the District Court had found § 1927 inapplicable, the court had also found that the buyer had in fact multiplied the proceedings, that his conduct had been unreasonable and vexatious, and that the court had remarked that if it were within the court's statutory power to grant the special costs sought, it would certainly have done so.

The reader may find the following annotations to be of related interest.

Attorney's right to practice in federal court as affected by his disbarment or suspension in state court or other federal court. 20 L Ed 2d 1436.

Misconduct other than criminal as ground for disbarment or suspension

of attorney from practicing in federal court or before federal administrative agencies. 94 L Ed 130, 3 L Ed 2d 1960.

Fabrication or suppression of evidence as ground of disciplinary action against attorney. 40 ALR2d 159.

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VOLUME 42

No. 84-410

Attachment B

RICHARD C. LUSSY,

Plaintiff and Appellant,

v.

J. MICHAEL YOUNG,

Defendant and Respondent.

OPINION, ORDER AND JUDGMENT

Richard C. Lussy appeals from an order of the District Court, Third Judicial District, Deer Lodge County, the Hon. Henry Loble presiding, from an order dismissing Lussy's complaint against J. Michael Young.

The only issue on appeal is the propriety of the District Court's dismissal of Lussy's complaint against J. Michael Young.

In cause no. DV-84-72 in the same District Court, Richard C. Lussy sued John Conway Harrison, John C. Sheehy, Fred J. Weber and L.C. Gulbrandson as individuals, without reference to their judicial positions, in a complaint filed in Deer Lodge County. J. Michael Young, a state employee, appeared as attorney for the named individual defendants in that action and brought about an order of the District Court to dismiss the action against the said individuals.

Lussy then sued J. Michael Young in the District Court, Deer Lodge County in cause no. DV-84-93, on the grounds that Young had represented the individuals in the action, that this was improper and that he was guilty of conspiracy, improper official actions, and abuse of the principle of "justinhoard."

In the District Court, Judge Loble dismissed the complaint against Young, saying in his order of August 22, 1984:

"The gist of plaintiff's rambling, uncomprehensible complaint seems to be that the defendant represented private, non-governmental clients in his capacity as an employee of state government. However, plaintiff attached to his complaint a motion to dismiss in Cause No. DV-84-72 in the District Court of Deer Lodge County. The defendants of that action were four Montana State Supreme Court Justices. The defendant in this case acted as lawyer for the defendant justices in the earlier action. Mr. Young clearly defended the action against the

justices on the basis that they were being sued for an act in discharge of a duty associated with judicial actions of the Court. An allegation that Young represented the justices as private individuals when the attached exhibits showed he represented them in their judicial capacities sets forth no cause of action."

Although four justices on this Court are indirectly involved in this action in that the attorney J. Michael Young, had represented them, and is now being sued for that representation, we see no conflict of interest in recognizing in Lussy's present complaint and appeal a fruitless, weightless, needless, senseless action. The appeal, as was the action in the District Court, is frivolous and as such should be dismissed.

This cause is another of a series of proceedings brought by Lussy in both state and federal courts in which he has imputed incompetence, bias and conspiracy against judges and parties involved in his actions, and he has subjected the judicial process to denigration.

IT IS THEREFORE ORDERED:

1. The appeal of Richard C. Lussy from the judgment of dismissal of cause no. DV-84-93, in the District Court, Deer Lodge County, be and the same is hereby dismissed.

2. Richard C. Lussy is assessed costs in the sum of $250.00 payable to the Clerk of this Court for deposit in the State Treasury of the State of Montana as part reimbursement to the State for the unnecessary expense and time he has taken of state officials.

3. The Clerk of this Court is directed to mail a certified copy of this Order to the Clerk of the District Court in and for the Third Judicial District, Deer Lodge County. Such copy of this order and judgment shall be and serve the office of a judgment for costs against Richard C. Lussy and entitled to all of the lien protection of a judgment. Such judgment shall be docketed in the District Court under the cause file number from which the appeal arose.

4. Copy to counsel of record, and to Richard C. Lussy.

DATED this 24th day of January, 1985.

J.A. Turnage, Chief Justice
John Conway Harrison, Justice
John C. Sheehy, Justice
Fred J. Weber, Justice
Willi[illegible] E. Hunt, Sr., Justice
L.C. Gulbrandson, Justice

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VOLUME 41

Attachment C

No. 84-69

IN RE THE MARRIAGE OF

GERALD LAWRENCE GAHR,

Petitioner and Appellant,

v.

LUCINDA GAHR,

Respondent and Respondent.

Submitted: Jul. 17, 1984
Decided: Oct. 11, 1984

JUDGES, Action in a custody proceeding to disqualify the sitting judge for bias. The Supreme Court ruled: (1) An affidavit, standing alone, is not sufficient to disqualify a judge for bias. The movant must satisfy the burden of proof by raising a strong presumption of actual bias, and (2) Attorney fees to a party and damages to a non-party were improperly awarded.

Appeal from the Eleventh Judicial District Court, Flathead County, Hon. Robert M. Holter, Judge

For Appellant: Hash, Jellison, O'Brien & Bartlett, Kalispell

For Respondent: Robert B. Allison, Kalispell

Submitted on briefs.

Opinion by Justice Gulbrandson; Chief Justice Haswell and Justices Harrison, Weber and Sheehy concur.

Affirmed in part, reversed in part.

____Mont.____

____P.2d____

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 032185
BILL NO. HB 541

Gahr, Petitioner and Appellant, v. Gahr, Respondent and Respondent.
41 St. Rep. 1879

Mr. Justice Gulbrandson delivered the Opinion of the Court.

This is an appeal from an order of the District Court of the Eleventh Judicial District, Kalispell, Montana, denying petitioner's motion for disqualification of the trial judge for bias, and assessing costs and attorney fees. Respondent did not file a brief with this Court. We affirm in part and reverse in part.

On August 31, 1983, Gerald Lawrence Gahr filed a petition for dissolution and custody. He alleged that he and his wife, Lucinda, and their three children had just returned from a five-year residence in Canada, and that he feared that Lucinda was planning to take the children back to Canada. At the time Gerald filed his petition and affidavit, Lucinda was away visiting relatives in Swan Lake, Montana. Due to this, petitioner alleged he had custody of the children, and requested an order protecting that status.

That same day, Judge Keedy, the District Court Judge assigned to the matter, issued a temporary restraining order, temporary custody order and order to show cause, directing that Gerald Gahr should have temporary custody, and for both to appear for a hearing on September 8, 1983. The temporary order included a provision, as provided for by the local district court rules, that the petition for dissolution could not be dismissed without permission of the court and also directed the Flathead County Family Court Services to prepare a report on custody, support, and other matters.

The next day, September 1, Lucinda Gahr filed a special appearance motion contesting the court's jurisdiction, and also filed affidavits alleging that she, Gerald and the three children had come to Montana on August 9, 1983, to visit relatives in Flathead County, and had planned to return to Canada at the end of the month. She requested custody of the children.

At the time the action was initiated, Lucinda was 31 years old, and Gerald was 60 years old. He was in poor health. Gerald, Lucinda, and the children are all United States citizens.

At a meeting with counsel in chambers prior to the September 8 hearing, Judge Keedy indicated that he was concerned about the question of jurisdiction. After hearing both sides, he decided that he did not have jurisdiction. He then dismissed the portion of the petition pertaining to custody, and ordered Gerald Gahr to deliver the children to Lucinda so she could take them back to Canada. Neither party was given the opportunity to present any evidence of the merits of temporary custody. That same day, Gerald Gahr filed a notice of dismissal without obtaining the permission of the court.

On September 9, Judge Keedy entered findings and conclusions, and an order denying Gerald Gahr's notice of dismissal, and pursuant to the interim report filed by the Family Court Services, directed him to deliver the children to their mother by 4:30 p.m. September 15.

On September 12, Gerald Gahr filed a motion to substitution of

judge. It was denied the next day as not timely. Then on September 15, just prior to the time delivery of the children had been ordered to take place, Gerald Gahr filed, in quick succession, a motion to amend and a motion to stay. Judge Keedy indicated that he would deny both. Finally, just minutes before the children were to be delivered to Lucinda Gahr, Gerald filed an affidavit of disqualification for bias. Judge Keedy honored the affidavit to the extent of taking no further action on the case other than notifying the Chief Justice of the Supreme Court, for the purpose of calling in a judge to hear the disqualification for bias. Nonetheless, the children were, pursuant to the earlier order, delivered to Lucinda Gahr, and were promptly removed to Canada.

Judge Holter heard the disqualification proceeding. He entered findings and conclusions to the effect that the affidavit was without merit and intended to delay, and granted attorneys fees of $500 to Lucinda Gahr, and damages of $500 to Flathead County.

Appellant presents the following issues on appeal:

(1) Under the rule on disqualification, is the affiant required to present evidence of actual prejudice or bias on the part of the judge?

(2) Was the affidavit in this case sufficient?

(3) If evidence is required in a disqualification proceeding, is it reversible error for the hearing judge to make findings on material facts where there is no evidence to support the findings made?

(4) May the judge hearing a disqualification proceeding award a specific amount of attorney's fees, or attorney's fees at all, to a party or award damages in a specific amount to a non-party without any supporting evidence?

This Court, by order of June 29, 1981, superseded the prior Montana rule on the disqualification of judges. The new order was adopted to remedy the confusion caused by the prior rules. See Supreme Court Order of December 29, 1976, section 3-1-801, MCA (1979), and State ex rel Amsterdam v. District Court (1973),163 Mont. 182, 516 P.2d 378; State ex rel Ross v. District Court (1967), 150 Mont. 233, 433 P.2d 778; State ex rel Grogan v. District Court (1911), 44 Mont. 72, 119 P. 174; State ex rel Carleton v. District Court (1905), 33 Mont. 138, 82 P. 789.

The present scheme, as set forth in section 3-1-802, MCA (1983), is simple: (1) No judge who is a party, related to a party, or who has been an attorney or counsel in the action, may preside over it. (2) In District Court proceedings, each party in a civil case has two, and the state and the defendant in a criminal case each have one, peremptory challenge(s). The peremptory challenge is automatic if it is made within 10 days of when a judge is assigned to a case. The challenged judge then has no further power to act in the action other than to call in another judge. (3) In all judicial proceedings, a judge may be disqualified for actual bias on the filing of an

affidavit supporting that allegation. Upon receipt of such an affidavit, the presiding judge may do no more than to refer the matter to the Chief Justice, who, if the affidavit warrants an inquiry, will appoint another judge to hear the matter. At the hearing the judge must hear evidence supporting the allegation of bias. The disqualification for bias provision is not meant to be an additional peremptory challenge. It only applies when the moving party meets its burden of raising a strong presumption of actual bias. 46 Am.Jur.2d Judges, Sect. 219.

Appellant, in his first specification of error, points out the general rule under the former substitution provision: that proof of facts showing actual bias and prejudice is not required or permitted, citing Amsterdam, Ross, Grogan, and Carleton. These cases no longer apply under the present version of section 3-1-802, MCA.

Appellant next contends that the affidavit he filed was sufficient to support the disqualification of Judge Keedy. His counsel stated at the disqualification hearing that "[w]e had the feeling that the affidavit would have to stand by itself, and we don't have any further evidence to present." Under the present rule, an affidavit alone cannot support a disqualification for bias. Again, this is different from the old rule. The purpose of the affidavit under the present scheme is to (1) temporarily relieve the sitting judge of any further jurisdiction over the matter; and (2) put the Chief Justice on inquiry notice that a sitting judge may be biased in a particular action. If the Chief Justice feels the affidavit warrants inquiry, he will appoint another judge to hear evidence and look into the matter further.

Appellant next asserts that, in any event, Judge Holter based his ruling on evidence that was not presented in the affidavit or at the hearing. He particularly objects to the judge's finding that: "[a]pparently Judge Keedy determined that false representation had been made to him," and that Judge Keedy "took steps to restore the harm done by a temporary order gained by misrepresentations to him."

It is axiomatic that a judge may take notice of all the evidence properly before him, including that contained in the record. Rule 202(b)(6), Mont.R.Evid. We do not, however, reach the issue of whether a judge sitting in a disqualification hearing can consider the judicial acts committed by the challenged judge. We affirm Judge Holter on the ground that petitioner failed to meet his burden of raising a strong presumption of Judge Keedy's bias. The whole gist of petitioner's argument was that he felt he could not get fair treatment from Judge Keedy because he had denied several of petitioner's previous motions. Beyond a brief chronology of the case and this conclusory argument, petitioner failed to present any evidence to meet his burden. Judge Holter properly denied petitioner's request for the disqualification of Judge Keedy.

Judge Holter awarded $500 in attorney's fees to Lucinda Gahr, and $500 to Flathead County for "damages" for the Family Court Services report. There is no provision in section 3-1-802, MCA that allows a

judge to award attorney's fees to a party, or damages to a non-party, in a disqualification action. This Court has consistently held that unless a statute provides explicitly for an award of attorney's fees to the prevailing party, a court cannot make such an award. Winer M.D. v. Jonal Co. (1976), 169 Mont. 247, 545 P.2d 1094; Stalcup v. Montana Trailer Sales (1966), 146 Mont. 494, 409 P.2d 542. Judge Holter's order, to the extent that it awards costs to Lucinda Gahr and damages to Flathead County, is thereby reversed.

Affirmed in part, reversed in part.

SENATE JUDICIARY COMMITTEE
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Witness recalls Lance's threat

By LARRY HOWELL
of the Missoulian

A nationally known expert on constitutional law testified Tuesday that he thought John Fesler Lance was serious about taking a hostage if he didn't win back custody of the children and ranch he'd lost through divorce.

Lance, a strong critic of the state's judicial system since his contested divorce settlement in 1979, is on trial in Missoula District Court for felony intimidation. He is acting as his own lawyer.

The charge stems from a letter dated Sept. 8, 1984, he sent to several people hinting that his legal problems would culminate in a "streets of Dodge" showdown, during which he would have an unnamed hostage.

Nathaniel Denman, of Cape Cod, Mass., said he'd agreed last spring to help Lance represent himself in his lawsuit-strewn quest to get back his children and ranch in the Bitterroot. Denman, who was recently on "60 Minutes," said his relationship with Lance deteriorated, culminating when Denman notified authorities of the hostage threat in September.

"I feared he would do what he said he was going to do," Denman testified. "I'm not a psychiatrist, but it looked like he was getting further and further into a hole ... he couldn't get out of."

During his cross-examination, Lance asked Denman if there was "ever any reference to use of firearms ... by John Lance ' during their phone conversations. Denman, who said he'd tried to discourage Lance from making any threats, said Lance had made such a reference.

"I mentioned that some policeman or sheriff might come for you and you indicated you had a 7mm (weapon)," Denman said. "You indicated you kept it by the door and you indicated that was what it was for."

After County Attorney Robert L. Deschamps III rested his case, Lance recalled Denman as his own witness. Much of the questioning concerned the falling out between Lance and Denman. After an objection by Deschamps that such testimony was irrelevent, Lance said he hoped to show that the threats had resulted from "the tremendous frustrations building inside of me" over Denman reneging on his offer to help Lance with his legal cases.

Judge Leonard H. Langen from Glasgow allowed Lance to proceed through a few more of Deschamps' objections. However, he got less and less patient, finally telling Lance, "We're not trying this man."

He then scolded Lance for requiring special treatment, saying he'd been "trying to lean over backwards" because Lance wasn't a lawyer. Lance responded that it was unfair to hold him to the same standards as a member of the bar.

Langen was brought in to hear the case because Missoula's district judges either had schedule conflicts or conflicts with Lance. His most recent lawsuit, filed in December in U.S. District Court in Missoula, alleges a judicial conspiracy deprived him of his land, the right to visit his children a "life, liberty and the pursuit of happiness."

Named as defendants in the suit, which seeks $6 million in damages, are four present and former state district judges, fiv counties, two county sheriffs, t state of Montana, Lance's ex-w her new husband and three cur rent owners of Lance's former ranch.

PAUL CARTER/Misso

One-time Florence rancher John F. Lance prepares to cross-examine a witness Tuesda as he acted as his own attorney in his Missoula District Court trial on charges of felor intimidation.

Search for sliced ski sparks s

A recent radio promotion by Missoula station XT-FM promoted some confusion around town.

The station cut a ski into six chunks, hid each und town and offered on-the-air clues as to the loca- s. Listeners who found the parts returned m to the station for

Reporter's notebook

"I'm now getting calls from distant states are calling just reach the governor of Montan.

Nevertheless, Schwinden

MONTANA
FARM BUREAU
FEDERATION

502 South 19th Bozeman, Montana 59715
Phone (406) 587-3153

TESTIMONY BY: Alan Eck

BILL # HB-594 DATE 3-21-85

SUPPORT XXX OPPOSE

Mr. Chairman and members of the committee, for the record my name is Alan Eck. I'm representing the Montana Farm Bureau Federation. The Farm Bureau would like to go on record as supporting House Bill 594. We believe that it is a basic right of any property owner to know who when and why someone is on their property and to give them permission to be there. We urge a "dopass" recommendation on HB-594. Thank you.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 032185
BILL NO. HB 594

Alan Eck
SIGNED

Lake Milling, Inc. PHONE: 406-363-2334

110 MILL STREET HAMILTON, MONTANA 59840

Testimony
in support of
HB 622

on behalf of
Robert Lake
Lake Milling, Inc.
Hamilton, Montana

Mr. Chairman, members of the Committee, Lake Milling is a small, privately owned feed manufacturing, farm supply store located in Hamilton, Montana. House Bill 622 is a much needed change for our type of business.

We have approximately 980 active accounts and, under the current law, checks written for payment on account are uncollectable as a bad check and are simply added back to the outstanding balance.

I believe a bad check is a bad check and should carry the same penalties whether the individual has an account or not. This bill will accomplish this.

I respectfully urge your support of House Bill 622.

March 21, 1985

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 032185
BILL NO. HB 622

AMENDMENTS TO HB 310:

1. Page 7, line 4.
Following: "40-4-106"
Insert: ", and uniform sample affidavits and orders of inability to pay filing fees or other costs"

2. Page 7, line 5.
Following: "order"
Insert: "and the inability to pay filing fees order"

3. Page 7, line 12 through page 8, line 6.
Reinsert: stricken language
Renumber: subsequent sections

4. Page 8, line 7.
Following: line 6
Insert: "Section 7. Review or removal -- district court. (1) An order issued by a municipal court or justice court pursuant to 40-4-106(3) is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court or justice court made pursuant to 40-4-106(3).

(2) Any case in which an order has been issued by a municipal court or justice court pursuant to 40-4-106(3) may be removed to district court upon filing of a notice of removal."
Renumber: subsequent sections

5. Page 8. line 9.
Following: "~~judge~~"
Insert: "justice of the peace, or municipal court judge"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 032185
BILL NO. HB 310

secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date C32185 HB Bill No. 781 Time 11:20

NAME	YES	NO
Senator Chet Blaylock		X
Senator Bob Brown		X
Senator Bruce D. Crippen	X	
Senator Jack Galt		X
Senator R. J. "Dick" Pinsoneault		X
Senator James Shaw	X	
Senator Thomas E. Towe		X
Senator William P. Yellowtail, Jr.		X
Vice Chairman Senator M. K. "Kermit" Daniels	X	
Chairman Senator Joe Mazurek	X	
	(4)	(6)

Cindy Staley
Secretary

Mazurek
Chairman

Motion: BNCI

(include enough information on motion—put with yellow copy of committee report.)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 032185
BILL NO. HB 781

secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 032185 House Bill No. 781 Time 11:21

NAME	YES	NO
Senator Chet Blaylock	X	
Senator Bob Brown	X	
Senator Bruce D. Crippen		X
Senator Jack Galt	X	
Senator R. J. "Dick" Pinsoneault	X	
Senator James Shaw		X
Senator Thomas E. Towe	X	
Senator William P. Yellowtail, Jr.	X	
Vice Chairman Senator M. K. "Kermit" Daniels		X
Chairman Senator Joe Mazurek		X
	(6)	(4)

Cindy Staley
Secretary

Chairman

Motion: BCI

(include enough information on motion—put with yellow copy of committee report.)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 032185
BILL NO. HB 781

PROPOSED AMENDMENT TO HB 340:

1. Page 4, line 7.
Following: "company."
Insert: "A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property."

2. Page 4, line 19.
Following: "rent"
Insert: "or damages"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 032185
BILL NO. HB 340

secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 032185 House Bill No. 507 Time 11:50

NAME	YES	NO
Senator Chet Blaylock		X
Senator Bob Brown		X
Senator Bruce D. Crippen	X	
Senator Jack Galt	X	
Senator R. J. "Dick" Pinsoneault		X
Senator James Shaw	X	
Senator Thomas E. Towe		X
Senator William P. Yellowtail, Jr.		X
Vice Chairman Senator M. K. "Kermit" Daniels		X
Chairman Senator Joe Mazurek		X.
	(3)	(7)

Cindy Staley
Secretary

Mazurek
Chairman

Motion: BCI

(include enough information on motion—put with yellow copy of committee report.)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 10
DATE 032185
BILL NO. HB 507

secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 032185 House Bill No. 507 Time 11:51

NAME	YES	NO
Senator Chet Blaylock	X	
Senator Bob Brown	X	
Senator Bruce D. Crippen		X
Senator Jack Galt		X
Senator R. J. "Dick" Pinsoneault	X	
Senator James Shaw		X
Senator Thomas E. Towe	X	
Senator William P. Yellowtail, Jr.	X	
Vice Chairman Senator M. K. "Kermit" Daniels	X	
Chairman Senator Joe Mazurek	X	

Cindy Staley
Secretary

Chairman

Motion: BNCI

(include enough information on motion—put with yellow copy of committee report.)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 11
DATE 032185
BILL NO. HB 507

secretary and chairman. Have at least 50 printed to start.)

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 032185 House Bill No. 366 Time 11:56 am

NAME	YES	NO
Senator Chet Blaylock	X	
Senator Bob Brown	X	
Senator Bruce D. Crippen		X
Senator Jack Galt		X
Senator R. J. "Dick" Pinsoneault	X	
Senator James Shaw		X
Senator Thomas E. Towe	X	
Senator William P. Yellowtail, Jr.	X	
Vice Chairman Senator M. K. "Kermit" Daniels	X	
Chairman Senator Joe Mazurek	X	
	(7)	(3)

Cindy Staley
Secretary

Chairman

Motion: BNCI

(include enough information on motion—put with yellow copy of committee report.)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 12
DATE 032185
BILL NO HB 366

PROPOSED AMENDMENTS TO HB 155:

1. Page 2, line 12.
Following: "or"
Strike: remainder of line 12 through "creature" on line 13
Insert: "mammal"

2. Page 2, line 17.
Following: "he"
Strike: "knowingly"

3. Page 3, line 2.
Following: "at"
Strike: "such"
Insert: "any"

4. Page 3, line 3.
Following: "exhibition"
Strike: ", fighting, menacing, or injuring of an animal"
Insert: "in which animals are fighting"

5. Page 3, line 15.
Following: "of"
Strike: "dogs"
Insert: "animals"
Following: "hunting"
Insert: "and training"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 13
DATE 032185
BILL NO. HB 155

STANDING COMMITTEE REPORT

March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 155

third reading copy (blue color)

(Senator Pinsoneault)

DECLARES A FELONY TO CAUSE OR ALLOW THE FIGHTING OF ANIMALS FOR SPORT

Respectfully report as follows: That HOUSE BILL No. 155

be amended as follows:

1. Page 2, lines 12 and 13.
Following: "or" on line 12
Strike: remainder of line 12 through "creature" on line 13
Insert: "mammal"

2. Page 2, line 17.
Following: "he"
Strike: "knowingly"

3. Page 2, line 24.
Following: (c) .
Insert: "knowingly"

4. Page 3, line 2.
Following: "in"
Strike: "or is knowingly present at such"
Insert: "any"

~~XXXXXX~~
~~SCA A55~~

~~XXXXXXXXX~~
~~SCAS1AA55~~

continued

Senator Joe Mazurek Chairman.

March 21 19 85

HOUSE BILL NO. 155

5. Page 3, line 3.
Following: "exhibition"
Strike: ", fighting, menacing, or injuring of an animal"
Insert: "in which animals are fighting"

6. Page 3, line 15.
Following: "of"
Strike: "dogs"
Insert: "animals"
Following: "hunting"
Insert: "and training"

AND AS AMENDED

BE CONCURRED IN

Senator Joe Mazurek, Chairman

STANDING COMMITTEE REPORT

March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 310

third reading copy (blue color)

(Senator Towe)

ABUSED HOUSEHOLD MEMBERS TO OBTAIN SELF-HELP TEMPORARY RESTRAINING ORDER

Respectfully report as follows: That HOUSE BILL No. 310

be amended as follows:

1. Page 5, lines 3 and 4.
Following: "INJURY" on line 3
Strike: remainder of line 3 through "INJURY" on line 4

2. Page 7, line 4.
Following: "40-4-106"
Insert: ", and uniform sample affidavits and orders of inability to pay filing fees or other costs"

3. Page 7, line 5.
Following: "order"
Insert: "and the inability to pay filing fees order"

[redacted]

[redacted]

CONTINUED

Chairman.

HOUSE BILL NO. 310

4. Page 3, line 7.
Following: line 6
Insert: "NEW SECTION. Section 6. Jurisdiction and venue. (1) District courts, municipal courts, and justices' courts have concurrent jurisdiction to hear and issue orders under 40-4-106(3).

(2) The municipal judge or justice of the peace shall, on motion, suspend all further proceedings in the action and certify the pleading and any orders to the clerk of the district court of the county where the action was begun if an action for declaration of invalidity of a marriage, legal separation, or dissolution of marriage, or child custody is pending between the parties. From the time of the certification of such pleadings and any orders to the clerk, the district court has the same jurisdiction over the action as if it had been commenced therein.

(3) An action brought under 40-4-106(3) may be tried in the county in which either party resides or in which the physical abuse was committed.

(4) The right to petition for relief may not be denied because the plaintiff has vacated the residence or household to avoid abuse."
Renumber: subsequent sections

5. Page 3, line 7.
Following: line 6
Insert: "NEW SECTION. Section 7. Review or removal -- district court. (1) An order issued by a municipal court or justice court pursuant to 40-4-106(3) is immediately reviewable by the judge of the district court at chambers upon the filing of a notice of appeal. The district judge may affirm, dissolve, or modify an order of a municipal court or justice court made pursuant to 40-4-106(3).

(2) Any case in which an order has been issued by a municipal court or justice court pursuant to 40-4-106(3) may be removed to district court upon filing of a notice of removal."
Renumber: subsequent sections

6. Page 3, line 9.
Following: "judge"
Insert: "justice of the peace, or municipal court judge"

CONTINUED

Senator Joe Mazurek, Chairman

March 21 19 35

HOUSE BILL NO. 310

7. Page 9, line 2.
Following: "through"
Strike: "7"
Insert: "9"

8. Page 9, line 4.
Following: "Section"
Strike: "8"
Insert: "9"

AND AS AMENDED

BE CONCURRED IN

Senator Joe Mazurek, Chairman

STANDING COMMITTEE REPORT

March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 340

third reading copy (blue color)

(Senator Mazurek)

AMENDS LAWS ON DISPOSITION OF PROPERTY ABANDONED BY A TENANT AFTER VACATIONS

Respectfully report as follows: That HOUSE BILL No. 340

be amended as follows:

1. Page 4, line 7.
Following: "company."
Insert: "A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property."

2. Page 4, line 19.
Following: "rent"
Insert: "or damages"

AND AS AMENDED

BE CONCURRED IN

~~XXXXXXX~~
~~DO PASS~~

~~XXXXXXXXXX~~
~~DO NOT PASS~~

Senator Joe Mazurek
Chairman.

STANDING COMMITTEE REPORT

March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 341

third reading copy (blue color)

(Senator Blaylock)

CIVIL LIABILITY OF PERSON WHO STOPS PAYMENT ON CHECK, DRAFT, OR ORDER

Respectfully report as follows: That HOUSE BILL No. 341

be amended as follows:

Page 1, lines 23 and 24.
Following: "payment" on line 23
Strike: remainder of line 23 through "RENDERED" on line 24
Insert: "with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check"

AND AS AMENDED

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek Chairman.

STANDING COMMITTEE REPORT

March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 366

third reading copy (blue color)

(Senator Mazurek)

REVISING LAW RELATING TO DISCRIMINATION IN INSURANCE & RETIREMENT PLANS

Respectfully report as follows: That HOUSE BILL No. 366

BE NOT CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek Chairman.

STANDING COMMITTEE REPORT

March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 476

third reading copy (blue color)

(Senator Yellowtail)

GIVING JUSTICES' CRTS. JURISDICTION WITH DIST. CRTS. IN MISDEMEANORS

Respectfully report as follows: That HOUSE BILL No. 476

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek Chairman.

STANDING COMMITTEE REPORT

March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 507

third reading copy (blue color)

(Senator Mazurek)

REVISE LAWS RE: DISCRIMINATION IN INSURANCE

Respectfully report as follows: That HOUSE BILL No. 507

BE NOT CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek Chairman.

STANDING COMMITTEE REPORT

March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 579

third reading copy (blue color)

(Senator Towe)

CERTIFICATION FOR VOLUNTARY ADMISSION OF MENTAL PATIENT TO STATE HOSPITAL

Respectfully report as follows: That HOUSE BILL No. 579

be amended as follows:

Statement of Intent.
Page 1, line 18.
Following: line 17.
Insert: "(1) adoption of a procedure requiring a written statement signed by an authorized person from the community mental health center either before or at the time the confirmation is obtained;"
Renumber: subsequent subsections

AND AS AMENDED

BE CONCURRED IN

~~XXXXXX~~
~~DO PASS~~

~~XXXXXXXXX~~
~~DO NOT PASS~~

Senator Joe Mazurek Chairman.

STANDING COMMITTEE REPORT

March 21 19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 609

third reading copy (blue color)

(Senator Mazurek)

DURABLE POWERS OF ATTORNEY

Respectfully report as follows: That HOUSE BILL No. 609

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek Chairman.

STANDING COMMITTEE REPORT

March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 731

third reading copy (blue color)

(Senator Blaylock)

PROSECUTOR MAY APPEAL FROM JUSTICE'S OR CITY COURT TO DISTRICT COURT

Respectfully report as follows: That HOUSE BILL No. 731

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek Chairman.

STANDING COMMITTEE REPORT

March 21 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 309

third reading copy (blue color)

(Senator Daniels)

ELIMINATE STATE AGENCY RESPONSIBILITY COSTS OF APPOINTED COUNSEL

Respectfully report as follows: That HOUSE BILL No. 309

BE CONCURRED IN

~~DO PASS~~

~~DO NOT PASS~~

Senator Joe Mazurek Chairman.