

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on January 8, 1991, at 8:45 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chairman (D)
Arlene Becker (D)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: William Boharski and Thomas Lee

Staff Present: John MacMaster (Leg. Council Staff Attorney).
Jeanne Domme (Committee Secretary)

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON HOUSE BILL 36 EXEMPT PARALEGALS & LEGAL ASS. FROM REG. AS PROCESS SERVERS

Presentation and Opening Statement by Sponsor:

REP. CROMLEY, HD 94, stated that this bill would exempt a paralegal from the requirement to register as a process server and allow them to serve more than 10 processes a year. A paralegal is an extension of the lawyer, and lawyers are now exempt from the statute which justifies the statute more fully.

Primarily paralegals call witnesses to trial, investigate the case, interview the witness and give the person a subpoena. The alternative is to hire a processor to deliver the subpoena in a more confrontational type of situation, which also increases expense for the public. Therefore, it is best this bill receive your favor.

Proponents Testimony:

Buck Deshaw, Vice President of the Paralegals Association, stated that paralegals do many duties for the attorneys one of which includes process. As we develop a case for the attorney, we speak with witnesses we may ultimately subpoena for deposition or process. We need to keep a good rapport with these people as we are contacting them, subpoena them to trial or answer any questions regarding the trial. Whereas a third party can go out and serve and not know anything pertaining to the trial. Many other professionals consider this to be a courtesy. Some trials involve a large number of witnesses who have to be subpoenaed. We can assure that the persons have been subpoenaed and will be there to testify. It is unfair for us to have to contact the Sheriff's office and ask them to drop everything and come with us to deliver a subpoena. We would like to see paralegals be exempted from the requirement to register as a process server and see this bill pass.

B.J. McCracken, of the Big Sky Paralegal Association, stated that the original bill was intended to accomplish two goals. The first goal is to improve the quality of service by insuring that people providing the service can do so appropriately and therefore they have to pass the test. The second purpose is to improve the efficiency of the system by providing an alternate mechanism for service. She stated that Cascade County has only 3 registered processors which is a disadvantage. We feel the education is an option. As far as the test, we know what is and isn't appropriate and what we can and cannot do. We can also improve efficiency by taking some of the load off the Sheriff's department and by doing the process serving ourselves. Passing this bill will provide a better more efficient system. It will save the public money and won't cost the state anything. Please listen to what we have to say and pass the bill.

Michael Sherwood, Montana Trial Lawyers Association, stated that he and the association support this bill for the reasons set forth by the other proponents. In Missoula there may be 10 trials set for the same date. So, often times subpoenas are served at the last minute which confirms the problems expressed by the other proponents regarding expediency in serving subpoenas, especially to hostile witnesses.

George N. McCabe, Great Falls Attorney, gave written testimony in favor of HB 36. EXHIBIT 1

Opponents Testimony:

Gary Dupuis, a registered process server, stated that paralegals are taking another step out of their field and want to be exempt from being registered as a processor. This is a step toward not being regulated by anyone. Paralegals are usually under the watchful eye of the attorney they work for, but most employees are being supervised by their employers while they are working. Mr. Dupuis quoted four sections from the Montana Code Annotated which show that the paralegals are not regulated by anyone in Montana. Attorneys are regulated by the Supreme Court, and most industries that serve the public are regulated by the state of Montana.

Jim Nixon, a registered process server, stated he has been a process server for the last year. He works seven days a week serving papers for Attorneys to people that should be in court the next day. He wanted to become a legal process server, so he took a test, paid his fee and became one. He feels that the paralegals should do the same.

Questions From Committee Members:

REP. MESSMORE asked REP. CROMLEY how many people would be without a job if this bill passes? REP. CROMLEY answered by saying he doesn't feel it will cost anyone his or her job. Attorneys will continue to use registered process servers for more hostile witnesses being subpoenaed, but paralegals will continue serving regardless of the limit of 10. If they reach their limit, the secretary or the attorney will serve the subpoena.

REP. DARKO asked Gary Dupuis the cost for taking the test and registering as a process server? Mr. Dupuis quoted \$65 as the fee for the test and to become licensed with the Clerk of the District Court costs \$100 for a 2 year term.

REP. JOHNSON asked Mr. Dupuis how many licensed process servers are in the state? Mr. Dupuis said he knew of 18 that have taken the test but wasn't sure how many are licensed.

REP. BOHARSKI asked Mr. Dupuis where he received his training? Mr. Dupuis said from being Sheriff for Lewis and Clark County for 10 years. Five of those ten years he was assigned to the Civil Bureau as a Deputy Sheriff and process server. REP. BOHARSKI then asked if all process servers are state bonded. Mr. Dupuis said yes, they have to be or they will not be licensed.

REP. TOOLE asked Mr. Dupuis what percentage of the process serving is devoted to serving subpoenas for trials or depositions vs. servers of complaints which, as Representative Cromley indicated, would be left to you and not given to the paralegals? Mr. Dupuis stated that on an average his priority work is serving subpoenas for specific dates. Fifty percent of his work is on an

emergency type situation. REP. TOOLE then asked if that would be the share he would worry about giving over to the paralegals? Mr. Dupuis said that wasn't necessarily true, the work he is worried about is that they are able to license some of them in the state of Montana. REP. TOOLE asked if this bill required paralegals to take the same test as process servers, he wouldn't object. Mr. Dupuis replied he had no problem with that.

REP. RICE asked REP. CROMLEY why don't we simply make the paralegals take the test and go through the process that we have on the books for protection of the public so they can become process servers if in fact they are serving that many subpoenas. Why should we override the public policy of the regulations set up for process servers simply in the case of paralegals? REP. CROMLEY stated he didn't know why the statute was enacted, because anyone can serve a subpoena if they are over the age of 18. There is no problem with paralegals and secretaries each serving 10 and they won't be taking the test. It is just a matter of the paralegals having to keep track of the times they serve.

REP. MEASURE asked what the public policy interest is in the initial act? It appears that the public policy issue is the bonding in case someone were injured in a confrontational act. Representative Cromley said that having a bond is not going to protect anyone. Another reason is if a person qualifies as a process server, such as a paralegal, their name is listed as a processor server and therefore available to the public.

Closing by Sponsor:

REP. CROMLEY stated that legal firms will still continue to use process servers in cases of serving complaints and when you don't know where a person is located. They always have and will in the future. The concern is the extension of the law firm and the lawyer. Paralegals are used to serve process to save time and money for the lawyer. I don't know of any paralegal that has qualified as a process server, and it would not be convenient for a law firm to have a paralegal as a public process server because that paralegal may not be available for required process serving within the firm.

EXECUTIVE ACTION ON HB 36

Motion: REP. BROWN MOVED HB 36 DO PASS.

Motion: REP. BROWN moved to amend HB 36 by repealing the section the bill amends.

Discussion:

REP. TOOLE questioned what the motion will do. Is it the intent

of your motion that the processor server be eliminated? REP. BROWN said no, that we need an exception over 10. With the testimony heard, he doesn't see the law firms use of paralegals having a great impact on what the processors presently do and probably won't change their course of action.

REP. TOOLE stated the statute was trying to create or carve out a niche for process serving and was concerned about eliminating this section of the bill.

REP. RICE asked REP. BROWN if he wants to strike the entire section that says anyone has to file a certificate. REP. BROWN stated John MacMaster made the point that the committee should repeal 25-1-1101 through 25-1-1112 which is all of the statutes setting up registration for process server, if the committee repeals 25-1-1101.

REP. RICE stated the statute was passed by another session for other reasons. If we change a section of law that has been passed by another session we may get ourselves in trouble and be back before the end of the session.

REP. BROWN stated he didn't know the reasons either and felt the committee should pass the bill.

REP. BROWN withdrew his amendment.

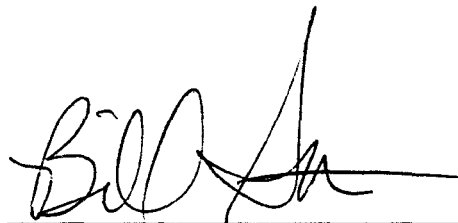
Vote: Motion failed 11-9. EXHIBIT 2

Motion: REP. GOULD MOVED HB 36 DO NOT PASS.

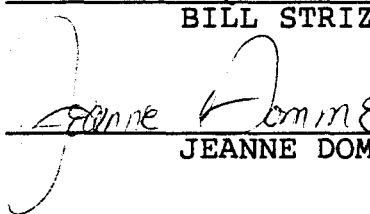
Motion/Vote: REP. BOHARSKI MADE SUBSTITUTE MOTION HB 36 BE TABLED. Motion carried.

ADJOURNMENT

Adjournment At: 9:58 a.m.



BILL STRIZICH, Chairman



JEANNE DOMME, Secretary

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE Jan. 8, 1991

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI		/	
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE		/	
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

EXHIBIT 1
DATE 1-8-91
HB 36

JARDINE, STEPHENSON, BLEWETT & WEAVER, P.C.

ATTORNEYS AT LAW
SEVENTH FLOOR, FIRST NATIONAL BANK BUILDING
P. O. BOX 2269
GREAT FALLS, MONTANA 59403-2269
(406) 727-5000

January 7, 1991

GREGORY A. LUINSTR
GEORGE N. McCABE
JOSEPH G. MUDD
ROBERT B. PFENNIGS
K. DALE SCHWANKE
JOHN D. STEPHENSON, JR.
CURTIS G. THOMPSON
PATRICK R. WATT
J. MICHAEL YOUNG

RETIRED
JOHN D. STEPHENSON
JOHN H. WEAVER

FAX (406) 727-5419

JAMES E. AIKEN
TRACY AXELBERG
JUDITH A. BARTRAM
GARY W. BJELLAND
ALEX BLEWETT
FRANCIS X. CLINCH
DONALD J. HAMILTON
LON T. HOLDEN
WILLIAM D. JACOBSEN
JACK L. LEWIS
SUE ANN LOVE

Chairman Bill Strizich
House Judiciary Committee
Capitol Building
Helena MT 59620

RE: House Bill 36

Dear Mr. Chairman:

I wish to express my support for the proposed amendment in H.B. 36, which amendment will exempt paralegals or legal assistants from complying with the licensing under § 25-1-1101, MCA.

I have been a practicing lawyer for over 32 years and there has never been any necessity for process servers to be registered. There is nothing in my experience that would be corrected by the inclusion of paralegals or legal assistants in the statute.

In addition, my law firm has 20 attorneys and several paralegals and, at no time, has there been and conduct by any of these paralegals that was questioned concerning their service of process. And, to my knowledge, there has never been any complaints made concerning any misconduct by other paralegals who serve process.

Whatever control is necessary in this area is therefore being provided now in a satisfactory manner. A new bureaucracy for paralegals will not solve any problems that have any significance legally or socially.

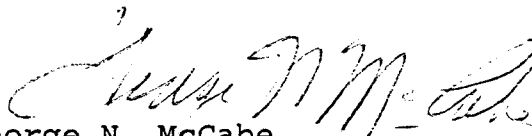
I recommend that the amendment be approved and passed.

Thank you for your consideration.

Very truly yours,

JARDINE, STEPHENSON, BLEWETT & WEAVER, P.C.

By


George N. McCabe

GNM:Pat

EXHIBIT 2
DATE 1-8-91
HB 36

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 1-8-91 BILL NO. HB 36 NUMBER 1

MOTION: Rep. Brown moved Do Pass

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	/	
REP. ARLENE BECKER	/	
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN	/	
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE		/
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON		/
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE	/	
REP. TIM WHALEN		/
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	9	11

VISITORS' REGISTER

Judiciary House

36

COMMITTEE

BILL NO. 56

DATE Jun. 8, 1991

SPONSOR Y.P. (Kome)

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.