

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 8, 1991, at 9:10 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (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: Rep. Messmore

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 SB 228 INCREASE JUDICIAL SALARIES

Presentation and Opening Statement by Sponsor:

SEN. YELLOWTAIL, SENATE DISTRICT 50, stated that it addresses a matter for the need for increased judicial salaries in Montana. He handed out 2 exhibits for the committee. **EXHIBIT 1 & 2.** He stated that a matter of public policy, the best lawyer in the court room is the judge. Montana compensates out judiciary at

the lowest level in any of the 50 states in our nation and the gap is growing drastically between Montana and its neighbors. An attorney in private practice makes as much as 30% more than a judge. This bill provides for a phased in salary increase for District Judges, Supreme Court Justices and the Chief Justice. He stated that the phased in approach called for \$8,000 increase over the next two years. That was amended by the Senate. Sen. Yellowtail recommended a amendment that would get the salaries back up to the level that was contemplated in the original drafting of the bill. He stated it would still leave Montana at approximately the bottom of the pile, but it would close the gap.

Proponents' Testimony:

REP. GOULD, HOUSE DISTRICT 61, stated that he has been working on this with the judges in the Missoula area. "It was my suggestion that this bill be started in the state." The state of Montana needs to pay the judges a commensurate salary to get them in the range of private entity. This bill will help Montana do that for their judiciary. He stated that he hoped the committee would look close at the amendment and to vote to put it back into the bill.

J.A. Turnage, Chief Justice, stated that he thought the committee would agree that the responsibility and discretion of authority that the constitution and statutes places in the hands of the judiciary demands only the brightest and best qualified to serve. When citizens seek services they look to those who are best qualified. There is a feeling that laws are self-executed. "We all know that is not the case." He stated that virtually every law and constitution provision, standing alone without a judicial branch of government to see that the laws are properly administrated and the constitution is followed, there would no law or constitution. The role of the judiciary in the state and the 43 judicial officers are handed a large degree of responsibility. "We understand the problems of the legislature allocating scarce resources to the needs, but we would hope that you will find time and seriously consider the request of the Montana Judiciary."

Martin Burke, Dean of the Law School - University of Montana, stated that the citizens of Montana have to consider the enormously important role of judges in our Democratic society. Montana judges are decision makers who are faced with some of the toughest decisions imaginable and shaping the law of the state. He stated that in order to retain the best and brightest individuals to sit on the district court bench cost some money.

Joy Bruck, President - League of Women Voters of Montana, gave written testimony in favor of SB 228. EXHIBIT 3

James Tutwiler, Montana Chamber of Commerce, stated that the business community in Montana also has an interest in our judiciary. He felt that if the committee is willing to get the

kind of people that will best suit the needs of the judiciary, the state is going to have to pay a commensurate price.

Don Judge, Montana State AFL-CIO, gave written testimony in favor of SB 228. **EXHIBIT 4**

Robert Deschamps, Montana County Attorney's Association, stated that it is important for both the defense and the prosecution that the state have well trained and well motivated on the bench. "I have been in front of the judges who have had those qualities and it doesn't serve anybody very well." He felt that it was important the judges salaries be increased and is an necessity for the people in the state of Montana.

Michael Sherwood, Montana Trial Lawyers Association, stated that the proponents have spoken well on the bill and that the Montana Trial Lawyers are in support of SB 228.

Allen Chronister, State Bar of Montana, stated that Montana has to provide the best possible people for our judiciary and pay them for what they are worth to get them into these very important positions.

John Alkie, Montana Defense Trial Lawyers Association, stated that the association supports this bill and the amendments provided to the committee. He felt it wasn't just a problem getting good people on the bench but also a problem keeping the competent people we have at the salaries they are earning.

Frank Davis, Judges Association, stated that the Judges Association is in support of this bill because it has merit. He handed the committee an exhibit. **EXHIBIT 5**. He stated that he would hope the committee would give this bill their support.

Opponents' Testimony:

SEN. SVRCEK, SENATE DISTRICT 26, stated he doesn't take his stand as an opponent lightly. The proponents have stated their case well and the importance of paying judges well. He felt there were other consideration that the committee and the legislature must make. "I think the increases in judicial salaries must be placed in context with the other priorities that this state and this legislature must contemplate." He stated that in the last session the judges came and asked for a \$12,000 increase in their salaries and it was decreased to \$6,000. The bill, as amended in the Senate, contemplates another \$8,000 increase for a total of \$14,000 increase in judicial salaries over 4 years. "If the amendment is adopted proposed by Sen. Yellowtail, an \$18,000 increase in the last two bienniums. "I am not saying judges should not be compensated for their hard work. We do need to pay them commiserate with the duties we require from them. I do have an amendment that I am proposing to the committee." **EXHIBIT 6**. He stated that this amendment would strike the increases proposed in the bill before the committee and would tie the judicial

salaries to their closest level in the present pay matrix and requires the judges be given the same rate of increase that the state gives their state employees.

Questions From Committee Members:

REP. DARKO asked Jim Opedahl if the benefit package include the retirement system? Mr. Opedahl stated that the 18% includes the individual members contribution to the retirement system.

REP. RUSSELL asked Dean Burke if the judicial people presently have had a course in Indian Law and do you think that it is important? Dean Burke stated that he doesn't know if current members of the bench have a background in Indian Law but he felt it was important that law students have some Indian law background.

Closing by Sponsor:

SEN. YELLOWTAIL stated that we keep such a large responsibility on the state's judges in the judicial system. He stated that Sen. Svrcek appeared in opposition, but he refuses to recognize the fact that over the years we have granted no percentage increase for the states judicial. The state has kept a percentage increase for state employees. "I would ask the committee to seriously consider this bill in the context of responsibilities the judiciary is given."

HEARING ON SB 58
REQUIRING ENTITY TO PAY MEDICAL COSTS
OF ARRESTED PERSONS NOT LATER JAILED

Presentation and Opening Statement by Sponsor:

SEN. YELLOWTAIL, SENATE DISTRICT 50, stated that this bill arose from the work of the joint interim sub-committee on adult and juvenile detention. SB 58, as it stands, pertains to the use of detention centers dealing with costs. He felt the primary changes are to require that an out-of-state jurisdiction pays for confinement and the medical expenses.

Proponents' Testimony:

Dan Russell, Administrator - Divisions of Corrections, stated that SB 58 has some very serious fiscal problems for the state, especially for the Department of Institutions. The bill states the arresting agency is the agency that must carry the costs for medical. He stated that on behalf of the District Court the Department of Institutions also supervise probationers who are still under the legal jurisdiction of the court. He stated that as the supervising agency, probation and parole officers are also the "arresting agency" when placing probationers in jail. The cost of medical care and compensation of probationers is cost that would have to be paid by the Department of Institutions.

Those costs would be at least \$347,000 a year and an unknown amount of medical care that the Department would have to pay. The department has no appropriation to cover those costs. He gave the committee an amendment that he discussed with Sen. Yellowtail. **EXHIBIT 7.** He felt that Sen. Yellowtail was in support of the amendment proposed by the Department of Institutions.

Mick Robinson, Central Services Administrator - Department of Justice, stated that the Department of Justice has some administrative problems with the language regarding the payment to the detention centers. He stated that he had a proposed amendment that he handed out to the committee. **EXHIBIT 8.** He stated that the Department does not have any leverage in coming up with an agreed upon cost and the Department ends up paying the amount requested by the detention center. He felt if that was the intent the department would go along with it, but had no negotiating power. The amendment would include a dollar amount as the amount to be paid with an inflation clause connected with that so the amount does not stay stagnant.

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor:

SEN. YELLOWTAIL stated that he would not have any problem with the amendments proposed by the Department of Institution. He felt that the amendment from the Department of Justice would lock in a specific figure and he was not comfortable with that amendment.

HEARING ON SB 51

Presentation and Opening Statement by Sponsor:

SEN. VAN VALKENBURG, SENATE DISTRICT 30, stated that SB 51 is a bill that many of the committee members have seen before. It is a product of 6 years of work by the Criminal Procedure Commission that was created in 1985 and has been working at revising the Montana Criminal Procedure Law at that time. He stated that it was the Criminal Procedure Commission's intention that the product would be adopted in rule fashion by the Montana Supreme Court. This bill is now being resubmitted in this session and the bill has the support of everyone who works in the Criminal Justice System in the state of Montana. He felt there would be some amendments proposed that will be mostly technical amendments. This is a bill that modernizes and recognizes changes in case law that has occurred over the past 25 years since Montana's Criminal Procedure Code was last revised and put into statute many of the common practices that occur in the

criminal arena in the state of Montana.

Proponents' Testimony:

Robert Deschamps III, Montana Criminal Procedure Committee, stated that this was bill was a long project and took a great amount of effort and time. The committee discovered there were many things on the codes that have been in the books forever. He stated that there has been a whole layer of court cases, both federal and state, that have mandated procedural rules over the last 20 years. There are many procedural rules that have been made by court ruling that don't exist in statute. The committee decided their objective would be to stream line, unify and consolidate the rules for the state of Montana. He stated that they covered most everything that relates to criminal procedure down to sentencing. The committee did not touch the sentencing statutes or the ones that deal with probation or parole.

Mr. Deschamps stated that most of what the committee did really didn't change anything. The committee streamlined and codified the rules. Most of the bill is existing law. "I think we have a good product and ask you to adopt the bill."

John Conner, Montana County Attorney's Association, Montana Criminal Procedure Committee, stated that he is in support of the bill and would be available for questions during executive session.

Michael Sherwood, Montana Criminal Procedure Committee, stated that he is in support of the bill and handed out some amendments for the committee. He gave a short summary of each amendment.
EXHIBIT 9

Opponents' Testimony: NONE

Questions From Committee Members:

REP. MEASURE asked Mr. Deschamps if he would go through the 4 or 5 specific instances where the law changes throughout the bill? Mr. Deschamps stated that the road block provision is in existing law, is several sections long and has a mechanical process for some of the regulations that the police officer has to follow when setting up a road block. The provision that the committee proposed allowed road blocks under certain types of provisions and gave it to the commanding authorities the responsibility of establishing the rules and regulations. He stated that the amendment that occurred in the Senate was because of the concern of the Sheriff's and Peace Officers who felt the provisions didn't clearly elaborate when they could stop someone that was a clean suspect.

REP. MEASURE asked Mr. Deschamps why they added vehicle registration and insurance to a regular stop and check for highway patrol officers? Mr. Deschamps stated that was one of

the things that is already done by highway patrol officers.

REP. MEASURE asked Mr. Deschamps if he could explain arrest by citizens in the bill? Mr. Deschamps stated that when a private person wants to make an arrest he has to see the crime committee in his presence or, if a felony, has to believe that a felony has been committed and then he is entitled to arrest.

REP. MEASURE asked Mr. Sherwood to explain searches and seizures in the bill? Mr. Sherwood stated that the primary page of search and seizure the committee took out a lot of the language that was adopted in the early 70's because the search and seizure law had changed radically since then. He felt there was a conflict between the statute as it exists and current United States Supreme Court search and seizure law.

REP. MEASURE if Mr. Sherwood if trial de novo is absent in Municipal or Justice Court? Mr. Sherwood stated that it will strict trial de novo in Municipal Court.

REP. WHALEN asked Mr. Sherwood what changes have been made to the current state statutes that forbids an arrest for a misdemeanor from a person's home at night? Mr. Sherwood stated that a person can still not be arrested at night as a general rule. The committee deleted some language that had been placed in the current statutes and the language addressed domestic violence. This bill does not change the law as it currently sits and does not change the one exception to that which is when there is domestic violence.

Closing by Sponsor:

SEN. VAN VALKENBURG stated that he had no objection to the committee taking its time with this bill but it has been available to all members of the bar, in Montana, since 1988. "I would hope you would give this your favorable consideration."

HEARING ON HB 752

SUMMARY MARRIAGE DISSOLUTION PROCEDURE ESTABLISHED

Presentation and Opening Statement by Sponsor:

REP. TOOLE, HOUSE DISTRICT 60, stated that this bill addresses a situation where people seeking a divorce, with very simple circumstances, are either forced to pay an attorney for services that only marginally needed, or do their own divorce with very little guidance. HB 752 is an effort to address that problem by establishing a procedure in the law that enables people, who have very simple or no disputes, to handle their own divorce without the existence of council. He states the bill provides for a summary dissolution process for people file divorce petitions jointly in court and do not have any children arising out of their marriage, who don't hold any real estate and have very

modest financial obligations and small amount of assets. There is a procedure for a 90 day delay following the filing of a petition and is placed on the court docket calendar only after the 90 days have expired. Rep. Toole stated that this bill sets it up so that a couple can get an inexpensive, easy divorce. He stated that the filing fees are \$100. Divorces under current law has a \$100 filing fee plus a \$25 fee for a decree. He stated that he has no particular feelings at to whether this needs to be changed to the fees currently for divorces.

Proponents' Testimony:

Bruce B. Barrett, Attorney, gave written testimony in favor of HB 752. EXHIBIT 10

Neil Haight, Director - Montana Legal Services, gave written testimony in favor of HB 752. EXHIBIT 11

Opponents' Testimony:

Charmaine Fistler, Clerk of Court, stated that there is need for this bill but there is a procedure for a joint dissolution of marriage. The petition can be filed for \$150 and if both spouses sign it the judge can make the judgement the same day. She stated that this bill eliminates the need for the judges from the process of divorce. Who is going to make the determination that each party has met the requirement of 40-4-104 with regard to the termination of marriage? EXHIBIT 12. Clerk's are not allowed to give legal opinions only procedural information. She stated the clerk's are concerned about liability of the notification of the final decree if not received by the final parties. The District Court would have to pay for postage to mail the final decree out to the involved parties. She stated this would be an added expense. Ms. Fistler stated that the clerk's oppose this bill and hope the committee would do the same.

Kade Bennetts, Clerk of Court, stated that the final petition for dissolution of marriage is a basic, simple dissolution. EXHIBIT 13. HB 752 is not needed for a couple to get a simple divorce. "I urge do not pass of this legislation."

Tom Harrison, Montana Clerk of Courts Association, stated that the fee system has to be changed for the reasons that was stated in testimony. He stated that the 90 day delay is not appropriate for some people and doesn't belong in this bill. He felt that this legislation is not needed.

Patty Jo Henthorn, Clerk of Court - Sweetgrass, stated she opposes HB 752.

Beverly Bennetts, Clerk of Court, stated that she opposes HB 752.

Lisa Ferkovich, Clerk of Court, stated that she opposes HB 752.

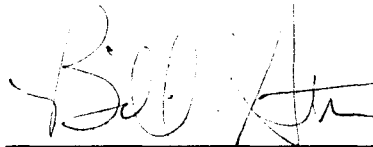
Questions From Committee Members: NONE

Closing by Sponsor:

REP. TOOLE stated that he does think this bill is needed. He felt that there are a number of problems that crop up when people don't know how to go about getting a divorce and end up hiring someone that they really can't afford. He stated that he would be happy to sit down with the Clerks and work through some of their concerns. "I would like the committee to look at bill and pass it out of committee."

ADJOURNMENT

Adjournment: 11:55 a.m.



BILL STRIZICH, Chair



JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3-8-91

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	XXXX		
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	/		

House Judiciary
Committee

EXHIBIT

1

DATE

3-8-91

HB

228

A JUDICIAL SALARY STUDY AND RECOMMENDATIONS TO THE MONTANA SUPREME COURT

*Prepared by the
Office of the Court Administrator
Montana Supreme Court*

January 1, 1991

Copies of This Study Are Not Printed At Public Expense

SENATE BILL 228
THIRD READING COPY

1. Page 3, line 1.
Strike: \$59,722
Insert: \$60,722
2. Page 3, line 2.
Strike: \$61,722
Insert: \$63,722
3. Page 3, line 3.
Strike: \$63,722
Insert: \$66,722
4. Page 3, line 4.
Strike: \$65,722
Insert: \$69,722
5. Page 3, line 9.
Strike: \$58,452
Insert: \$59,452
6. Page 3, line 10.
Strike: \$60,452
Insert: \$62,452
7. Page 3, line 11.
Strike: \$62,452
Insert: \$65,452
8. Page 3, line 12.
Strike: \$64,452
Insert: \$68,452
9. Page 3, line 19.
Strike: \$57,178
Insert: \$58,178
10. Page 3, line 20.
Strike: \$59,178
Insert: \$61,178
11. Page 3, line 21.
Strike: \$61,178
Insert: \$64,178
12. Page 3, line 22.
Strike: \$63,178
Insert: \$67,178

EXHIBIT 3

DATE 3-8-91

~~SB~~ 228



SB 228 An act increasing the salaries paid Supreme Court justices and District Court judges;...

The League of Women Voters of Montana supports SB 228.

The League rarely participates in the debate on salary setting for any elected officials. However, the current low level of judicial compensation (we are 50th in the nation) not only undercuts the court system's ability to attract qualified personnel from among Montana's best and brightest young legal minds, but we are losing experienced judges as well. Aspiring to a position on the bench is in danger of becoming attractive only to those who can afford to do so. According to the Judicial Salary Study (pg 13), Montana judicial salaries have not even kept pace with the average increases in annual wages of most wage-earners in the state.

For many years, the League has supported efforts to attract qualified persons to serve on the bench, to adequately fund the judiciary and to upgrade the administration of the court system. In the short-term, the only practical answer to maintaining the high quality of our courts is to assure that the salary paid judges is competitive and appropriate to the responsibility these positions carry. Unless this Legislature is willing to significantly increase judicial salaries, it could be difficult for Montana to continue to maintain a first rate judicial system.

Therefore, the League of Women Voters of Montana urges your support of SB 228.

Joy Bruck, President
League of Women Voters of Montana
1601 Illinois Helena, MT 59601
443-3772



EXHIBIT 4
DATE 3-8-91
HB 228

DONALD R. JUDGE
EXECUTIVE SECRETARY

110 WEST 13TH STREET
P.O. BOX 1176
HELENA, MONTANA 59624

(406) 442-1708

TESTIMONY OF DON JUDGE ON SENATE BILL 228 BEFORE THE HOUSE JUDICIARY COMMITTEE, MARCH 8, 1991

Mr. Chairman, members of the committee, for the record I am Don Judge, representing the Montana State AFL-CIO and I am here today in support of Senate Bill 228.

The remarks of Chief Justice Turnage in his State of the Judiciary address concerning the wages paid to the judiciary in Montana did not go unnoticed by the Montana State AFL-CIO.

The Montana State AFL-CIO, its affiliated unions and Montana workers as a whole recognize in order to recruit and retain competent, productive workers, they must be provided a decent wage commensurate with the responsibilities and demands of the job. This philosophy applies to every worker, whether laborer or judge.

We have supported similar calls for raising the salaries for Montana judges in the past and we support the call now.

The Montana State AFL-CIO agrees with a 1989 Great Falls Tribune editorial that said, "Judges have a tremendous responsibility in our lives. Their decisions have a direct or indirect bearing on virtually every aspect of what we do. Montanans expect a lot of work and a lot of quality from those who wear the black robes in the criminal and civil courts. We expect the best and the brightest. Since that is the case we must provide judges with decent compensation."

When justice is rendered, it should be by those whom we have confidence in, and to whom we have provided a just wage.

There will be those who will say we can't afford to raise judicial salaries, we say how can we afford not to?

The AFL-CIO urges you to support Senate Bill 228 and give it a "do pass" recommendation.

Thank you.

MISSOULIAN EDITORIAL

Court raises are justified

Montana needs good judges
— but they don't come cheap

Raising the pay for Montana's grossly underpaid judges and justices wouldn't produce instantly better courts. That can only happen over time, through the recruitment and retention of the best legal talent to the bench.

But continuing to ignore the pay problem is the surest way to produce worse courts.

The judiciary isn't alone among the poorly paid sectors of government. Montana doesn't pay its university professors, hydrologists or public health-care workers competitive salaries, either. But considering the fact that one gets what one pays for, the courts are the last place where taxpayers ought to be stingy. Every aspect of our lives is affected by the quality of justice dispensed by the courts. We ought to be doing everything possible to make sure the men and women on the bench are the best available.

It's tough to persuade legislators and the constituents they represent to pay judges and justices more when they're already among the highest-paid public employees in the state. District Court judges earn \$55,178 a year, and

associate justices of the Supreme Court earn \$56,452. Those figures may sound plenty high in a state where the average family income is scarcely half what a judge makes.

But judicial salaries must be judged in the proper context. Not only do other states pay their judges more (district judges in neighboring states make an average of \$68,500 a year; the national average is roughly \$75,000), but most good judges could dramatically improve their income by going into private legal practice. What's more, a recent study prepared by the Supreme Court administrator concludes inflation has eroded the buying power of judicial salaries by 32 percent since 1977.

Montanans may never know what they're losing by underpaying judges. That's because the best potential judges may never seek office because the financial sacrifice is too great.

Legislators are considering proposals to raise judicial salaries. Senate Bill 228 would grant judges \$12,000 raises, phased in over the next two years and financed partly through added court fees. In considering such proposals, lawmakers and taxpayers will undoubtedly agonize over the costs. But if the consequences of judicial mediocrity are considered, low salaries for judges are a poor bargain.

Ex. 5
3-8-91
SB 228

Wednesday, January 16, 1991

Opinion

State judges under paid

By any standard, Montana judges are underpaid.

One might expect their pay to be less than the national average. Montana wages are less than the national average in nearly every field.

GAZETTE OPINION

But one would not expect that Montana Supreme Court justices would be paid a full one-third less than the average pay for similar positions elsewhere.

One would not expect that state district court judges would be paid 27 percent less than the average of their peers elsewhere in America.

Even more startling is the breach between Montana judges and those from surrounding states.

Montana's chief justice earns \$57,722 a year. The figures budgeted for surrounding states are: North Dakota, \$70,243; Wyoming, \$72,000, Idaho, \$76,201; South Dakota, \$66,700, and Washington, \$89,300.

Montana district court judges are paid only 80 percent of the averages of district court judges for those states.

During the 1989 Legislative Session, Chief Justice J.A. Turnage testified:

"If Montanans are to keep and maintain a first rate judicial system, we simply must have a compen-

sation system which can reasonably be expected to retain and recruit our best lawyers to become judges. If embarrassment at being 50th (in judicial pay) in the nation were all that was at stake. I believe we could certainly stand it. But the consequences of such low salaries go beyond embarrassment and threatens to undermine the judicial system itself. The current level of salaries offers little hope of ensuring the future of our currently first rate system."

It is a terrible that the chief justice has to go to the Legislature hat in hand to plead the obvious.

The world has become so complex that governmental agencies sue each other so the courts can tell them who is responsible for what. What is the formula for "equal" education, equal taxes, equal opportunity? The courts are ever more frequently being called in to balance the state constitution against the reality of daily life in Montana.

We don't seem to recognize the importance of the role judges play in our society. We don't seem to recognize the quality of the judges we are blessed with. We don't seem to realize that we cannot maintain that high quality without paying them commensurate with their worth.

Those are simple points. The Legislature must grasp them this session.

Ex. 5
3-8-91
SB 228

4A

Give judges a pay hike

— Montana used to have a commission that studied judicial salaries and made recommendations to the Legislature regarding salaries for district court judges and supreme court justices.

The commission's recommendations were duly noted by the Legislature — and then ignored. I'll wonder the commission was finally abolished.

In any event, judicial salaries, when adjusted for inflation, actually decreased by 32 percent from 1977 through 1990.

The 1989 Legislature granted supreme court and district court judges \$3,000 a year raises for 1990 and '91. This year supreme court judges will receive \$56,452. The chief justice makes \$57,722. District court judges will be paid \$55,178.

Even with a total raise of \$6,000 a year over two years, Montana ranks 50th — dead last — in the salaries it pays its judges.

Montana salaries are so low that neighboring states are even increasing the gap between their salary levels and that of Montana. For example, in 1986 the salary for a Montana Supreme Court justice was \$50,452 and for an Idaho justice it was \$54,770 — a difference of \$4,318. Unless the current Legislature increases judicial salaries, the 1991 dollar difference between the same positions in Montana and Idaho will be more than \$18,000.

"If embarrassment at being 50th in the nation were all that was at stake, I believe we could certainly stand it," Chief Justice Jean Turnage said. "But the consequences of such low salaries go beyond embarrassment and threaten to undermine the judicial system itself. The current level of salaries offers little hope of ensuring the future of our current first-rate system."

AN
IR
VIEW

The \$56,452 paid to Montana Supreme Court justices compares to a national average of \$83,749 and an average in neighboring states of \$73,808. The \$55,178 paid to Montana district court judges compares to a national average of \$75,419 and an average in neighboring states of \$68,531.

(The neighboring states used in the comparison are Washington, Idaho, Wyoming and North and South Dakota.)

Washington pays the highest salaries in the region, \$89,300 for supreme court justices and \$80,500 for district court judges.

But the other states used in the salary survey also pay their judges considerably more than Montana. For example, North Dakota pays its justices \$11,890 more and its district court judges \$7,791 more. Wyoming pays justices \$15,548 more and judges \$13,572 more.

In 1977, Montana Supreme Court justices ranked 42nd in the nation in salary and district court judges were ranked 29th. Since that time Montana judicial salaries have reached the point that even the state court administrators in all but two states (Montana and Wyoming) are paid more than Montana district court judges.

We urge legislators to bring judicial salaries in line with our neighboring states. They deserve it.

The time has come to pay our judges an adequate salary

Montana's judicial salaries are nothing short of shameful.

They are short of everything else — far short of the national average, short of the regional average by an ever increasing ratio and short by a long shot of the wages a competent attorney can make in private practice.

During the 1989 Legislative session, Chief Justice J.A. Turnage summarized the need for a pay increase for the states judges: "If Montanans are to keep and maintain a first rate judicial system, we simply must have a compensation system which can reasonably be expected to retain and recruit our best lawyers to become judges."

We agree.

The modest increase the last Legislature gave the judges wasn't enough. The state's ability to recruit and keep good judges is still in jeopardy.

"Not only are we still dead last in national rankings, Montana salaries are so low that neighboring states are even increasing the gap between their salary levels and that of Montana," Turnage said recently, pressing for action by the 1991 Legislature.

He provided an example. Five years ago, a Montana Supreme Court justice received \$50,452. Our next door neighbor, Idaho, paid its high court justices \$54,770 — a difference of \$4,318. The gap between the two justices this year will be more than \$18,000 if this Legislature doesn't take action.

A new bill to boost the salaries again is currently being drafted at the request of Rep. Jan Brown, D-Helena.

Without a bill in hand, we support the concept of a pay raise for Montana's district and high court judges.

Montana's judges shoulder a heavy burden. The decisions they hand down have direct and indirect bearing on virtually every aspect of our lives. We expect much and pay little for a demanding job.

The judicial system is at risk when good judges cannot afford to serve on the bench. It's time to pay for the first-rate judicial system we have.

EXHIBIT 6
DATE 3-8-91
~~SB~~ 228

Amendments to Senate Bill No. 228
Third Reading Copy

Requested by Senator Svrcek
For the Committee on Judiciary:

Prepared by Greg Petesch
March 6, 1991

would strike the increases proposed
in SB 228 and tie judicial salaries
to whatever pay increase the
Legislature grants to state em-
ployees in the present legislative
session.

1. Page 2, line 25 through page 3, line 5.
Following: "~~thereafter~~" on page 2, line 25
Strike: remainder of line 25 through "thereafter" on page 3, line 5
Insert: "a base salary of \$57,722 increased each fiscal year by the percentage increase for a grade 25, step 2, classified state employee"
2. Page 3, lines 8 through 13.
Following: "~~thereafter~~" on line 8
Strike: remainder of line 8 through "thereafter" on line 13
Insert: "a base salary of \$56,452 increased each fiscal year by the percentage increase for a grade 24, step 5, classified state employee"
3. Page 3, lines 18 through 23.
Following: "~~thereafter~~" on line 18
Strike: remainder of line 18 through "thereafter" on line 23
Insert: "a base salary of \$55,178 increased each fiscal year by the percentage increase for a grade 24, step 4, classified state employee"
4. Page 4, line 9.
Strike: "\$70"
Insert: "\$65"
5. Page 4, line 10.
Strike: "\$70"
Insert: "\$65"
6. Page 4, line 11.
Strike: "\$110"
Insert: "\$105"
7. Page 4, line 13.
Strike: "\$110"
Insert: "\$105"
8. Page 4, line 15.
Strike: "\$50"
Insert: "\$45"
9. Page 4, line 17.
Strike: "\$35"

Ex. 6

3-8-91

SB 228

Insert: "\$30"

10. Page 5, line 13.

Strike: "\$60"

Insert: "\$55"

11. Page 5, line 17.

Strike: "\$45"

Insert: "\$40"

12. Page 8, line 7.

Strike: "\$10"

Insert: "\$5"

13. Page 8, line 17.

Strike: "\$80"

Insert: "\$70"

14. Page 8, line 18.

Strike: "\$80"

Insert: "\$70"

15. Page 8, line 19.

Strike: "\$120"

Insert: "\$110"

16. Page 8, line 21.

Strike: "\$120"

Insert: "\$110"

17. Page 8, line 23.

Strike: "\$60"

Insert: "\$50"

18. Page 8, line 25.

Strike: "\$45"

Insert: "\$35"

19. Page 9, line 21.

Strike: "\$70"

Insert: "\$60"

20. Page 9, line 25.

Strike: "\$55"

Insert: "\$45"

21. Page 12, line 15.

Strike: "\$20"

Insert: "\$10"

EXHIBIT 7
DATE 3-8-91
HB ~~58~~ 58

Amendments to Senate Bill 58
Third Reading Copy

by the Department of Institutions

Page 2, Line 17

Following: "the county"

Insert: Medical expenses for inmates detained as probation violators shall not be a charge to the Department of Institutions.

Page 3, Line 22

Following: "the county"

Insert: Costs of confinement for probation violators shall not be a charge to the Department of Institutions.

EXHIBIT 8
DATE 3-8-91
~~HB~~ 58

Proposed amendments to S.B. 58 (third reading copy):

1. Page 3, line 14, strike the language, "AS AGREED UPON BY THE ARRESTING AGENCY AND THE DETENTION CENTER,".
2. Page 4, line 3, insert a new sub-section (3), and re-number the current (3) to (4).

"(3) The confinement cost as used in 7-32-2242(2), is defined as:

- (a) \$35 for each prisoner day for the year ending June 30, 1992.
- (b) For the year beginning July 1, 1992, and on July 1 of each succeeding year, the previous year's cost shall be increased by the percentage change in the consumer price index as certified by the Bureau of Business and Economic Research of the University of Montana.
- (c) The Department of Justice shall compute the next year's rate, to the nearest whole dollar, and inform all county sheriffs or detention center administrators, by July 1, of the new rate."

Proposed Amendments to SB 51
Michael J. Sherwood
Member of the State Bar Commission on Criminal Procedure

1. At Page 10, line 18, after "before",

INSERT: "before the first witness is sworn at the time of"

Reasoning: It may happen that a defendant wishes to object to the trial taking place in a particular jurisdiction because the jury panel has been prejudiced by publicity. This may not become apparent until the panel has been interviewed. This process takes place at the beginning of a trial. Witnesses are sworn only after a jury has been selected from the panel.

2. At page 25, line 7, after "state",

INSERT: "except that a warrant for the violation of a city ordinance may not be acted upon unless the person is located within the city limits where the violation is alleged to have occurred"

Reasoning: This makes Section 28 consistent with Section 30 at page 27, lines 10 through 13.

3. At page 49, line 22, after "counsel",

INSERT: "or that has jurisdiction over the criminal cause"

Reasoning: Oftentimes counsel is initially appointed by a J.P. even though the case is a felony. It might very well be that counsel will seek to be relieved from an appointment by the District Court or Supreme Court.

4. At page 52, line 4, after "in",

STRIKE: "is not in contumacious default in the"
and

INSERT: "has refused or failed, when able, to make"

Reasoning: "Contumacious" is a big word, even for lawyers.

5. At page 67, line 11,

STRIKE: "\$500"

and

INSERT: "\$1,000"

Reasoning: Often a bail will be set on a second or third-time DUI or other misdemeanor offense which exceeds \$500.

Ex. 9
3-8-91
SB 51

6. At page 77, line 23, after "issue",

INSERT: "a summons or"

Reasoning: This makes Section 96 consistent with Section 29.

7. At page 99, line 15, after "a",

STRIKE: "verdict is returned"
and

INSERT: "judgment as to guilt or innocence is reached"

Reasoning: Juries return verdicts, judges reach judgments.

8. At page 126, line 12, after "district",

INSERT: "OR MUNICIPAL"

Reasoning: HB 69 now limits trial de novo in an appeal from municipal court. A party that wishes to have a witness granted immunity for purposes of trial may only get that opportunity at the municipal court level.

9. At page 126, line 20, after "evidence",

INSERT: "OR ANY INFORMATION DIRECTLY OR INDIRECTLY DERIVED FROM SUCH TESTIMONY OR EVIDENCE"

Reasoning: This language was inadvertently deleted from the code.

10. At page 127, line 10,

STRIKE: "felony"
and, after "cases",
INSERT: "PENDING IN DISTRICT OR MUNICIPAL COURT"

Reasoning: HB 69 has now restricted trial de novo in municipal court cases. The reasoning was to eliminate using the municipal court trial as a discovery tool. This is fine so long as meaningful pre-trial discovery is available in municipal court.

11. At page 159, line 19,

INSERT: "(3) AN ORDER FOR THE DISMISSAL OF AN ACTION AS PROVIDED IN THIS CHAPTER IS A BAR TO ANY OTHER PROSECUTION FOR THE SAME OFFENSE IF IT IS A MISDEMEANOR, BUT IT IS NOT A BAR IF THE OFFENSE IS A FELONY."

HOUSE BILL 752

From: Bruce B. Barrett, Attorney

TESTIMONY IN SUPPORT OF SUMMARY DIVORCE BILL

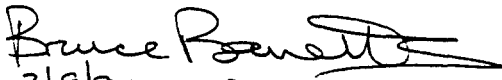
I submit this testimony in support of the Summary Divorce Bill. If passed this Bill would allow Montana to join a growing number of states who are allowing a simple and expedited process for couples seeking divorce in non-complex situations. In drafting this bill, similar laws in Washington, Oregon, and California were examined.

The highlights of the bill are as follows:

1. The bill would allow a limited number of persons to apply for, and obtain a divorce without a Court hearing. This would only be allowed for couples with no children, and limited debts and property. All other couples must seek divorce through the traditional Court-hearing means.
2. Both husband and wife must seek to utilize this process. Unless both consent, the traditional process must be used.
3. The non-Court process provided in this Bill establishes a 90-day "waiting" period. During this period either party can "revoke" their participation before a Decree of Dissolution is entered. This acts as an additional safeguard to protect the parties.
4. Two years ago the Attorney General's Office determined that the costs involved in printing and distributing the forms called for in this bill would be inconsequential. The filing fee for parties seeking Summary Divorce is nearly as high as for those seeking traditional divorces, even though the Court involvement is much less. An earlier version of the bill required a \$50.00 fee. The Clerks of Court objected to the loss of revenue.
5. This bill would help reduce Courtroom backlog. Many divorces involve no debts, no children, and no property of consequence. Judges have little choice but to "rubber stamp" documents prepared by attorneys and charged to the clients. Parties with simple divorces are constantly seeking to go to Court on their own. Their efforts are often awkward and very time consuming for the legal system. In seeking to help persons avoid costly legal fees, workshops and form packets are appearing to help people try to 'do-it-themselves' as they try to negotiate a simple problem through a complex legal system. This bill would assist those persons who truly do not need an attorney, reduce incidents of unauthorized practice of law by workshop sponsors and form distributors, and relieve some of the burden on a clogged legal system.

Page 2, Testimony of Bruce Barrett, Attorney

None of what I have said so far addresses the moral issue. Some argue that divorce is already too easy, and that anything which simplifies the process assaults the sanctity of marriage. This bill is limited in scope, and will affect only a small percentage of persons seeking dissolution of marriage. The marriages where stakes are high must still be examined by a Judge. As to the cases where summary divorce is available, the extended waiting period actually gives the parties longer to reconsider, seek counseling, etc. It must be remembered that persons utilizing this new summary divorce must both agree to use the process. Under the process as it stands today, when both parties agree to a dissolution they can seek a joint dissolution with the help of an attorney. In the case of a joint dissolution, no service is required, only the signing of a Petition and a short Court appearance. Frankly, today a couple with the means to hire a fast acting attorney can have a divorce in as little as 1 day if the Court hearing can be arranged that quickly, which it often can. The expensive and cumbersome process available today hardly is a guarantor of the sanctity of marriage. This Bill should be passed to assist responsible couples who make their own joint determination that their marriage must end. The limits on assets and children, combined with the waiting period, are good assurances that justice will be done. I urge passage of the Bill.


318191 243-6213

I. WHAT IS THIS BOOKLET ABOUT?

Exhibit # 10
3/8/91 HB 752

This booklet describes a way to end a marriage through a kind of divorce called **Summary Dissolution**.

The official word for **divorce** in California is **dissolution**. There are two ways of getting a divorce, or dissolution, in California. The usual way is called a **Regular Dissolution**. A shorter and easier way—what this booklet is about—is called **Summary Dissolution**.

The new method is shorter and easier. But not everybody can use it.

Briefly, a Summary Dissolution is possible for couples

- (1) who have no children together,
- (2) who have been married for only a short time,
- (3) who don't own very much,
- (4) who don't owe very much, and
- (5) who have no disagreements about how their belongings and their debts are going to be divided up once they are no longer married to each other.

With this procedure you won't have to appear in court. You may not need a lawyer, but it is in your best interest to see a lawyer about the ending of your marriage. See page 22 for more details about how a lawyer can help you.

The procedure is carried out by preparing and filing a **Joint Petition for Summary Dissolution**, together with a **Property Settlement Agreement**, with the County Clerk in your county. After a six-month waiting period—during which either of you can stop the process if you change your mind—you apply for and receive a final divorce.

This booklet will tell you:

- (1) where to turn for help if you want to save your marriage;
- (2) who can use the Summary Dissolution procedure;
- (3) what steps you have to go through to get a Summary Dissolution;
- (4) when it would help to see a lawyer; and
- (5) what risks you take when you use this procedure rather than the Regular Dissolution procedure.

If you wish to use the Summary Dissolution procedure, you must, at the time you file the Joint Petition, sign a statement which says that you have read and understood this booklet. It's important for you to read **the whole booklet** very carefully.

Save this booklet for at least six months if you decide to start a summary dissolution. It will tell you how to complete the procedure.

If you fail to complete the procedure, either by revoking it or obtaining a final divorce, the court may dismiss the action to clear its records.

SPECIAL WARNING

If you are an alien who became a lawful permanent resident on the basis of your marriage to a U.S. citizen or a lawful permanent resident, obtaining a dissolution within two years might lead to your deportation. You should consult a lawyer before obtaining a divorce.

II. ARE YOU SURE YOUR MARRIAGE CAN'T BE SAVED?

Before you take any legal steps to end your marriage, you should make sure that you have thought of all possible ways of saving it.

Do you want professional help in working out ways to save your marriage?

Many communities, and many religious organizations, offer marriage counselling services.

You can also get help from the Court. Most County Superior Courts have services called **Conciliation Courts**. Through the Conciliation Courts you can get help in dealing with the problems in your marriage. Even if you have made up your mind to go through with the divorce, it might help you to talk to somebody about your problems. You should feel free to ask for help from the Conciliation Courts.

How much will it cost?

In some counties counselling help through the Conciliation Courts costs nothing at all. In others there is a small fee.

Will your personal problems be kept private?

By law, all records of the Conciliation Court are strictly confidential. You will meet with your counsellor in a private office. What is said between you and the counsellor is completely private.

Where do you find these services?

The addresses and telephone numbers of the Conciliation Courts in those counties which have them may be found on the back of this booklet. You can make an appointment to see a counsellor with a simple telephone call.

IV. WHO CAN USE THE SUMMARY DISSOLUTION PROCEDURE?

You can get a divorce through the Summary Dissolution procedure only if **ALL** of the following statements are true about you at the time you file the Joint Petition for Summary Dissolution. Check this list very carefully. If even one of these statements is not true for you, you **CANNOT** use this way of getting a divorce.

- ___ 1. We have both read this booklet, and we both understand it.
- ___ 2. We have been married no longer than five years.
- ___ 3. No children were born to us before or during our marriage.
- ___ 4. We have no adopted children under 18 years of age.
- ___ 5. The wife is not now pregnant.
- ___ 6. Neither of us owns any part of any land or buildings.
- ___ 7. Our community property is not worth more than \$10,000.00.*
- ___ 8. Neither of us has separate property worth more than \$10,000.00.*
- ___ 9. Our community obligations are less than \$3,000.00.*

For deciding on statements 7, 8, and 9, use the guide given on pages 7 to 13.

- ___ 10. At least one of us has lived in California for the past six months or longer, and in the county where we are filing for Dissolution for the past three months or longer.
- ___ 11. We have prepared and signed an agreement which states how we want our possessions and our debts to be divided between us. (Or which states that we have no community property or community obligations.)
- ___ 12. We have both signed the Joint Petition and all other papers needed to carry out this agreement.
- ___ 13. We both want to end the marriage because of serious permanent differences.
- ___ 14. We have both agreed to use the Summary Dissolution procedure rather than the Regular Dissolution procedure.
- ___ 15. We are both aware of the following facts:
 - (a) that there is a six-month waiting period, and that either of us can stop the divorce at any time during this period;
 - (b) that our marriage will be completely ended only if, after the waiting period, one of us files with the County Clerk a Request for Final Judgment;
 - (c) that after the Dissolution becomes final, neither of us has any right to expect money or support from the other, except for what is included in the Property Settlement Agreement; and
 - (d) that by choosing the Summary Dissolution procedure we give up certain legal rights that we would have if we had used the Regular Dissolution procedure. (These are explained on page 6.)

*Do not count cars or car loans in this total.

VI. AN IMPORTANT DIFFERENCE BETWEEN SUMMARY DISSOLUTION AND REGULAR DISSOLUTION.

With a Regular Dissolution, a court hearing or trial is held. If either spouse is unhappy with the judge's final decision, it is possible to challenge that decision.

This can be done, for example, by asking for a new trial. It is also possible to **appeal** the decision by taking the case to a higher court.

With a Summary Dissolution there is no trial or hearing. Couples who choose this method of getting a divorce do not have the right to ask for a new trial (since there is no trial) or the right to appeal the case to a higher court.

There are, however, some cases in which divorce agreements under a Summary Dissolution can be challenged. You will have to see a lawyer about this. The Court may have the power to set aside the divorce if you can show:

(1) that you were treated unfairly in the Property Settlement Agreement,

This is possible if you find out that the things you agreed to give to your spouse were much more valuable than you thought at the time of the Dissolution.

(2) that you went through the Dissolution procedure against your will,

This is possible if you can show that your spouse used threats or other kinds of unfair pressure to get you to go along with the divorce.

(3) that there are serious mistakes in the original agreement.

Various kinds of mistakes can make the Dissolution invalid; but you will have to go to court to prove the mistakes. It may be that one or both of you had a lot of property that you had forgotten about when you drew up the Property Settlement Agreement. Or maybe a bank account mentioned in the agreement had much more money or much less money in it than your agreement states.

Correcting mistakes and unfairness in a Summary Dissolution proceeding can be expensive, time-consuming and difficult. It is very important for both of you to be honest, cooperative, and careful when your lawyers or you do the paperwork for the Dissolution.

XII. WHAT YOU SHOULD KNOW ABOUT REVOCATION

It is important to realize that the **Notice of Revocation** (Form 1295.30) is NOT just another form you are supposed to fill out and turn in.

DO NOT FILL IT OUT, AND DO NOT BRING IT TO THE COUNTY CLERK UNLESS YOU WANT TO STOP THE DIVORCE!!!

What is the Notice of Revocation form for?

This is the form you need if you want to stop the divorce. This is called **revoking** the agreement—cancelling or stopping it.

What reasons are there for revoking?

There are three reasons you might have for wanting to stop the **Summary Dissolution**:

- (1) you have decided to return to your spouse and continue the marriage;
- (2) you may want to change over to the **Regular Dissolution** as a better way of getting your divorce; or
- (3) the wife discovers she is pregnant.

Why might you want to change over to the Regular Dissolution?

You may come to believe that you will get a better settlement if you go to court than the agreement you originally made with your spouse. (Maybe, after thinking it over, you feel you aren't receiving a fair share of the community property.)

How do you do it?

At the time you picked up the Joint Petition forms, you and your spouse also received three copies of Form 1295.30, **Notice of Revocation of Summary Dissolution Petition**. Fill out all three copies of that form, sign them, and bring them to the County Clerk's office. **YOU CAN DO THIS ALONE. THIS FORM DOES NOT NEED YOUR SPOUSE'S SIGNATURE.**

If you do this at any time during the six-month waiting period, you will automatically stop the divorce proceeding.

Can the Dissolution be stopped once the waiting period is over?

If your spouse has not yet filed a **Request for Final Judgment**, you can still revoke the Dissolution by filing the Revocation form.

What happens to the part of the waiting period that got used up?

You can apply the amount of time you waited on the **Summary Dissolution** to the **Regular Dissolution**. For example, if four months went by before you decided to revoke the **Summary Dissolution**, the waiting period for the **Regular Dissolution** will be shortened by four months.

However, you can save this time **only** if you file for a **Regular Dissolution** within 90 days of revoking the **Summary Dissolution**.

X

XIII. SHOULD YOU SEE A LAWYER?

Must you have a lawyer to get a divorce with the Summary Dissolution?

No. You can do the whole thing by yourselves. But it would be wise to see an attorney before you decide to do it yourself. You should not rely on this booklet only. It is not intended to take the place of a lawyer.

If you want legal advice, does that mean you have to hire a lawyer?

No. you may hire a lawyer, of course, but you can also just visit a lawyer once or twice (at low cost) for advice on how to carry out the Dissolution proceeding. Don't be afraid to ask the lawyer in advance what fee will be charged. It may be surprisingly inexpensive to have a lawyer handle your divorce.

Do you have to accept your attorney's advice?

No, you don't. And if you are not pleased with what one attorney advises, you can feel free to go to another one.

How can an attorney help you with the Summary Dissolution?

First of all, an attorney can advise you, on the basis of your personal situation, whether you ought to use the Regular Dissolution rather than the Summary Dissolution.

Second, an attorney can check through your Property Settlement Agreement to help you figure out if you've thought of everything you should have. (It is easy to forget things you don't see very often—savings bonds, safe deposit boxes, etc.)

Third, there are many situations in which it is not easy to figure out what should count as community property and what should count as separate property. Suppose one of you had money before the marriage and put it into a bank account in both of your names, and then suppose that both of you used money from that account. It may not be easy to decide how the money that remains should be divided. An attorney can advise you on how to make these decisions.

Fourth, there may be special situations in which your property settlement is not covered by the sample agreement on pages 15 to 18.

An attorney can help you put the agreement in words that are legally precise and cannot be challenged or misinterpreted later on.

Where can you find an attorney?

The yellow pages of your telephone directory will list, under "Attorneys" or "Attorney Referral Service," organizations that can help you find a lawyer. In many cases you will be able to find an attorney who will charge only a small fee for your first visit. You can get information about free or low-cost legal services through the County Bar Association in your county.

X

D-29

Testimony of Neil Haight, Director Montana Legal Services

TESTIMONY IN SUPPORT OF HOUSE BILL 752

I appear today to support House Bill 752 which will establish a no-Court dissolution process for certain limited cases in Montana. From the perspective of Montana Legal Services, this bill will be beneficial in 3 ways.

1. The bill will bring relief to an over-burdened and underfinanced legal services organization. We provide legal services for low income persons. There are never enough resources to provide assistance to all who need it, including poor persons with relatively simple divorces.

When faced with our many cases we have no choice but to use a priority system to handle those with the most critical needs first. People with no children and little property or debts must, unfortunately, go to the bottom of our list of cases. Eventually we try to get private members of the bar to handle these kinds of cases. Anyone involved in the "pro bono" process of trying to get busy attorneys to take time out to handle free cases for poor persons will tell you this task is extremely difficult. Precious administrative and attorney time is spent by our staff trying to solicit pro bono attorneys to handle these simple cases.

2. The bill will be a benefit to many clients who we believe want such a bill. Clients often ask our offices for do-it-yourself forms, but present law, malpractice concerns, and traditional court practices prohibit us from doing this. If this bill were passed these clients would be able to obtain their own divorce with a simple process that has a number of protections built in.

In spite of arguments to the contrary, handling your own dissolution, including a court hearing before a judge is no easy process. It can be difficult at best, humiliating and frustrating at worst. Yet many persons are forced to utilize this difficult process when a much simpler one could be made available. The demand for a way to get a dissolution without the expense of an attorney has been great enough that our office has established actual classes where groups of do-it-yourself clients are taught basics. These classes also take our precious time and resources, but are a necessity. Some of the parties taking these classes could now handle their own dissolutions using a simple booklet and blank forms prepared by the Attorney General for distribution.

Interestingly, our classes were in part a response to increasing incidents of private citizens trying to help other citizens do their own divorces. In many cases these people were coming very close to practicing law without a license. People had begun providing forms, and it will probably be only a matter of time

22. 11
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HB 752

before form-selling businesses begin to develop. This area is ripe for abuse, especially when a simple process, already in use in other states, is available.

3. The bill will benefit the attorneys of Montana. Contrary to popular belief, most lawyers we deal with would prefer this bill. Simple divorces are not money makers in most cases, and in our cases in particular. The divorces that clog our courtrooms take time away from many critical cases that need judge's attention and courtroom time. Removing these cases from the dockets will help all attorneys. Removing these cases from our own "lists" at legal services will free up pro bono attorneys to spend what free time they are willing to contribute on cases that truly need attorney time and resources.

Cross-References

Montana Rules of Civil Procedure, Title 25,
ch. 20.

Application of the Montana Rules of Civil
Procedure, 40-4-105.
Uniform Child Custody Jurisdiction Act, Title
40, ch. 7, part 1.

40-4-104. Dissolution of marriage — legal separation. (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state or was stationed in this state while a member of the armed services and that the domicile or military presence has been maintained for 90 days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

History: En. 48-316 by Sec. 16, Ch. 536, L. 1975; R.C.M. 1947, 48-316; amd. Sec. 1, Ch. 392, L. 1985.

Cross-References

Residence — rules for determining, 1-1-215.

Conciliation proceedings — effect on other proceedings, 40-3-127.

Support, custody, visitation, and related provisions, Title 40, ch. 4, part 2.

40-4-105. Procedure — commencement — pleadings — abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

EXHIBIT 10
DATE 3-8-91
HB 182

FILED
BY _____
DEPUTY

'91 MAR 5 AM 11 15

CLERK OF DISTRICT COURT
KATHLEEN D. BREUER

and

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

IN RE THE MARRIAGE OF

N

and

Joint Petitioners,

CAUSE NO.

JOINT PETITION FOR
DISSOLUTION OF MARRIAGE

JOINT PETITION FOR DISSOLUTION OF MARRIAGE

COME NOW the Joint Petitioners and for their cause of action state:

I.

That the vital statistics concerning the parties are as follows:

WIFE

- A. Age: Thirty-eight (38) years of age
- B. Occupation: unemployed
- C. Length and Domicile in Montana: over ninety (90) days

HUSBAND

- A. Age: Twenty-five (25) years of age
- B. Occupation: Marine enlistment
- C. Length and Domicile in Montana: n/a

II.

That the parties were married in the city of Missoula, county of Missoula,

1 state of Montana, on August 25, 1989.

2 III.

3 That the marriage of the parties is irretrievably broken in that there
4 exists serious marital discord which adversely affects one or both of the
5 parties towards the marriage, and there is no reasonable prospect of reconciliation.

6 IV.

7 There were no children born of this marriage; petitioner wife is not now
8 pregnant.

9 V.

10 There is no real property from this marriage to be divided; all personal
11 property has been mutually agreed upon and divided and in this agreement
12 petitioner husband shall relinquish title to 1978 AMC Matador to petitioner
13 wife. Petitioner husband shall assume the responsibility of all debts of
14 the marriage including any and all bad checks he wrote during the marriage;
15 from this date forward, each party shall be responsible for his/her own debt.

16 VI.

17 WHEREFORE, the petitioners pray:

18 1. That the marriage of the parties be dissolved.

19 2. That division of property and assumption of debt as outlined in this
20 petition be ordered and implemented.

21 Dated this 5 day of June, 1991.

22 petitioner

23 4
DI

noted

24 I, _____, being first duly sworn upon oath, depose and
25 state that I am the petitioner named in the above-entitled matter and I have
read the foregoing Joint Petition for Dissolution by us subscribed, and that

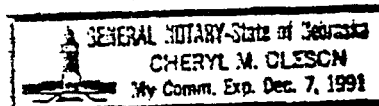
Ex. 13
3-8-91
HB 752

1 the facts and matters contained therein are true and accurate to the best of
2 my knowledge and belief.

3
4 SUBSCRIBED AND SWORN to before me this 17 day of September, 1991.

5 (NOTARIAL SEAL)

Cheryl M. Olson
NOTARY PUBLIC OF NEBRASKA
RESIDING AT 7031 W 110th Pl #152
COMMISSION EXP.



9 I, _____, IN, being first duly sworn upon oath, depose
10 and state that I am the petitioner named in the above-entitled matter and I
11 have read the foregoing Joint Petition for Dissolution by us subscribed,
12 and that the facts and matters contained therein are true and accurate to
13 the best of my knowledge and belief.

14 SUBSCRIBED AND SWORN to before me this 17 day of September, 1991.
15 (NOTARIAL SEAL)

Cheryl M. Olson
NOTARY PUBLIC FOR MONTANA
RESIDING AT Blissville
COMMISSION EXP. 11-25-92

EX. 13
HB 752
3-8-91

FILED

BY _____
DEPUTY

'91 MAR 5 AM 11 15

CLERK OF DISTRICT COURT
KATHLEEN D. BREUER

con

and

Phone: n/a

MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY

IN RE THE MARRIAGE OF

CAUSE NO.

[

I

CONSENT TO ENTRY OF DECREE

and

/

Joint Petitioners,

CONSENT TO ENTRY OF DECREE

COMES NOW, _____, a Joint Petitioner named in the
above-entitled matter, and states that he is in agreement with the terms
of the Joint Petition for Dissolution and further states that he gives
his consent to the entry of the decree in his absence.

7

impls

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB#228
 DATE 3-8-91 SPONSOR(S) Yellowtail

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Judge FRANK M DAVIS	Judges ASSOCIATION	SB 228		✓
TOM HONZEL - Helena	Judges	SB 228		✓
Martin Burke - Missoula	School of Law	SB 228		✓
Jay Bruck	Law of Montana	SB 228		✓
J. A. Tunnage	Chaffin	SB 228		✓
CHRISTIAN MACKAY	MT. ST. AFL-CIO	SB 228		✓
Michael Sherwood	MTCH	SB 228		✓
Robert L. Deschamps	Mont. Co. Attys. Assn.	SB 228		✓
JAMES Tutwiler	Wt. Chamber	SB 228		✓
Allen Chronister	State Bar	SB 228		✓
R Budd Gould	Self	SB 228		✓
Sue Weingarten	MT Defense Fund	✓		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB#58
 DATE 3-8-91 SPONSOR(S) Sen. Yellowtail

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
<u>Gordon Morris</u>	<u>MHC</u>	<u>58</u>		<input checked="" type="checkbox"/>

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB#51
 DATE 3-8-91 SPONSOR(S) Sen. Von Valkenberg

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
R.L. Deschamps III	Montana Criminal Procedure Comm.	SB51		<input checked="" type="checkbox"/>
Michael Sherwood	" "			<input checked="" type="checkbox"/>

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HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary

COMMITTEE

BILL NO.

HB 252

DATE

3-8-91

SPONSOR(S)

Rep. Took

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
CHARMAINE L FISHER	Clerk of Court		✓	
Patty Sohlenthorn	Clerk of Court		✓	
Beverly Bennetts	Clerk of Court		✓	
JOAN BREUER	Clerk of Court		✓	
Todd Dissen	ASUM			✓
Neil Aaight				✓
Bruce BARRETT	Attorney			✓
Lisa Ferkovich	Clerk of Court		✓	
Cheryl Glineth	" " "		✓	
Tom Hammon	Int. Clerks of Court Assoc.		✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.