

SENATE BILL NO. 288

INTRODUCED BY S. BROWN

IN THE SENATE

January 27, 1981	Introduced and referred to Committee on Judiciary.
February 18, 1981	Committee recommend bill do pass. Report adopted.
February 19, 1981	Bill printed and placed on members' desks.
February 20, 1981	Second reading, do pass.
February 23, 1981	Correctly engrossed.
February 24, 1981	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

March 3, 1981	Introduced and referred to Committee on Judiciary.
March 27, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.
March 31, 1981	Second reading, concurred in as amended. On motion rules suspended and bill placed on third reading this day. Third reading, concurred in as amended. Ayes, 91; Noes, 1.

IN THE SENATE

April 1, 1981

Returned from House with amendments.

April 10, 1981

Second reading, amendments concurred in.

April 11, 1981

Third reading, amendments concurred in. Ayes, 47; Noes, 0. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *288*
2 INTRODUCED BY *STEVE BROWN*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING
5 CONSTITUTIONAL AMENDMENT NO. 9, WHICH AUTHORIZES THE
6 LEGISLATURE TO ESTABLISH EXCEPTIONS TO THE CONFIDENTIALITY
7 OF PROCEEDINGS BEFORE THE JUDICIAL STANDARDS COMMISSION;
8 AUTHORIZING AN EFFICIENCY AND EFFECTIVENESS AUDIT; REQUIRING
9 THE COMMISSION TO REPORT TO THE LEGISLATURE; AMENDING
10 SECTION 3-1-1105, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 3-1-1105, MCA, is amended to read:

14 "3-1-1105. Confidential proceedings -- rules for
15 commission. (1) ~~+++ Except as provided in [sections 2~~
16 ~~through 6], all papers filed with and proceedings before the~~
17 commission or masters are confidential.

18 ~~(2) --The and the~~ filing of papers with and the
19 testimony given before the commission or masters is
20 privileged communication.

21 ~~(3)(2)~~ The commission shall make rules for the conduct
22 of its affairs and ~~provide--for~~ the enforcement of
23 confidentiality of ~~its--proceedings~~ consistent with this
24 part."

25 NEW SECTION. Section 2. Public disclosure of record

1 required. If the commission recommends to the supreme court
2 that a judicial officer be censured, suspended, removed or
3 retired pursuant to 3-1-1106(3), the commission must allow
4 public access to:

5 (1) all papers pertaining to each finding of probable
6 cause for charging judicial misconduct, including charges of
7 misconduct that are later determined not to be grounds for
8 recommending disciplinary action to the supreme court; and

9 (2) all transcripts or recordings of proceedings
10 before the commission or masters pertaining to the matters
11 described in subsection (1).

12 NEW SECTION. Section 3. Judge's waiver of
13 confidentiality -- hearing made public. The commission must
14 allow public access to all papers filed with and testimony
15 and hearings before the commission or masters in a given
16 case if the judge against whom a complaint has been filed
17 waives his right of confidentiality and requests in writing
18 that the proceedings be accessible to the public.

19 NEW SECTION. Section 4. Public statements by
20 commission. In any case in which the subject matter becomes
21 public, through independent sources or through a waiver of
22 confidentiality by the judge against whom the complaint has
23 been filed, the commission may issue statements as it
24 considers appropriate in order to:

25 (1) confirm the pendency of the investigation;

1 (2) clarify the procedural aspects of the disciplinary
2 proceedings;

3 (3) explain the right of the judge to a fair hearing
4 without prejudice;

5 (4) state that the judge denies the allegations; or

6 (5) declare that there is insufficient evidence for a
7 finding of good cause.

8 NEW SECTION. Section 5. Disclosure for judicial
9 selection -- appointment or assignment. If in connection
10 with the selection or appointment of a judge, any state or
11 federal agency seeks information or written materials from
12 the commission concerning that judge, information may be
13 divulged in accordance with procedures prescribed by the
14 commission, including reasonable notice to the judge
15 affected unless the judge signs a waiver of notice. If in
16 connection with the assignment of a retired judge to
17 judicial duties, any appropriate authority seeks information
18 or written materials from the commission about that judge,
19 information may be divulged in accordance with procedures
20 prescribed by the commission, including reasonable notice to
21 the judge affected unless the judge signs a waiver of
22 notice.

23 NEW SECTION. Section 6. Efficiency and effectiveness
24 -- audit authorized. (1) The legislative auditor may audit
25 the commission to determine whether it is efficiently and

1 effectively processing complaints against judicial officers
2 in the state in accordance with this part.

3 (2) The confidentiality provisions of this part do not
4 bar the legislative auditor from obtaining access to any
5 information possessed by the commission that is necessary to
6 the legislative audit function so long as confidential
7 information is kept confidential by the legislative auditor.

8 NEW SECTION. Section 7. Commission report to
9 legislature. (1) The commission shall submit to the
10 legislature each year the legislature meets in regular
11 session a report containing the following information:

12 (a) identification of each complaint, whether or not
13 verified, received by the commission during the preceding
14 biennium by a separate number that in no way reveals the
15 identity of the judge complained against;

16 (b) the date each complaint was filed;

17 (c) the general nature of each complaint;

18 (d) whether there have been previous complaints
19 against the same judge and, if so, the general nature of the
20 previous complaints;

21 (e) the present status of all complaints filed with or
22 pending before the commission during the preceding biennium;
23 and

24 (f) whenever a final disposition of a complaint has
25 been made during the preceding biennium, the nature of the

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1 disposition, the commission's recommendation, if any, to the
2 supreme court, and the action taken by the supreme court.

3 (2) The commission must observe the confidentiality
4 provisions of this part in fulfilling the requirements of
5 this section.

6 Section 8. Codification instruction. Sections 2
7 through 7 are intended to be codified as an integral part of
8 Title 3, chapter 1, part 11, and the provisions of Title 3,
9 chapter 1, part 11, apply to sections 2 through 7.

-End-

Approved by Committee on Judiciary

1 *Senate* BILL NO. *288*
2 INTRODUCED BY *STEVE BRAUN*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPLEMENTING
5 CONSTITUTIONAL AMENDMENT NO. 9, WHICH AUTHORIZES THE
6 LEGISLATURE TO ESTABLISH EXCEPTIONS TO THE CONFIDENTIALITY
7 OF PROCEEDINGS BEFORE THE JUDICIAL STANDARDS COMMISSION;
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9 THE COMMISSION TO REPORT TO THE LEGISLATURE; AMENDING
10 SECTION 3-1-1105, MCA."

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15 commission. (1) ~~Except as provided in [sections 2~~
16 ~~through 6], all papers filed with and proceedings before the~~
17 ~~commission or masters are confidential.~~

18 ~~(2) The and the filing of papers with and the~~
19 ~~testimony given before the commission or masters is~~
20 ~~privileged communication.~~

21 ~~(3) (2) The commission shall make rules for the conduct~~
22 ~~of its affairs and provide for the enforcement of~~
23 ~~confidentiality of its proceedings consistent with this~~
24 ~~part."~~

25 NEW SECTION. Section 2. Public disclosure of record

1 required. If the commission recommends to the supreme court
2 that a judicial officer be censured, suspended, removed or
3 retired pursuant to 3-1-1106(3), the commission must allow
4 public access to:

5 (1) all papers pertaining to each finding of probable
6 cause for charging judicial misconduct, including charges of
7 misconduct that are later determined not to be grounds for
8 recommending disciplinary action to the supreme court; and

9 (2) all transcripts or recordings of proceedings
10 before the commission or masters pertaining to the matters
11 described in subsection (1).

12 NEW SECTION. Section 3. Judge's waiver of
13 confidentiality -- hearing made public. The commission must
14 allow public access to all papers filed with and testimony
15 and hearings before the commission or masters in a given
16 case if the judge against whom a complaint has been filed
17 waives his right of confidentiality and requests in writing
18 that the proceedings be accessible to the public.

19 NEW SECTION. Section 4. Public statements by
20 commission. In any case in which the subject matter becomes
21 public, through independent sources or through a waiver of
22 confidentiality by the judge against whom the complaint has
23 been filed, the commission may issue statements as it
24 considers appropriate in order to:

25 (1) confirm the pendency of the investigation;

1 (2) clarify the procedural aspects of the disciplinary
2 proceedings;

3 (3) explain the right of the judge to a fair hearing
4 without prejudice;

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6 (5) declare that there is insufficient evidence for a
7 finding of good cause.

8 NEW SECTION. Section 5. Disclosure for judicial
9 selection -- appointment or assignment. If in connection
10 with the selection or appointment of a judge, any state or
11 federal agency seeks information or written materials from
12 the commission concerning that judge, information may be
13 divulged in accordance with procedures prescribed by the
14 commission, including reasonable notice to the judge
15 affected unless the judge signs a waiver of notice. If in
16 connection with the assignment of a retired judge to
17 judicial duties, any appropriate authority seeks information
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23 NEW SECTION. Section 6. Efficiency and effectiveness
24 -- audit authorized. (1) The legislative auditor may audit
25 the commission to determine whether it is efficiently and

1 effectively processing complaints against judicial officers
2 in the state in accordance with this part.

3 (2) The confidentiality provisions of this part do not
4 bar the legislative auditor from obtaining access to any
5 information possessed by the commission that is necessary to
6 the legislative audit function so long as confidential
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10 legislature each year the legislature meets in regular
11 session a report containing the following information:

12 (a) identification of each complaint, whether or not
13 verified, received by the commission during the preceding
14 biennium by a separate number that in no way reveals the
15 identity of the judge complained against;

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17 (c) the general nature of each complaint;

18 (d) whether there have been previous complaints
19 against the same judge and, if so, the general nature of the
20 previous complaints;

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22 pending before the commission during the preceding biennium;
23 and

24 (f) whenever a final disposition of a complaint has
25 been made during the preceding biennium, the nature of the

1 disposition, the commission's recommendation, if any, to the
2 supreme court, and the action taken by the supreme court.

3 (2) The commission must observe the confidentiality
4 provisions of this part in fulfilling the requirements of
5 this section.

6 Section 8. Codification instruction. Sections 2
7 through 7 are intended to be codified as an integral part of
8 Title 3, chapter 1, part 11, and the provisions of Title 3,
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1 disposition, the commission's recommendation, if any, to the
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10 SECTION SECTIONS 3-1-1105 AND 3-1-1107, MCA."

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1 required. If the commission recommends ~~to the supreme court~~
2 ~~that a judicial officer be censured, suspended, removed or~~
3 ~~retired pursuant to 3-1-1106(3)~~ FINDS PROBABLE CAUSE FOR
4 CHARGING A JUDGE WITH JUDICIAL MISCONDUCT GOOD CAUSE TO
5 ORDER A HEARING PURSUANT TO 3-1-1106(2), the commission must
6 allow public access to:

7 (1) all papers pertaining to each finding of probable
8 GOOD cause for ~~charging judicial misconduct~~, including
9 charges of ~~misconduct~~ that are later determined not to be
10 grounds for recommending RETIREMENT OR disciplinary action
11 to the supreme court; and

12 (2) THE PROCEEDINGS IN WHICH THE COMMISSION OR MASTERS
13 HEAR THE CHARGES OF MISCONDUCT AGAINST A JUDGE; AND

14 ~~(2)(3)~~ all transcripts or recordings of proceedings
15 before the commission or masters pertaining to the matters
16 described in subsection SUBSECTIONS (1) AND (2).

17 SECTION 3. SECTION 3-1-1107, MCA, IS AMENDED TO READ:

18 "3-1-1107. Action by supreme court. (1) The supreme
19 court shall review the record of the proceedings and shall
20 make such determination as it finds just and proper and may:

21 ~~(1)(a)~~ (a) order censure, suspension, removal, or
22 retirement of a judicial officer; or

23 ~~(1)(b)~~ (b) wholly reject the recommendation.

24 (2) Any hearing conducted before the supreme court
25 relative to a recommendation by the commission, together

1 with all papers pertaining to such recommendation, shall be
 2 accessible to the public."

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 4 confidentiality -- hearing made public. The commission must
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 25 selection -- appointment or assignment. If in connection

1 with the selection or appointment of a judge, any state or
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 3 the commission concerning that judge, information may be
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 5 commission, including reasonable notice to the judge
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 7 connection with the assignment of a retired judge to
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 18 in the state in accordance with this part.

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6 identity of the judge complained against;

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10 against the same judge and, if so, the general nature of the
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13 pending before the commission during the preceding biennium;
14 and

15 (f) whenever a final disposition of a complaint has
16 been made during the preceding biennium, the nature of the
17 disposition, the commission's recommendation, if any, to the
18 supreme court, and the action taken by the supreme court.

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20 provisions of this part in fulfilling the requirements of
21 this section.

22 Section 9. Codification instruction. Sections 2
23 through 7 are intended to be codified as an integral part of
24 Title 3, chapter 1, part 11, and the provisions of Title 3,
25 chapter 1, part 11, apply to sections 2 through 7.

House amendments to Senate Bill 288:

1. Page 1, line 16.
Following: "through"
Strike: "6"
Insert: "7"

2. Page 2, line 5.
Following: "of"
Strike: "probable"
Insert: "good"

3. Page 2, line 6.
Following: "cause"
Strike: "for charging judicial misconduct"
Following: "charges"
Strike: "of"

4. Page 2, line 7.
Following: line 6
Strike: "misconduct"

5. Page 2, line 8.
Following: "recommending"
Insert: "retirement or"

6. amendment to amendment #3 of House Judiciary Committee amendments of 3/26/81.
Insert: "~~finds probable-cause-for-charging-a-judge-with-judicial misconduct~~ good cause to order a hearing pursuant to 3-1-1106 (2)"

7. amendment to amendment #4 of House Judiciary Committee amendments of 3/26/81.
Insert: "(2) the proceedings in which the commission or masters hear the charges ~~of-misconduct~~ against a judge; and"

Respectfully report as follows: That.....SENATE..... Bill No. 288

BE AMENDED AS FOLLOWS:

1. Title, line 10.

Following: line 9

Strike: "SECTION"

Insert: "SECTIONS"

Following: "3-1-1105"

Insert: "AND 3-1-1107"

2. Page 1, line 25.

Following: "disclosure"

Strike: "of record"

3. Page 2, lines 1 through 3.

Following: "commission" on line 1

Strike: remainder of line 1 through "3-1-1106 (3)" on line 3

Insert: "finds probable cause for charging a judge with judicial misconduct"

4. Page 2, line 8.

Following: ";"

Strike: "and"

Insert: "(2) the proceedings in which the commission or masters hear the charges of misconduct; and"

Renumber: subsequent subsection

5. Page 2, line 11.

Following: "in"

Strike: "subsection"

Insert: "subsections"

Following: "(1)"

Insert: "and (2)"

6. Page 2.

Following: line 11

Insert: "Section 3. Section 3-1-1107, MCA, is amended to read:

"3-1-1107. Action by supreme court. (1) the supreme court shall review the record of the proceedings and shall make such determination as it finds just and proper and may:

(1) (a) order censure, suspension, removal, or retirement of a judicial officer; or

(2) (b) wholly reject the recommendation.

(2) Any hearing conducted before the supreme court relative to a recommendation by the commission, together with all papers pertaining to such recommendation, shall be accessible to the public."

Renumber: subsequent sections