

Montana Citizens Council on Judicial Accountability

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Proposed Model State Legislation ▪ For Discussion Purposes Only ▪ Draft Date 2/15/2021

A PROPOSED STATE BILL

A SYNOPSIS

Hereby proposed is the Citizens' Panel on Judicial Misconduct (Citizens' Panel) which shall have original and exclusive jurisdiction over judicial discipline, replacing any and all judicial disciplinary authority of this State, not including the Legislature's power to impeach; further upon enactment and the effective date of this proposed Act, any and all other state judicial disciplinary agencies or authorities shall cease to exist, with all funding otherwise allocated to it or them being shifted to the Citizens' Panel.

The Citizens' Panel shall have original and exclusive jurisdiction over discipline imposed for judicial misconduct as defined herein. It shall have original and concurrent jurisdiction to indict a judge of this State for violation of one or more state criminal statutes in his or her judicial capacity.

The Citizens' Panel is an agency of the legislative branch operating independently in its various functions.

The Citizens' Panel shall have three major functions as exercised by its Screening Panel, Pre-Trial and Indictment Panel, as well as Trial and Judicial Discipline Panel. The Screening Panel shall dismiss any and all complaints before the Citizens' Panel that fail to allege a cognizable claim of judicial misconduct, referring all others for consideration and appropriate disposition by the Pre Trial and Indictment Panel.

Upon finding probable cause to believe a respondent judge violated one or more state criminal statutes in his or her judicial capacity, the Pre-Trial and Indictment Panel of the Citizen's Panel shall indict that judge for said crime(s). In the event the Pre-Trial and Indictment Panel finds probable cause that a respondent judge violated one or more federal criminal statutes, or judicial canon of ethics, it shall issue a written finding to that effect and notify through the Administrator, appropriate U. S. Attorneys and/or the appropriate U. S. Assistant Attorneys General. Further the Pre-Trial and Indictment Panel shall preside over pre-trial proceedings for all allegations of judicial misconduct pending before it in anticipation of trial and possible imposition of judicial discipline. The Trial and Judicial Discipline Panel of the Citizens' Panel has authority to try cases of alleged judicial misconduct as defined herein, imposing discipline when appropriate.

THE CITIZENS' PANEL ON JUDICIAL MISCONDUCT ACT

An Act relating to investigation of alleged judicial misconduct as defined herein, indictment and discipline of judges for such misconduct, as well as creation of the Citizens' Panel on Judicial Misconduct (Citizens Panel) Proposed Model State Legislation which shall be the sole judicial disciplinary body of this State, functioning independently as an agency of the Legislature.

This Bill shall become effective when enacted into law as provided by state constitution and applicable statutes.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(A) SHORT TITLE – This Act shall be cited as the 'Citizens' Panel on Judicial Misconduct Act'.

(B) TABLE OF CONTENTS – The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I – GENERAL PROVISIONS

Sec. 101. Definitions.

Sec. 102. Creation and Defined Function of the Citizens' Panel On Judicial Misconduct.

TITLE II – ADMINISTRATION

Sec. 201. Administrative Structure.

Sec. 202. Funding, Budget, and Related Reporting.

Sec. 203. Panel Selection, Eligibility, Training, Assignment, Term of Service, and Compensation.

Sec. 204. Exemption and Excuse from Service.

TITLE III – COMPLAINT PROCEDURE

Sec. 301. Purpose and Notice of the Complaint Process.

Sec. 302. Standing and Time Limits for Filing.

TITLE IV – MAINTAINING PANEL AND SUBPANEL SECRECY AND INDEPENDENCE

Sec. 401. The Screening Panel.

Sec. 402. The Pre-Trial and Indictment Panel.

Sec. 403. The Trial and Judicial Discipline Panel.

TITLE V – RIGHTS OF THE PARTIES

Sec. 501. Rights to Counsel.

Sec. 502. Rights Accorded By State and U.S. Constitution.

Sec. 503. Rehearing and Appeal.

TITLE VI – REACHING ACCORD AND IMPOSING SANCTIONS

Sec. 601. Reaching Accord.

Sec. 602. Sanctions.

TITLE VII – SEVERABILITY PROVISION

Sec. 701. Severability Provision.

TITLE I – GENERAL PROVISIONS

SEC. 101. DEFINITIONS.

a. “Judges of this State” include and refer to its former and currently sitting trial and appellate judges and justices, magistrates, referees, special judges, judges pro-tem, standing master, and the like who preside over pre-trial and/or trial of cases and controversies, post-trial motions, and/or appeals.

b. “Courts of this State” include and refer to its trial courts whether they be district or supreme, county, city, municipal, town, township, village, or any subdivision of the State as well as courts of special jurisdiction functioning as sections or divisions of the foregoing or with an independent basis of jurisdiction such as tax courts. “Courts of this State” also include and refer to its courts of appellate jurisdiction whether statewide, a lesser geographic area, or overflow jurisdiction. Administrative agencies are excluded.

c. “Judicial misconduct” includes and refers to one or more violations by a judge of this State, in his or her judicial capacity, of any effective code of judicial conduct, judicial canon, state code of ethics, common law judicial obligation, oath of office, criminal statute, and/or other proscribed act applicable to judges of this State within the meaning of this Act.

d. “Judicial discipline” includes and refers to one or more sanctions imposed by the Trial and Judicial Discipline Panel of the Citizens’ Panel pursuant to Title VI, Sec. 602 of this Act, upon a finding that the respondent judge is guilty of an act or acts of judicial misconduct.

SEC. 102. CREATION AND DEFINED FUNCTION OF THE CITIZENS’ PANEL ON 33 JUDICIAL MISCONDUCT.

a. Hereby created is the Citizens’ Panel on Judicial Misconduct (Citizens’ Panel) which shall be the sole judicial disciplinary body of this State. Upon the effective date of this Act, any and all other judicial disciplinary agencies of this State shall cease to exist; cases pending before them shall be transferred for resolution to the Citizens’ Panel, and any funding allocated to such

judicial disciplinary agencies shall be assigned and appropriately transferred to the Citizens' Panel.

b. The Citizens' Panel shall have original and exclusive jurisdiction over discipline imposed for judicial misconduct as defined herein. It shall have original and concurrent jurisdiction to indict a judge of this State for violation of one or more state criminal statutes in his or her judicial capacity.

c. The Citizens' Panel is an agency of the legislative branch operating independently in its various functions.

d. The Citizens' Panel shall have three major functions as exercised by its Screening Panel, Pre Trial and Indictment Panel, as well as Trial and Judicial Discipline Panel.

1. The Screening Panel shall dismiss any and all complaints before the Citizens' Panel, failing to allege a cognizable claim of judicial misconduct, referring all others for consideration and appropriate disposition by the Pre-Trial and Indictment Panel. Judicial misconduct complaints shall be liberally construed so as not to preclude those having substance but inartfully pleaded.

2. Upon finding probable cause to believe a respondent judge violated one or more state criminal statutes or ethics in his or her judicial capacity, the Pre-Trial and Indictment Panel of the Citizen's Panel shall indict that judge for said crime(s). In the event the Pre-Trial and Indictment Panel finds probable cause that a respondent judge violated one or more federal criminal statutes, it shall issue a written finding to that effect and notify through the Administrator, appropriate U. S. Attorneys and/or the appropriate U. S. Assistant Attorneys General. The Pre-Trial and Indictment Panel shall preside over pre-trial proceedings for all allegations of judicial misconduct pending before it in anticipation of trial and possible imposition of judicial discipline.

3. The Trial and Judicial Discipline Panel of the Citizens' Panel has authority to try cases of alleged judicial misconduct as defined herein, imposing discipline when appropriate.

TITLE II – ADMINISTRATION

SEC. 201. ADMINISTRATIVE STRUCTURE.

a. Administration of the Citizens' Panel shall consist of an Administrator appointed by a majority vote of the Governor, majority and minority leader of the House and Senate, and respective Chairperson as well as senior or ranking minority member of both the House and Senate Judiciary Committees. Said Administrator shall be appointed for a five year term with a maximum of two terms. Serving him or her shall be an Assistant Administrator, at least one secretary, staff attorneys as needed to advise the Citizens' Panel in its various functions, investigators and experts as needed, and Public Defenders available to prosecute complaints on behalf of indigent complainants.

SEC. 202. FUNDING, BUDGET, AND RELATED REPORTING.

- a. The Citizens' Panel shall function as an independent agency of the Legislature which after transfer of funding to it from the agency's predecessor(s), shall provide funding for its operation and management so as to carry out the purposes of this Act.
- b. The Administrator shall notify the Chairperson of both the House and Senate Judiciary Committees of expenditures by the Citizens' Panel, its financial needs, and shall furnish other information essential to formulating a related budget.
- c. The Citizens' Panel through its Administrator and to the extent practicable shall report on its activities to the Chairperson of the House and Senate Judiciary Committees when the Legislature is in session and shall provide an annual report to the Governor as well as the entire House and Senate.

SEC. 203. PANEL SELECTION, ELIGIBILITY, TRAINING, ASSIGNMENT, TERM OF SERVICE, AND COMPENSATION.

- a. The Citizens' Panel shall be composed of at least twenty-one randomly selected people meeting eligibility requirements prescribed herein. Panelists shall be selected at random from voters registration lists.
- b. To be eligible for selection, prospective members of the Citizens' Panel must be natural born American citizens or naturalized citizens for more than five years; at least thirty (30) years of age; able to read, write, and understand English; and physically as well as mentally capable of rendering satisfactory service. Further said prospective panelists cannot have been convicted of any crime punishable by imprisonment for over one year and/or involving moral turpitude such as child molestation, perjury, fraud, etc.
- c. Promptly after being selected but prior to being sworn to office, all members of the Citizens' Panel shall undergo at least a 32 hour training program on the legal terminology they are likely to encounter while serving; basic court structure and procedure as well as corresponding judicial duties; various canons, codes, and substantive law they are generally required to enforce; their basic duties and functions; and the basic duties, functions, as well as standard operating procedures of their subpanels, ie. the Screening Panel, Pre-Trial and Indictment Panel, and Trial and Judicial Discipline Panel of the Citizens' Panel.
- d. Assignment whether to the Screening Panel, Pre-Trial and Indictment Panel, and/or Trial and Judicial Discipline Panel, shall be random except in the accommodation of members' terms of service.

e. While his or her service may be intermittent, in no event shall any panelist serve more than six consecutive calendar months on the Citizens' Panel during any five (5) consecutive year period.

f. Each member of the Citizens' Panel shall be reasonably compensated for his or her service through a uniform per diem payment supplemented by a variable mileage allowance and provision for incidental expense such as parking and/or overnight lodging fees if any, and meals if not directly provided.

SEC. 204. EXEMPTION AND EXCUSE FROM SERVICE.

Service on the Citizens' Panel shall be considered a duty of state citizenship in the same way that jury service is a duty of state citizenship.

a. The following are exempt from and ineligible for service on the Citizens' Panel:

1. current and former judges, justices, and both public as well as private sector attorneys;
2. full-time employees of local, county, state, and federal government as well as elected and appointed government officials.

b. The following are excused from service on the Citizens' Panel:

1. those over 70 years of age or shortly to be 70 and requesting to be excused;
2. those having a current doctor's certificate stating they are unable to serve for specific reason(s) stated;
3. those on active duty in the Armed Forces of the United States, or who are enlisted and will be called to duty under a delayed enlistment plan within six months, or who will be 18 activated from the National Guard or Reserve within six months;
4. those who have served as a state or federal grand or trial juror, civil or criminal, within two years of their prospective service on the Citizens' Panel;
5. those who directly care for one or more children under the age of ten and/or aged, infirm, or elderly person(s) whose health and/or safety would be jeopardized by their absence;
6. the sole owner or proprietor of a small business with no employees or very few employees where service and his or her corresponding absence would cause the business to close or face the prospect of financial ruin;
7. volunteer firefighters, rescue squad or ambulance squad members, and auxiliary police in departments that are short handed or are often called to duty;
8. key hospital emergency room personnel, other specialized medical professionals similarly situated, and others who cannot be spared for reasons of public health and safety;
9. citizens who are non-resident domiciliaries;
10. those who would be unduly burdened by related travel;
11. those who otherwise make a showing of substantial hardship;

c. The Administrator may limit the term of service for key personnel not qualifying for the foregoing exemptions but whose extended absence would likely cause financial or other

hardship for an enterprise, non-profit, or business; except that he or she must serve at least ten consecutive business days.

TITLE III – COMPLAINT PROCEDURE

SEC. 301. PURPOSE AND NOTICE OF THE COMPLAINT PROCESS.

a. The purpose of this complaint process is to deter judicial misconduct, criminal and otherwise; initiate and impose discipline for that misconduct by judges of this State; and prompt indictments when the misconduct constitutes one or more state crimes. This process further provides the citizens of this State a forum for addressing related allegations that do not rely almost exclusively for effectiveness on judicial integrity and/or that of lawyers and/or public officials whose power and/or careers are controlled or substantially impacted by judges. This is not to suggest that judges, lawyers, and public officials whose power and/or careers are controlled or substantially impacted by judges are not generally honest people of great integrity. This Act instead decries a judiciary that is essentially the final arbiter of whether it has been corrupted and exclusive regulator of any attorney or judge who would object.

b. In no event shall this process duplicate or overlap functions of an appellate court, provide post trial relief, and/or alter any final judgment or similar action of any court.

c. Information on how and where to file a complaint before the Citizens' Panel shall be made conspicuous and available at every courthouse in the State. Said information shall be provided to every litigant or claimant and attorney of record upon the corresponding filing of a case in a court of this State and to every defendant or respondent at such time that a corresponding complaint and summons are served. Said information shall also be provided to all parties to an appeal and their attorneys of record at the time said appeal is filed.

d. The Citizens' Panel shall make a standard form of complaint available for the general public which states its purpose and the kind of evidence that should be submitted for its consideration to the extent reasonably available.

e. The Citizens' Panel shall make available for the general public, preferably but not necessarily free, a copy of any and all code(s) of judicial conduct, judicial canon(s), state code(s) of ethics, common law judicial obligation(s), oath(s) of office, highly relevant criminal statute(s), and other highly relevant proscriptions applicable to judges of this State.

SEC. 302. STANDING AND TIME LIMITS FOR FILING.

a. Any litigant, attorney, law firm, and/or party adversely affected, someone acting on their behalf or simply having knowledge of judicial misconduct as herein defined, may make a complaint.

b. Upon the effective date of this Act, the time limit for filing a subsequent related complaint is 120 days after the alleged judicial misconduct occurred or was reasonably discovered. In the event of alleged judicial misconduct before establishment of the Citizens' Panel, the time period for filing a related complaint in cases never submitted to any previously constituted judicial disciplinary agency shall be a reasonable time after the alleged misconduct occurred or was reasonably discovered.

TITLE IV – MAINTAINING PANEL AND SUBPANEL SECRECY AND INDEPENDENCE.

SEC. 401. THE SCREENING PANEL.

a. The Screening Panel shall meet in secret closed room session with no one else present when considering whether any complaint before the Citizens' Panel has sufficient merit to proceed to its Pre Trial and Indictment Panel. Screening Panel members may go outside the subpanel's deliberation room to ask questions of their staff attorney(s), but in no event shall any one or more subpanel members request the opinion of a nonmember as to whether a matter should be dismissed or proceed to the pre trial / indictment stage.

b. A minimum of five out of seven Screening Panel members may dismiss any matter before the Citizens' Panel or have it proceed to the pre-trial / indictment stage. Any such decision is final and cannot be appealed. As the jurisdiction of the Citizens' Panel is original and exclusive with no court having appellate jurisdiction over it, no court can overturn such a finding.

SEC. 402. THE PRE-TRIAL AND INDICTMENT PANEL.

a. Following a self-executing pre-trial and discovery process to the extent possible, the Pre-Trial and Indictment Panel shall meet in secret closed room session with no one else present when considering whether any case before the Citizens' Panel warrants an indictment and otherwise merits trial. Pre-Trial and Indictment Panel members may go outside the subpanel's deliberation room to ask questions of their staff attorney(s), but in no event shall any one or more subpanel members request the opinion of a nonmember as to whether a matter should prompt an indictment, be dismissed, or proceed to trial.

b. A minimum of five out of seven Pre-Trial and Indictment Panel members may indict based upon or dismiss any matter submitted to it by the Screening Panel of the Citizens' Panel, or have it proceed to trial. Any such decision is final and cannot be appealed. As the jurisdiction of the Citizens' Panel is original and exclusive, no court can overturn such a finding.

c. Pre-trial and discovery before the Pre-Trial and Indictment Panel shall be conducted in accord with prevailing rules of civil procedure except the subpanel itself may simultaneously explore related matters through its own investigator(s) and expert(s). One or more subpanel members shall consider and resolve related motions, requests, and similar matters with the advice of one or more staff attorneys. A minimum of five out of seven subpanel members shall be necessary for a finding of contempt.

SEC. 403. THE TRIAL AND JUDICIAL DISCIPLINE PANEL.

a. As far as possible, trial before the Trial and Judicial Discipline Panel of the Citizens' Panel shall conform to prevailing rules of civil procedure and rules of evidence. At least seven members of the Citizens' Panel shall try all matters submitted to it by the Pre-Trial and Indictment Panel of the Citizens' Panel, except that a staff attorney shall resolve any and all trial as well as post-trial motions.

b. Upon conclusion of trial, there shall be a reading of the alleged instances of judicial misconduct by the Trial and Judicial Discipline Panel which shall be followed by the subpanelists' questions if any to be answered by the presiding staff attorney. Said staff attorney shall not offer an opinion as to the guilt or innocence of any accused judge.

c. The Trial and Judicial Discipline Panel shall be instructed that the complainant must prove his, her, and/or its case by clear and convincing evidence upon being provided standard instructions setting forth the essential elements of all alleged judicial misconduct. The Trial Panel shall then retire into closed room deliberation where at least six out of seven of them shall determine whether the respondent judge is guilty or not guilty of the misconduct charged. Any and all admissible evidence shall be available during deliberation. Each subpanelist shall make up his or her own mind as to guilt or innocence and should not be unduly swayed by but appropriately consider the opinions of others. Upon reaching a decision by the required majority vote, the panelists shall so state, announce their decision, and be polled by the presiding staff attorney.

TITLE V – RIGHTS OF THE PARTIES.

SEC. 501. RIGHTS TO COUNSEL.

a. The complainant has the right to counsel of his, her, and/or its own choosing and expense, self representation as to natural persons, and/or representation by a nonlawyer advocate. Public Defenders shall be made available to prosecute complaints on behalf of indigent complainants.

b. Upon a finding by the Screening Panel that a complaint warrants submission to the Pre-Trial and Indictment Panel of the Citizens' Panel, a respondent judge has a right to be represented by the Attorney General and/or one or more of his or her Assistant Attorneys General. Otherwise the respondent judge has the right to counsel of his or her own choosing and at his or her expense, self-representation, and/or representation by a nonlawyer advocate.

SEC. 502. RIGHTS ACCORDED BY STATE AND U.S. CONSTITUTION.

All complainants and respondent judges shall enjoy the rights accorded them by the Constitution of this State and the U.S. Constitution. All hearings and trials shall be open to the public and media.

SEC. 503. REHEARING AND APPEAL.

a. Any and all judges found guilty of any charge before the Citizens' Panel have ten consecutive days immediately after that finding to request a rehearing. The rehearing shall be before the same trial panel that heard the case.

b. A complainant may not appeal a finding of not guilty as to a respondent judge. If a guilty verdict is affirmed upon rehearing, a respondent judge may appeal that finding to a specially constituted panel consisting of at least seven panelists from the full Citizens' Panel. At least six out of that seven shall determine whether to affirm the guilty verdict at issue and their decision shall be final with no further appeal.

TITLE VI – REACHING ACCORD AND IMPOSING SANCTIONS.

SEC. 601. REACHING ACCORD.

In some instances of judicial misconduct, all parties involved and/or their representatives may reach an accord or agreed resolution of the matter. In that event both sides shall present a tentative agreement pointing out why it suffices in the interests of justice. The Trial and Judicial Discipline Panel shall then meet in closed session to decide whether to accept or decline the tentative accord. A vote of at least five out of seven subpanelists shall suffice for ratification in which event the case would be concluded. In the event a majority believes the tendered accord is acceptable with modification, it shall so indicate to both parties and their representatives. Upon agreement of both sides to a proposed modification, the Trial and Judicial Discipline Panel shall ratify and enter the same as its findings.

SEC. 602. SANCTIONS.

Upon a finding of guilty in regard to judicial misconduct, the Trial and Judicial Discipline Panel may impose the following sanctions:

- a. Public reprimand;
- b. Imposition of civil fine up to \$5,000;
- c. Performance of public service during suspension;
- d. Suspension for up to two years with or without pay with the period of non payment allowed to run for all or part of the term of suspension, whether constant or intermittent;

- e. Removal from office if allowed by state law;
- f. Recommendation to the Chairman of the House Judiciary Committee and Senate Judiciary Committee that impeachment proceedings begin with all deliberate speed.

TITLE VII – SEVERABILITY PROVISION.

SEC. 701. SEVERABILITY PROVISION.

If any provision of this Act is found to violate either the Constitution of this State and/or the U. S. Constitution, only the conflicting provision shall be affected and declared null and void, which shall have no effect on the remainder of this Act.