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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

\* \* \* \* \*

MATTHEW G. MONFORTON, )  
 )  
 Petitioner, )  
 )  
 vs. )  
 )  
 MICHAEL F. McMAHON, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

Cause No. DV-22-626B

**ORDER RE: CROSS-MOTIONS  
FOR SUMMARY JUDGMENT**

Before the Court are Petitioner’s Motion for Summary Judgment and Respondent’s Cross-Motion for Summary Judgment. The motions have been briefed and the Court is fully advised.

**STANDARD**

Summary judgment is only proper when “the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Rule 56(c)(3), Mont. R. Civ. P. Summary judgment is an extreme remedy which should not replace a trial on the merits where there are material factual disputes. The party moving for summary judgment has the initial burden of establishing the absence of genuine issues of material fact. The burden then

shifts to the party opposing summary judgment to show, by more than mere denial or speculation, that there are genuine issues of material fact to be resolved. “[A]ll reasonable inferences which can be drawn from the evidence presented should be drawn in favor of the non-moving party.” *Lee v. Great Divide Ins. Co.*, 2008 MT 80, ¶ 10, 342 Mont. 147, 182 P.3d 41.

## DISCUSSION

On June 2, 2022, Matthew Monforton (Monforton) filed a complaint with the Commissioner of Political Practices (COPP) against District Court Judge Michael McMahon (Judge McMahon). The COPP dismissed the complaint the same day it was filed, finding the Montana Code of Ethics did not apply to judges. The contents of Monforton’s COPP complaint against Judge McMahon are immaterial as resolution of this dispute involves a purely legal question: Whether the Montana Code of Ethics, §§ 2-2-101, et seq., MCA, applies to judges. The Court concludes it does not.

“In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted. Where there are several provisions or particulars, such a construction is, if possible, to be adopted as will give effect to all.” § 1-2-101, MCA. Proper interpretation of a statute requires interpreting the statute as a whole, “without isolating specific terms from the context in which they are used by the Legislature.” *City of Great Falls v. Morris*, 2006 MT 93, ¶ 19, 332 Mont. 85, 134 P.3d 692. Where a statute’s language is clear and unambiguous, no further interpretation is needed. *State v. Letasky*, 2007 MT 51, ¶ 11, 336 Mont. 178, 152 P.3d 1288.

The Montana Constitution provides, "The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees." Mont. Const., Art. XIII, § 4. The legislature undertook this task in enacting the Montana Code of Ethics at Title 2, Chapter 2, Part, 1, MCA. While Petitioner insists that judges are "state officers" under Article XIII, § 4 of the Montana Constitution, subjecting them to the Montana Code of Ethics, the statutory framework does not support Petitioner's conclusion. Section 2-2-112, MCA, addresses the ethical requirements for legislators. Section 2-2-105, MCA, addresses the ethical requirements for "public officers" and "public employees" both of which are defined terms.

"Public employee" means:

- (a) any temporary or permanent employee of the state;
- (b) any temporary or permanent employee of a local government;
- (c) a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority; and
- (d) a person under contract to the state.

§ 2-2-102 (7), MCA.

- (9) (a) "Public officer" includes any state officer and any elected officer of a local government.
- (b) For the purposes of 67-11-104, the term also includes a commissioner of an airport authority.

§ 2-2-102 (9), MCA.

"State officer" as used in the definition of "public officer" is further defined by the statute: "'State officer' includes all elected officers and directors of the executive branch of state government as defined in 2-15-102." § 2-2-102 (12), MCA.

While the Montana Code of Ethics explicitly lays out the ethical requirements for legislators, public officers, and public employees, it does not address the ethical requirements

for members of the judiciary. Petitioner's argument that the definition of "state officer" should be read more broadly than applying only to elected officers and directors of the executive branch because of the term "includes," is unpersuasive. The ethical requirements of members of the legislative and executive branches of government are specifically laid out in the Code of Ethics. If the legislature had also intended for the Code of Ethics to be applicable to the judicial branch, it could have easily done so. Rather, in defining "state agency," the legislature specifically excluded the judicial branch. § 2-2-102 (11)(b), MCA. A plain reading of the entirety of the Montana Code of Ethics establishes that it does not apply to judges.

The exclusion of the judiciary from the Montana Code of Ethics does not mean judges are not subject to ethical standards as argued by Petitioner. Rather, the Montana Constitution separately called for the legislature to create a judicial standards commission.

- (1) The legislature shall create a judicial standards commission consisting of five persons and provide for the appointment thereto of two district judges, one attorney, and two citizens who are neither judges nor attorneys.
- (2) The commission shall investigate complaints, and make rules implementing this section. It may subpoena witnesses and documents.
- (3) Upon recommendation of the commission, the supreme court may:
  - (a) Retire any justice or judge for disability that seriously interferes with the performance of his duties and is or may become permanent; or
  - (b) Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform his duties, violation of canons of judicial ethics adopted by the supreme court of the state of Montana, or habitual intemperance.
- (4) The proceedings of the commission are confidential except as provided by statute.

Mont. Const., Art. VII, § 11.


The legislature created a Judicial Standards Commission through the enactment of Title 3, Chapter 1, Part 11, MCA. Members of the judiciary are also bound by the Montana

Code of Judicial Conduct (revised by the Montana Supreme Court March 25, 2014). The Judicial Standards Commission is tasked with investigating complaints, including complaints for violations of the Montana Code of Judicial Conduct, of any judicial officer in the state. Thus, an individual with a complaint against a judicial official must pursue a remedy through the Judicial Standards Commission, not the Commissioner of Political Practices. The COPP did not err in dismissing Monforton's complaint against Judge McMahon.

IT IS HEREBY ORDERED:

1. Petitioner's Motion for Summary Judgment is **DENIED**.
2. Respondent's Cross-Motion for Summary Judgment is **GRANTED**.
3. Petitioner's Petition for Judicial Review of Final Agency Decision is **DISMISSED**.

Dated this 16 day of September 2022.

  
Hon. Rienne H. McElyea  
District Judge

c: Matthew G. Monforton  
Stefan T. Wall  
Commissioner of Political Practices

> Emailed 9/16/22