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WLF PETITIONS MONTANA TO OPEN ATTORNEY DISCIPLINARY PROCESS

The Washington Legal Foundation (WLF) today petitioned Montana bar authorities to amend their rules of disciplinary procedure to allow the public greater access to and participation in all aspects of the attorney disciplinary process.

With this filing, WLF has now expanded nationwide its effort to open up the attorney disciplinary process -- this is the 50th petition filed by WLF in its SCALES ("Stop the Collapse of America's Legal Ethics") project. WLF has now filed petitions in every state plus the District of Columbia, except Oregon. Oregon was excluded because it already has an extreme open disciplinary process; WLF has asked the other states to emulate Oregon.

WLF believes that secrecy in the attorney disciplinary process is arguably the single greatest threat to the public's confidence in the legal profession. As the authors of a recent American Bar Association (ABA) report on the subject stated, we are "convinced that secrecy in discipline proceedings continues to be the greatest single source of public distrust of lawyer disciplinary systems." The report concluded that, because of this distrust, "secrecy does great harm to the reputation of the profession." WLF believes that the public's suspicion that discipline meted out under the cloak of confidentiality can be neither fair nor vigorous is wholly understandable. Moreover, WLF noted, for attorneys who make their living in the very public American justice system to argue that they must be disciplined in secret rightly strikes the public as the height of hypocrisy.

To ensure the public greater access to the disciplinary process, both as a practical and theoretical matter, WLF's petition urged the Montana Supreme Court to amend the rules to:

- (1) allow the public access to all complaints filed against a lawyer from the time that a complaint is lodged with the Commission on Practice; and
 - (2) require that, at least sixty (60) days prior to a hearing on a disbarred or suspended attorney's petition for reinstatement or readmission, the attorney publish a notice of the petition in the journal of the state bar and in a newspaper of general circulation in each judicial district in which the attorney maintained an office at the time he was suspended or disbarred, and that the attorney notify the complainant(s) in the disciplinary proceeding that the attorney is applying for reinstatement or readmission and inform the complainant(s) that they have sixty (60) days to raise objections or to support the attorney's petition.
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The first provision is modeled after the procedures followed in Oregon and -- to a lesser extent -- in Florida and West Virginia. Each of these states grants the public access to all complaints filed against attorneys; both those that are dismissed as without merit or with an admonition to the attorney, and those that proceed to a formal hearing on the charges. Montana currently allows the public to learn only of those cases in which findings of attorney misconduct have led the Commission on Practice to initiate formal disciplinary proceedings by filing a complaint with the Montana Supreme Court. WLF noted in its petition that the sole argument against opening the discipline process completely -- the concern that attorneys' reputations will be damaged by frivolous complaints -- has proven to be illusory. Officials in Oregon, Florida, and West Virginia, where the open process has been in place for as long as twenty years, emphatically support the program and do not know of any attorney whose reputation has been undeservedly damaged.

WLF's second recommendation, which is wholly missing from the Montana rules currently, is modeled after a rule contained in the ABA Model Rules of Professional Responsibility. It would make the discipline process more accessible to the public, by giving interested parties adequate notice of and opportunity to participate in any readmission hearing.

WLF's SCALES project is a nationwide movement designed to eliminate abuse in America's civil justice system and improve the professional standards of America's lawyers. WLF petitions seeking public access to the attorney disciplinary process mark the fourth phase of SCALES. Earlier phases (which involved filing petitions in all 50 states) addressed attorney advertising, contingency fee agreements, and limitations on campaign contributions to judges by attorneys who practice before the judges. Numerous states have adopted recommended reforms outlined in the WLF petitions.

"The organized bar's reliance on secrecy is wrong and damages the public's perception of lawyers," said WLF Chief Counsel Richard Samp after filing the Montana petition. "The public is perfectly capable of distinguishing between meritorious and frivolous complaints, and all states should open the disciplinary process to public scrutiny."

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For further information, contact WLF Chairman Daniel J. Popeo or WLF Chief Counsel Richard Samp at (202) 588-0302.