

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1059

2007 HOUSE JUDICIARY

HB 1059

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1059

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/10/07

Recorder Job Number: 844, 845

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1059.

Robin Huseby, Executive Dir., Commission on Legal Counsel for Indigents: (see attached testimony).

Rep. Koppelman: I'm curious why, you mentioned that these complaints become public at some point. What is the reason for you wanting to know about that earlier, before they've been adjudicated.

Robin Huseby: The vast majority of complaints never go forward. So we may have attorneys who have 10-12 complaints in a year that never go formal. It doesn't necessarily mean there isn't some truth to what is being said. We would like to have those complaints, if there are enough of them, it may mean to us that there is some pattern of behavior that we need to address.

Rep. Meyer: I agree with you, but I think on the Informal complaints that they should be made public too. One of the problems we ran into in our area, is that we had numerous complaints against attorneys that never get to formal proceedings, but it was certainly indicated to me that it was a difficult process taking an attorney to the disciplinary board, and when you have 12 complaints against an attorney, the public needs to be aware of this.

Robin Huseby: Those are very valid points. We hear that a lot on the disciplinary committee. On the other hand, many of these complaints (vast majority of them) are frivolous. This is found especially in the indigent defense contractors, or public defenders. Many of these people put in frivolous complaints and we wouldn't want that to be known to everyone. It paints a bad picture of the attorney, but I can understand what your point is.

Rep. Klemin: You want to have these records exempt from disclosure, unless and until they become public. My question is, why would you not use the word confidential here rather than exempt.

Robin Huseby: The reason is if they are confidential, if we had adopted some policies in our agency that would be discretionary. For example, let's say that there became an employment problem with the attorney and we felt that we needed to fire him or terminate the contract. It may be that those records should be made open to a body or to a person, etc. if there was a lawsuit or whatever. Confidential records simply can't be opened under any circumstances. So we wanted the flexibility to exempt these records vs. confidentiality because it would be at the discretion of the agency to release them.

Rep. Klemin: So confidential can't be opened, exempt can be.

Robin Huseby: Confidential could be opened by court order, but exempt could be opened at the discretion of the agency.

Rep. Kretschmar: In the statutory language, the word commission refers to your commission on the indigent defense counsel.

Robin Huseby: Yes.

Rep. Kretschmar: Then do you propose rules according to chapter 28 of the administrative rules, or do you use some other procedures.

Robin Huseby: We have a procedure somewhat like the administrative rules, but we are not subject to them per se. We have to give notice to interested parties and get feedback, etc. That is what we do.

Chairman DeKrey: Thank you for appearing today. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to HB 1059.

Rep. Delmore: I move a Do Pass.

Rep. Boehning: Seconded.

14 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Dahl

Date: 1/10/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1059

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Delmore Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	/		Rep. Delmore	/	
Rep. Klemin	/		Rep. Griffin	/	
Rep. Boehning	/		Rep. Meyer	/	
Rep. Charging	/		Rep. Onstad	/	
Rep. Dahl	/		Rep. Wolf	/	
Rep. Heller	/				
Rep. Kingsbury	/				
Rep. Koppelman	/				
Rep. Kretschmar	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Dahl

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 10, 2007 11:30 a.m.

Module No: HR-06-0395
Carrier: Dahl
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1059: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1059 was placed on the
Eleventh order on the calendar.

2007 SENATE JUDICIARY

HB 1059

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1059**

Senate **Judiciary Committee**

Check here for Conference Committee

Hearing Date: March 6, 2007

Recorder Job Number: 4429

Committee Clerk Signature

Monica LaSalle

Minutes: Relating to confidentiality of commission on legal counsel for indigents information and records.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following hearing:

Testimony in Favor of the Bill:

Robin Husby, Executive Director of Commission on Legal Counsel (Att. #1) introduced the bill, spoke to past legislation and the interpretation of the statute. **Ms. Husby** gave an example of why this is needed.

Sen. Nething requested a review of the current status (meter 2:25) We have two types of attorneys; contract and staff. Currently we only see the cases relating to us with the contract attorney's, they may also be receiving complaints in there own general practice.

Sen. Fiebiger asked what is required in the contract. We had this in the contract when we first started and it caused controversy in another district. We were sent the complaints by the attorney and we sent them back, striking it out of the contract, or the private disciplinary

complaints would have become public, if they were filed with us. Anything that has not gone to "Formal" is private and she was concerned with the open records law.

Sen. Marcelles questioned if they have background checks. **Ms. Husby** responded, under the law we can only requests "formal" disciplinary actions. She reviewed the process (meter 8:15)

Sen. Nething reviewed (meter 9:20) the process that Robin spoke of in his own word.

Robin stated that complaints against an attorney are not uncommon and this we understand.

Testimony Against the bill:

None

Testimony Neutral to the bill:

None

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1059

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: March 12, 2007

Recorder Job Number: 4881

Committee Clerk Signature *Marion L. Solberg*

Minutes: Relating to confidentiality of commission on legal counsel for indigents information and records.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Lyson made the motion to Do Pass HB 1059 and **Sen. Fiebiger** seconded the motion. All members were favor and the motion passes.

Carrier: **Sen. Nething**

Senator David Nething, Chairman closed the hearing.

REPORT OF STANDING COMMITTEE (410)
March 12, 2007 2:16 p.m.

Module No: SR-46-5022
Carrier: Nething
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1059: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1059 was placed on the
Fourteenth order on the calendar.

2007 TESTIMONY

HB 1059

HOUSE BILL NO. 1059
COMMISSION ON LEGAL COUNSEL FOR INDIGENTS
Wednesday, January 10th, 2007, 9:00 a.m., Prairie Room

Presenting the bill synopsis: Robin Huseby, Executive Director
P.O. Box 149
Valley City, ND 58072
701 845-8632, rhuseby@nd.gov

House Bill no. 1059 is a bill to amend and reenact NDCC §54-61-04 relating to the confidentiality of the Commission on Legal Counsel for Indigents' records. Our records are open records unless there is a statutory exception to the open records' laws. The purpose of this proposed amendment is to avoid creating a situation wherein we, by taking documents or information from our contract attorneys or public defenders, make a private matter an open record.

This agency currently receives complaints from clients about counsel who are either contracted with us or work for us as public defenders. We have a system in place for attending to those complaints. We have an obligation to prescribe minimum qualifications for these attorneys and see to it that those qualifications are being met.

Currently, when an attorney receives a disciplinary complaint through the Disciplinary Board of the Supreme Court, until that matter would become 'formal', that complaint is not an open record. We believe that as an agency we should be notified if our contracted attorneys are receiving disciplinary complaints, whether from an indigent client or a non-indigent client prior to it becoming formal, or public.

While §54-61-04 does exempt case sensitive information, it is not clear on information about an attorney on non indigent cases. We believe that the obtaining of all disciplinary complaints in our office about the attorneys we contract with or employ is important in evaluating their performance. While most of the disciplinary cases are dismissed as being non-meritorious, nonetheless there are times when a pattern of complaints reveals a definite problem.

AH #1
3-6-7

**HOUSE BILL 1059
SENATE JUDICIARY**

The Commission on Legal Counsel is requesting that the statute creating their agency be amended regarding the availability of certain records.

Currently, §54-61-04 regarding "Records" of the Commission allows for certain records from and about attorneys working for the agency to be exempt from disclosure. The statute references "case-related" records.

We are asking that the statute be amended to allow that information or records obtained by the commission relating to allegations of misconduct by those attorneys, whether in regards to a commission related case or any other matter that lawyer has been involved with, will be exempt from disclosure unless and until it becomes open record by 'formal' disciplinary proceedings.

This amendment will allow the commission to obtain from all attorneys working for the commission, whether as contractors or on a case-by-case basis, copies of all disciplinary complaints filed against them and keep them exempt from the open record law. In this way the commission can more fully keep track of who is getting disciplinary complaints filed against them yet not subject that information to open records requests.