

SUPREME COURT OF THE STATE OF MONTANA

In re Revised Rules on Substitution of District Judges

In re Revised Rules on Substitution · Decided July 10, 2009

OPINION

In Re Revised Rules On Substitutio

PER CURIAM.

IN THE SUPREME COURT OF THE STATE OF MONTANA July 10 2009

IN RE REVISED RULES ON)

) ORDER

SUBSTITUTION OF DISTRICT JUDGES)

_____ Under the power vested in this Court by Article VII, Section 2 of the Montana Constitution, the Court has established rules for the substitution of district judges, which rules are codified at § 3-1-804, MCA. Earlier this year, the Court prepared and made public proposed revised rules for substitution of district judges, the primary purpose of which is to make the rules easier to read and understand. The Court has accepted comments on the proposed revised rules, and has now agreed on a final revised version of the rules. IT IS ORDERED that the attached rules for the substitution of district judges are adopted, effective October 1, 2009. IT IS FURTHER ORDERED that copies of this Order with the attached revised rules for the substitution of district judges be electronically published on the State Bar of Montana website, <http://www.montanabar.org>, and on the website for the Judicial Branch, <http://www.courts.mt.gov>. IT IS FURTHER ORDERED that the Clerk shall serve this Order with the attached rules for substitution of district judges on each district judge of the State of Montana, the Office of the Attorney General for the State of Montana; the Montana Trial Lawyers Association, the Montana Association of Criminal Defense Lawyers, the Office of Public Defender, the Montana County Attorneys' Association, the Montana Association of Criminal Defense Lawyers, the Code Commissioner and Director of Legal Services for the Montana Legislative Services Division, and the State Bar of Montana. DATED this 9TH day of July, 2009.

/S/ MIKE McGRATH

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/S/ W. WILLIAM LEAPHART

/S/ JIM RICE

/S/ PATRICIA COTTER

/S/ JAMES C. NELSON

/S/ JOHN WARNER

/S/ BRIAN MORRIS

2 3-1-804. Substitution of district judges.

SUBSTITUTION OF DISTRICT JUDGES

This section applies to judges presiding in district courts. It does not apply to any judge sitting as a water court judge, to a workers' compensation court judge, or to a judge supervising the distribution of water under 85-2-406, including supervising water commissioners under Title 85, chapter 5, part 1.

(1) Each adverse party is entitled to one substitution of a district judge.

(a) In a civil action other than those noted in subsection (1)(b), a motion for substitution by the party filing the action must be filed within 30 calendar days after the first summons is served or an adverse party has appeared. A motion for substitution by the party served must be filed within 30 calendar days after service has been completed in compliance with M. R. Civ. P. 4. (b) In a criminal action; a child abuse and neglect proceeding under Title 41, chapter 3; a youth court act proceeding under Title 41, chapter 5; or a mental health commitment proceeding under Title 53, chapter 21, part 1, a motion for substitution by the prosecution or the state must be filed within 10 calendar days after the district judge is assigned pursuant to subsection (2)(a). A motion for substitution by the defendant, parent, youth, or respondent must be filed within 10 calendar days after the defendant, parent, youth, or respondent makes an initial appearance in the district court.

(2)(a) When an initial pleading is filed, the clerk of court shall stamp the name of the district judge to whom the case is assigned on the face of the original and all copies of that document. (b) A motion for substitution of a district judge must be made by filing a written motion with the clerk, as follows: The undersigned hereby moves for substitution of District Judge _____ in this case. The moving party shall serve copies of the motion for substitution upon all other parties to the proceeding. The clerk shall immediately notify the district judge of the motion and, if there has already been a substitution, the first district judge to whom the case was assigned.

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(3) In civil cases, the motion for substitution is not effective for any purpose unless the filing fee for a motion for substitution required by 25-1-201 is paid to the clerk of the district court. No filing fee is required in criminal cases or by parties who have qualified for representation at public expense.

(4) Any motion for substitution that is not timely filed is void. The district judge for whom substitution is sought has jurisdiction to determine timeliness, and if the motion for substitution is untimely, shall enter an order denying the motion.

(5) After a timely motion has been filed, the substituted district judge does not have power to act on the merits of the case or to decide legal issues in the case, except as provided in subsection (10).

(6) The first district judge who has been substituted or disqualified for cause has the duty of calling in all subsequent district judges. In a multijudge district, all other district judges

in that district must be called before a district judge from another district is called.

(7) When a new district judge has accepted jurisdiction, the clerk of court shall provide a copy of the assumption of jurisdiction to the first district judge to whom the case was assigned and to each attorney or party of record. A certificate of service must be attached to the assumption of jurisdiction form in the court file.

(8) If the presiding judge in any action recuses himself or herself or if a new district judge assumes jurisdiction in any action, the right to move for substitution of a district judge is reinstated, except as to parties who have previously obtained a substitution. The time periods run anew from the date of service of notice or other document identifying the new district judge.

(9) No party who is joined or intervenes has any right of substitution after the time has run as to the original parties to the proceeding.

(10) A district judge who has previously been substituted from the case may agree to set the calendar, draw a jury, and conduct all routine matters including arraignments, preliminary pretrial conferences in civil cases, and other matters that do not address the merits of the case, if authorized by the presiding district judge.

(11) When a new trial is ordered by the district court, each adverse party shall be entitled to one motion for substitution of district judge. The motion must be filed, with the required filing fee, within 20 calendar days after the district court has ordered a new trial.

(12) When a judgment or order is reversed or modified on appeal and the cause is remanded to the district court for a new trial, or when a summary judgment or judgment of dismissal is reversed and the cause remanded, each adverse party is entitled to one motion for substitution of district judge. The motion must be filed, with the required filing fee, within 20 calendar days after the remittitur from the supreme court has been filed with the district court. There is no other right of substitution in cases remanded by the supreme court. In criminal cases, there is no right of substitution when the cause is remanded for resentencing. 3