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TO: Montana Supreme Court

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FROM: Greg Petesch, Code Commissioner [Signature]

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

RE: Proposed Changes to Rule on Substitution of District Court Judges

The following comments are shown by striking and adding. They are intended as style suggestions for consistent use of voice and tense and to avoid the use of gender-specific pronouns, which were removed from the MCA by Chapter 56, Laws of 2009.

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 or to a workers' compensation court judge.

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

(a) In a civil action, a motion for substitution by the party filing the action must be filed within 30 calendar days after the district judge is assigned. A motion for substitution by the party served must be filed within 30 calendar days after service has been made.

(b) In a criminal action, a motion for substitution by the prosecution must be filed within 10 calendar days after the district judge is assigned. A motion for substitution by the defendant must be filed within 10 calendar days after the defendant 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 shall 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.

(3) In civil cases, the motion for substitution ~~shall~~ is not be 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.

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

(5) After a timely motion has been filed, the substituted district judge ~~shall~~ does not have no power to act on the merits of the case or to decide legal issues in the case, except as provided in subsection (10) below.

(6) The first district judge who has been substituted or disqualified for cause ~~shall have~~ has the duty of calling in all subsequent district judges. In a ~~multi-judge~~ multijudge district, all other district judges in that district ~~shall~~ 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 ~~shall~~ must be attached to the assumption of jurisdiction form in the court file.

(8) If the presiding judge in any action ~~removes himself or herself,~~ is recused 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 ~~shall~~ must run anew from the date of service of notice or other document identifying the new district judge.

(9) After the time has run as to the original parties to the proceeding, no party who is joined or intervenes ~~shall have~~ has any right of substitution, except as provided herein in this

section. A ~~third-party~~ third-party defendant; who is not an original party in the case, ~~may have~~ has a right of one substitution. That motion must be filed within 30 calendar days after the service upon the ~~third-party~~ third-party defendant of a ~~third-party~~ third-party complaint.

(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 ~~which that~~ do not go to the merits of the case; if authorized by the district judge ~~in with jurisdiction~~ authorizes the same.

(11) When a new trial is ordered by the district court, each adverse party ~~shall be~~ is entitled to one motion for substitution of district judge. ~~Such~~ 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 ~~shall be~~ is entitled to one motion for substitution of district judge. ~~Such~~ 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. ~~No~~ There is no other right of substitution ~~shall arise~~ in cases remanded by the supreme court.

(13) In criminal cases, there is no right of substitution ~~shall arise~~ when the cause is remanded for resentencing.