

AF-09-0289

IN THE SUPREME COURT OF THE STATE OF MONTANA

IN RE REVISE RULES ON

SUBSTITUTION OF DISTRICT JUDGES

FILED

JUN 22 2009

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

**Public comments of Montana attorney Al Avignone on the
proposed revised rules for substitution of district judges**

I, Al Avignone, respectfully submit the following comments on the Court's proposed revised rules for the substitution of district judges now codified at § 3-1-804, MCA ("Proposed Rules"):

1. I am an attorney admitted to practice law in New Jersey since 1984 and in Montana since 1991. I am engaged in private practice as a partner in the Garrity, Avignone & Banick law firm located in Bozeman Montana.
2. Over the past twenty-five years, I have actively practice in the courts of New Jersey and Montana. I currently practice exclusively in Montana. I have extensive experience in both civil and criminal litigation in Montana. As such, I have a particular interest in the Court's Proposed Rules.

Proposed Rule (1)(b)


3. Proposed Rule (1)(b) provides in part that in a criminal action a motion for substitution must be filed within ten calendar days after the defendant makes an initial appearance in the district court. The ten-day deadline is in

contrast to the thirty days that would be allowed in a civil action after a party is served. I believe the ten-day deadline is unfair for the following reasons.

4. Defendants in criminal matters are often represented at the initial appearance by an attorney who, for a variety of reasons, does not represent the defendant during the duration of the case. Often, an attorney from the Office of the State Public Defender will appear with the defendant at the initial appearance only to be substituted by a private attorney at a later date. Retention of a private attorney may take some time to secure funding and make appropriate arrangements. Therefore, the appearance of permanent counsel often comes more than ten days after the initial appearance. The private attorney may desire to substitute the district judge assigned to the case, but may be precluded if the deadline is only ten days.

5. For these reasons, I respectfully recommend the Court change the deadline for a defendant in a criminal matter to substitute a district Judge to thirty days instead of ten.

Respectfully submitted this 19th day of June, 2009.



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