

IN THE SUPREME COURT OF THE STATE OF MONTANA

FILED
Case Number AF 24-52

IN RE MODIFICATION OF THE RULE ON)
DISQUALIFICATION OF JUDGES)

ORDER JUN 19 2003

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

Pursuant to the power placed in this Court by Article VII, Section 2, 1972 Montana Constitution, this Court has established rules for the disqualification of substitution of judges in civil and criminal cases, and such rules are now codified at §§ 3-1-803 through 3-1-805, MCA.

IT IS HEREBY ORDERED that, effective June 19, 2003, § 3-1-805, MCA, is amended to read as follows (deleted language is indicated by strikeout; new language is underlined):

3-1-805. Disqualification for cause.

DISQUALIFICATION FOR CAUSE

This section is limited in its application to judges presiding in district courts, justice of the peace courts, municipal courts, small claims courts, and city courts.

1. Whenever a party to any proceeding in any court shall file an affidavit alleging facts showing personal bias or prejudice of the presiding judge, such judge shall proceed no further in the cause. If the affidavit is filed against a district judge, the matter shall be referred to the Montana Supreme Court, ~~whereupon~~ if the affidavit is in compliance with subsections a, b and c below, the Chief Justice shall assign a district judge to hear the matter. If the affidavit is file against a judge of a municipal court, justice court, or city court, any district judge presiding in the district of the court involved may appoint either a justice of the peace, a municipal judge or a city court judge, to hear any such proceeding.

(a) The affidavit for disqualification must be filed more than thirty (30) days before the date set for hearing or trial.

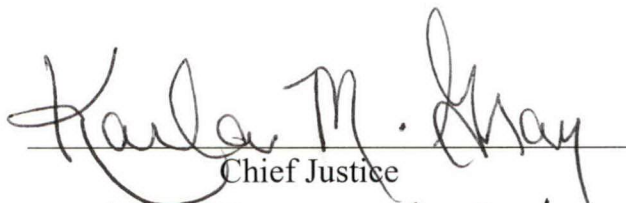
(b) The affidavit shall be accompanied by a certificate of counsel of record that the affidavit has been made in good faith. An affidavit will be deemed not to have been made in good faith if it is based solely on rulings in the case which can be addressed in an appeal from the final judgment, made by the challenged judge and from which an appeal could have been taken.

(c) Any affidavit which is not in proper form and or which does not allege facts showing personal bias or prejudice may be set aside as void.

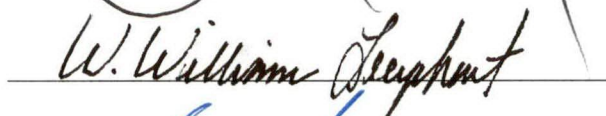
(d) The judge appointed to preside at a disqualification proceeding may assess attorneys fees, costs, and damages against any party or his attorney who files such disqualification without reasonable cause and thereby hinders, delays or takes unconscionable advantage of any other party, or the court.

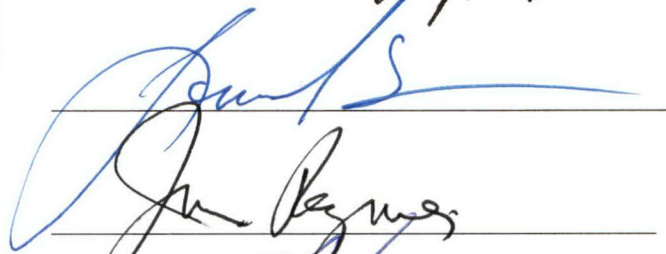
The Clerk is directed to mail copies of this order to West Group, State Reporter Publishing Company and the *Montana Lawyer* with the request that it be published in their respective publications; to the Director of Legal Services of the Montana Legislative Services Division; and to all Clerks of the District Court of the State of Montana with a request that each Clerk furnish a copy to the District Court Judges and the Judges of Courts of Limited Jurisdiction in their respective counties.

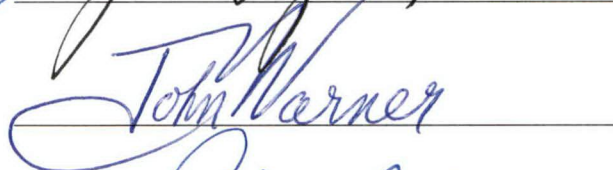
DATED this 19th day of June, 2003.



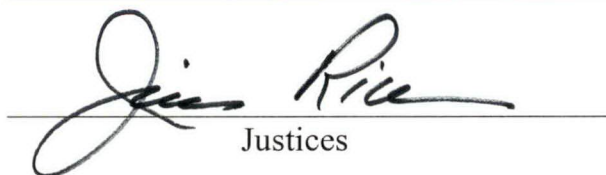
Chief Justice











Justices

June 20, 2003

CERTIFICATE OF SERVICE

I hereby certify that the attached document was sent by United States mail, prepaid, to the following named:

ALL CLERKS OF DISTRICT COURT
(with instructions)

MR GREG J PETESCH DIRECTOR
LEGAL SERVICES OFFICE
LEGISLATIVE SERVICES DIVISION
PO BOX 201706
HELENA MT 59620-1706

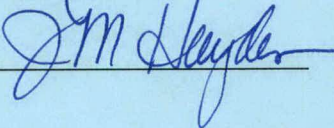
STATE REPORTER PUBLISHING CO
32 S EWING ST
HELENA MT 59601

ATTN: ORDER PUBLISHING DEPT
WEST GROUP
PO BOX 64526
ST PAUL MN 55164-0526

CHARLES WOOD EDITOR
THE MONTANA LAWYER
PO BOX 577
HELENA MT 59624-0577

ED SMITH
CLERK OF THE SUPREME COURT

STATE OF MONTANA

BY: 
Deputy




ED SMITH
CLERK

State of Montana
Office of Clerk of the Supreme Court
P.O. Box 203003
Helena, 59620-3003
406-444-3858 phone
406-444-5705 fax

June 20, 2003

MEMORANDUM

TO: Clerks of the District Court

FROM: Ed Smith, Clerk of the Supreme Court 

RE: **IN RE THE MODIFICATION OF THE RULE ON DISQUALIFICATION OF JUDGES; and IN THE MATTER OF THE MANDATORY CONTINUING LEGAL EDUCATION OF PATRICK M. SPRINGER**

Pursuant to the enclosed orders, of the Supreme Court dated June 19, 2003, I am requesting that you distribute copies of the enclosed orders as directed by the Supreme Court in those orders.



ED SMITH
CLERK

State of Montana
Office of Clerk of the Supreme Court
P.O. Box 203003
Helena, 59620-3003
406-444-3858 phone
406-444-5705 fax

June 20, 2003

Ms. Shauna Thomas
State Reporter
PO Box 749
Helena MT 59624-0749

Dear Ms. Thomas:

Pursuant to the Supreme Court Order dated June 19, 2003, I am requesting that you publish the enclosed Supreme Court Order in the first available issue of The State Reporter.

Thank you for your cooperation and please do not hesitate to contact this office if you should have any questions.

Sincerely,

ED SMITH
Clerk of the Supreme Court

A handwritten signature in black ink, appearing to read "Rex J. Renk".

By: Rex J. Renk
Deputy Clerk

enc.



ED SMITH
CLERK

State of Montana
Office of Clerk of the Supreme Court
P.O. Box 203003
Helena, 59620-3003
406-444-3858 phone
406-444-5705 fax

June 20, 2003

West Publishing Co.
Attn: Order Publishing Dept.
P.O. Box 64526
St Paul MN 55164-0526

To Whom It May Concern:

Pursuant to the Supreme Court's order dated June 19, 2003, I am requesting that you publish the enclosed Supreme Court Order in the annual update of Montana Rules of Court.

Thank you for your cooperation and please do not hesitate to contact this office if you should have any questions.

Sincerely,

ED SMITH
Clerk of Supreme Court

A handwritten signature in cursive script, appearing to read "Rex J. Renk".

By: Rex J. Renk
Deputy Clerk

enc.



ED SMITH
CLERK

State of Montana
Office of Clerk of the Supreme Court
P.O. Box 203003
Helena, 59620-3003
406-444-3858 phone
406-444-5705 fax

June 20, 2003

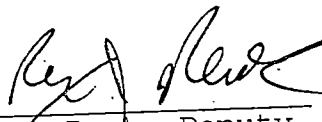
Charles Wood Editor
The Montana Lawyer
PO Box 577
Helena MT 59624-0577

Dear Mr. Wood:

Pursuant to the orders of the Supreme Court dated June 19, 2003, I am requesting that the enclosed orders, IN RE THE MODIFICATION OF THE RULE ON DISQUALIFICATION OF JUDGES; and IN THE MATTER OF THE MANDATORY CONTINUING LEGAL EDUCATION OF PATRICK M. SPRINGER, be published in the next issue of The Montana Lawyer. If there are any questions, please contact this office.

Sincerely,

ED SMITH
Clerk of the Supreme Court

By: 
Rex J. Renk, Deputy

enc.