

ORIGINAL

FILED

07/21/2026

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AF 09-0289

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 09-0289

IN RE REVISED RULES ON
SUBSTITUTION OF DISTRICT JUDGES

ORDER

In response to the 2025 Montana Legislature's Senate Bill 41 (SB 41), this Court invited and solicited public comment on a proposal to revise the current process for selecting district court judges to replace judges substituted under § 3-1-804, MCA. Although published in the Montana Code Annotated for the public's benefit, this section is a Supreme Court rule, not a legislatively passed statute. On November 18, 2025, after the close of the comment period, the Court held a public meeting and received information from the Office of the Court Administrator (OCA) about a proposed subsequent judge selection process. The Court also discussed whether additional revisions to the rule may be advisable. The Court tabled the proposal pending further consideration and information from the Court Administrator.

On April 15, 2026, the Court sought further input from the practicing bar, the judiciary, clerks of court, and interested members of the public regarding § 3-1-804, MCA. This included disseminating questionnaires to all clerks of district court and Montana district court judges. The Montana Bar also surveyed its active members. The Court, having also received a report from OCA that addressed potential approaches for implementing potential changes to the selection process in light of Justices' comments at public meetings and public comments that were submitted in response to earlier invitation, proposed revised amendments to § 3-1-804, MCA, and provided those amendments to the public for comment.

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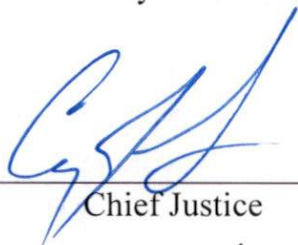
On July 14, 2026, after the close of the comment period, the Court held a public meeting, at which it considered the questionnaire and survey responses, public comments, and SB 41. Following discussion, the Court determined to amend § 3-1-804, MCA, consistent with the proposed revisions it publicized in April 2026. Section 3-1-804, MCA, as amended by this Court, is attached to this Order.

IT IS ORDERED that the proposed revisions as approved by the Court are ADOPTED. The revisions to § 3-1-804, MCA, shall become effective on October 1, 2026.

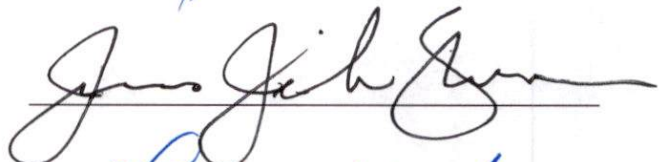
IT IS FURTHER ORDERED that the Court Administrator shall take all necessary steps to inform Clerks of District Court and District Court Judges of the revisions to § 3-1-804, MCA, and to provide any necessary support for implementation.

This Order shall be posted on the Court's website. In addition, the Clerk is directed to provide copies of this Order and attached rules to the State Law Library, to Todd Everts, Connie Dixon, Shana Harrington, and Karl Krempel at Montana Legislative Services, to Eric Goodemote in the Thomson Reuters Rules Department at Thomson Reuters, to Patti Glueckert and the Statute Legislation department at LexisNexis, and to the State Bar of Montana with the request that it provide notice to the membership by publication in the *Montana Lawyer* magazine and through other electronic and timely means.

DATED this 21st day of July, 2026.



Chief Justice









Angel Gutierrez

Jean Rice

Justices

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)(c), 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, except that a party who cannot demonstrate adversity with an original party who has moved to substitute may not move to substitute once the original party's time has expired. A party who is joined has no right of substitution after the time to file a motion for substitution has run as to the original parties. In the case of multiple defendants, the joined defendant's time to move to substitute begins to run upon service of the first defendant without whom the joined defendant cannot demonstrate adversity.

(b) In a criminal action, a motion for substitution by the prosecution or the defendant must be filed no later than 10 calendar days after the defendant's arraignment.

(c) A motion for substitution may not be filed (i) in a child abuse or neglect proceeding under Title 41, chapter 3; (ii) in a youth court action proceeding under Title 41, chapter 5; (iii) a mental health commitment proceeding under Title 53, chapter 21, part 1; or (iv) by an intervenor.

(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 the assigned district judge shall be made by timely filing a written motion, stating, "The undersigned hereby moves for substitution of District Judge _____ in this case." Unless local court rules applicable to the county in which the motion is filed provide otherwise, the moving party shall provide (i) a proposed order with the motion stating, "The undersigned District Judge, having been substituted, hereby invites _____ to accept jurisdiction over this matter"; and (ii) a proposed Notice of Accepting or Declining Jurisdiction, stating, "The undersigned District Court Judge having been invited to assume jurisdiction over this matter hereby [] accepts [] declines jurisdiction." The clerk of court may fill in the blanks in accordance with local rules that prescribe a system for assigning cases within the judicial district.

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 is not effective for any purpose until the filing fee for a motion for substitution required by 25-1-201 is paid to the clerk of the district court.

In criminal cases, the motion for substitution is effective upon filing, except as otherwise provided herein for a motion filed by a defendant who is not represented by a public defender, as defined by 47-1-103.

In criminal cases filed by the county attorney, the county attorney shall pay the substitution motion fee required by 25-1-201 within 30 days of receipt of a claim from the clerk of district court. In criminal cases filed by the attorney general, the attorney general shall pay the substitution motion fee required by 25-1-201 within 30 days of receipt of a claim from the clerk of district court.

In criminal cases where the motion is filed by or on behalf of an indigent defendant, as defined by 47-1-103, represented by a public defender, as defined by 47-1-103, the office of public defender, as defined by 47-1-103, shall pay the substitution motion fee within 30 days of receipt of a claim from the clerk of district court. In criminal cases where the motion is filed by or on behalf of a defendant who is not represented by a public defender, as defined by 47-1-103, the motion for substitution is not effective for any purpose unless the substitution motion fee required by 25-1-201 is paid to the clerk of the district court except as waived pursuant to 25-10-404.

The substitution motion filing fee required by 25-1-201 is not a district court expense within the meaning of 3-5-901.

(4) Any motion for substitution that is not timely filed is void. The district judge from 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 the power to act on the merits of the case or to decide legal issues in the case, except as provided in subsection (10).

(6)(a) The first district judge who has been substituted retains the duty of calling in all subsequent district judges, subject to the requirements of this subsection (6).

(b) Subject to subsection (6)(d), when a subsequent district judge is to be selected, the selection must be made through a process that incorporates random selection from a pool consisting of the district judges in each judicial district adjacent to the first district judge's judicial district, thus ensuring that the selected district judge is reasonably proximate geographically to the judicial district of the original judge. If none of the

district judges in that initial pool of district judges accepts the invitation to assume jurisdiction over the case, then the selection must be made from a pool consisting of the district judges in each judicial district adjacent to those judicial districts that were adjacent to the first district judge's judicial district. If none of those district judges accepts jurisdiction, then the selection shall be made from among all the district judges in the state who were not in the first two pools.

(c) For purposes of subsection (6), "random selection" means selection by chance from among two or more eligible district judges, such that each judge in the identified pool has an equal opportunity for selection. The method of random selection may include rotation, drawing, or other neutral processes and must be documented in the court file or other record of the proceeding.

(d) In a multijudge district, all other district judges in that district must be included in the initial pool of eligible judges and must be called before expanding the pool to include judges from another district.

(e) In a single-judge district, the subsequent district judge shall be selected in accordance with subsection (6)(b).

(f) The office of the court administrator may establish procedures or provide tools to assist with the implementation of random selection. Nothing in this subsection requires the use of a centralized software system. Any such procedures must allow for documentation and, if directed by the supreme court, audit of the selection process.

(g) The Chief Justice may call retired district judges who are physically and mentally able and who have voluntarily retired after at least 8 years of service to be included in the statewide pool, pursuant to 19-5-103.

(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 identifying the new district judge.

(9) 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.

(10) 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.

(11) 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 sentencing.