

May 1 2014

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

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May 1, 2014

Ed Smith
Clerk of Supreme Court
PO Box 203003
Helena, MT 59620-3003

Re: Proposed Amendment to Aide Allowing Substitution of District Judge

Dear Mr. Smith:

I oppose the proposed amendments to the Rule on Substitution of District Judges.

The proposed amendment will impair a litigant's opportunity and ability to substitute the appointed judge. The existing rule has allowed litigants who believe a particular Judge is not fair and impartial to substitute that Judge. Allowing a party to remove a Judge believed to be unfair and biased creates confidence in the judicial process. At a time when our institutions seem to be under attack from various directions, maintaining the public's confidence in the courts must be maintained.

The proposed amendment unreasonably reduces the time to substitute a Judge to ten days. The time reduction is unfair, particularly for the defendant. The plaintiff knows immediately which Judge is assigned to a case and any concern between the plaintiff and the counsel about that judge can be promptly discussed, and a decision made whether or not to substitute the appointed judge. A defendant, however, having been served with process and being informed there are 21 days to respond, may be unaware of the right to substitute the assigned judge and may wait beyond the ten days before consulting counsel. That defendant will unknowingly allow the time to substitute a judge to lapse. This is inherently unfair to defendants.

The increased cost of \$500 to substitute simply burdens parties already facing the prospect of expensive litigation. The cost, alone, may dissuade a party from exercising the right to substitute the judge, for economic reasons, even though the assigned judge is perceived to be

unfair and biased. This will have an impact on litigants who are poor. The combined result is that the rule of substitution favors the plaintiff and the wealthy.

I have practiced for over 35 years and have, from time to time, substituted judges upon the request of a client whenever the client, or I, feel the assigned judge will be unfair or biased. From my observations the right to substitute a judge is not abused, although it is certainly used, from time to time, for strategic litigation purposes rather than to remove a judge perceived to be unfair and biased. However, the few instances of strategic use of substitution should not deprive the much more general use of substitution.

Nor should particular circumstances in a single judicial district drive the changes in substitution of judges. If there are problems with substitution of particular judges, then the focus should be on those judges, and not on the rest of the State of Montana and its citizens.

Creating and maintaining confidence in the courts is critical in our society. That confidence will be weakened by the proposed changes.

I request that the proposed changes be rejected.

Sincerely Yours,



James A. Patten

JAP/kmt