

FILED

August 20 2014

Arthur V. Wittich ¹
Margot B. Ogburn ^{2 & 3}
Jason A. Delmue ⁴
Margaret M. Reader ⁵
Carrie R. Wasserburger
Emily S. Stark ⁶



602 Ferguson Ave., Suite 507
Bozeman, Montana 59718
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Phone: (406) 585-5598
Fax: (406) 585-2811
wlf@law-advisor.com

All attorneys licensed in Montana
Also licensed in CO¹; CA²; AR³; NV⁴; IL⁵; WA⁶

Paralegals:
Hayley Dustin
Amanda Menasco

"Thy Liberty in Law"

FILED

AUG 20 2014

August 18, 2014

Clerk of the Montana Supreme Court
P.O. Box 203003
Helena, Montana 59620-3003

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Via US Mail

Re: In The Matter of The Montana Rules of Civil Procedure, Order No. AF-07-0157

Dear Justices of the Montana Supreme Court:

The above referenced Order proposes an amendment to Rule 23 of the Montana Rules of Civil Procedure, by adding a new subsection concerning the disposition of residual funds in class action cases. The Order includes a 60 day public comment period.

I am lead counsel on a class action case (i.e., Southwest Montana Building Industry Association v. City of Bozeman), wherein the disposition of residual funds are currently being litigated.

It is unclear whether the new proposed requirement to provide for the disbursement of residual funds, including not less than 50% being dispersed to the Montana Justice Foundation, is only for subsequent orders.

The first sentence of subsection (2) requires such process to be included in future orders, however, the second sentence includes the minimum to the Montana Justice Foundation without qualifying whether such minimum requirement applies to subsequent orders, or existing cases.

Clearly, this new requirement for a disbursement process should only apply to subsequent orders. If this is your intent, I would ask that you clarify subsection (2).

If instead the Order establishes minimum disbursement rules to the Montana Justice Foundation for existing cases where an Order has been issued, I strenuously oppose the new rule. Imposing such a new requirement in disputes that have been fully argued and briefed would materially alter the rights of Montanans, including my clients.

Thank you for the ability to comment.

Sincerely,

Arthur V. Wittich
AVW/hd