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04/15/2026

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

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APR 15 2026

Bowen Greenwood
Clerk of Supreme Court
State of Montana

IN RE RULES ON

NOTICE AND
ORDER

SUBSTITUTION OF DISTRICT JUDGES

In response to the 2025 Montana Legislature's Senate Bill 41, this Court invited and solicited public comment in the summer of 2025 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 Court Administrator (OCA) about a proposed subsequent judge selection process. The Court also discussed whether additional revisions to the rules may be advisable. The Court tabled the proposal pending further consideration and information from the Court Administrator.

The Court has not reached a final determination on how to amend the rule on substitution of district judges codified at § 3-1-804, MCA, or whether, as some commenters advocated, the Court should abolish the non-cause substitution rule. Accordingly, the Court has decided to seek further input from the practicing bar, the judiciary, clerks of court, and interested members of the public on the substitution of district judges. In that regard, OCA will disseminate questionnaires to all clerks of district court and Montana district court judges, and the Montana Bar will survey active members of the Bar, to more fully understand the operations and potential difficulties of the current substitution process; the impact of proposed changes to the current procedure; and the need for any further

recommendations for improvement. In particular, the Court seeks input on how best to proceed in response to SB 41 in a manner that preserves the efficient administration of justice.

At the November 18, 2025 public meeting, the Court Administrator confirmed OCA would review the Justices' comments from the meeting and public comments already submitted and provide a report to the Court addressing potential approaches for implementing potential changes to the selection process in response to SB 41. The Court, having received a report from OCA, has suggested revisions for consideration, which are attached to this Notice and Order. Also attached are the questionnaires OCA will send to the district court judges and clerks of court. OCA will disseminate the surveys to the district court judges and clerks of court, compile the results, and submit the same to the Clerk of the Supreme Court. The Montana Bar will disseminate a survey to its active members, compile the results, and submit the same to the Clerk of the Supreme Court. Any interested party may submit public comments to the Clerk of the Supreme Court. After the time has run for survey results, questionnaire compilations, and public comments to be filed with the Clerk of the Supreme Court, the Court will set a public meeting to consider the same.

IT IS THEREFORE ORDERED that all interested persons, including the District Court Council, all members of the bench and bar of Montana, clerks of court, attorneys, and other members of the public are granted until June 15, 2026, to file with the Clerk of this Court public comments regarding the judicial substitution rule, § 3-1-804, MCA, including:

- whether the current version should be retained,
- whether the attached proposed amendments should be adopted, as proposed or with further revisions (please note any suggested revisions), and
- whether non-cause judicial substitution should be abolished.

IT IS FURTHER ORDERED the Montana State Bar and the Office of the Court administrator shall have until June 15, 2026, to file with the Clerk of this Court reports concerning their respective surveys and questionnaires.

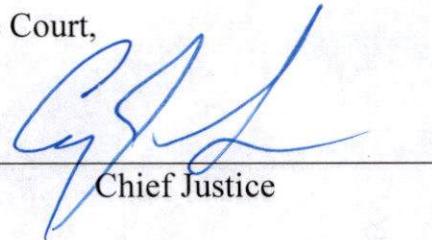
IT IS FURTHER ORDERED this Order and its attachments shall be posted on the websites of the Montana Judicial Branch and the State Bar of Montana. The State Bar of Montana is further requested to give notice of this Order with attachments and of its website posting to the membership by publication in the *Montana Lawyer* magazine and through other electronic and timely means.

IT IS FURTHER ORDERED the Clerk of the Supreme Court shall provide copies of this Order with attachments to each member of the District Court Council, the State Bar of Montana, the Montana Trial Lawyers Association, the Montana Defense Trial Lawyers Association, the Office of Public Defender, the Montana County Attorneys' Association, and the Montana Association of Criminal Defense Lawyers; and to each District Court Judge and each Clerk of the District Court with a request that each Clerk of the District Court make the Order available for public review in the Office of the Clerk of the District Court.

Dated this 15th day of April, 2026.

For the Court,

By



Chief Justice

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 ~~within~~ no later than 10 calendar days after the defendant's arraignment.

(c) A motion for substitution may not be filed ~~(i) in the following cases: a child abuse or neglect proceeding under Title 41, chapter 3; (ii) in a youth court action proceeding under Title 41, chapter 5; or (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 ~~must~~ shall be made by timely filing a written motion, ~~stating with the clerk as follows:~~ "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 ~~unless~~ 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 ~~for~~ 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 or disqualified for cause has 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 called before a district judge from another district is called 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 ~~or other document~~ identifying the new district judge.

~~(9) No party who is joined or intervenes has any right of substitution after the time has run as to the original parties to proceed.~~

(9) ~~(10)~~ 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) ~~(11)~~ 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) ~~(12)~~ 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.

Questionnaire to Clerks of Court Regarding Judicial Substitution Rule § 3-1-804, MCA

Clerks of Court:

We are seeking information as to how you implement the current judicial substitution rule in the judicial district you serve and request your response to the following questions.

1. What Judicial District do you serve?
2. Is your Judicial District:
 - a. single judge, single county
 - b. single-judge, multi-county
 - c. multi-judge, single county
 - d. multi-judge, multi-county
3. What do you/clerks in your office do upon receiving a motion for substitution of a judge? What is the process you follow to address the motion and substitute the cause to a different judge? (Please provide a step-by-step description of your process. If you have a written policy or directive for handling such motions, please provide a copy of such.)
4. Do you determine if a motion for substitution is untimely? If not, who does and how is the matter brought to that person's attention? If so, what do you do?
5. Have you experienced difficulties in implementing the current judicial substitution rule? If so, how frequently:
 - a. Never
 - b. Rarely
 - c. Occasionally
 - d. Frequently
 - e. Always
6. How has the current rule worked for your office:
 - a. Excellent
 - b. Good
 - c. No opinion
 - d. Poor
 - e. Very Poor
7. Revisions have been proposed to the current judicial substitution rule. Do you have any concerns about how the proposed revised rule will impact your work? Please explain.

8. Additional Comments (please feel free to provide any additional information you think relevant to our inquiry:

Questionnaire to District Court Judges Regarding Judicial Substitution Rule § 3-1-804, MCA

District Court Judges:

We are seeking information as to how you implement the current judicial substitution rule in the judicial district you serve and request your response to the following questions.

1. Is your Judicial District:
 - a. single judge, single county
 - b. single-judge, multi-county
 - c. multi-judge, single county
 - d. multi-judge, multi-county
2. Have you or your judicial district worked out a process with the Clerk of Court in your judicial district whereby the Clerk of Court's office generally handles the substitution to another judge without involving you?
3. If the Clerk of Court's office does not handle the re-assignment to another judge, what is your process for accomplishing the substitution? (please provide a step-by-step process)
4. Have you experienced difficulties in implementing the current judicial substitution rule? If so, how frequently:
 - a. Never
 - b. Rarely
 - c. Occasionally
 - d. Frequently
 - e. Always
5. Assuming substitutions will continue, how has the current rule worked for you:
 - a. Excellent
 - b. Good
 - c. No opinion
 - d. Poor
 - e. Very Poor
6. If you accept assignment related to another judge's substitution, do you travel to that judicial district for hearings and trial? If not, please explain.
7. Do you believe revisions should be made to our current substitution rule?
 - a. Yes
 - b. No

8. What problems, if any, have you experienced in implementing the current substitution rule?
9. Do the problems you have identified warrant revising the current substitution rule?
10. Revisions have been proposed to the current judicial substitution rule. Would you rather:
 - a. Leave the current substitution rule in place
 - b. Amend the current judicial substitution rule by adopting the proposed revised rule
 - c. Amend the current rule by adopting a revision different from the proposed revised rule
 - d. Abolish the substitution rule
11. Please briefly explain your choice in 10 above.

Questionnaire to Attorneys Regarding Judicial Substitution Rule § 3-1-804, MCA

The Montana Supreme Court is evaluating whether to retain, revise, or abolish the current judicial substitution rule. Your responses will assist the Court in assessing how the rule operates in practice.

I. Practice Background

1. In what judicial districts do you primarily practice?
(Check all that apply.)
2. Years in practice:
 - 0-5
 - 6-10
 - 11-20
 - 21+
3. Primary practice area(s):
 - Civil
 - Criminal
 - Family
 - Juvenile
 - Other (specify)

II. Experience with Substitution

4. Approximately how many motions for substitution have you filed in the past five years?
 - 0
 - 1-2
 - 3-5
 - 6+
5. Approximately how many substitution motions have been filed by opposing parties in your cases during that time?
 - 0
 - 1-2
 - 3-5
 - 6+
6. In your experience, substitution most commonly results in:
 - Reassignment within the same district
 - Reassignment to a nearby district
 - Reassignment to a distant district
 - Unsure

III. Effect on Case Administration

7. In your experience, substitution typically:
- Has no meaningful impact on case timeline
 - Causes minor delay
 - Causes significant delay
 - Improves case administration
 - Other (explain)
8. Have you observed any strategic or tactical misuse of substitution?
- No
 - Rarely
 - Occasionally
 - Frequently
- If frequent, please explain.
9. Have you experienced increased litigation costs as a result of substitution?
- No
 - Minimal
 - Moderate
 - Significant
- Please explain if significant.

IV. Fairness and Transparency

10. Do you believe the current substitution process works well?
- Yes
 - No
 - Unsure
- Please explain.
11. Do you believe the proposed reassignment system would:
- Improve the substitution process
 - Make the substitution process worse
 - Make no difference
 - Unsure
- Please explain.
12. Should the reassignment process be publicly auditable (i.e. documented in the case file)?
- Yes
 - No
 - No opinion

V. Structural Questions

12. Should non-cause substitution be:
- Retained in current form

- Modified
- Abolished
- No opinion

13. If modified, what primary modifications should occur (Please list from the most to least important).

14. Should retired judges be included in reassignment pools?

- Yes
- No
- Only with party consent
- No opinion

VI. Open-Ended

15. What problems, if any, have you observed with the current rule?

16. What concerns, if any, do you have regarding the proposed revisions?

17. Additional comments.