

**PROPOSED RULE LANGUAGE REGARDING THE
UNAUTHORIZED PRACTICE OF LAW**

5/22/07

ADD TO WATER RIGHT CLAIM EXAMINATION RULES:

Rule 47. Attorney Representation Not Required in Conferences With Department Claims Examination Personnel. An individual authorized to speak for a claimant as an agent or representative, including an agent or representative who is not licensed to practice law in Montana, may meet or confer with department claims examination personnel to review, discuss and exchange information for the resolution of issues related to a water right claim in accordance with the Water Right Claim Examination Rules and Section 85-2-243, MCA. Meetings or conferences between department claims examination personnel and an agent or representative who is not licensed to practice law in Montana does not constitute the unauthorized practice of law.

RETAIN EXISTING W.R.Adj.R. 16 AS SHOWN BELOW RATHER THAN DELETE (AND JUDGE LOBLE'S MARCH 27, 2007 RULE 16 LANGUAGE REJECTED):

RULE 16. SETTLEMENT CONFERENCES AND MEDIATION. The water court may require parties to participate in settlement conferences or may assign the matter to a mediator. In the event the water court assigns an outside mediator, the parties shall share and pay the expense of hiring the mediator as directed by the water court.

ADD TO WATER RIGHT ADJUDICATION RULES:

RULE 33. ATTORNEY REPRESENTATION

Rule 33(a). When Attorney Representation Required. Except when a natural person appears *pro se*, only an attorney licensed to practice law in

Montana (or an attorney who is admitted *pro hac vice*) may represent a party or submit pleadings, including but not limited to, filing withdrawals of claims or objections, motions, or stipulations, in water court proceedings before a water master or a water judge who adjudicates a water right claim after a decree is issued by the water court, including enforcement decree proceedings conducted under W.R.Adj.R. 31.

Rule 33(b). When Attorney Representation Not Required. An individual authorized to speak for a claimant as an agent or representative, including an agent or representative who is not licensed to practice law in Montana, may meet or confer with department claims examination personnel to review, discuss and exchange information for the resolution of issues related to a water right claim in accordance with the Water Right Claim Examination Rules, § 85-2-243, MCA, or §85-2-248, MCA. Meetings or conferences between department claims examination personnel and an agent or representative who is not licensed to practice law in Montana does not constitute the unauthorized practice of law. However, nothing in these rules or the Water Right Claim Examination Rules authorizes, requires, or obligates department claims examination personnel to prepare and submit settlement documents on behalf of a claimant, an individual or an entity to resolve legal issues related to a water right claim.

Rule 33(c). Rules of Professional Conduct. It is not a violation of Rule 5.5 of the Montana Rules of Professional Conduct for an attorney to meet or confer with an individual and any agent or representative authorized to speak for a claimant, including an agent or representative who is not licensed to practice law in Montana, for the purpose of reviewing, discussing, exchanging information, or recommending resolution of factual or legal issues related to a water right claim in accordance with the Water Right Claim Examination Rules, the Water Right Adjudication Rules, § 85-2-243, MCA, or §85-2-248, MCA.