

HOUSE JOINT RESOLUTION NO. 1
INTRODUCED BY C. HARRIS

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA SUPREME COURT TO AMEND THE MONTANA RULES OF CIVIL PROCEDURE TO PREVENT THE PRACTICE OF GAINING MORE TIME TO RESPOND TO A COMPLAINT BY FILING A NONMERITORIOUS MOTION TO DISMISS FOR FAILURE TO STATE A CAUSE OF ACTION FOR WHICH RELIEF CAN BE GRANTED.

WHEREAS, Rule 12(a) of the Montana Rules of Civil Procedure provides that an answer or other response to a complaint must be served within 20 days; and

WHEREAS, many practicing attorneys in Montana believe that this period of time is insufficient to adequately answer or otherwise respond to a complaint; and

WHEREAS, an unfortunate practice has developed whereby, in order to obtain additional time to answer or otherwise respond to a complaint, attorneys file a nonmeritorious motion to dismiss for failure to state a cause of action for which relief may be granted; and

WHEREAS, this practice is fictitious in nature and burdens the court system and attorneys with unnecessary work and costs; and

WHEREAS, the Montana Supreme Court has the authority and duty to revise the Montana Rules of Civil Procedure when appropriate and to address issues of ethics in the practice of law.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Montana Supreme Court is strongly urged to amend Rules 11 and 12(a) of the Montana Rules of Civil Procedure to read as follows:

"Rule 11. Signing of pleadings, motions, and other papers -- sanctions. Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other

paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, and including a nonmeritorious motion to dismiss for failure to state a cause of action for which relief can be granted. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee."

"Rule 12(a). When presented. Except as otherwise provided by statute applicable to particular defendants or proceedings, the responsive pleadings shall be served as follows: A defendant shall serve an answer within ~~20~~ 35 days after the service of the summons and complaint upon that defendant, or within ~~20~~ 35 days after the completion of service of process as provided in Rule 4, unless the court directs otherwise when service of process is made pursuant to Rule 4D(4). A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer, or, if a reply is ordered by the court, within 20 days after service of the order or such time as the order otherwise directs. The state, or any state board or state agency shall serve an answer to the complaint within 40 days after service upon the attorney general. Unless a different time is fixed by the court, when a motion permitted by these rules is served, the responsive pleading shall be served within 20 days after notice of the court's action if the court denies the motion or postpones its disposition until trial on the merits, and shall be served within 20 days after the service of the more definite statement if the court grants a motion for a more definite statement."

(2) That a copy of this resolution be sent to each justice of the Montana Supreme Court and to the Montana Bar Association.

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