

HOUSE JOINT RESOLUTION NO. 10

INTRODUCED BY E. HILL SMITH

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A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO DISAPPROVE CERTAIN PORTIONS OF THE RULE OF PROCEDURE ADOPTED BY THE MONTANA SUPREME COURT THAT PROHIBITS SUBSTITUTION OF DISTRICT COURT JUDGES IN CERTAIN CASES.

WHEREAS, Article VII, section 2, of the Montana Constitution provides the Montana Supreme Court with the authority to make rules governing practice and procedure for courts in this state; and

WHEREAS, the same provision of the Montana Constitution provides that rules of procedure adopted by the Montana Supreme Court are "subject to disapproval by the legislature in either of the two sessions following promulgation"; and

WHEREAS, in February of 2014, the Montana Supreme Court received a request to amend its rules on substitution of district court judges, which is codified at 3-1-804, MCA; and

WHEREAS, the purpose of the request was to address a perceived abuse of the substitution rule; and

WHEREAS, the Montana Supreme Court revised its rule to, among other things, require a county attorney, the attorney general, or the office of state public defender to pay a substitution fee and prohibit substitution in a child abuse or neglect proceeding under Title 41, chapter 3, a youth court proceeding under Title 41, chapter 5, or a mental health commitment proceeding under Title 53, chapter 21, part 1; and

WHEREAS, the revisions to the rule on substitution of district court judges took effect July 1, 2015; and

WHEREAS, the revised rule should not prohibit substitution of district court judges in certain actions altogether but should instead mirror the rule for substitutions in criminal actions, which establishes a strict time limit for filing motions to substitute.

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

That the 65th Legislature disapproves of the portions of the revised rule on substitution, approved March 24, 2015, and effective July 1, 2015, that:

- (1) requires the county attorney, attorney general, and the office of state public defender to pay a



1 substitution fee; and

2 (2) prohibits substitution in a child abuse or neglect proceeding under Title 41, chapter 3, a youth court
3 proceeding under Title 41, chapter 5, or a mental health commitment proceeding under Title 53, chapter 21, part
4 1.

5 BE IT FURTHER RESOLVED, that the Legislature urges the Montana Supreme Court to consider
6 revising the rule on substitution of District Court judges to allow substitution in all proceedings but require the
7 parties to file motions for substitution within 5 calendar days after:

8 (1) the show cause hearing in a child abuse or neglect proceeding under Title 41, chapter 3;

9 (2) the juvenile's initial appearance on a petition in a youth court proceeding under Title 41, chapter 5;

10 and

11 (3) the reading of rights in a mental health commitment proceeding under Title 53, chapter 21, part 1.

12 BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the Montana
13 Supreme Court, the State Bar of Montana, and the Montana Judges Association.

14 - END -