

1 HOUSE BILL NO. 436

2 INTRODUCED BY L. SHELDON-GALLOWAY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROCEDURES RELATED TO THE SUBSTITUTION
5 OF DISTRICT JUDGES; PROVIDING THAT A MOTION FOR SUBSTITUTION MAY BE FILED IN A CHILD
6 ABUSE AND NEGLECT PROCEEDING; PROVIDING AN EXCEPTION TO TIMELINESS OF FILING
7 REQUIREMENTS; AND AMENDING SECTION 3-1-804, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 Section 1. Section 3-1-804, MCA, is amended to read:

12 **"3-1-804. Substitution of district judges.**

13 SUBSTITUTION OF DISTRICT JUDGES

14 This section applies to judges presiding in district courts. It does not apply to any judge sitting as a
15 water court judge, to a workers' compensation court judge, or to a judge supervising the distribution of water
16 under 85-2-406, including supervising water commissioners under Title 85, chapter 5, part 1.

17 (1) Each adverse party is entitled to one substitution of a district judge.

18 (a) In a civil action other than those noted in subsection (1)(c), a motion for substitution by the
19 party filing the action must be filed within 30 calendar days after the first summons is served or an adverse
20 party has appeared. A motion for substitution by the party served must be filed within 30 calendar days after
21 service has been completed in compliance with M. R. Civ. P. 4.

22 (b) In a criminal action, a motion for substitution by the prosecution or the defendant must be filed
23 within 10 calendar days after the defendant's arraignment.

24 (c) A motion for substitution may not be filed in the following cases: ~~a child abuse or neglect~~
25 ~~proceeding under Title 41, chapter 3; a youth court action proceeding under Title 41, chapter 5; or a mental~~
26 health commitment proceeding under Title 53, chapter 21, part 1.

27 (d) In a child abuse and neglect proceeding concerning an emergency protective services hearing
28 under 41-3-306, which must be held within 5 business days of the child's removal from the home, a motion for

1 substitution may not be filed before the emergency protective services hearing is held.

2 (2) (a) When an initial pleading is filed, the clerk of court shall stamp the name of the district judge
3 to whom the case is assigned on the face of the original and all copies of that document.

4 (b) A motion for substitution of district judge must be made by filing a written motion with the clerk
5 as follows:

6 The undersigned hereby moves for substitution of District Judge _____ in this case.

7 The moving party shall serve copies of the motion for substitution upon all other parties to the
8 proceeding. The clerk shall immediately notify the district judge of the motion and, if there has already been a
9 substitution, the first district judge to whom the case was assigned.

10 (3) In civil cases, the motion for substitution is not effective for any purpose unless the filing fee for
11 a motion for substitution required by 25-1-201 is paid to the clerk of the district court.

12 In criminal cases, the motion for substitution is effective upon filing, except as otherwise provided
13 herein for a motion filed by a defendant who is not represented by a public defender, as defined by 47-1-103.

14 In criminal cases filed by the county attorney, the county attorney shall pay the substitution motion fee
15 required by 25-1-201 within 30 days of receipt of a claim from the clerk of district court. In criminal cases filed
16 by the attorney general, the attorney general shall pay the substitution motion fee required by 25-1-201 within
17 30 days of receipt of a claim from the clerk of district court.

18 In criminal cases where the motion is filed by or on behalf of an indigent defendant, as defined by 47-1-
19 103, represented by a public defender, as defined by 47-1-103, the office of public defender, as defined by 47-
20 1-103, shall pay the substitution motion fee within 30 days of receipt of a claim from the clerk of district court. In
21 criminal cases where the motion is filed by or on behalf of a defendant who is not represented by a public
22 defender, as defined by 47-1-103, the motion for substitution is not effective for any purpose unless the
23 substitution motion fee required by 25-1-201 is paid to the clerk of the district court except as waived pursuant
24 to 25-10-404.

25 The substitution motion filing fee required by 25-1-201 is not a district court expense within the meaning
26 of 3-5-901.

27 (4) (A) Any EXCEPT AS PROVIDED IN SUBSECTION (4)(B), ANY motion for substitution that is not timely
28 filed is void. The district judge for whom substitution is sought has jurisdiction to determine timeliness, and if the

1 motion for substitution is untimely, shall enter an order denying the motion.

2 (B) A MOTION FOR SUBSTITUTION MAY BE FILED AFTER THE TIME PERIOD PROVIDED FOR IN SUBSECTION
3 (1)(B) HAS EXPIRED IF EVIDENCE IS PRESENTED THAT THE ASSIGNED JUDGE HAS VIOLATED THE MONTANA CODE OF
4 JUDICIAL CONDUCT.

5 (5) After a timely motion has been filed, the substituted district judge does not have the power to
6 act on the merits of the case or to decide legal issues in the case, except as provided in subsection (10).

7 (6) The first district judge who has been substituted or disqualified for cause has the duty of calling
8 in all subsequent district judges. In a multijudge district, all other district judges in that district must be called
9 before a district judge from another district is called.

10 (7) When a new district judge has accepted jurisdiction, the clerk of court shall provide a copy of
11 the assumption of jurisdiction to the first district judge to whom the case was assigned and to each attorney or
12 party of record. A certificate of service must be attached to the assumption of jurisdiction form in the court file.

13 (8) If the presiding judge in any action recuses himself or herself or if a new district judge assumes
14 jurisdiction in any action, the right to move for substitution of a district judge is reinstated, except as to parties
15 who have previously obtained a substitution. The time periods run anew from the date of service of notice or
16 other document identifying the new district judge.

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

19 (10) A district judge who has previously been substituted from the case may agree to set the
20 calendar, draw a jury, and conduct all routine matters including arraignments, preliminary pretrial conferences
21 in civil cases, and other matters that do not address the merits of the case, if authorized by the presiding district
22 judge.

23 (11) When a new trial is ordered by the district court, each adverse party shall be entitled to one
24 motion for substitution of district judge. The motion must be filed, with the required filing fee, within 20 calendar
25 days after the district court has ordered a new trial.

26 (12) When a judgment or order is reversed or modified on appeal and the cause is remanded to the
27 district court for a new trial, or when a summary judgment or judgment of dismissal is reversed and the cause
28 remanded, each adverse party is entitled to one motion for substitution of district judge. The motion must be

Amendment - 1st Reading-white - Requested by: Daniel Emrich - (S) Judiciary

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Drafter: Julianne Burkhardt, 406-444-4025

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- 1 filed, with the required filing fee, within 20 calendar days after the remittitur from the supreme court has been
- 2 filed with the district court. There is no other right of substitution in cases remanded by the supreme court.
- 3 In criminal cases, there is no right of substitution when the cause is remanded for sentencing."

4 - END -

AMENDED