

HOUSE BILL NO. 322

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO STANDING
MASTERS; REQUIRING STANDING ORDERS TO BE POSTED ON THE DISTRICT COURT'S OR THE
JUDICIAL BRANCH'S WEBSITE; ALLOWING PARTIES TO OBJECT TO A REFERENCE TO A STANDING
MASTER; REQUIRING HEARINGS IF REQUESTED; REQUIRING DISTRICT COURT REVIEW OF
STANDING MASTER FINDINGS OF FACT AND RECOMMENDATIONS FOR DISPOSITION; PROVIDING
FOR DE NOVO REVIEW OF OBJECTIONS; PROVIDING QUALIFICATIONS FOR STANDING MASTERS;
PROVIDING FOR AN APPOINTMENT PROCESS FOR STANDING MASTERS; PROVIDING FOR
DISQUALIFICATION AND REMOVAL OF STANDING MASTERS; CLARIFYING THAT STANDING MASTERS
ARE STATE EMPLOYEES; AND AMENDING SECTIONS 3-5-124, 3-5-125, 3-5-126, AND 3-5-901, MCA."

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

Section 1. Section 3-5-124, MCA, is amended to read:

"3-5-124. Standing masters -- reference -- powers. (1) A reference to a standing master must be
made at the judge's discretion or by standing order of the district court. All standing orders of reference under
this section must be posted in a conspicuous place on the district court's or the judicial branch's website.

(2) A party may object to a reference to a standing master within 20 days after the date the matter
was referred to the standing master but before the first meeting with the standing master. On objection, the
district court shall refer the matter to another standing master in the judicial district or return the matter to the
active docket of the district court.

~~(2)(3)~~ (a) The order of reference to the standing master ~~may~~ must specify or limit the standing
master's powers and ~~may~~ must direct the standing master to present written findings of fact and ~~conclusions of~~
~~law upon recommendations for disposition on particular issues for the consideration of the district court.~~ Subject
to the specifications and limitations stated in the order, the standing master shall regulate all proceedings in

1 ~~every~~each hearing before the standing master and implement measures necessary for the efficient
2 performance of the standing master's duties under the order.

3 (b) The standing master may:

4 (i) require the production of evidence ~~upon~~on all matters embraced in the reference, including the
5 production of all books, papers, vouchers, documents, and writings that are applicable;

6 (ii) rule ~~upon~~on the admissibility of evidence unless otherwise directed by the order of reference.

7 The standing master's rulings must be in accordance with Montana law and the Montana Rules of Evidence, as
8 applicable.;

9 (iii) put witnesses on oath and ~~examine them~~ permit their examination;

10 (iv) call the parties to the action and ~~examine them on~~ permit their examination under oath; and

11 (v) issue temporary orders that are subject to immediate review by the district court, ~~upon~~on
12 objection by a party to the action. The district court may affirm, reverse, modify, or recommit the matter to the
13 standing master with instructions.

14 (c) The standing master shall make a record of the evidence offered and excluded in the same
15 manner and subject to the same limitations as provided in the Montana Rules of Evidence for a court sitting
16 without a jury. Audio and video recordings are acceptable means of record so long as a master recording is
17 properly preserved and can be transcribed for district court and appellate review.

18 (4) A standing master shall apply all applicable laws and follow the applicable rules of the judicial
19 district in which the matter is filed."

20

21 **Section 2.** Section 3-5-125, MCA, is amended to read:

22 **"3-5-125. Standing masters -- proceedings -- meetings -- witnesses -- statements of account.**

23 (1) When a reference is made, the clerk shall immediately furnish the standing master with a copy of the order
24 of reference. Unless the order of reference otherwise provides, the standing master shall set a time and place
25 for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of
26 reference and shall notify the parties or their attorneys. The standing master shall proceed with all reasonable
27 diligence throughout the proceedings. Either party, on notice to the parties and standing master, may apply to
28 the district court for an order requiring the standing master to speed the proceedings and to make the report of

1 its findings of fact and recommendations for disposition. If a party fails to appear at the time and place
 2 appointed, the standing master may proceed ex parte or, in the standing master's discretion, adjourn the
 3 proceedings to a future day, giving notice to the absent party of the adjournment.

4 (2) The parties may procure the attendance of witnesses before the standing master by the
 5 issuance and service of subpoenas as provided in Rule 45 of the Montana Rules of Civil Procedure. If, without
 6 adequate excuse, a witness fails to appear or give evidence, the witness may be punished for a contempt and
 7 be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45 of the Montana Rules
 8 of Civil Procedure.

9 (3) When matters of accounting are in issue before the standing master, the standing master may
 10 prescribe the form in which the accounts must be submitted and may require or receive in evidence a statement
 11 by a certified public accountant who is called as a witness. ~~Upon~~On objection of a party to any of the items
 12 submitted or ~~upon~~on a showing that the form of statement is insufficient, the standing master may require a
 13 different form of statement to be furnished or the accounts or specific items to be proved by oral examination of
 14 the accounting parties or ~~upon~~on written interrogatories or in ~~such~~any other manner as the standing master
 15 directs."

16

17 **Section 3.** Section 3-5-126, MCA, is amended to read:

18 **"3-5-126. Standing masters -- findings of fact and ~~conclusions of law~~ recommendations for**
 19 **disposition -- ~~orders~~ -- contents and filing -- review -- stipulations as to findings.** (1) Subject to the order
 20 of reference, the standing master shall submit findings of fact and ~~conclusions of law~~ recommendations for
 21 disposition to the district court, following a hearing ~~upon~~on the matters submitted to the standing master by the
 22 order of reference. If a party requests a hearing on a matter submitted to the standing master, the standing
 23 master shall hold a hearing. When a hearing is not required, the standing master shall submit ~~an order upon~~
 24 recommendations for disposition to the district court on the matters submitted to the standing master by the
 25 order of reference. The standing master shall file the findings of fact and ~~conclusions of order~~ recommendations
 26 for disposition with the clerk of the court and promptly serve copies on all parties in accordance with applicable
 27 law. All contested proceedings before the standing master must be audio or video recorded. The standing
 28 master shall, at the expense of the district court, file a recording of the proceedings and of the evidence and the

1 original exhibits. The record of the proceedings before the standing master must be made available to the
 2 public to the same extent other records of the district court are available to the public. The reasonable cost of
 3 the preparation of a duplicate of the recording is the responsibility of the objecting party. The objecting party
 4 shall serve a copy of the duplicate recording on adverse parties ~~at the objecting party's expense.~~

5 (2) Within 10 days after being served with notice of the filing of the findings of fact and ~~conclusions~~
 6 ~~or order~~ recommendations for disposition, any party may file and serve written specific objections ~~upon the~~
 7 ~~other parties~~, request a hearing before the district court, or ~~may~~ apply to the district court for an extension ~~to~~
 8 ~~serve.~~ The district court shall make a de novo determination of the specified findings of fact or
 9 recommendations for disposition to which an objection is made. ~~Application to the court for action upon the~~
 10 ~~findings and conclusions or order and upon the filing of specific objections to the findings and conclusions or~~
 11 ~~order must be by motion and upon notice as prescribed in Rule 6(c) of the Montana Rules of Civil Procedure.~~
 12 The district court, ~~after a hearing~~, may shall either adopt the findings of fact and ~~conclusions or order~~
 13 recommendations for disposition and ~~may or~~ modify, reject in whole or in part, receive further evidence, or
 14 recommit the ~~findings and conclusions or order~~ matter to the standing master with instructions. If a party
 15 requests a hearing, the district court shall hold a hearing.

16 (3) ~~The effect of a standing master's report is the same whether or not the parties have consented~~
 17 ~~to the reference, but when~~ When the parties stipulate that a standing master's findings of fact are final, only
 18 questions of law arising ~~upon~~ on the findings of fact and ~~conclusions~~ recommendations for disposition may be
 19 considered."
 20

21 **NEW SECTION. Section 4. Appointment of standing masters -- qualifications -- disqualification.**

22 (1) A judicial district may appoint or reappoint one or more standing masters for a term of 4 years for its district
 23 with the concurrence of a majority of the judges in the district.

24 (2) A standing master must be:

25 (a) admitted to practice law in Montana for at least 3 years prior to the date of appointment;

26 (b) a member of good standing in the state bar of Montana;

27 (c) determined by the appointing judicial district to be competent to perform the duties of the office;

28 and

1 (d) selected pursuant to the standards and procedures promulgated by the supreme court. These
 2 standards and procedures must contain provisions for public notice of all vacancies or proposed
 3 reappointments in standing master positions and for the establishment by a judicial district of a merit selection
 4 panel, composed of residents of the individual judicial districts, to assist the judicial district in identifying and
 5 recommending persons who are best qualified to fill the positions. These standards and procedures must
 6 provide for the participation of a merit selection panel in the reappointment of a standing master.

7 (3) A standing master shall take the oath required of judges and follow the Montana code of
 8 judicial conduct.

9 (4) An appointed standing master is an employee of the district court under 3-5-901.

10 (5) A standing master must be disqualified from proceeding on a matter on the same grounds as
 11 any other judicial officer. On disqualification of a standing master, the district court shall either refer the matter
 12 to another standing master in the judicial district or move the case back to its active docket for further
 13 proceedings.

14
 15 **NEW SECTION. Section 5. Removal of standing master.** A standing master may be removed
 16 during the 4-year term for which the standing master was appointed for incompetence, misconduct, neglect of
 17 duty, or physical or mental disability or if the judicial district terminates the office on determining that the
 18 services performed by the standing master are no longer needed. Removal must be by a majority vote of all the
 19 judges in the district. Before removal, the standing master must be given notice of the charges against the
 20 standing master and an opportunity to be heard.

21
 22 **Section 6.** Section 3-5-901, MCA, is amended to read:

23 **"3-5-901. State assumption of district court expenses.** (1) There is a state-funded district court
 24 program under the judicial branch. Under this program, the office of court administrator shall fund all district
 25 court costs, except as provided in subsection (3). These costs include but are not limited to the following:

- 26 (a) salaries and benefits for:
 - 27 (i) district court judges;
 - 28 (ii) law clerks;

1 (iii) court reporters, as provided in 3-5-601;

2 (iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth

3 court; ~~and~~

4 (v) standing masters; and

5 ~~(v)(vi)~~ other employees of the district court;

6 (b) in criminal cases:

7 (i) fees for transcripts of proceedings, as provided in 3-5-604;

8 (ii) witness fees and necessary expenses, as provided in 46-15-116;

9 (iii) juror fees and necessary expenses;

10 (iv) for a psychiatric examination under 46-14-202, the cost of the examination and other

11 associated expenses, as provided in 46-14-202(4); and

12 (v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the

13 director of the department of public health and human services to be placed in an appropriate facility of the

14 department of public health and human services and of transporting the defendant back for any proceedings, as

15 provided in 46-14-221(5);

16 (c) except as provided in 47-1-119, the district court expenses in all postconviction proceedings

17 held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter

18 22, and appeals from those proceedings;

19 (d) except as provided in 47-1-119, the following expenses incurred by the state in federal habeas

20 corpus cases that challenge the validity of a conviction or of a sentence:

21 (i) transcript fees;

22 (ii) witness fees; and

23 (iii) expenses for psychiatric examinations;

24 (e) except as provided in 47-1-119, the following expenses incurred by the state in a proceeding

25 held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth,

26 temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

27 (i) transcript fees;

28 (ii) witness fees;

1 (iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian,
2 or other person having physical or legal custody of the youth except for expenses for services that a person is
3 eligible to receive under a public program that provides medical or psychological evaluation;

4 (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth;
5 and

6 (v) expenses associated with court-ordered alternative dispute resolution;

7 (f) except as provided in 47-1-119, costs of juror and witness fees and witness expenses before a
8 grand jury;

9 (g) costs of the court-sanctioned educational program concerning the effects of dissolution of
10 marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation
11 and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

12 (h) except as provided in 47-1-119, all district court expenses associated with civil jury trials if
13 similar expenses were paid out of the district court fund or the county general fund in any previous year;

14 (i) all other costs associated with the operation and maintenance of the district court, including
15 contract costs for court reporters who are independent contractors; and

16 (j) costs associated with the operation and maintenance of the youth court and youth court
17 division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by
18 other entities identified in Title 41, chapter 5.

19 (2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost
20 and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

21 (3) For the purposes of subsection (1), district court costs paid by the office of court administrator
22 do not include:

23 (a) costs for clerks of district court and employees and expenses of the offices of the clerks of
24 district court;

25 (b) costs of providing and maintaining district court office space; or

26 (c) charges incurred against a county by virtue of any provision of Title 7 or 46."
27

28 NEW SECTION. Section 7. Codification instruction. [Sections 4 and 5] are intended to be codified

1 as an integral part of Title 3, chapter 5, part 1, and the provisions of Title 3, chapter 5, part 1, apply to [sections
2 4 and 5].

3 - END -