



Montana Legislative Services Division

Legal Services Office

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To: Members of the Senate Select Committee on Judicial Oversight and Reform  
From: Julie Johnson  
Re: Follow-Up Questions and Answers  
Date: July 11, 2024

At the most recent meeting of this committee on June 12 and 13, 2024, I was asked to follow up on some questions. Below are the questions and answers to them.

**Question 1:** How are district court judges assigned a case that is filed in a multijudge judicial district?

**Answer:** According to the Director of the Information Technology Division at the Montana Supreme Court, judges are assigned cases using a proprietary randomizing formula within the FullCourt (the “system”) case management system, which has been used to assign cases since 2006. The software algorithm is used across the country in other courts using the FullCourt case management system. The assignment of cases is randomized, and the system works as follows:

For each case type and subtype (such as a criminal case, civil case, and juvenile case), each judge is assigned a judge count. One can think of it as how many times a judge’s name is placed in a particular hat. For example, in Criminal Information cases (DC-IN) in Lewis and Clark County, each of the four judges has their name placed in the hat 10 times. As new cases are created, a judge’s name is randomly picked by the system (i.e., from the “hat”), which makes the judge’s count go from 10 to 9. The next time a criminal case is assigned by the system, another judge’s name is randomly picked by the system. It could be one of the other judges in the same judicial district, or it could be the same judge that was assigned the most recent case. Each time a judge’s name is picked by the system for a particular type of case, the number of times the same judge can be picked again is reduced by one. When a judge’s number gets to zero, that name will not get picked again until each judge has had 10 criminal cases assigned to them. When all judge counts get to zero, each of the judges’ names go back up to 10 and the system starts over.

Some courts have local rules that deviate from the random assignment in certain criminal and family law case types. For instance, the 13<sup>th</sup> Judicial District has a “one defendant, one judge” rule, which means that all cases for a single criminal defendant are assigned to one judge. Other courts have a “one family, one judge” rule, which means that all domestic relations cases for a single family are assigned to one judge.

The system does keep track if a judge is substituted, but this part of the system is not automated and requires manual entry of the information. If a judge is substituted and accepts jurisdiction, that judge’s count in the FullCourt system will be reduced by one for that case type.

**Question 2:** What gives retired judges authority to sit for cases?

**Answer:** Section [19-5-103](#), MCA, provides:

**19-5-103. Call of retired judges and justices and inactive vested members for duty.** (1) (a) If physically and mentally able, a retired judge or justice who has voluntarily retired after at least 8 years of service is subject to call for duty by the chief justice to aid and assist any district court or any water court under directions that the chief justice may give or to serve as water judge.

**Question 3:** What gives authority to judges visiting from a different jurisdiction to sit on a case in a jurisdiction or district other than the one the judge was elected for?

**Answer:** Section [3-1-804\(6\)](#), MCA provides:

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

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

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

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

[...]

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

Also, [3-5-111](#) and [3-5-112](#), MCA, also apply and provide as follows:

**3-5-111. District courts presided over by judges of other districts.** A judge of the district court of any judicial district may hold the district court in any county of another district at the request of the judge of the other district or as otherwise provided by law. A district judge shall hold the district court in a county of another district if so requested by the chief justice. The judge holding the court in the other district has the same power as within the judge's own district.

**3-5-112. Authority of chief justice.** (1) The chief justice may by written order assign a district judge to hold court in a county of another district if:

(a) for any cause a district court in another district is not or cannot be held in any county by a judge of the other district or acting for the other district; or

(b) the business of the court in the other district is not or cannot be dispatched with reasonable promptness.

(2) A district judge assigned to another district pursuant to subsection (1) shall hold court in the other district for the time specified in the order.

**Question 4:** Did either party file a motion to substitute a district court judge in the 2021 Election Legislation litigation?

**Answer:** Yes. When the case was first filed, Judge Knisely was assigned to the case. The plaintiffs filed a motion to substitute Judge Knisely. The case was then assigned to Judge Harada. Judge Harada disqualified herself and the case was next assigned to Judge Moses, who accepted jurisdiction over the matter.

**Question 5:** Were motions to substitute made in cases regarding legislation in Lewis and Clark County?

**Answer:** Yes. Motion for substitutions were made by both plaintiffs and the State in certain cases.

**Senate Bill 319 from 2021 (Campaign Finance)**

For example, in the litigation over SB 319 from 2021, that case was originally assigned to Judge McMahon. The State filed a motion to substitute on June 14, 2021, and the case was assigned to Judge Seeley. The State filed a second motion for substitution on June 17, 2024, and the case was assigned to Judge Menahan.

**Senate Bill 93 from 2023 (Citizen Initiative)**

The case was originally assigned to Judge Seeley, but the State moved to substitute Judge Seeley on August 30, 2023. The case was then assigned to Judge Menahan.

**2023 Abortion Legislation Litigation**

This case was originally assigned to Judge Abbott; however, Judge McMahon assumed jurisdiction. After that, the plaintiff filed a motion to substitute, and Judge Seeley assumed jurisdiction. The Attorney General/State then moved to substitute Judge Seeley, and the case was assigned to Judge Menahan.

**House Bill 393 from 2023 (Education Savings Accounts)**

Judge McMahon was initially assigned this case. The plaintiffs filed a motion to substitute, and the case was then assigned to Judge Menahan.

**Zephyr v. Regier**

This was a Lewis and Clark County case that was assigned to Judge McMahon. The plaintiffs filed a motion to substitute Judge McMahon, who asked Judge Seeley to assume jurisdiction.

The defendants filed a motion to substitute Judge Seeley, and Judge McMahon asked Judge Menahan to assume jurisdiction.