

1 SENATE BILL NO. 85

2 INTRODUCED BY T. MURPHY

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROCEDURES RELATED TO SUBSTITUTION OF
5 DISTRICT JUDGES; INCREASING THE FEE FOR FILING A MOTION FOR SUBSTITUTION OF A JUDGE; AND
6 AMENDING SECTIONS 3-1-804 AND 25-1-201, MCA."

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

9

10 **Section 1.** Section 3-1-804, MCA, is amended to read:11 **"3-1-804. Substitution of district judges.**

12 SUBSTITUTION OF DISTRICT JUDGES

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

16 (1) Each adverse party is entitled to one substitution of a district judge. A motion for substitution must
17 contain a statement of necessity describing why the motion for substitution is necessary.

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

22 (b) In a criminal action; a child abuse and neglect proceeding under Title 41, chapter 3; a youth court
23 act proceeding under Title 41, chapter 5; or a mental health commitment proceeding under Title 53, chapter 21,
24 part 1, a motion for substitution by the prosecution or the state must be filed within 10 calendar days after the
25 district judge is assigned pursuant to subsection (2)(a). A motion for substitution by the defendant, parent, youth,
26 or respondent must be filed within 10 calendar days after the defendant, parent, youth, or respondent makes an
27 initial appearance in the district court.

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

30 (b) A motion for substitution of a district judge must be made by filing a written motion with the clerk, as

1 follows:

2 The undersigned hereby moves for substitution of District Judge in this case. The motion
3 for substitution is necessary because.....

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

7 (3) In civil cases, the motion for substitution is not effective for any purpose unless the filing fee for a
8 motion for substitution required by 25-1-201 is paid to the clerk of the district court. No filing fee is required in
9 criminal cases or by parties who have qualified for representation at public expense.

10 (4) Any motion for substitution that is not timely filed is void. The district judge for whom substitution is
11 sought has jurisdiction to determine timeliness, and if the motion for substitution is untimely, shall enter an order
12 denying the motion.

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

15 (6) When a motion for substitution is filed, the chief justice of the Montana supreme court has the duty
16 of calling in all subsequent district judges. The first district judge who has been ~~substituted~~ or disqualified for
17 cause has the duty of calling in all subsequent district judges. ~~When a district judge is disqualified in a~~
18 ~~multijudge district, all other district judges in that district must be called before a district judge from another district~~
19 ~~is called.~~

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

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

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

29 (10) A district judge who has previously been substituted from the case may agree to set the calendar,
30 draw a jury, and conduct all routine matters including arraignments, preliminary pretrial conferences in civil cases,

1 and other matters that do not address the merits of the case, if authorized by the presiding district judge.

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

5 (12) When a judgment or order is reversed or modified on appeal and the cause is remanded to the
6 district court for a new trial, or when a summary judgment or judgment of dismissal is reversed and the cause
7 remanded, each adverse party is entitled to one motion for substitution of district judge. The motion must be filed,
8 with the required filing fee, within 20 calendar days after the remittitur from the supreme court has been filed with
9 the district court. There is no other right of substitution in cases remanded by the supreme court.

10 In criminal cases, there is no right of substitution when the cause is remanded for resentencing."
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12 **Section 2.** Section 25-1-201, MCA, is amended to read:

13 **"25-1-201. Fees of clerk of district court.** (1) The clerk of district court shall collect the following fees:

14 (a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from
15 the plaintiff or petitioner, \$90; for filing a complaint in intervention, from the intervenor, \$80; for filing a petition for
16 dissolution of marriage, \$170; for filing a petition for legal separation, \$150; and for filing a petition for a contested
17 amendment of a final parenting plan, \$120;

18 (b) from each defendant or respondent, on appearance, \$60;

19 (c) on the entry of judgment, from the prevailing party, \$45;

20 (d) (i) except as provided in subsection (1)(d)(ii), for preparing copies of papers on file in the clerk's
21 office, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;

22 (ii) for a copy of a marriage license, \$5, and for a copy of a dissolution decree, \$10;

23 (e) for each certificate, with seal, \$2;

24 (f) for oath and jurat, with seal, \$1;

25 (g) for a search of court records, \$2 for each name for each year searched, for a period of up to 7 years,
26 and an additional \$1 for each name for any additional year searched;

27 (h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the
28 fee for entry of judgment provided for in subsection (1)(c);

29 (i) for issuing an execution or order of sale on a foreclosure of a lien, \$5;

30 (j) for transmission of records or files or transfer of a case to another court, \$5;

- 1 (k) for filing and entering papers received by transfer from other courts, \$10;
- 2 (l) for issuing a marriage license, \$53;
- 3 (m) on the filing of an application for informal, formal, or supervised probate or for the appointment of
4 a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the
5 applicant or petitioner, \$70, which includes the fee for filing a will for probate;
- 6 (n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the
7 estate of a nonresident decedent, \$55;
- 8 (o) for filing a declaration of marriage without solemnization, \$53;
- 9 (p) for filing a motion for substitution of a judge, ~~\$100~~ \$1,000;
- 10 (q) for filing a petition for adoption, \$75.
- 11 (2) Except as provided in subsections (3) and (5) through (7), fees collected by the clerk of district court
12 must be deposited in the state general fund as specified by the supreme court administrator.
- 13 (3) (a) Of the fee for filing a petition for dissolution of marriage, \$5 must be deposited in the children's
14 trust fund account established in 52-7-102, \$19 must be deposited in the civil legal assistance for indigent victims
15 of domestic violence account established in 3-2-714, and \$30 must be deposited in the partner and family
16 member assault intervention and treatment fund established in 40-15-110.
- 17 (b) Of the fee for filing a petition for legal separation, \$5 must be deposited in the children's trust fund
18 account established in 52-7-102 and \$30 must be deposited in the partner and family member assault intervention
19 and treatment fund established in 40-15-110.
- 20 (4) If the moving party files a statement signed by the nonmoving party agreeing not to contest an
21 amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of district court may
22 not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under
23 subsection (1)(a).
- 24 (5) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, \$9 must be
25 deposited in the civil legal assistance for indigent victims of domestic violence account established in 3-2-714.
- 26 (6) The fees collected under subsections (1)(d), (1)(g), and (1)(j) must be deposited in the county district
27 court fund. If a district court fund does not exist, the fees must be deposited in the county general fund to be used
28 for district court operations.
- 29 (7) Of the fee for issuance of a marriage license and the fee for filing a declaration of marriage without
30 solemnization, \$13 must be deposited in the domestic violence intervention account established by 44-4-310 and

1 \$10 must be deposited in the county district court fund. If a district court fund does not exist, the fees must be
2 deposited in the county general fund to be used for district court operations.

3 (8) Any filing fees, fines, penalties, or awards collected by the district court or district court clerk not
4 otherwise specifically allocated must be deposited in the state general fund."

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