

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 06-0377

PUBLIC ACCESS AND PRIVACY
TO COURT RECORDS IN MONTANAO R D E R

As reflected by the AF designation, this cause number is an administrative file relating to the Court's consideration of the referenced rules, which had been developed and recommended by a Task Force of this Court's Commission on Technology. The Task Force is interdisciplinary in nature and held seven noticed public meetings between December 2005 and March 2006 relating to the Rules.

On May 23, 2006, we issued an Order requesting public comment by August 23, 2006, on the proposed rules; we published the rules via hyperlink. Written comments were received from a variety of persons and organizations, and we directed the Task Force to revisit its recommendations pursuant thereto. It did so and we subsequently considered the Task Force's recommendations and the public comments. On February 13, 2007, we issued our Order adopting the Rules for Privacy and Public Access to Court Records in Montana—as attached to the Order—with an effective date of December 31, 2007. In our Order, we expressly “recognize[ed] that certain rules or parts thereof may become applicable only when the technology contemplated by the rule or part thereof becomes available to the courts.”

On December 11, 2007, the Chairs of the Task Force petitioned to amend Section 4.5(c) of the Rules, delay the effective date for the Rules until July 1, 2008, and provide a

60-day comment period ending February 28, 2008, for comments on implementation difficulties with Section 4.5(c) of the Rules. Recognizing the imminence of the original effective date of the Rules, we filed our Order on December 12, 2007, amending Section 4.5(c) of the Rules, delaying the implementation deadline for the Rules until July 1, 2008, and encouraging courts, clerks and attorneys to advise the Task Force—within 60 days from December 12, 2007—of their concerns with respect to specific forms and processes that will need to be addressed before compliance with Section 4.5(c) of the Rules is possible. We directed the Task Force to respond to the concerns raised by modifying or suggesting modifications to forms—and developing or suggesting procedures for courts, clerks and practitioners—to comply with Section 4.5(c) of the Rules. We Ordered the Clerk to give notice of the Order to, among others, the Clerks of the District Courts with a request that the Clerks provide a copy of the Order to the District Judge of that District. Our December 12, 2007 Order was promptly published in the December 2007/January 2008 issue of the State Bar’s magazine, *The Montana Lawyer*.

On December 20, 2007, the five Judges of the Thirteenth Judicial District Court, Yellowstone County—together with attorneys W. Corbin Howard of Billings and P. Mars Scott of Missoula—filed a Petition for Original Jurisdiction and Order seeking clarification via supplemental orders about, among other things, which rules or parts thereof are effective December 31, 2007, and expressing concerns about a lack of technology and procedures for meeting the requirements of the Rules. Concerns also were expressed regarding increased workload for the clerks of court and courts, increased legal fees for litigants and increased

numbers of—and difficulties for—self-represented litigants. Privacy concerns also were raised.

The Honorable Blair Jones and the Honorable Katherine M. Irigoien petitioned to join the December 20 Petition. On December 24, 2007, the Montana Legal Services Association (MLSA) moved for leave to file a brief *amicus curiae* in this cause number.

With all due respect to the Petitioners, those desiring to join as Petitioners and the MLSA, we repeat that this is an administrative proceeding, not an adversarial one. We have already delayed the effective date of the Rules and requested that comments on Section 4.5(c) of the Rules, as amended, be directed to the Task Force. It appears from the Petition and the MLSA motion, however, that there may be additional concerns about the Rules, and that the Petitioner, putative Co-Petitioners and movant MLSA may not be aware of our December 12 Order.

THEREFORE,

IT IS ORDERED that the Petition, requests to join and motion for leave to file a brief *amicus curiae* are denied without prejudice; and

IT IS FURTHER ORDERED that our Order of December 12, 2007, remains in effect at this time EXCEPT that the comments and concerns expressed in the Petition, efforts to join and MSLA motion are hereby deemed directed to—and a copy shall be forwarded by our Clerk to—the Task Force for its consideration and further communication with the Petitioners and MSLA;

IT IS FURTHER ORDERED that the Task Force shall file any additional Petitions with regard to the Rules—recommended forms, procedures an the like—with this Court not

later than May 31, 2008; and

IT IS FURTHER ORDERED that the Court will consider any further Petitions or proposed amendments to the Rules from the Task Force at one or more public meetings beginning June 1, 2008.

The Clerk is directed to give notice of this Order to the Petitioners, those seeking to join the Petition and the MLSA; to the State Law Librarian and the Executive Director of the State Bar of Montana with a request that this Order be posted on the respective websites; and to the clerk of each district court in Montana with a request that the clerk provide a copy of this Order to the district judge(s) of that district.

DATED this 9th of January, 2008.

/S/ KARLA M. GRAY
/S/ PATRICIA COTTER
/S/ W. WILLIAM LEAPHART
/S/ JAMES C. NELSON
/S/ JOHN WARNER
/S/ BRIAN MORRIS
/S/ JIM RICE