

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 07-0016

IN THE MATTER OF THE RULES OF
APPELLATE PROCEDURE.O R D E R

On July 3, 2007, this Court issued an Order adopting new Montana Rules of Appellate Procedure (M. R. App. P.) and repealing the existing M. R. App. P. effective October 1, 2007. Since their adoption, it has come to our attention that certain “fine-tuning” amendments need to be made to the new M. R. App. P. Following discussion at the Court’s public meeting in Helena, Montana, on February 12, 2008, we concluded that the hereinafter described amendments to the M. R. App. P. were appropriate and necessary.

As a further housekeeping measure, and pursuant to M. R. App. P. 2(4), we have changed the caption of this Cause No. so that the instant and any future amendments to the M. R. App. P. will be filed, and a complete historical record maintained, under this Cause No. To that end, the Clerk of this Court shall not close this Cause absent further order of this Court. Therefore, on this Court’s own motion,

IT IS ORDERED that the following amendments to the M. R. App. P. are adopted, effective, 30 days from the date of this Order. New language is underlined, and deleted language is stricken. All other M. R. App. P. and Forms remain in effect and unaltered, except as to the specific amendments adopted herein:

- I. Rule 5(1) and (2) are amended as follows:

(1) **Motion and affidavit to proceed without paying the filing fee—general.** A party in a civil appeal or in an original proceeding for a writ in the supreme court who desires to proceed without payment of the required filing fee shall file a combined motion and affidavit in the supreme court for leave to so proceed, ~~together with an affidavit~~ as prescribed by Form 3, showing the party's financial condition and inability to pay the filing fee, the party's belief that the party is entitled to redress, and a short statement of the issues the party intends to present. If necessary to determine a party's financial condition, the supreme court may remand a combined motion and affidavit to the district court for fact-finding.

(2) **Motion and affidavit to proceed without paying the filing fee—incarcerated person.** A person incarcerated in a correctional institution or facility who is a party in a civil appeal or in an original proceeding for a writ in the supreme court and who desires to proceed without payment of the required filing fee shall file a combined motion and affidavit in the supreme court for leave to so proceed, together with an unnotarized form as otherwise prescribed by Form 3, showing the party's financial condition and inability to pay the filing fee, the party's belief that the party is entitled to redress, and a short statement of the issues the party intends to present. The incarcerated party also shall file a statement of account prepared by the correctional institution or facility indicating the party's funds, if any, which are held by the institution or facility; no motion under this section will be granted without the required statement of account.

II. Rule 8(4)a. is amended as follows:

a. A transcript shall contain a title page, index pages listing witnesses and exhibits, as applicable, the body of the transcript, and a page certifying in writing—and executed by the court reporter—that the transcript is a true and correct verbatim record of the proceeding transcribed. Each page shall measure 8½ by 11 inches, with combined left and right standard text margins not exceeding 2.25 inches. ~~The font used for the original transcript shall contain no more than 9 characters per inch, and~~ a A page number shall appear in the upper right corner of each page.

III. Form 3, in its present form is repealed and is replaced with the amended Form 3 attached hereto and, by this reference made a part hereof, for all purposes.

IT IS FURTHER ORDERED that a copy of this Order, including amended Form 3, shall be electronically published on the website for the Judicial Branch,

<http://www.courts.mt.gov>. We request that notice of this Order, along with the link to the Judicial Branch website, be electronically published on the websites of the State Law Library and State Bar of Montana and in the next available issue of *The Montana Lawyer*.

IT IS FURTHER ORDERED that the Clerk of this Court give notice of this Order, including the amended Form 3, to the clerks of the district courts with the request that they provide a copy thereof to each district judge in their county; to the code commissioner for State of Montana; to the State Law Librarian; to the executive director of the State Bar of Montana; to the editor of *The Montana Lawyer*; and to the presidents of the Montana Judges Association and the Montana Magistrates' Association.

Dated this 20th of February, 2008.

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

Form 3

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No. _____

(designation of party),

v.

MOTION AND AFFIDAVIT IN SUPPORT
TO PROCEED ON APPEAL WITHOUT
PAYMENT OF FILING FEE

(designation of party).

I move this Court to proceed without payment of the filing fee in this cause, and I submit this Affidavit in support of my motion.

I, _____ (state your name), being first duly sworn, depose and say that I am the _____ (designation of party) in the above-entitled cause; that in support of my application to proceed on appeal without being required to pay the filing fee, I state that because of my financial condition I am unable to pay the filing fee; that I believe I am entitled to redress; and that the issues which I desire to present on appeal are the following:

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?
 - a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
 - b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.
2. Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source? If the answer is yes, describe each source of income, and state the amount received from each during the past 12 months.
3. Do you own any cash or checking or savings account? If the answer is yes, state the total value of the items owned.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? If the answer is yes, describe the property and state its approximate value.
5. List the persons who are dependent upon you for support and state your relationship to those persons.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Subscribed and sworn to before me this _____ day of _____, 2____.

SEAL

Notary Public for the State of Montana
Residing at _____
My Commission expires _____