

IN THE SUPREME COURT OF THE STATE OF MONTANA

FILED

NOV 14 1994

IN THE MATTER OF RULES FOR
THE DISQUALIFICATION AND
SUBSTITUTION OF JUDGES

)
) ORDER AMENDING RULE
) 3-1-804(1)(c), MCA.

Ed Smith
CLERK OF SUPREME COURT
STATE OF MONTANA

In *Challinor v. Glacier Nat'l Bank* (1994), 51 St.Rep. 863, 880 P.2d 1327, this Court interpreted § 3-1-804(1)(c), MCA, as allowing a plaintiff who has named multiple defendants in the complaint to move for a substitution of a district judge within a period of 20 consecutive days after the service of summons on the last served defendant. Recognizing that such a time period for substitution could result in misuse in multiple-party actions or proceedings, the Court concluded that such concerns were best addressed by a prospective rule change.

Pursuant to the power placed in this Court by Article VII, Section 2, of the 1972 Montana Constitution, this Court established rules for the disqualification and substitution of judges in civil and criminal cases. The rules had an effective date of September 1, 1987, and are now codified at §§ 3-1-801 through -805, MCA.

This Court adopts the following amendment of § 3-1-804(1)(c), MCA, with an effective date of February 1, 1995, and a comment period to extend to January 31, 1995. (For ease in reading the change, the additions to the rule are underscored, with the understanding that the revised rule will not contain such underscoring):

(c) When a judge is assigned to a cause for 20 consecutive days after service of a summons, or 10 consecutive days after service of an order to show cause, information or other initiating document, and no motion for substitution of judge has been filed within said time period, the plaintiff or the party filing the order, information or other initiating document, and the party upon whom service has been made shall no longer have a right of substitution. Any party named in a summons who is subsequently served shall have 20 consecutive days after such service in which to move for a substitution of judge. Any person subsequently served in connection with an order to show cause, information or other initiating

document, shall have 10 consecutive days after such service in which to move for a substitution of judge. If the presiding judge removes himself or herself, or a new judge assumes jurisdiction of the cause by virtue of the internal operating rules of a multi-judge court, the right to move for substitution of a judge is reinstated, unless having been previously used in the cause by the moving party, and the time periods shall run anew. After the time period shall have run as to the original parties to the proceeding, no party who is joined or intervenes thereafter shall have any right of substitution, except that one third party defendant who is not an original party in any pending case may have a right of one substitution within 20 consecutive days after the service upon the third party defendant of a third party complaint.

ORDER SUPERSEDES SECTION 3-1-804(1)(c), MCA:

By the authority of Article VII, Section 2, of the 1972 Montana Constitution, this revised rule amends and is to be used in place of the Court's interpretation of the rule on disqualification and substitution of judges, § 3-1-804(1)(c), MCA, as discussed by this Court in the opinion dated September 13, 1994 in Challinor v. Glacier Nat'l Bank.

EFFECTIVE DATE:

This revision of the rule shall take effect on February 1, 1995.

COMMENT PERIOD:

The Montana Supreme Court invites comments by attorneys, judges, and other interested parties to be submitted to the Clerk of this Court by January 31, 1995. Following the receipt of such comments, this Court will consider the same and make such changes as it finds to be appropriate.

NOTICE:

The Clerk of this Court is directed to mail copies of this Order to the following:

The Code Commissioner of the State of Montana;
District Court Judges of the State of Montana;
Clerks of the District Courts of the State of Montana;
United States District Court Judges of the State of Montana;

Clerks of the United States District Courts of the State of Montana;

President and Executive Director of the State Bar of Montana, with the request that this order be published in The Montana Lawyer;

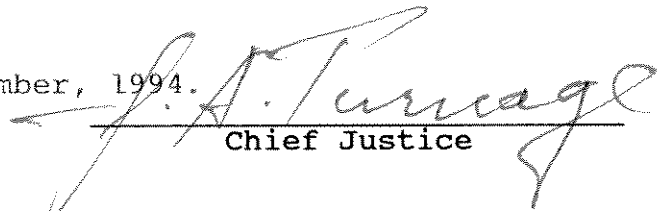
President and Executive Director of the Montana Trial Lawyers Association, with the request that this order be published in the Association journal;

President and Executive Director of the Montana Defense Trial Lawyers Association, with the request that this order be published in the Association journal;

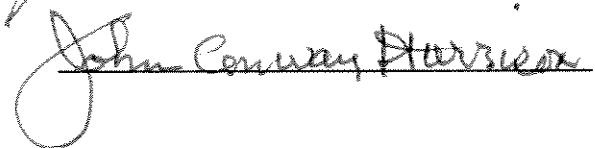
West Publishing Company, with a request that it be published in the Pacific Reporter; and

State Reporter Publishing Company, with a request that it be published in the State Reporter.

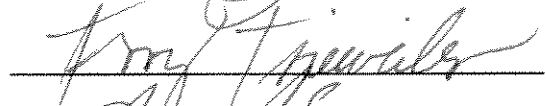
DATED this 10th day of November, 1994.

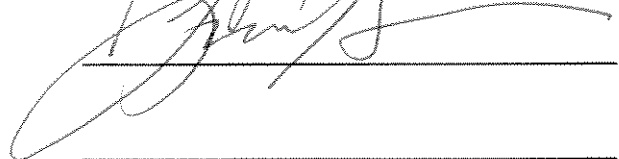


Chief Justice









Justices