

IN THE SUPREME COURT OF THE STATE OF MONTANA

FILED

IN RE MODIFICATION OF THE RULE ON )  
DISQUALIFICATION OF JUDGES )

ORDER JUN 19 2003

Ed Smith  
CLERK OF SUPREME COURT  
STATE OF MONTANA

Pursuant to the power placed in this Court by Article VII, Section 2, 1972 Montana Constitution, this Court has established rules for the disqualification of substitution of judges in civil and criminal cases, and such rules are now codified at §§ 3-1-803 through 3-1-805, MCA.

IT IS HEREBY ORDERED that, effective June 19, 2003, § 3-1-805, MCA, is amended to read as follows (deleted language is indicated by strikeout; new language is underlined):

**3-1-805. Disqualification for cause.**

DISQUALIFICATION FOR CAUSE

This section is limited in its application to judges presiding in district courts, justice of the peace courts, municipal courts, small claims courts, and city courts.

1. Whenever a party to any proceeding in any court shall file an affidavit alleging facts showing personal bias or prejudice of the presiding judge, such judge shall proceed no further in the cause. If the affidavit is filed against a district judge, the matter shall be referred to the Montana Supreme Court, ~~whereupon~~ If the affidavit is in compliance with subsections a, b and c below, the Chief Justice shall assign a district judge to hear the matter. If the affidavit is file against a judge of a municipal court, justice court, or city court, any district judge presiding in the district of the court involved may appoint either a justice of the peace, a municipal judge or a city court judge, to hear any such proceeding.

(a) The affidavit for disqualification must be filed more than thirty (30) days before the date set for hearing or trial.

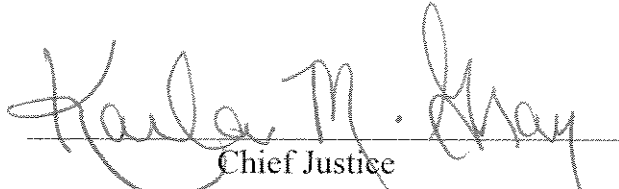
(b) The affidavit shall be accompanied by a certificate of counsel of record that the affidavit has been made in good faith. An affidavit will be deemed not to have been made in good faith if it is based solely on rulings in the case which can be addressed in an appeal from the final judgment. ~~made by the challenged judge and from which an appeal could have been taken.~~


(c) Any affidavit which is not in proper form and or which does not allege facts showing personal bias or prejudice may be set aside as void.

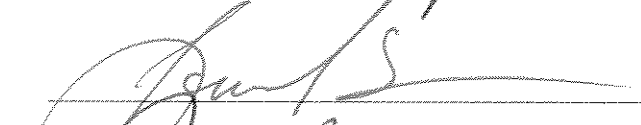
(d) The judge appointed to preside at a disqualification proceeding may assess attorneys fees, costs, and damages against any party or his attorney who files such disqualification without reasonable cause and thereby hinders, delays or takes unconscionable advantage of any other party, or the court.

The Clerk is directed to mail copies of this order to West Group, State Reporter Publishing Company and the *Montana Lawyer* with the request that it be published in their respective publications; to the Director of Legal Services of the Montana Legislative Services Division; and to all Clerks of the District Court of the State of Montana with a request that each Clerk furnish a copy to the District Court Judges and the Judges of Courts of Limited Jurisdiction in their respective counties.

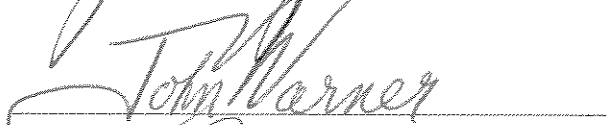
DATED this 19th day of June, 2003.

  
Chief Justice

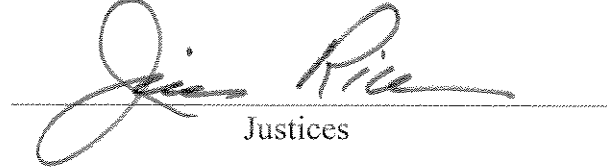










  
Justices