

IN THE SUPREME COURT OF THE STATE OF MONTANA

IN THE MATTER OF PROTECTING)
THE PRIVACY OF PARTIES IN) ORDER
CERTAIN PROCEEDINGS)

Rules 23(d), 17(e) and 22, M.R.App.P. (hereafter referred to as the Rules) require that parties and children be referred to only by their initials in filings in certain designated proceedings. These Rules are effective, as far as they go, in protecting the individual privacy interests of such persons.

It has come to our attention, however, that an equally serious infringement of the individual privacy interests of such persons occurs when briefs, petitions, responses, motions, memoranda, notices and similar documents include attached or separate appendices or exhibits containing un-redacted names, medical records, evaluations, and other personally sensitive and private information. Furthermore, the typical district court record is rife with such documents and information, often not in any sort of segregated or protected fashion.

While it is possible to redact briefs, petitions, responses, motions, memoranda, notices and similar documents of names by substituting initials therefore, it is not practically possible to redact names and personally sensitive information from the multitude of medical records, evaluations, and other documents that may be included in the district court record or that may be included in appendices. Moreover, while the public's right to know under Article II, Section 9 of Montana's Constitution must be protected, the Article II, Section 10 rights of individual privacy of the parties and children involved in the aforementioned proceedings must be protected as well.

It is with a view toward balancing these two rights that we adopt the following procedures as to proceedings, whether brought by direct appeal, for extraordinary relief or as an original proceeding, regarding:

- a) The neglect of a child or for the termination of parental rights under Title 41, Chapter 3, MCA;
- b) Under the Uniform Parentage Act, Title 40, Ch. 6, part 1, MCA;
- c) For adoption, Title 42, MCA;
- d) Under the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act., Title 52, Ch. 3, part 8, MCA
- e) Under Title 53, Ch. 20, MCA (developmental disabilities), Ch. 21 (mentally ill), and Ch. 24 (alcoholism and drug dependence).

Therefore,

IT IS HEREBY ORDERED:

I. As to the aforementioned proceedings, briefs filed on direct appeal which do not comply with Rule 23(d), M.R.App.P., shall be returned for compliance to the filer at that person's expense by Order of the Court as part of the Court's "brief checking" procedures. Petitions, responses, motions, notices, and similar documents, whether filed on direct appeal, for extraordinary relief or as an original proceeding which do not comply with the Rules shall be returned for compliance to the filer at that person's expense by the Clerk of the Supreme Court with a short written explanation.

II. Appendices and the district court record in the aforementioned cases shall be available only to counsel of record, to parties not represented by counsel and to a guardian *ad litem* for a party or child. Appendices and exhibits attached to briefs, petitions, responses, motions, notices and similar documents shall be removed by the Clerk of the Supreme Court from the "reference" copies of the same. Other persons seeking access to the referred to appendices, exhibits or to the district court record shall petition this Court and demonstrate

why the person's need to know and examine the same outweighs the individual privacy interests of the persons involved.

IT IS FURTHER ORDERED, that this Order shall be effective on the date hereof.

IT IS FURTHER ORDERED that the Clerk of this Court give notice of this Order by mail to the Executive Director of the State Bar of Montana with a request that this Order be published in the next available issue of the *Montana Lawyer* and on the State Bar's website and to the Law Librarian for the State of Montana with a request that this Order be published on the State Law Library's website.

Dated this 14th day of June, 2005.

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