



Law and Justice Interim Committee

62nd Montana Legislature

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TO: Members, Law and Justice Interim Committee

FROM: David S. Niss, Staff Attorney

RE: Amended Rules of Appellate Procedure and Amended Uniform District Court Rules

DATE: January 31, 2012

I Introduction

Committee staff previously presented the Law and Justice Interim Committee (LJIC) with a memorandum dated October 6, 2011, in which the staff discussed amendments to the Montana Rules of Civil Procedure (M.R.Civ.P.), the Montana Rules of Appellate Procedure (M.R.App.P.), and the Montana Uniform District Court Rules (M.U.D.C.R.). In that memo, Committee staff pointed out that recent changes to all three types of rules are subject to the provisions of Article VII, section 2(3), of the Montana Constitution, allowing the Legislature to disapprove rules of procedure adopted by the Montana Supreme Court in either of the two legislative sessions following adoption by the Court. At the Committee meeting on December 15, 2011, the Committee voted to subject the rules to a Committee hearing for the purposes of considering testimony recommending disapproval of the Rules.

When Committee staff reviewed the motion adopted by the Committee, they found that the motion applied only to the amendments to the M.R.Civ.P. and did not mention either the changes to the M.R.App.P. or the changes to the M.U.D.C.R. For this reason, the Committee staff has provided the following summaries of the rules and asks that the Committee determine whether to subject these other rules to the hearing process voted on at the December Committee meeting.

II Discussion

A. Amended Rules of Appellate Procedure

Here is a brief summary of the changes to the M.R.App.P. Unless otherwise indicated, all citations are to the M.R.App.P.

Rule 4(5)(a)(iii) has been amended to clarify the time allowed for filing a cross-appeal, and Rule 4(5)(a)(iv) has been amended to include a time within which a ruling on an M.R.Civ.P. Rule 60(b) motion (motion for relief from judgment or order) may be appealed.

Rule 7(4)(d) has been amended to promote the appointment of appellate mediators in reasonably close proximity to the parties. The Rule has also been amended to allow parties to an appeal subject to mandatory appellate alternative dispute resolution a second opportunity to select their own mediator.

Rule 8(4)(a) has been amended to require persons responsible for preparing transcripts to include a certificate of service upon all applicable parties with all transcripts filed with the Clerk of the Supreme Court.

Rule 9 has been amended by the addition of subsection (7), allowing the Clerk of Court to charge appellants in civil cases for the mailing costs of returning the record to the District Court.

Rule 10(2) has been amended concerning service of transcripts on county attorneys in certain types of cases. Rule 10(6) has been amended to eliminate the redaction requirement in appendices filed with the Court.

Rule 10(7) has been reworded, amended to eliminate the requirement that full names of minor children be redacted, and expanded to incorporate several new provisions, consistent with those in the M.R.Civ.P., concerning redaction of confidential personal information.

Rule 11(1) has been amended by deletion of some requirements as to the type of recycled paper to be used in documents filed with the Court. A revision to Rule 11(6)(a) changes the required brief color for appellees' briefs from red to salmon in order to allow for recycling of those brief covers.

Both Rules 11(6)(a) and 12(5) have been amended to prohibit the use of plastic-coated tabs in briefs and other papers filed with this Court.

Rule 12(3) has been amended to clarify the word or page limit for reply briefs in cases with multiple appellees or cross-appeals. Rule 12(11) has been amended to provide that filed DVD copies of briefs must not include attachments or appendices and to require the redaction of all confidential information from DVD copies of briefs.

Rule 13(2) has been amended to provide that when a separately bound appendix is filed, only seven copies and an original are required.

A new Rule 22(5) has been adopted to conform with M.R.Civ.P. Rule 62(f) regarding a stay of proceedings to enforce a judgment, and the former Rule 22(5) is renumbered as Rule 22(6).

B. Amended Uniform District Court Rules

Here is a brief summary of the changes to the M.U.D.C.R. Unless otherwise indicated, all citations are to the M.U.D.C.R.

Rule 1(a)(5) has been amended to simplify the requirements for the type of recycled paper to be used in court filings.

The opening clause of Rule 10 has been amended to add a reference to the Court's recent adoption of rules to authorize limited scope representation by Montana attorneys via amendments to the Rules of Professional Conduct and the M.R.Civ.P.

Technical changes have been made replacing references to "counsel" with references to "parties" and substituting gender-neutral phrases for references to "he" and "him." In all other substantive respects, the Rules are unchanged.

III Conclusion

At its December 2011 meeting, the Committee voted to subject the M.R.Civ.P. to a hearing to gather testimony to determine whether the Legislature should exercise its constitutional authority to disapprove the newly adopted M.R.Civ.P. In order to subject the M.R.App.P., the M.U.D.C.R., or both, to the same hearing process, a motion to that effect needs to be made and passed by a majority of the Committee members.

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