

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 77

COURTS, DISTRICT - Filing fee requirement for substitution of judge in criminal proceedings;
CRIMINAL LAW AND PROCEDURE - Filing fee requirement for substitution of judge in district court proceedings;
FEES - Filing fee requirement for substitution of judge in district court criminal proceedings;
JUDGES - Filing fee requirement for substitution in district court criminal proceedings;
MONTANA CODE ANNOTATED - Sections 3-1-804, 25-1-201;
MONTANA LAWS OF 1987 - Chapter 318.

HELD: The fee for substitution of a district court judge in section 25-1-201(1)(p), MCA, applies only in civil actions, and no such fee is currently imposed in criminal actions.

29 March 1988

Daniel L. Schwarz
Powder River County Attorney
Powder River County Courthouse
Broadus MT 59317

Dear Mr. Schwarz:

You have requested my opinion concerning the following question:

Is a party in a criminal district court proceeding required to pay the fee specified in section 25-1-201(1)(p), MCA, as a condition to substituting a judge?

I conclude that the fee requirement in section 25-1-201(1)(p), MCA, applies only to civil actions, that it has no effect on criminal proceedings, and that no fee requirement for substitutions now exists in criminal actions.

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Section 25-1-201, MCA, lists district court fees in civil actions. It was amended in 1987 by the addition of a new provision, now codified as section 25-1-201(1)(p), MCA, requiring a \$100 fee "for filing a motion for substitution of a judge." 1987 Mont. Laws, ch. 318, § 1. Substantial confusion has apparently arisen over the applicability of the amendment to criminal actions because of substitution rules recently adopted by the Montana Supreme Court, codified in section 3-1-804, MCA, which state that a substitution motion "shall not be effective for any purpose unless a filing fee is paid to the clerk of the district court in the amount set by law" and which specifically waive such fee "in criminal cases where the defendant has received a court-appointed counsel."

It is quite clear that the substitution fee requirement in section 25-1-201(1)(p), MCA, pertains only to civil actions. This conclusion is dictated not only by its inclusion in Title 25, which deals with civil and not criminal procedure, but also by the title of the underlying bill and session law which provided that the amendment was "AN ACT CREATING A FEE FOR FILING A MOTION FOR SUBSTITUTION OF A DISTRICT JUDGE IN A CIVIL CASE[.]" House Bill No. 141 (Mont. 50th Leg. Sess.); 1987 Mont. Laws, ch. 318; see Department of Revenue v. Puget Sound Power & Light Co., 179 Mont. 255, 263, 587 P.2d 1282, 1286 (1978) ("[t]he title of an act is presumed to indicate the legislature's intent"); In re Senate Bill No. 23, 168 Mont. 102, 105, 540 P.2d 975, 976 (1975) ("[a] consideration of the title of the Act is a necessary first step in our search for the purpose and meaning of this statute"); In re Coleman Estate, 132 Mont. 339, 343, 317 P.2d 880, 882 (1975) ("[t]he title of the act may be looked to [in construing it]"). Montana statutes do not otherwise impose a fee for substituting a district court judge in criminal proceedings. Although the Supreme Court rule dealing with substitutions could be construed as suggesting such a requirement does exist in criminal actions, the more appropriate interpretation is that, to the extent a fee has been established for those actions, it must be paid except when the defendant is indigent.

THEREFORE, IT IS MY OPINION:

The fee for substitution of a district court judge in section 25-1-201(1)(p), MCA, applies only in civil actions, and no such fee is currently imposed in criminal actions.

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Very truly yours,

MIKE GREELY
Attorney General