

HOUSE JOINT RESOLUTION 1

Introduced by Fagg

12/23	Introduced
12/30	Referred to Judiciary
1/04	First Reading
1/05	Hearing
2/06	Tabled in Committee

1 HOUSE JOINT RESOLUTION NO. 1

2 INTRODUCED BY FAGG

3
4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
5 REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA
6 SUPREME COURT TO AMEND RULE 68, OFFER OF JUDGMENT, OF THE
7 MONTANA RULES OF CIVIL PROCEDURE TO ENCOURAGE REASONABLE
8 SETTLEMENT OFFERS BY BOTH PLAINTIFFS AND DEFENDANTS.

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10 WHEREAS, the Montana Legislature would like to encourage
11 settlements in lawsuits and discourage prolonged, costly
12 litigation; and

13 WHEREAS, the Montana Legislature would like to
14 respectfully request the Montana Supreme Court to amend Rule
15 68, Offer of Judgment, of the Montana Rules of Civil
16 Procedure; and

17 WHEREAS, this proposed rule change would encourage
18 reasonable settlement offers by both plaintiffs and
19 defendants and would enhance serious consideration of these
20 settlement offers because of the potential cost of turning
21 down a settlement offer and then receiving an adverse
22 judgment that would include attorney fees and costs incurred
23 after the offer to settle.

24
25 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE

1 OF REPRESENTATIVES OF THE STATE OF MONTANA:

2 That the Montana Supreme Court be respectfully requested
3 and urged to amend Rule 68 of the Montana Rules of Civil
4 Procedure to read as follows:

5 "Rule 68. Offer of judgment. At any time more than 10
6 days before the trial begins, a party ~~defending--against--a~~
7 ~~claim~~ may serve upon the adverse party an offer to allow
8 judgment to be taken against the ~~defending~~ party making the
9 offer for the money or property or to the effect specified
10 in the ~~offer--with-costs-then-accrued~~. If within 10 days
11 after the service of the offer the adverse party serves
12 written notice that the offer is accepted, either party may
13 then file the offer and notice of acceptance, together with
14 proof of service, ~~thereof~~ and thereupon judgment ~~shall~~ must
15 be entered accordingly. An offer not that is neither
16 accepted nor withdrawn within 30 days after it is served
17 upon the adverse party shall--be--deemed--withdrawn is
18 considered rejected, and evidence ~~thereof~~ of the offer is
19 not admissible except in a proceeding to determine costs. If
20 the adverse party rejects the offer and obtains a final
21 judgment finally-obtained-by-the-offeree that is not more at
22 least as favorable than as the last offer, the offeree
23 adverse party must shall pay the reasonable attorney fees
24 and reasonable costs incurred by the party making the offer
25 after the ~~making-of-the-offer~~ rejection of the last offer.

1 The fact that an offer is made but not accepted does not
2 preclude a subsequent offer. When the liability or lack of
3 liability of one party to another has been determined by
4 verdict, ~~or order,~~ or judgment, but the amount or extent of
5 the liability remains to be determined by further
6 proceedings, the party adjudged liable may make an offer of
7 judgment, which ~~shall have~~ has the same effect as an offer
8 made before trial if it is served within a reasonable time
9 not less than 10 days prior to the commencement of hearings
10 to determine the amount or extent of liability."

-End-