

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2025 MTWCC 6

WCC No. 2025-00776

SCOTT C. SIMONE

Petitioner

vs.

OLD REPUBLIC INSURANCE COMPANY

Respondent/Insurer.

ORDER ON CONSTITUTIONAL CHALLENGE

¶ 1 The Petitioner, Scott C. Simone, has raised a constitutional challenge to § 39-71-107(7)(b), MCA (2021).

¶ 2 Although, in at least one previous case, the Workers' Compensation Court indicated that it would follow M.R.Civ.P. 5.1(b) if the Petitioner notified the state attorney general of a constitutional challenge under M.R.Civ.P. 5.1(a), this Court has not formally adopted a notification requirement.

¶ 3 Pursuant to ARM 24.5.352(1), "If no express provision is made in these rules regarding a matter of procedure, the court is guided, where appropriate, by considerations and procedures set forth in the Montana Rules of Civil Procedure."

¶ 4 M.R.Civ.P. 5.1 states:

(a) Notice by a Party. A party that files a pleading, written motion, or other paper challenging the constitutionality of a state statute must promptly file a notice of constitutional question stating the question and identifying the paper that raises it, and serve the notice and paper on the state attorney general either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose.

(b) Intervention; Final Decision on the Merits. Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the statute unconstitutional.

(c) No Forfeiture. A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

¶ 5 This Court hereby adopts M.R.Civ.P. 5.1(a)-(c), until such time as it rules otherwise, or makes express provision in its local rules regarding this matter of procedure.

¶ 6 Based on the foregoing, it is:

ORDERED

¶ 7 Mr. Simone shall, within 5 days of this Order, file a Notice of Constitutional Question and serve it on the Attorney General. Failure to do so will result in summary dismissal of the constitutional challenge.

¶ 8 DATED this 4th day of November, 2025.

/s/ Lee Bruner
Judge Lee Bruner

c: Eric Rasmusson
Steven W. Jennings