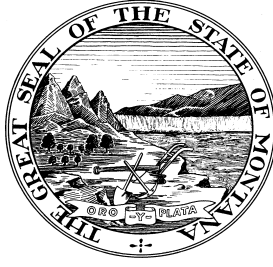


# MONTANA FIFTH JUDICIAL DISTRICT

Loren Tucker  
District Judge



Michael J. Gee  
Law Clerk

Diane L. Kaatz  
Court Administrator

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June 8, 2012

Senator Jim Shockley, Chairman  
Law and Justice Interim Committee  
P.O. Box 201706  
Helena, MT 59620-1706

RE: Article VII Section 2(3) Montana Constitution  
Supreme Court Rule - Substitution of Judges – Section 3-1-804 MCA

Dear Chairman Shockley:

At its Spring conference, the Montana Judges' Association considered the Supreme Court Rule (codified as Section 3-1-804 MCA) which allows for substitution of judges without cause.

As is usual in our Association, a variety of spirited opinions were expressed. After discussion, the Association determined by majority vote to recommend to the Legislature that the rule allowing parties to remove a presiding judge without cause should be disapproved. The one Supreme Court Justice in attendance abstained.

Generally, the reasoning of the majority coincided with my correspondence to you of April 17, 2012. I am enclosing a copy. Please bear in mind that views expressed in it are mine. The Association acted on the rule, not my correspondence.

Judge Brad Newman has noted that on at least two occasions, the Supreme Court discussed problems and abuses even though it did not effect any change. *State ex rel. Greely v. Fourth Judicial District Court*, 180 Mont. 317, 590 P.2d 12104 (1979), *State ex rel. Perry v. Fourth Judicial District Court*, 145 Mont. 287, 400 P.2d 648 (1965).

The Montana Judges' Association requests the Legislature to disapprove Section 3-1-804 MCA which was implemented by Supreme Court Rule. Thank you for the opportunity to make recommendations to your Committee. Judge Newman and I would appreciate an opportunity to appear when it convenes on June 21 and 22 to answer questions as the Committee schedule permits.

Sincerely,

Loren Tucker  
President, Montana Judges' Association

LT:dlk

c: Chief Justice Mike McGrath  
Rep. Ellie Boldman Hill  
Rep. Steve Lavin  
Rep. Margaret MacDonald  
Rep. Mike Menahan  
Rep. Michael More  
Rep. Ken Peterson  
Sen. Shannon J. Augare  
Sen. Steve Gallus  
Sen. Greg W. Hinkle  
Sen. Lynda Moss  
Sen. Terry L. Murphy  
MJA Legislative Committee Members