

THE SUPREME COURT OF MONTANA

MIKE McGRATH
CHIEF JUSTICE



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August 5, 2024

Senator Jason Ellsworth
President, Montana State Senate
Montana State Capitol
Helena, MT 59620

Re: Retired Judge Appointments

Dear Senator Ellsworth:

We are in receipt of your letter of July 29, 2024. It is the responsibility of the Chief Justice to appoint retired judges to serve in the district courts, so I write on behalf of the Court. I welcome the opportunity to respond to your questions.

The Judicial Branch considers the use of retired judges as an efficient and cost-effective way for the Branch to manage heavy caseloads and to cover the handling of court dockets during periods of a judge's illness or when a judge retires and a successor is not yet in place. Significantly, it reduces the need for the Legislature to appropriate funds to create new judicial positions. Between 2021 and today I have appointed a retired judge on 43 occasions. In that same time period, more than 190,000 cases were filed in the district Courts.

Montana state law (§ 19-5-103, MCA) provides that the Chief Justice may appoint a retired judge or justice to aid and assist in any district court. The retired judge must have voluntarily retired with a minimum of eight years of service and be physically and mentally able. Once appointed, a retired judge has authority to make decisions and issue opinions on behalf of the court where the judge is called to serve.¹

In general, most retired judges have little or no interest in returning to active duty. It is a difficult and stressful job, and most want to enjoy their well-earned retirement. I do not appoint a retired judge unless they have indicated they are agreeable to being called back to active service.

¹ State law does not provide for appointments of retired justices to serve as members of the Montana Supreme Court. Article VII, Section 3, of the Montana Constitution provides for only district judges to be substituted in the event of a justice's disqualification or disability.

Moreover, I do not appoint retired Supreme Court justices to serve in the district courts. The only exception is if that former justice also had previously served a minimum of eight years as a district court judge. It would not be appropriate or even feasible to expect an appointee without previous trial court experience to serve as a district judge, and it would not be fair to the litigants in the case.

In most cases retired judges are appointed to serve only on one case, and the appointment terms are specified in the order from the Chief Justice. Copies are provided to the clerks of the pertinent district court as well as the parties to the case.

There are circumstances where a retired judge has been appointed to cover a specific time period, such as a week, if the acting judge is unavailable, or a specific docket such as a drug court proceeding or law and motion calendar. In all cases the parameters of the appointment authority are specified in the appointment order.

Below are my responses to your specific questions.

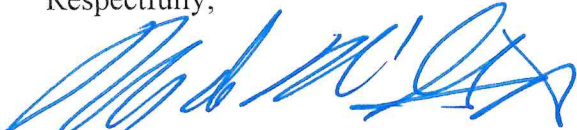
- There is not a formal process for the appointment of a retired judge
- Generally, a district judge will contact the Supreme Court and request assistance. In most cases that judge will have made several attempts to bring in another active district court judge. After discussion about the nature of the case—for example whether it is a civil or criminal case, or whether it is expected to go to trial—and we make the determination that a retired judge would be an appropriate use of judicial resources, I attempt to find a retired judge that is available to step in.
- There is not a list of available retired judges to be considered. However, based upon previous communications, I am aware of retired judges that are willing to assist. To keep expenses low, it is my practice to attempt to find a retired judge that resides in the general area where they are going to assist. And if available, I initially ask retired judges that had served in the same judicial district.
- As noted above, I don't appoint retired Supreme Court justices to serve in the district court. Nor do I appoint retired judges who have been disciplined by this Court.
- Appointed judges are subject to the provisions of the Code of Judicial Conduct. As such, I do not appoint retirees that no longer adhere to the requirements of the Code.
- Regarding campaign contributions, I have been an elected official since 1982, and in a state-wide position since 2001. I have no idea if these retired judges have ever contributed to a campaign—nor would I ever consider whether they had. (I will note that most tend to be a frugal bunch and unlikely to have made campaign contributions.)

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- I have never had a situation arise where I had to consider recusing myself from an appointment because of a potential conflict of interest. But if such a situation arose, the Acting Chief would make the appointment.
- There is not a mechanism in place to inform the Chief Justice of retirees' legal or political activities. I generally ask if they are currently practicing law or may otherwise not be qualified to serve.

Thank you for the opportunity to respond to your questions. Attached is a complete list of retired judges who have been appointed since 2021, as well as the type of district court case or proceeding where the appointed judge has served.

Respectfully,



Mike McGrath
Chief Justice

Attachment

- c: Committee members
Marilyn Miller, Secretary of the Senate
Rachel Weiss, Legislative Services
Bowen Greenwood, Clerk of Court
Beth McLaughlin, Supreme Court Administrator
Montana Supreme Court Justices

MONTANA JUDICIAL BRANCH—RETIRED JUDGE APPOINTMENTS 2021-AUGUST 2024

Date	Retired Judge	Retired District	Case Type	Assigned District
2/21	Hon. Mike Salvagni	18 th Judicial District	Civil case	13 th Judicial District
5/21	Hon. Mike Salvagni	18 th Judicial District	Criminal and child abuse cases	8 th Judicial District
5/21	Hon. Nels Swandal	6 th Judicial District	Civil case	8 th Judicial District
6/21	Hon. Mike Salvagni	18 th Judicial District	Domestic relations cases	8 th Judicial District
7/21	Hon. Blair Jones	22 nd Judicial District	Civil case	17 th Judicial District
8/21	Hon. Nels Swandal	6 th Judicial District	Civil case	5 th Judicial District
12/21	Hon. Holly Brown	18 th Judicial District	Civil case	1 st Judicial District
3/22	Hon. Nels Swandal	6 th Judicial District	Civil case	13 th Judicial District
5/22	Hon. Mike Salvagni	18 th Judicial District	Civil case	13 th Judicial District
6/22	Hon. Karen Townsend	4 th Judicial District	Criminal law and motion calendar	20 th Judicial District
6/22	Hon. Karen Townsend	4 th Judicial District	Criminal law and motion calendar	4 th Judicial District
6/22	Hon. Ed McLean	4 th Judicial District	Criminal law and motion calendar	4 th Judicial District
7/22	Hon. Nels Swandal	6 th Judicial District	Civil, domestic relations, and criminal cases	10 th Judicial District
7/22	Hon. Nels Swandal	6 th Judicial District	Civil and guardianship cases	10 th Judicial District
8/22	Hon. Nels Swandal	6 th Judicial District	Probate case	10 th Judicial District
9/22	Hon. Nels Swandal	6 th Judicial District	Probate case	10 th Judicial District
9/22	Hon. Nels Swandal	6 th Judicial District	Criminal cases	19 th Judicial District
9/22	Hon. Karen Townsend	4 th Judicial District	Criminal cases	19 th Judicial District
12/22	Hon. James Manley	20 th Judicial District	Civil case	20 th Judicial District
12/22	Hon. Mike Salvagni	18 th Judicial District	Civil case	13 th Judicial District
4/23	Hon. Robert Olson	9 th Judicial District	Criminal law and motion calendar	9 th Judicial District

MONTANA JUDICIAL BRANCH—RETIRED JUDGE APPOINTMENTS 2021-AUGUST 2024

Date	Retired Judge	Retired District	Case Type	Assigned District
5/23	Hon. Ed Mclean	4 th Judicial District	Criminal law and motion calendar	3 rd Judicial District
5/23	Hon. Nels Swandal	6 th Judicial District	Juvenile case	10 th Judicial District
6/23	Hon. James Manley	20 th Judicial District	Criminal law and motion calendar	20 th Judicial District
7/23	Hon. Ed McLean	4 th Judicial District	Criminal case	20 th Judicial District
8/23	Hon. Mike Moses	13 th Judicial District	Civil case	15 th Judicial District
8/23	Hon. Karen Townsend	4 th Judicial District	Criminal law and motion calendar	4 th Judicial District
8/23	Hon. Mike Salvagni	18 th Judicial District	Criminal case	1 st Judicial District
10/23	Hon. Robert Olson	9 th Judicial District	Domestic Relation case	8 th Judicial District
10/23	Hon. James Manley	20 th Judicial District	Criminal case	8 th Judicial District
10/23	Hon. Mike Moses	13 th Judicial District	Civil case	15 th Judicial District
10/23	Hon. Jon Oldenburg	10 th Judicial District	Criminal cases	10 th Judicial District
12/23	Hon. Mike Salvagni	18 th Judicial District	Civil Case	18 th Judicial District
1/24	Hon. Robert Olson	9 th Judicial District	Criminal law and motion calendar	12 th Judicial District
1/24	Hon. Robert Olson	9 th Judicial District	Civil case	8 th Judicial District
2/24	Hon. Robert Olson	9 th Judicial District	Criminal law and motion calendar	9 th Judicial District
2/24	Hon. Greg Todd	13 th Judicial District	Civil case	10 th Judicial District
3/24	Hon. Robert Olson	9 th Judicial District	Criminal law and motion calendar	20 th Judicial District
3/24	Hon. Mike Salvagni	18 th Judicial District	Civil case	2 nd Judicial District
5/24	Hon. Greg Todd	13 th Judicial District	Probate case	5 th Judicial District
7/24	Hon. Robert Olson	9 th Judicial District	Civil case	20 th Judicial District
7/24	Hon. Greg Todd	13 th Judicial District	Civil case	13 th Judicial District
21-24	Hon. Mike Salvagni	18 th Judicial District	Presiding over drug court docket	8 th Judicial District