

BALLOT LANGUAGE FOR INITIATIVE NO. 189 (I-189)

INITIATIVE NO. 189

A LAW PROPOSED BY INITIATIVE PETITION

I-189 creates a general requirement that the same time limits, filing privileges, filing deadlines, and filing fees apply to government lawyers, agencies, and officials and to private parties and participants. This general requirement applies in all state court proceedings. I-189 requires government parties to pay state court filing fees from which they are currently exempt. It deletes the language in Montana Rule of Appellate Procedure 4 giving government parties 60 days to file a notice of appeal and requires government parties to file a notice of appeal within 30 days. It also amends Montana Rule of Civil Procedure 12 to require government parties to comply with the same filing deadlines for responsive pleadings as private parties, reducing government parties' response time from 42 days to 21 days.

For state agencies, I-189 will increase costs due to the new filing fees and additional employees necessary to handle increased workloads created by shorter timelines. These costs cannot be reasonably determined. State courts will receive additional filing fees, but the amount of the fees cannot be determined.

YES ON INITIATIVE I-189

NO ON INITIATIVE I-189

THE COMPLETE TEXT OF INITIATIVE NO. 189 (I-189)

Be it enacted by the People of the state of Montana:

NEW SECTION. **Section 1. Equal procedures for government and private parties.** In all state court proceedings, the time limits, filing privileges, and filing deadlines for government lawyers, agencies, and officials must be equal to the time limits, filing privileges, and filing deadlines for nongovernment parties and participants. Prosecutors and government lawyers shall pay the same court filing fees as nongovernment parties."

Section 2. Section 25-10-403, MCA, is amended to read:

"25-10-403. Prepayment of fees. Each party to a civil action is required to pay the fees fixed by law for the performance of any service or duty by any officer of such court at the instance of such party at the time such service is rendered, ~~except in the case mentioned in 25-10-405 and 25-10-701;~~ and no such officer is required to perform such service or duty unless the fees fixed therefor are, on demand, first paid or tendered."

Section 3. Section 25-10-701, MCA, is amended to read:

"25-10-701. Public officers not to be personally taxed. No officer prosecuting or defending ~~as provided in 25-10-405~~ an action on behalf of the state, a county, a municipality, or a subdivision thereof shall be taxed with costs or damages, but such costs or damages, if any, shall be taxed to the state, county, or municipality, as the case may be."

Section 4. Rule 4, Montana Rules of Appellate Procedure, is amended to read:

"Rule 4. How and when to take an appeal or cross appeal.

(1) Judgments defined.

(a) Final judgment. A final judgment conclusively determines the rights of the parties and settles all claims in controversy in an action or proceeding, including any necessary determination of the amount of costs and attorney fees awarded or sanction imposed.

(b) Interlocutory judgment. An interlocutory judgment is an order or decree that determines a preliminary or subordinate question or issue and which enables the court to render a final judgment but does not finally decide the cause.

(2) How commenced.

(a) An appeal is taken by timely filing a notice of appeal in accordance with rule 10(1) of these rules in the office of the clerk of the supreme court substantially complying with Form 1 in the Appendix of Forms, along with payment of the filing fee prescribed by statute or the affidavit to proceed without advance payment of fees prescribed in the Appendix of Forms as Form 3. A copy of the notice of appeal shall be contemporaneously served for filing in the office of the clerk of the district court and served on all parties.

(b) A cross-appeal is taken by timely filing a notice of cross-appeal in accordance with rule 10(1) of these rules in the office of the clerk of the supreme court substantially complying with Form 2 in the Appendix of Forms, along with the filing fee prescribed by

statute or the affidavit to proceed without advance payment of fees prescribed in the Appendix of Forms as Form 3. A copy of the notice of cross-appeal shall be contemporaneously served for filing in the office of the clerk of the district court and served on all parties.

(c) Except where the supreme court grants an out-of-time appeal under section (6) of this rule, the timely filing of a notice of appeal or cross-appeal is required in order to invoke the appellate jurisdiction of the supreme court.

(d) A notice of appeal or cross-appeal shall not be filed by the clerk of the supreme court unless accompanied by the filing fee prescribed by statute or the affidavit to proceed without advance payment of fees prescribed in the Appendix of Forms as Form 3. If the notice of appeal or notice of cross-appeal is filed by facsimile in accordance with rule 10(1)(b) of these rules, either the filing fee or the affidavit to proceed without advance payment of fees must be paid (or filed) and actually received by the clerk of the supreme court within 5 business days of the facsimile filing; otherwise the filing shall be treated as void.

(3) Joint or consolidated appeals.

(a) If 2 or more parties are entitled to appeal from a judgment or order of the district court and their interests are such as to make joinder practicable, they may file a joint notice of appeal or cross-appeal, or may join an appeal or cross-appeal after filing separate notices.

(b) Appeals or cross-appeals may be consolidated by order of the supreme court upon its own motion or upon motion of a party or parties.

(4) Content of notice of appeal or cross-appeal.

(a) The notice of appeal or cross-appeal shall specify the party or parties taking the appeal or cross-appeal, and shall designate the final judgment or order or part thereof from which the appeal is taken. An appeal from a judgment draws into question all previous orders and rulings excepted or objected to which led up to and resulted in the judgment.

(b) If an appeal is taken after certification by the district court under M. R. Civ. P. 54(b), the notice of appeal shall state that fact, and a copy of the certification order shall be attached to the notice. Upon the filing of such a notice, the clerk of the supreme court shall immediately forward copies thereof to the supreme court. The appeal shall not proceed further until the supreme court has reviewed the certification order, determined that the certification complies with M. R. Civ. P. 54(b) and rule 6(6), and entered an order allowing the appeal to proceed.

(c) The attorney for the appellant or cross-appellant, or the party, if not represented by an attorney, shall certify that the appeal or cross-appeal is or is not subject to the mediation process required by rule 7.

(d) The attorney for the appellant or cross-appellant, or the party, if not represented by an attorney, shall certify that a copy of the notice of appeal or cross-appeal was served by mailing a copy thereof to the clerk of the district court and to counsel of record and every party not represented by counsel.

(e) In the event the appellant or cross-appellant fails to comply with sections (4)(a) through (d) of this rule, the clerk of the supreme court shall issue a written notice, substantially complying with Form 4 in the Appendix of Forms, directing the appellant or cross-appellant to file an amended notice of appeal or cross-appeal within 11 days. A notice issued by the clerk of the supreme court pursuant to this section shall not affect the original filing date of the notice of appeal or cross-appeal.

(f) An appeal or cross-appeal shall not be dismissed for informality of form or title so long as the information required in section (4) of this rule is contained in the notice of appeal or cross-appeal. In the discretion of the supreme court, an appeal may be dismissed for failure of the appellant or cross-appellant to comply with section (4)(e) of this rule.

(5) Time for filing notice of appeal or cross-appeal.

(a) Appeals in civil cases.

(i) In civil cases, including proceedings regarding abused or neglected children under Title 41, Chapter 3, the notice of appeal shall be filed with the clerk of the supreme court within 30 days from the date of entry of the judgment or order from which the appeal is taken. ~~In all other cases in which the United States of America or the State of Montana, or any political subdivision thereof, or any officer or agency thereof is a party, the notice of appeal shall be filed within 60 days from the entry of the judgment or order from which appeal is taken.~~ If notice of entry of judgment or order is required to be served under M. R. Civ. P. 77(d), the 30 days ~~or 60 days, as the case may be,~~ shall not begin to run until service of the notice of entry of judgment or order.

(ii) A notice of appeal filed after the announcement of a decision or order, but before either entry of the written judgment or order from which the appeal is taken or service of the notice of entry of judgment, shall be treated as filed on the day of such entry. The district court is not deprived of jurisdiction to enter the written judgment or order by the premature filing of a notice of appeal.

(iii) If a timely notice of appeal is filed by a party, any other party may file a notice of cross-appeal within 15 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by section (5)(a) of this rule, whichever last expires.

(iv) If a timely motion pursuant to the Montana Rules of Civil Procedure is filed in the district court by any party:

(A) Under rule 50(b) for judgment;

(B) Under rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if granted;

(C) Under rule 59 to alter or amend judgment;

(D) Under rule 59 for a new trial; or

(E) Under rule 60(b) for relief from a judgment or order, the time for appeal for all parties shall run from the entry of the order granting or denying any such motion or, if

applicable, from the time such motion is deemed denied at the expiration of the 60-day period established by M. R. Civ. P. 59(f). No notice of entry of judgment or order is required when any of the foregoing motions are granted, denied, or deemed denied. A notice of appeal filed before the disposition of any of the above motions, whether by entry of an order or by deemed denial, shall be treated as filed on the date of such entry or deemed denial. The district court is not deprived of jurisdiction to enter its order on any such motion by the premature filing of a notice of appeal.

(b) Appeals in criminal cases.

(i) An appeal from a judgment entered pursuant to section 46-18-116 must be taken within 60 days after entry of the judgment from which appeal is taken. A notice of appeal filed after the oral pronouncement of a decision or sentence but before entry of the written judgment or sentence is treated as filed on the date of the written entry. The district court is not deprived of jurisdiction to enter the written judgment or order by the premature filing of a notice of appeal.

(ii) After filing a notice of appeal, retained criminal defense counsel will remain as counsel of record on appeal until and unless counsel either obtains and files with the clerk of the supreme court the client's written consent to counsel's withdrawal, or obtains a supreme court order allowing counsel to withdraw.

(iii) An appeal from a judgment or order made appealable by section 46-20-103 must be taken within 20 days of the entry of the written judgment or order from which appeal is taken.

(6) Out-of-time appeal. In the infrequent harsh case and under extraordinary circumstances amounting to a gross miscarriage of justice, the supreme court may grant an out-of-time appeal. An out-of-time appeal must be requested by verified petition supported by affidavits, records, and other evidence establishing the existence of the extraordinary circumstances claimed. Extraordinary circumstances do not include mere mistake, inadvertence, or excusable neglect."

Section 5. Rule 12, Montana Rules of Civil Procedure, is amended to read:

"Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing.

(a) Time to Serve a Responsive Pleading.

(1) In General. Unless another time is specified by this rule or a statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer within 21 days after being served with the summons and complaint, unless the court orders otherwise under Rule 4(c)(2)(C).

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

~~(2) State of Montana and Its Agencies, Officers, or Employees Sued in an Official Capacity. The State of Montana, a state agency, or a state officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 42 days after service on the attorney general.~~

~~——(3) State Officers or Employees Sued in an Individual Capacity. A state officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the state's behalf must serve an answer to a complaint, counterclaim, or crossclaim within 42 days after service on the officer or employee or service on the attorney general, whichever is later.~~

~~(4)(2) Effect of a Motion. Unless the court sets a different time, serving a motion under this rule alters these periods as follows:~~

~~(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or~~

~~(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.~~

~~(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:~~

- ~~(1) lack of subject-matter jurisdiction;~~
- ~~(2) lack of personal jurisdiction;~~
- ~~(3) improper venue;~~
- ~~(4) insufficient process;~~
- ~~(5) insufficient service of process;~~
- ~~(6) failure to state a claim upon which relief can be granted; and~~
- ~~(7) failure to join a party under Rule 19.~~

~~A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion. If a court grants a motion made under subsection (3), any other defenses presented must be decided by the court in the proper venue, and not by the court in which the action is commenced.~~

~~(c) Motion for Judgment on the Pleadings. After the pleadings are closed -- but early enough not to delay trial -- a party may move for judgment on the pleadings.~~

~~(d) Result of Presenting Matters outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties~~

must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining Motions.

(1) Right to Join. A motion under this rule may be joined with any other motion allowed by this rule.

(2) Limitation on Further Motions. Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) When Some Are Waived. A party waives any defense listed in Rule 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule;

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course; or

(iii) for the defense of improper venue, show good cause within 21 days of an event providing reason to believe that an impartial trial cannot be had in the county in which the action is commenced under section 25-2-201(2).

(2) When to Raise Others. Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) Lack of Subject Matter Jurisdiction. If the court determines at any time that it lacks subject matter jurisdiction, the court must dismiss the action.

(i) Hearing before Trial. If a party so moves, any defense listed in Rule 12(b)(1)-(7) -- whether made in a pleading or by motion -- and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

NEW SECTION. **Section 5.** **Repealer.** The following section of the Montana Code Annotated is repealed:

25-10-405. Government entities not required to prepay fees -- exceptions.

NEW SECTION. **Section 6.** Codification instruction. [Section 1] is intended to be codified as an integral part of Title 25, and the provisions of Title 25 apply to [section 1].

NEW SECTION. **Section 7.** **Submission to electorate.** [This initiative] shall be submitted to the qualified electors of Montana at the general election to be held in November 2020 by printing on the ballot the full title of [this initiative] and the following:

YES ON INITIATIVE _____

NO ON INITIATIVE _____