

## Chapter 3: Dealing with CLJ Judges

### Supervision of CLJ Judges

#### I. Qualifications for a Justice Court Judge-

The justice court judge must be elected by the people of the county in which they are serving. There are no other major qualifications other than the judge must be certified that they meet all the qualifications including the annual training.

#### Qualifications of a City Court Judge.

The city court judge must meet the same qualifications as the justice of the peace.

#### Qualifications for a Municipal Court Judge-

The municipal court judge is elected by the people of the city that the judge will be serving. The qualifications of a municipal court judge can be found in MCA 3-6-202. The municipal court judge must have been admitted to practice law in the state of Montana for at least 3 years prior to the date of appointment of election. The municipal court judge must be a citizen of the United States and reside within the county that they are serving in for at least one year.

#### II. Disqualification of a Justice Court Judge-

You should always know if the judge hearing your case is the actual justice of the peace or a judge pro tempore. MCA 3-10-116 states that when a justice of the peace for a justice's court of record is unable to perform their duties they may call upon another justice of the peace for a court of record or not of record, a municipal court judge, a retired justice of the peace for a justice's court of records or retired municipal court judge. The disqualified justice of the peace may also call upon an attorney, or the clerk for the justice's court of record.

**Tip:** If you determine that a judge should be disqualified, inform the judge informally prior to filing the motion. This demonstrates both courtesy and courage.

A substitute justice of the peace meet the standards set out in MCA 3-10-231. Generally they must be one of the people found in MCA 3-10-116 and be of good moral character, have community support, knowledge of the community standards and court procedure.

#### Vacancies in the Office of Justice of the Peace-

If a vacancy occurs the county commission must appoint an eligible person to hold office.

#### Disqualification of a Municipal Court Judge-

If the municipal court judge is disqualified for any reason they must call in a sitting or retired court judge of record or an attorney that has been admitted to practice law in the state of Montana for at least 5 years.

### **III. Supervision of Judges (writs)**

The writs pertaining to CLJs are discussed below. A writ of supervisory control is available only as an extraordinary writ filed with the Montana Supreme Court. Writs of review or prohibition on CLJs can be filed with either the Montana Supreme Court or the district court in the county where the CLJ is located.

#### **Writ of supervisory control**

Such writs are governed by Rule 14 of the Montana Rules of Appellate Procedure. Rule 14(3) specifies that the Supreme Court has supervisory control over all other courts and may, on a case by case basis, supervise any court. This is defined as an extraordinary writ.

#### **Writ of review**

A writ of review may be filed with the Supreme Court or a district court in the county where the CLJ is located. Such a writ can be pursued where the CLJ exercising judicial function has exceeded its jurisdiction. §§ 27-25-102, -201, -202, -203, -205, and -303 are the most relevant sections.

As with supervisory control, you should discuss the filing of any such writ with your regional deputy public defender.

#### **Writ of prohibition**

A writ of prohibition can be filed to stop proceedings in a CLJ in a situation where the CLJ is exercising judicial functions and the proceedings are without or in excess of its lawful jurisdiction. The writ may be filed with the Supreme Court or a district court in the county where the CLJ is located. §§ 27-27-101, -102, 103 are the pertinent sections on such writs.

As with the previous writs, you should discuss the case with your regional deputy public defender before filing.

### **IV. Judges, Prosecutors, and Sheriffs**

It is important to remember that the judges in courts of limited jurisdiction, prosecutors, and sheriffs are all elected officials with separate powers. While they often work together you cannot ask one to make the others act. It is important to understand this relationship and who to ask to get information, service, or an action completed.