

May 22, 2008

Mr. Jonathan B. Smith
Chief Deputy County Attorney
P.O. Box 1516
Kalispell, MT 59903-1516

Re: Entry of Criminal Judgments in Civil Judgment Book

Dear Mr. Smith:

You have requested an opinion from the Attorney General on the question of whether it is appropriate for the Clerk of the District Court to enter criminal judgments in the judgment book provided in Mont. Code Ann. § 3-5-507. Since the question is readily resolved by resort to the legislative history of the statute, it has been determined that a letter of advice rather than a formal opinion is appropriate.

Montana Code Annotated § 3-5-507 provides: “The clerk must keep with the records of the court a book to be called the ‘Judgment Book’, in which judgments must be entered.” The statute was originally enacted in the 1867 territorial code. It appears to have been adopted from what is now § 668 of the California Civil Code, which provides: “Except as provided in Section 668.5, the clerk of the superior court, must keep, with the records of the court, a book called the ‘judgment book’, in which judgments must be entered.”

The California Supreme Court held in Carroll v. Carroll, 16 Cal. 2d 761, 108 P.2d 420 (1940) that the applicability of § 668 was limited to “civil actions”, based in part on the fact that the statute was located in the part of the California Code entitled “Trial and Judgment of Civil Actions.” 108 P.2d at 423-24 (§ 668 inapplicable to “special proceeding” in probate court). The Montana Supreme Court has held that where the Montana legislature adopts a statute based on the law of California, subsequent interpretation by the California Supreme Court is persuasive authority for construction of the Montana statute. North v. Bunday, 226 Mont. 247, 254, 735 P.2d 270, 274 (1987) (“[W]hen our legislature borrows a statute from another state it borrows the construction placed upon it by the courts of that other state. However, while this Court will consider

the home court construction placed on the borrowed statute, such construction is not binding on this Court.” (citations omitted)).

In this case the California ruling is especially persuasive because the legislative history of Mont. Code Ann. § 3-5-507 shows that its genesis is similar to that of Cal. Civ. P. Code § 668. The earliest codification of the Montana code available in our office is the codification of 1895. The predecessor to Mont. Code Ann. § 3-5-507 is found in Civil Procedure Code § 1194 (1895). In the same codification, a different statute, Penal Code § 2229 (1895), governed entry of judgment in criminal cases. Penal Code § 2229 mirrored, but did not refer to, another civil procedure statute, Civil Procedure Code § 1196, by requiring the entry on the “judgment roll” of certain information and copies of certain documents giving evidence of the judgment. The Penal Code makes no mention of entry of the judgment in the judgment book.

Penal Code § 2229 carried forward to the Mont. Rev. Codes Ann. as § 94-7820. It survived the 1967 recodification of the Criminal Procedure Code as Mont. Rev. Codes Ann. § 94-2209, and the creation of the Montana Code Annotated as Mont. Code Ann. § 46-18-602. In none of these recodifications did the legislature change the coverage of what is now Mont. Code Ann. § 3-5-507.

Montana Code Annotated § 46-18-602 was finally repealed in 1981. 1981 Mont. Laws, ch. 196. The scant legislative history on the bill that repealed the requirement, SB 119, strongly suggests that the legislature did not intend to replace the judgment roll procedure with entry in the judgment book.

Senate Bill 119 was introduced at the request of the Clerks of Court Association (“Clerks”) with the intent of simplifying the Clerks’ workload by removing tasks that were unnecessary or redundant. Hearing on SB 119, Minutes of House Judiciary Committee, March 6, 1981 (hereafter “Minutes”). The Clerks prepared a section by section analysis of the bill. A copy is attached for your reference. The analysis of the portion of the bill repealing Mont. Code Ann. § 48-18-602 states:

The duties outlined in this section are all provided for in other sections. 3-5-501, (4) [sic] provides for entry of judgment and 3-5-501 (7) minute books containing the daily proceedings of the court; The court file contains all the papers that constitute the judgment roll. ***The Clerks of Court feel that there is no need for this statute while all of the duties are outlined in other sections.

Minutes, Ex. 1.

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Given the intention of the Clerks to remove redundant duties, I find it significant that the Clerks' listing of duties that overlap Mont. Code Ann. § 48-18-602, allowing for its repeal, does not include a reference to Mont. Code Ann. § 3-5-707. Given that the two statutes coexisted since at least 1895, the absence of evidence that the chief proponents of the bill thought entry of criminal judgments in the judgment book was a substitute for their entry on a judgment roll strongly indicates that the legislature had no such intention when it acted on SB 119.

Your letter suggests that excluding criminal judgments from the judgment book will work a hardship on commercial interests that have relied on the judgment book in Flathead County to find various financial obligations attached to criminal judgments. Given that criminal record checks are available for a nominal charge, the existence of criminal judgments is not difficult to find, and when the record shows that such judgments exist companies can readily find copies of the judgment to determine whether financial obligations continue to exist.

From the foregoing analysis it is my opinion that the judgments to be included in the judgment book do not include criminal judgments. I hope you find the foregoing helpful. This letter does not constitute an official opinion of the Attorney General.

Sincerely,

CHRIS D. TWEETEN
Chief Civil Counsel

cdt/jym