MONTANA SIXTEENTH JUDICIAL DISTRICT COURT RULES

CARTER, CUSTER, FALLON, GARFIELD, POWDER RIVER, ROSEBUD and TREASURE COUNTIES

Rule 1 - Department and Assignment of Cases

- A. The Sixteenth Judicial District Court is divided into 2 departments. Department 1 consists of Custer and Powder River Counties. Department 2 consists of Carter, Fallon, Garfield, Rosebud and Treasure Counties. Judge Michael B. Hayworth, or his successor, is the presiding judge of Department 1. Judge George W. Huss, or his successor, is the presiding judge of Department 2. All actions filed shall initially be assigned to the presiding judge of the department in which the action is filed, subject to transfer as set forth below. Once assigned, the presiding judge's name shall appear on all file covers and documents for service.
- B. The work in the District shall be interchangeable between the judges thereof during the absence or disability of either of them or upon the request of either judge. A judge making any order for the judge of the other department will be presumed to have acted with the consent of that judge. Actions by one department relative to a case assigned to the other department shall not, by that fact alone, result in a transfer of the case.
- C. Either judge may, with the consent of the other judge, transfer any action, matter or proceeding to the other department. Notice of said transfer shall be provided to all parties.
- D. A Petition for Consolidation, pursuant to Rule 42(a), Montana Rules of Civil Procedure, shall be filed in each action to be consolidated. The judge in whose department the initial action was filed shall determine whether consolidation will be ordered and all actions thus consolidated shall be assigned to that department.
- E. In the event of a disqualification or recusal, the first judge invited to assume jurisdiction shall be the other judge of the District, unless the other judge of the District has been disqualified or recused from the case. In the absence of judicial disqualification or recusal, no action may be transferred from one department to the other department without an order of approval, considered and signed by both department judges.

Rule 2 - Schedule for Law and Motion

A. Law and Motion shall be set and heard on the following schedule:

Department 1:

Custer County: Every Monday and as needed Powder River County: First Wednesday of each month

Department 2:

Rosebud County: Every Monday and on Thursdays as needed Fallon County: Tuesday of the first full week of each month and as the caseload warrants

Carter County: Tuesday of the first full week of each month Treasure County: Thursday of the first full week of each month Garfield County: Thursday of the last full week of each month

- B. The Law and Motion calendar includes uncontested matters, judgments by default, probate matters, criminal matters and appropriate ex parte matters. Matters which counsel expect will be contested or are expected to take more than 15 minutes shall be scheduled for additional time with the judicial assistant. All matters shall be calendared with the judicial assistant by 4:00 p.m. on the business day before Law and Motion. If time permits, un-calendared matters may be presented and heard after all calendared matters have been heard. Uncontested or emergency matters may be presented to the Court at such other times as the Court is available to hear the matter.
- C. No matter may be heard on the Law and Motion calendar until all relevant supporting documents have been filed with the Clerk of Court and opposing parties served pursuant to applicable rules.

Rule 3 - Filings and Pleadings

A. Counsel shall file all motions and briefs with the Clerk of Court. An email to the judge or judicial assistant does not constitute 'filing' a document with the Clerk of Court.

- B. If a filing fee is required, counsel shall pay the required filing fee at the time of filing, or as otherwise arranged with the Clerk of Court.
- C. Upon the filing of a motion for leave to file an amended complaint or answer, a complaint in intervention or any other pleading requiring leave of Court to file, the movant shall file with the motion a copy of the proposed pleading or amendments and lodge the original with the Clerk of Court. If leave to file is granted, the Clerk shall file the original forthwith.
- D. Except as provided in Uniform District Court Rule (UDCR) Rule 4, no discovery documents may be filed with the Clerk of Court without prior leave of Court. Upon receipt of a deposition pursuant to UDCR 4, after leave of Court has been granted, the Clerk shall open it and file it in the open file, unless otherwise ordered. In the event the Court orders filing of discovery documents, the Clerk shall receive such documents, note upon the register of the action and place them in a separate Court file, with the file number noted. After final judgment and expiration of the time for appeal, the Clerk shall notify counsel to retrieve filed discovery documents within thirty (30) days. If counsel fails to retrieve the discovery documents, the Clerk of Court may destroy them.
- E. When a demand for a jury trial is incorporated in a pleading, the demand must be indicated in the title as well as the body of the pleading.
- F. Any papers filed which do not conform to Rule 10 and 11 of the Montana Rules of Civil Procedure may be stricken by the Court on its own initiative in accordance with Rule 11.
- G. When a party obtains an Order or Arrest Warrant directly from the Court, the party shall immediately present the Order or Arrest Warrant to the Clerk of Court for filing.
- H. When counsel wishes to have only one subpoena issued, he or she shall deliver one original subpoena and one copy of the subpoena to the Clerk of Court for issuance. When counsel wishes to have more than one subpoena issued, he or she shall present one original subpoena for each person or entity to be served and one praecipe listing the name of each person or entity for whom or which a subpoena is to be issued.
- I. All briefs required by rule, regulation or by Court order to be filed by a date certain shall be filed by the required date. Any requests for an extension of time shall be filed and served prior to the due date. The Court may strike briefs not filed in a timely manner and impose other appropriate sanctions.
- J. Individual briefs shall not exceed twenty-five (25) pages in length, exclusive of indexes and appendices, except with leave of the Court.
- K. All filings shall be formatted as directed by UDCR 1, and utilize left justify for the body of the document.
- L. Counsel shall take care that any filing of more than one page in length does not leave one page with a "dangling signature line," i.e., a page with only the date and/or a line for the judge's signature.
- M. In order to facilitate scanning and entry into the Full Court case management system, documents filed with the Clerk of Court shall not be stapled.
- N. All proposed orders shall omit the submitting counsel's name and address from the top left-hand corner.

Rule 4 - Facsimile ("Fax") and Electronic Transmission (Email)

- A. The filing of any document that may be done by mail may be done by fax or electronic transmission, subject to the provisions of this Rule and the Montana Rules of Civil Procedure.
- B. The date and time of receipt of the transmission by the Clerk of Court shall be the date and time of filing.
- C. A faxed or electronic document must show necessary signatures or the document will not be filed. An attorney's copied or electronically generated signature shall be deemed an original signature for court-filed documents. It is the obligation of the person faxing or electronically transmitting any document with a party/non-attorney signature to arrange for the original signed document to be timely filed with the Clerk of Court.
- D. The required format for electronically filing of scanned documents is PDF. The required format for electronically transmitted proposed orders is Microsoft Word.
- E. As dictated by statute, the fee for filing a pleading by fax or email in all criminal and civil proceedings shall be 50 cents per page. The fee for providing copies of papers on file in the Clerk's office by fax, e-mail or other electronic means in all criminal and civil proceedings shall be 25 cents per page. Section 25-1-201, M.C.A.

F. It shall be the obligation of the person filing the document to pay any required fees in the manner and within the time required by the Clerk of Court.

Rule 5 - Court Orders and Minutes Provided Electronically

In an effort to promote the electronic storage and exchange of documents and reduce redundant scanning of documents produced by the Court, the Clerk of Court may distribute copies of Court Orders and Minute Entries by email rather than by hard copy. Attorneys or parties must provide the Clerk of Court's office with the email address(es) to which copies of Orders or Minute Entries are to be emailed.

An attorney who has filed any document in this District electronically is deemed to have provided written consent to receive documents electronically. Rule 5(b)(2)(E), Montana Rules of Civil Procedure.

Rule 6 - Motions and Hearings

- A. The proponent of any motion filed with the Court must cite to statute or precedent that allows the Court to grant the relief requested and must submit, contemporaneously with the motion, a proposed order granting the relief sought. The preferred format is a Microsoft Word document.
- B. Parties are alerted to the specific requirements set forth in Uniform District Court Rule 3 concerning application for relief ex parte.
- C. For a motion seeking specific relief, the motion must confirm that opposing counsel has been contacted regarding the motion, and also state whether any party objects to the relief requested. In the event of objection, the motion must state whether the objecting party will exercise the right to file a written objection. Unless the Court has been informed the adverse party does not oppose the motion, or the adverse party opposes the relief but does not intend to file a written objection, then absent good cause to act ex parte, the adverse party is entitled to the opportunity to respond or object to the Motion before the Court makes a ruling. Timelines established by the Uniform District Court Rules, the Rules of Civil Procedure, and applicable specific statutes govern the time to be allowed for any response or objection.
- D. Even when a hearing on motions has been tentatively docketed at an Omnibus Hearing or scheduling conference, when hearing on a motion is requested in a criminal or civil matter, counsel shall state the request for hearing within the motion, response, or reply. The request shall specify the purpose of the hearing (oral argument or evidence hearing). Counsel shall include a proposed order granting (or confirming the tentatively-docketed) hearing. If the Court determines on its own motion that oral argument would be beneficial to a determination of the motion, the Court shall so order and will notify the parties of the date and time for hearing.
- E. The Court may establish time parameters for any hearing. The Court will enforce the time limits set by the Court as well as the time parameters stated by the parties at the time of scheduling.
- F. Absent a showing of good cause, a Section 61-8-403, M.C.A. petition to challenge a driver license suspension or revocation will be scheduled for no more than one (1) hour, and will be calendared to be heard at the next reasonably available opportunity. While statute allows the return of a seized license pending a hearing, such requests will not be routinely granted. Due process will be assured by docketing the matter for a timely hearing.
- G. In Youth in Need of Care proceedings, if a contested show cause hearing is requested pursuant to Section 41-3-427, M.C.A., or if the hearing is otherwise disputed, counsel and the parties must be in or near the courtroom sufficiently in advance of the scheduled hearing time to allow meaningful discussion of the issues of dispute with all parties present, prior to the hearing. Counsel shall coordinate this pre-hearing meeting. Counsel shall confirm compliance with this requirement on the record before proceeding with the contested hearing.
- H. For hearings related to family law Show Cause orders and other contested family law proceedings, counsel and the parties must be in or near the courtroom sufficiently in advance of the scheduled hearing time to allow meaningful discussion of the issues of dispute with all parties present, prior to the hearing. Counsel shall coordinate this pre-hearing meeting. Counsel shall confirm compliance with this requirement on the record before proceeding with the contested hearing.

Rule 7 - Service of Process and Papers

- A. Following the initial filing for any matter, when a party files a document with the Clerk of Court or provides a document to the judge, whether via fax or email or US Mail, the party shall use the same (quickest) method to provide the document to the opposing party. To do otherwise is the functional equivalent of ex parte communication with the Court. This notice requirement is in addition to the service required when a particular method of service or method of proof of service exists as prescribed in the Montana Rules of Civil Procedure, or other applicable statute.
- B. Proof of service of all papers required or permitted to be served shall be filed with the Clerk of Court promptly and in any event before any action is to be taken thereon by the Court or the parties.
- C. Whenever the Clerk of Court is required to furnish notice of any pleading, judgment or order, all necessary copies of such pleading, judgment or order shall be furnished to the Clerk of Court by the party requesting such judgment or order to be provided by US Mail, together with properly addressed and stamped envelopes. Without proper envelopes and postage, the document will be provided by the Clerk of Court via email, only.
- D. Two originals of any order to show cause, or like order, together with a sufficient number of copies to be conformed for service or mailing to all parties, shall be presented to the judge for signature. If the judge signs the order, the judge will sign both as original orders. One original shall be retained as part of the file and the other shall be used for service.
- E. Any counsel obtaining a judgment or decree shall immediately deliver it to the Clerk of Court for filing together with the required filing fee. Failure to comply with this requirement shall be deemed a contempt of court.
- F. An attorney who has filed any document in this District electronically is deemed to have provided written consent to receive documents electronically. Rule 5(b)(2)(E), Montana Rules of Civil Procedure.

Rule 8 - Scheduling Orders; Communications with the Court

- A. Not later than one hundred twenty (120) days after the filing of a Complaint in a civil action, counsel for the plaintiff or petitioner shall file a written request for a scheduling conference or scheduling order which shall be issued by the Court in accord with Rule 16(b), Montana Rules of Civil Procedure, unless all parties stipulate otherwise and the Court deems a scheduling order unnecessary. Failure to file such a request in a timely manner may result in sanctions, including dismissal for failure to prosecute the action. Counsel for the Defendant or Respondent may also move for a Scheduling Order.
- B. The Court will not receive letters, emails, or other communication from counsel or parties that do not indicate on the face of the document that a copy has been sent to opposing counsel and any unrepresented party. Whenever possible, parties are to avoid addressing substantive matters within email correspondence.
- C. No party shall discuss ex parte with the Court any substantive issue related to a pending or anticipated case without notice and approval of all opposing counsel, or as otherwise expressly allowed by law. A violation of this rule may result in a disqualification or recusal of the judge, as well as imposition of sanctions against the offending counsel or party.
- D. In the event the Court has any matter under advisement for more than thirty (30) days, any party affected thereby may file with the Clerk of Court a pleading entitled "Request for Decision" which shall state the date the matter was taken under advisement and shall request a decision thereon from the Court.
- E. All the Court's scheduling shall be coordinated with the judicial assistant or other personnel the judge may designate. The Court, on its own motion, may docket a matter giving the respective parties reasonable notice of the date. The foregoing rule shall apply in like manner where the presiding judge has been called in and assumed jurisdiction.

Rule 9 - Trials and Hearings

A. Counsel

- 1. Counsel shall have a conference with the Judge prior to trial, unless waived by the Judge.
- At the scheduled time of a court proceeding, hearing, or trial, all counsel shall be seated at counsel table with their client, with all

pleadings available, and exhibits pre-marked and ready to proceed.

- Counsel shall have stipulated in the pretrial order to those exhibits that will be admissible without objection. Copies of exhibits for the bench are required in complex matters.
- 4. All exhibits are to be marked prior to trial or during recesses. Plaintiff/petitioner shall mark exhibits with a number, and the defendant/respondent shall utilize a letter.
 - 5. Trial briefs shall be submitted as required in the pretrial order.
- 6. Continuances of trial, even when stipulated-to by opposing counsel, will not be granted without good cause. All such motions to continue trial must be submitted in accordance with Local Rule 6.
- 7. At least three (3) weeks prior to the commencement of a civil jury trial or criminal jury trial, counsel for each party shall advise the Clerk of Court in writing as to whether said trial will proceed as docketed. The purpose of this notice is to provide the Clerk of Court sufficient time to summon a jury pool, or alternatively to set other matters in the time slot. Except for good cause, any motion for continuance is due on this date. Failure to comply with the requirements of this rule may result in the imposition of sanctions, including jury costs.
- 8. Attorneys must take care to utilize the microphone systems, and speak at locations to maximize the effectiveness of the reporting systems in use within each courtroom.
- 9. Argument on objection, when permitted by the Court, shall cease on completion of rebuttal. Only one counsel for a party may make oral argument on the objection.
- 10. The party with the duty to first offer proof on any issue, shall open and, with leave of the Court, may close the argument. In the event the adverse party waives argument, no rebuttal will be permitted.
- 11. In the examination of witnesses, only one counsel for each party will be permitted to examine or cross-examine the same witness, except by prior permission of the Court. Likewise, except with leave from the Court, only one counsel may conduct voir dire, opening statement, or oral argument related to an objection. The closing argument, and the rebuttal closing argument, respectively, may each be conducted by different counsel for one party.
- 12. Counsel shall not use any exhibits or charts in an opening statement without the Court's approval.
 - 13. Counsel shall not stand between a witness and the jury.
- 14. Counsel shall not have a witness stand with his or her back to the Court Reporter.
- 15. Plaintiff's counsel must use at least half (½) of the allotted time for closing argument during the initial argument, and may reserve the remaining time for plaintiff's rebuttal closing. Rebuttal closing may not exceed the scope of the defendant's closing argument.
- 16. During jury deliberations counsel and parties shall remain available to be in the courtroom, or available upon ten (10) minutes' notice.
- 17. Court sessions will normally be held until 5:00 o'clock p.m., and beyond as needed. The parties must have a sufficient number of witnesses ready to testify so the jury's time is not wasted by an early adjournment necessitated by the absence of witnesses ready to testify.
- 18. If counsel must make an argument outside the presence of the jury, counsel shall take care to time the argument to avoid unnecessary interruption of the proceedings. To this end counsel is directed to inform the Court of pending issues or argument either before the jury is called into the Courtroom, or at the time of a recess.
- 19. Objecting counsel is responsible for interposing the objection before the witness begins answering, otherwise the objection is untimely. Counsel shall instruct their witnesses to stop speaking when an objection is asserted during testimony.
- 20. Counsel and witnesses shall take care to allow the presiding judge the time to rule on a pending objection before proceeding with questioning or testimony. Counsel may make arguments on a pending objection with leave of the court and, as appropriate, outside the presence of the jury.
- 21. Offers of proof will be made during recesses and outside the presence of the jury.
- 22. Counsel, not the Court, is responsible for making the trial record. For example, if at a side bar an attorney is ordered to terminate a particular line of questioning, then at the next opportunity outside the presence of the jury, counsel must recite for the record those matters occurring at side bar in order to make a record and preserve the matter for appeal.
- Counsel must treat one another, as well as the Court and its staff, with professionalism and civility, if not respect.

B. Witnesses

- 1. Counsel must advise their witnesses to "speak up" when testifying.
- Counsel may approach the witness and the bench only with permission of the Court. Counsel must otherwise maintain a reasonable distance from each witness.
- 3. Counsel is responsible for briefing his or her witnesses on matters which are inadmissible, including exclusion based on pretrial orders. Counsel shall take care to pose questions in a manner that does not invite testimony addressing an excluded fact.
- 4. As part of witness preparation, counsel shall instruct their witnesses to stop speaking when an objection is asserted during testimony. The witness shall be instructed that, in the event of an objection, to wait silently to answer the question until directed to do so by the judge.
- 5. If the Court has ordered witnesses to be excluded from the courtroom, counsel must advise his or her witnesses of that fact and further advise the witnesses not to discuss testimony with other witnesses.
- 6. Any attorney, party, or witness who anticipates that any witness to be called in a trial by jury may refuse to answer a question on the basis that the answer may tend to incriminate him or her, shall advise the Court in advance of such anticipated testimony. The Court shall hold a hearing outside of the presence of the jury to determine if, in fact, such will be the case. The Court will then enter an appropriate order for the purpose of avoiding, if possible, "taking the 5th" in the presence of a jury.
- 7. Without first obtaining leave of Court, a maximum of three (3) witnesses for each side is permitted to testify regarding a person's character in any case, whether civil or criminal.
- 8. Without first obtaining leave of Court, in any contested parenting proceeding a maximum of three (3) non-expert witnesses for each side is permitted to testify regarding a person's parenting practices and abilities.

 C. Jury Instructions and Jury Issues
- 1. Counsel shall provide Court and opposing counsel with jury instructions and verdict forms as instructed by the Scheduling Order or Omnibus Order. Attorneys shall check instructions to avoid duplicates. The Montana Pattern Civil or Criminal Jury Instructions, as applicable, shall be used as the primary source. Instructions shall be printed on 8½" x 11" paper. See also UDCR 7.
- 2. Counsel shall ensure that the proposed instructions are correct with respect to gender and as to whether parties are singular or plural, the charged offense is singular or plural, and adjust the pattern jury instructions for unique circumstances or special verdicts (such as "not guilty by reason of mental disease or defect").
- 3. Proposed Instructions filed with the Clerk of Court shall be marked and identified as Plaintiff's Proposed # or Defendant's Proposed #. Attorneys must also provide the judicial assistant with two hard copies of the proposed instructions: one including the citations and one without citations. In addition, attorneys must email the jury instructions with citations to the judicial assistant in Microsoft Word format.
- 4. The Court will provide attorneys with the pre-arranged order of Instructions to be given.
- 5. At no time during the trial, except in voir dire, may counsel ask questions of or seek information from the jury.
- 6. During closing argument counsel must stay a reasonable distance from the jury box.
- 7. Counsel for the parties must ensure that they themselves, their clients, and their witnesses remain apart from the jury at all times.
- 8. Jurors shall be allowed to take notes unless the presiding judge orders otherwise for good cause. No juror is required to take notes. The bailiff shall collect the jurors' notes at the end of each day for safekeeping by the Clerk of Court. The bailiff shall return the notebooks to the jurors at the beginning of the next day. Jurors shall be permitted to have their notes during deliberation.

D. Voir Dire

- 1. The length of voir dire examination shall be established by the Court, and shall not exceed one (1) hour per side, except for good cause and prior leave of Court.
- 2. Only one counsel for each party shall question the prospective jury pool during voir dire.
- 3. Upon request and a showing of good cause, sensitive matters may be examined one juror at a time and outside of the presence of the balance of the pool.
 - 4. Preemptory challenges to members of the jury pool will be

exercised outside the presence of the jury pool. Counsel may challenge jurors 'for cause' during the voir dire process with the jury pool present in the courtroom.

5. The proper purpose of voir dire is to select a panel that will fairly and impartially hear the evidence presented and render a just verdict, and to determine the grounds for any challenge for cause. Accordingly, during voir dire questioning counsel shall not use voir dire for the purpose of arguing the merits of the case, or ask a juror to commit to a specific verdict based on hypothetical evidence.

Rule 10 - Stipulations

In any case, whether civil or criminal, the Court will not consider for any purpose any stipulation between the parties unless the stipulation is either made in open court on the record, or made into a writing which is subscribed by either the party against whom the stipulation is sought to be enforced, or by such party's counsel.

Rule 11 - Courtroom Technology

- A. Electronic Evidence Presentation System (where available)
- At a time well-in-advance of the scheduled trial or hearing date, counsel unfamiliar with the electronic evidence presentation system shall advise the Clerk of Court and shall make arrangements to come to the courthouse at a time convenient to the Clerk of Court in order to receive the necessary training for use of the electronic evidence presentation system.
- 2. It is counsel's responsibility to confirm the availability and functioning of the electronic evidence presentation system prior to trial or hearing. Counsel must completely set up and test all electronic evidence presentation equipment <u>prior</u> to using the system in any judicial proceeding. Upon request from counsel, the Clerk of Court shall turn-on the electronic evidence presentation system prior to the start of the trial or hearing. Operation of the equipment is the responsibility of counsel. In the event that an immediately irreparable malfunction of the equipment, counsel must be prepared to present evidence using alternative means.
- 3. During the course of the trial or hearing, the Court will be responsible for directing at which locations within the courtroom the electronic evidence can be viewed (i.e. witness seat, jury, counsel tables). Counsel is responsible for requesting locations for the Court to publish the evidence. Counsel is also responsible for requesting any lighting adjustments needed during the course of trial to assist the viewing of evidence using the system.

B. Sound System

Operation of the sound system located in the courtroom, and adjusting volume levels, shall be the responsibility of the Clerk of Court and/or the electronic court reporter. The Clerk of Court shall confirm that all microphones in the courtroom are in proper working order at the time of the trial or hearing. The Clerk of Court shall be responsible for adjusting sound levels as needed.

- C. <u>Videoconferencing Judicial Video Network</u>
- 1. The Judicial Video Network ("JVN") allows for two-way electronic audio-video communication whereby all participants are able to see and hear each other simultaneously and communicate with each other during a proceeding. Testimony may be provided under oath, and during the examinations opposing counsel and the finder of fact are able to see and hear the witness, interact face-to-face through the electronic system, and assess witness demeanor akin to in-court testimony.
- 2. The JVN system also allows for an audio-only interaction through a telephone connection without a video component.
- 3. Counsel or parties may participate in proceedings via JVN only with the prior permission of the Court. JVN appearances and JVN witness testimony will be liberally allowed for routine proceedings. However, the JVN system is generally discouraged as the means for counsel to conduct a contested proceeding.
- 4. Supplementing the information required by Local Rule 6, a motion for appearance or testimony via the JVN system (whether by audio-video connection, or by telephone) must specify: whether the moving party seeks to contest the proceeding; whether the proceeding will be contested by any party; whether any opposing party objects to the JVN appearance; and whether appearance will be audio-video or telephone audio. A telephone contact number for use in the event of technical difficulties is also required.
 - 5. Requests for audio-video JVN connection must identify the

- physical location of each person who is to appear via JVN; and all necessary IP addresses.
- 6. In all instances, including upon the consent of all parties, a motion for appearance or testimony via the JVN system must be filed in advance of the hearing, as early as is practical to do so. In all instances, a motion for JVN appearance must be filed no less than one hour prior to the scheduled start of the hearing. (See deadline herein specific to Crime Lab testimony via the JVN system.)
- 7. Deadline specific to Crime Lab Testimony via JVN. For good cause, forensic testimony by employees of the Montana State Crime Lab may be offered via the JVN system during a criminal trial. Except for good cause, a Motion seeking leave for crime lab expert testimony via JVN shall be filed no later than thirty (30) days prior to the first day of trial. The motion must contain all the information specified for JVN motions within these Rules. Response or objection to such testimony via JVN shall be filed within ten (10) business days following the filing, including whether a genuine issue exists as to the analysis or procedure at issue. In the event of objection, the Court will determine if the testimony will be allowed via the JVN system.
- 8. Absent good cause, a motion for appearance or testimony via the JVN system that does not comply with the provisions herein will not be granted.
- Any party/counsel granted leave to use JVN shall make all necessary arrangements for such use with the Clerk of Court or judicial assistant.
- 10. In the event a proceeding must be continued because of an untimely motion for JVN appearance without good cause that necessitates a continuance of the proceeding, counsel may be sanctioned the cost of other parties' appearance at the hearing.
- 11. The Court reserves the authority to recess a hearing to a time when all parties, counsel, and witnesses are personally present in the courtroom.
- 12. Counsel is responsible for keeping the Clerk of Court and other individuals informed of site or IP address changes effecting JVN participation. Participants in the hearing via JVN are to maintain a means of communication (cell phone) so the individual may be readily contacted in the event of unforeseen difficulty establishing the JVN connection, or other delay.
- 13. Counsel and participants via JVN shall complete all necessary arrangements, any required connections, and be in place prior to the scheduled start of the hearing. At the time of a hearing conducted using the JVN system, the Clerk of Court (or the Clerk of Court's designee) shall be responsible for turning the equipment on, dialing up IP addresses and, when possible, confirming connections prior to the judge's arrival at the bench. The Clerk of Court shall operate the movement and proper positioning of the camera during JVN system use.
- 14. The Court cannot guarantee the functioning of the JVN system. In the event that an immediately irreparable malfunction of the JVN connection, counsel must be prepared to present necessary testimony using alternative means.
- 15. Any party/counsel requesting use of the JVN equipment for hearings or meetings other than Sixteenth Judicial District Court business shall make proper reservations for such use through the Clerk of Court or judicial assistant, and shall be responsible for operation and movement of the camera. The party/counsel shall report to the Clerk of Court upon arriving for the JVN session and will be directed to the appropriate location for use of the equipment. Charges for the use of JVN may be assessed.

Rule 12 - Courtroom Records; Courthouse Facilities

- A. The Clerk shall not permit any files or documents to be removed from the Clerk of Court's office without obtaining a receipt from any person removing any file or court record. The person removing the file or court record shall return it within twenty (20) days, and in any event, no later than two (2) business days prior to any scheduled Court activity.
- B. The records and files in abuse/neglect actions shall not be withdrawn, examined, or inspected by anyone except as allowed under Section 41-3-205, M.C.A. Youth Court records shall not be withdrawn, examined, or inspected by anyone except as allowed under Sections 41-5-215 and 41-5-216, M.C.A. Adoption records may not be withdrawn,

examined or inspected by anyone except upon order of the Court.

- C. No will, bond or undertaking shall be taken from the Clerk of Court's office under any circumstances, and neither shall a judgment be removed from the Clerk's office before it is recorded.
- D. Counsel shall file all original documents with the Clerk of Court. When counsel has not arranged for the original document to be timely brought before the presiding judge, counsel shall mail or email a copy to the presiding judge at the judge's resident office. Counsel shall indicate on the certificate of service the method by which a copy was sent to the judge.
- E. Counsel and other persons wishing to utilize the courtrooms, the jury room, or the law library for meetings, depositions, and video-conferencing shall contact the Clerk of Court to reserve the desired facility so as to avoid possible conflicts with Court matters or others who have already scheduled use of these courthouse facilities.

Rule 13 - Mandatory Settlement Conferences; Mediation

- A. Any civil action docketed for trial may be subject to a mandatory settlement conference as directed by the Court.
- B. Any family law matter docketed for trial may be subject to mandatory mediation as directed by the Court.

Rule 14 - Attorneys

- A. Unless appearing specifically on behalf of one of the attorneys of record, no attorney may participate in any proceedings in the case until the attorney's name has been entered as (co-)counsel of record.
- B. Counsel may not withdraw from any case, civil or criminal, except by consent of the client or by leave of the Court after notice is served on the client and other parties/opposing counsel. This provision shall be applied in conjunction with Sections 37-61-403 through -405, M.C.A., and UDCR 10. Once withdrawal as counsel is granted, the withdrawal becomes effective fourteen (14) days following the date of the court Order.
- C. Opposing counsel shall not address one another during a judicial proceeding except by permission of the Court.
- D. From ninety (90) days after the time for appeal from any final judgment or decree in a civil matter has run, the presumption shall be that any party previously represented by counsel is no longer represented by such counsel. After the ninety (90) day period, notice of renewed proceedings shall be provided to presumed-former counsel, as well as notice or service directly to the party as otherwise required by law. This rule shall not be construed to prohibit continued representation in such matter if the client and attorney agree. Neither is the rule intended to prohibit earlier termination of the attorney-client relationship upon notice.

Rule 15 - Attorney's Fees

Upon a final decision on the merits or other appropriate time, a party seeking an award of attorney's fees shall file and serve an affidavit itemizing the claim. Within fourteen (14) days thereafter allowing three (3) additional days for mailing, the opposing party shall file any objection. The Court will docket the matter for hearing. In a contested proceeding, receipt of evidence pertaining to attorney's fees may be deferred until the final decision or order on the merits of the case has been issued.

Rule 16 - Photography, Television and Media

- A. Except for good cause to the contrary and timely objection, and subject to the provisions and restrictions set forth herein, the presiding judge may grant leave for photographing, recording, televising, or otherwise broadcasting or transmitting courtroom images obtained while court is in session or during recess.
- B. Prior to filming, media personnel shall contact the Clerk of Court to coordinate the placement of equipment in order to avoid disrupting the proceedings. Placement of media equipment is secondary to the need for seating of any victim, legal assistants, jurors, and other necessary persons.
- C. All media personnel and media equipment shall remain stationary behind the bar so as not to disrupt the judicial proceedings. Media equipment operators shall not utilize flash devices, lighting equipment, large microphones, or other devices that disrupt or distract from the proceedings.

D. Members of the jury pool and panel shall not be photographed or identified, and neither shall their images be recorded or televised in any manner that allows a juror to be identified. Following the conclusion of deliberations, a juror may consent to the publication of the juror's image and identifying information. Any such consent must be voluntary and in writing. Violation of this provision may be punished as contempt of court.

Rule 17 - Adoption Matters

In all adoption matters, the pre-placement evaluation required by Section 42-3-201, M.C.A., will be ordered by the Court. It is the obligation of counsel to present to the Court an order for such evaluation. The evaluation will then be considered for waiver by the Court or the Department of Public Health and Human Services ("DPHHS") if the petitioner is a step-parent or a member of the child's extended family. Whenever the Court signs an order for such an evaluation by DPHHS, it shall be the duty of counsel to mail or deliver a conformed copy of the Petition for Adoption and the Order for Evaluation to DPHHS.

Rule 18 - Dissolution/Paternity Actions

A. As directed by the Court, for temporary maintenance or child support, or other matters pendent lite, modification proceedings, or trial on contested domestic relations matters, the moving party shall submit to the Court an affidavit in the form hereinafter set forth, including the questions hereinafter set forth and answers thereto:

_______, being first duly sworn, deposes and says: That he/she is the petitioner/respondent in the above entitled action; that he/she has fully and fairly stated the facts of the case to verify believe that he/she has a good and sufficient cause of action/defense, and that he/she makes the following statements of the fact:

- 1. General Background Information.
 - a. Name, date of birth
 - b. Education
 - c. Health
 - d. Residence address during the 90 days preceding the filing of the Petition
 - e. Current residence address
 - f. Date and location of marriage. Date of separation.
 - g. Employment and description of duties
 - h. Pay frequency/pay period and itemized amount of income from all sources
 - i. Attach recent and representative pay stubs to the Affidavit
 - j. Statement of ordinary necessary expenses, and any unusual expenses, noting that portion of the expense attributable to a minor child or children
 - k. Future employment plans with estimated income
 - I. Statement of inheritance, gifts, insurance proceeds, etc., with date received
 - m. Itemized statement of all assets owned by either party with value, and basis of stated value. Include all real property, property interests (including mineral rights), bank accounts, retirement accounts, all titled personal property, all personal property items of significance, and any personal property items in dispute.
 - n. All liabilities owed by either party
 - 1. Name and address of creditor
 - 2. Amount owing and repayment schedule
- 2. If the parties co-parent minor children, include:
 - a. Details of the requested co-parenting schedule including regular, summer, and holiday schedules, and any special requests.
 - b. Calculation of child support per the child support guidelines worksheets
 - c. If requested, reasoning for deviating from child support guidelines calculation and the amount of child support requested
 - d. Details of any medical insurance available to the child, including the premium
 - e. Details of how dependents should be divided for income tax purposes
- 3. Spouse seeking spousal maintenance (omit if not seeking spousal maintenance)
 - a. Amount

- b. Duration
- c. Reasons
- 4. Spouse opposing maintenance (omit if not applicable)
 - a. Reasons
 - b. Alternative to maintenance
- 5. Itemized, proposed property settlement listing all assets with assigned values and all liabilities. (Indicate if proposed property settlement is in lieu of or in addition to spousal maintenance in the appropriate case.)
- Request for Payment for attorney fees and cost (if requesting payment from other party).
 - 7. Include the following relevant documents:
 - a. Recent and representative pay stubs
 - b. Account Financial Statements for the relevant period (up to 3 years)
 - c. Copies of federal and state income tax returns (up to 3 years)
 - d. Any reports that have been prepared by experts
 - e. If expert witnesses are anticipated, set out summary of testimony
 - f. Other witnesses set out summary of testimony
 - g. If legal issues are going to be presented to the Court, specify the issues
- 8. Are there any matters not addressed above to which the parties have agreed?
- 9. Are there any matters not addressed above which the parties dispute?
 - 10. Estimate the time required for formal trail or hearing
- B. No later than thirty (30) days following service of the Petitioner's affidavit, the Respondent shall serve upon the Petitioner an Affidavit following the outline format as show above, and stating any objection or concern to the Petitioner's responses. The Affidavits are not to be filed with the Court unless in the event of a trial, or as directed by the Court. An Affidavit, with all attached documents, may be filed as evidence during the trial of this matter, subject to cross examination of the author. The purpose of the Affidavits is to initiate disclosure as required by statute, and to assist the parties and the court by identifying the issues to be resolved and each party's position prior to hearing.
- C. All parents of minor children shall satisfactorily complete the parenting education program sanctioned by the Sixteenth Judicial District Court prior to the final hearing, the issuance of a final decree for dissolution of marriage, or the issuance of a final parenting plan. Upon completion of the education program each parent shall file a certificate of completion with the Clerk of Court. The Court may consider a parent's failure to do so an act contrary to a child's best interests.
- D. Counsels are alerted to the requirements concerning application for relief ex parte. Section 40-4-220(2), M.C.A. Uniform District Court Rule 3. Rules of Professional Conduct Rule 3.3(3)(d).
- E. Unless the parties stipulate to an interim or amended parenting plan, the moving party must submit an affidavit setting forth facts supporting the proposed amendment and shall give notice in accordance with Section 40-4-220(1), M.C.A. The opposing party then has an opportunity to present counter affidavits, and based on the affidavits, the Court will determine whether, based on the best interests of the child(ren), "adequate cause for hearing the motion" exists. If adequate cause for amendment has not been presented, the Court will deny the motion without a hearing. If adequate cause for amendment has been presented, the Court will issue an order to show cause requiring the parties to appear and show why the requested interim or amended parenting plan should not be granted. Section 40-4-220(1), M.C.A.
- F. Section 25-1-201, M.C.A., provides for a \$120 filing fee to file a contested petition (motion) for amendment of a final parenting plan. Pursuant to Section 40-4-219(7), M.C.A., a prior parenting plan means a parenting determination contained in a judicial decree or order made in a parenting proceeding. Therefore, a final custody decree or order qualifies as a "final parenting plan" in determining whether a new filing fee is due. A motion to amend parenting plan (custody decree) is deemed contested unless both parties stipulate to the motion at the time it is filed with the Court.
- G. After entry of an order for child support that is to be collected by Child Support Enforcement Division, counsel for the party to receive the child support shall give notice to Child Support Enforcement Division in accord with Montana law.

- H. When child support or spousal maintenance is ordered to be paid directly to the Office of the Clerk of Court, counsel for the party ordered to pay child support shall inform their client to include an additional \$2.00 in each payment in order to cover the associated costs, including the check, ledger sheets, and postage. The proposed decree shall include in the final order the child support obligor's obligation to include the additional \$2.00 in each child support payment.
- I. A completed Vital Statistics reporting form shall be presented to the Clerk of Court when filing the Final Decree of Dissolution.

Rule 19 - Criminal Actions

- A. Any Defendant desiring a public defender shall complete a sworn Financial Affidavit and other information as required by the Office of Public Defender. The Office of Public Defender shall determine the eligibility of a defendant requesting a public defender in accordance with Montana law. The Financial Affidavit form is available from the Office of Public Defender.
- B. For all criminal evidentiary hearings and criminal bench trials where the Court must enter written findings of fact and conclusions of law, all parties shall file with the Clerk of Court and serve upon opposing parties proposed findings of fact and conclusions of law, unless waived by the Court. Post-hearing or post-trial amended and supplemental findings of fact and conclusions of law may be submitted in appropriate circumstances as directed by the Court. In addition to the submission for the Court file, the preferred format for submission to the judge is Microsoft Word.
- C. After the defendant enters a plea of "not guilty', the Court shall set an omnibus hearing. Prior to the time set for omnibus hearing, counsel for the prosecution and defense shall consult and attempt to stipulate to the contents of the Court-approved omnibus form which shall be submitted for the Court's approval at the date set for the omnibus hearing.
- D. For offenses committed prior to October 1, 2015, upon motion of the defendant who has successfully completed his or her deferred imposition of sentence, the Court may order that the action be dismissed. Evidence of successful completion of the requirements must be submitted to the Court along with a proposed order.

Rule 20 - Closing Estate with Foreign Personal Representative

Upon completion of those probate matters in which a foreign personal representative is qualified under the provisions of Section 72-4-303, et seq., M.C.A., counsel for the foreign personal representative must file with the Court a Foreign Personal Representative's Sworn Statement to Close Estate.

Effective October 10, 2015