# PARTNER/FAMILY MEMBER ASSAULT SECTION

# I. Jurisdiction — Venue

District courts, municipal courts, justice's courts, and city courts have concurrent jurisdiction. An action brought under Title 40, Chapter 15, may be tried in the county in which either party resides or in which the physical abuse was committed.

## II. Basis for Issuance

A person may seek an Order of Protection without filing a petition for dissolution of marriage or legal separation, if a verified petition is filed alleging:

Reasonable apprehension of bodily injury by the petitioner's partner or family member or is a victim of assault, aggravated assault, criminal endangerment, assault on a minor, assault with a weapon, negligent endangerment, unlawful restraint, kidnapping, arsons; or petitioner is a victim of stalking.

# III. Hearing

A hearing must be set within 20 days after service of the order. The hearing may be continued at the request of either party for good cause or by the Court. The hearing may result in the issuance of an Order of Protection which may be granted for a specific time period or be made permanent.

# **IV.** Registration of Orders

The clerk of court, justice of the peace, municipal court judge, or a city court judge <u>shall</u>, within 24 hours after proof of service on the respondent, notify all appropriate law enforcement agencies. This includes any extension, modification, <u>or</u> termination of the Temporary Order of Protection.

# V. Fees

MCA 40-15-204. Written orders of protection. "...(8) There is no cost to file a petition for an order of protection or for service of an order whether served inside or outside the jurisdiction of the court issuing the order..."

# **TEMPORARY ORDER OF PROTECTION CHECKLIST**

#### DO YOU QUALIFY FOR AN ORDER OF PROTECTION?

You are eligible for a Temporary Order of Protection if you are reasonably apprehensive of bodily injury by your partner or family member, or if you are a victim of the following offenses by your partner or family member:

Assault; Partner Assault; Aggravated Assault; Intimidation; Criminal or Negligent Endangerment; Assault on a Minor; Assault with a Weapon; Arson; Unlawful Restraint; Kidnapping; and Aggravated Kidnapping.

You are eligible for an Order of Protection, regardless of your relationship with the offender, if you are a victim of Stalking; Incest; Sexual Assault; or Sexual Intercourse without Consent. It does not matter when the abusive incident happened, as long as you are in danger of harm now. There is no requirement that the incident was reported to law enforcement.

## HOW DO YOU GET AN ORDER OF PROTECTION?

You may apply for a Temporary Order of Protection by filing a sworn petition in court. Orders of Protection may be filed in justice, city, municipal court, or district court.

## WHAT IF THERE IS A DIVORCE FILED?

If a divorce or custody action is filed in district court involving you and the respondent (the offender), your petition for an Order of Protection should be filed in district court. You may request an Order of Protection in justice, city, or municipal court only if the judge handling your divorce or custody case is unavailable or, to escape abuse, you left the county where the abuse happened. A copy of the relevant district court documents must be given to the court when the petition is filed.

#### WHERE DO YOU GET THE FORMS?

Temporary Order of Protection forms are available from any of the courts.

## HOW DO YOU FILL OUT THE FORMS?

Write your name on the line marked "Petitioner." Write the offender's name on the line marked "Respondent." Read the petition carefully and put an "X" in the blank in front of the parts that apply to you and your situation. Describe in detail the injury or threats that the offender (the Respondent) made. Explain when and where the abuse or threats occurred. If you have left home and do not want the offender to know where you are, write "Confidential" in the address section. If there are things not in the petition that you want the court to order the offender to stop doing, or things you believe the offender should be ordered to do, write them in. Fill out the "Instructions to Peace Officers" form so that the officers can find the respondent to serve the papers on the respondent. The petition must be signed in front of a notary public or in front of a judge. There are notaries and judges at the courthouse. The forms are provided to you without charge. There are no filing fees or costs assessed for service. The petition is then presented to the judge.

#### WHAT DOES THE COURT DO?

If the judge finds that you are in danger of harm, without immediate action, the court will issue a Temporary Order of Protection ordering the offender to stay away from you, in addition to other possible protection.

# AT THE HEARING ...

A hearing will be held within 20 days from the date the court issues a Temporary Order of Protection. At the hearing, the court will determine if good cause exists for the Temporary Order of Protection to be continued. If that finding is made, the judge will issue an Order of Protection.

# **INFORMATION SHEET**

You are about to ask for a Temporary Order of Protection as a victim of abuse. This sheet has information to guide you through the legal process and answer some of the questions you may have.

You are the PETITIONER. The Petitioner is the person alleging abuse and asking for protection. The RESPONDENT is the person you are asking the court to protect you from. A Temporary Order of Protection is an order, signed by a judge that restricts or prohibits the Respondent from contacting you. Generally, a Temporary Order of Protection is good for twenty (20) days.

If you are a minor, your parent or guardian, or other representative may file a petition for a Temporary Order of Protection on your behalf against the Respondent.

ou have the right to appear in court on your own to request a Temporary Order of Protection
lowever, the following resources are available in your community to help you through thi
rocess:

When signed by a Judge, a Temporary Order of Protection is effective **immediately.** After the judge signs the Order, these are the next steps:

- Your petition and a copy of the Order must be given to law enforcement for service upon the Respondent.
- There must be a hearing within twenty (20) days. If law enforcement cannot find the Respondent within twenty (20) days, you will need to ask the court to set a new hearing date.
- At the hearing, you must be prepared to explain to the court why you are asking for an Order of Protection. This includes bringing witnesses to the hearing who have knowledge about the facts in your Petition.

Stay in contact with the Clerk of Cou	ert for information about	t your case.	The Clerk's numb	er is:
You should keep copies of your Orde in your purse or wallet, as well as have	•	_	•	rry one

PHONE NU	MBERS					
	artment:					
IN THE	C	OURT OF	CI	TY/COUNTY,	STATE OF M	IONTANA
BEFOR	Е		, JUST	TICE OF THE I	PEACE/CITY .	JUDGE
*	*	*	*	*	*	*
	Petitioner, vs		) <b>O</b> I ) <b>A</b> I	ETITION FOR RDER OF PRO ND REQUEST Case No	OTECTION F FOR HEAR	
	Respondent	· ·	, )			
*	*	*	*	*	*	*
issue a Temp	orary Order	of Protection as Temporary Ord	gainst Respor	Ann., 40-15-20 adent. I believe on immediately	e I am in dang	
<b>Petitioner:</b>						
Sex:						

# **Respondent:**

Race:

Fill out as much information as you can about Respondent. If you don't know all of the following information, it will not affect your ability to get a Temporary Order of Protection.

PETITION FOR TEMPORARY ORDER OF PROTECTION AND REQUEST FOR HEARING PAGE 1 OF 8 PAGES

# **Respondent (Continued):** Driver's License No.: State: \_\_\_\_ Sex: Race: Exp. Date: Veh. Make/Model: Height: Color: Weight: \_\_\_\_ Plate #: Hair Color: Eye Color: Scars/Marks/Tattoos: \* Date of Birth: \* Social Security No.: (\*) If you can provide either Respondent's date of birth or social security number, law enforcement will be able to enter your temporary order of protection into the State's computer system. If is very helpful if you have this information. You can still receive a Temporary Order of Protection if you don't.

# **RESIDENCY**

I, the above named Petitic	oner, live in	County, State of	
Respondent lives in	County, State of	·	
The abuse happened in	County, State of		

# **RELATIONSHIP**

To qualify for a Temporary Order of Protection, you must meet one of the descriptions listed below.

**CIRCLE** the description of your relationship with Respondent.

- **A.** We are married.
- **B.** We were married, but are now separated.
- **C.** We are divorced.
- **D.** We are dating or having an ongoing intimate relationship.
- **E.** We dated or had an ongoing intimate relationship.
- **F.** We have a child and/or children together.
- **G.** I am a family member or a former family member of Respondent.
- **H.** Other. (None of the relationships listed in A-G are required if you were the victim of stalking, incest, sexual assault, or sexual intercourse without consent.)

PETITION FOR TEMPORARY ORDER OF PROTECTION AND REQUEST FOR HEARING PAGE 2 OF 8 PAGES

# **DESCRIPTION OF ABUSE**

To qualify for a Temporary Order of Protection, you must satisfy one of the situations described above and have been the victim of one or more of the types of abuse listed below.

- **A. PARTNER/FAMILY MEMBER ASSAULT** Respondent, who is my partner or a family member, caused bodily injury to me, or caused me to fear bodily injury.
- **B.** ASSAULT Respondent caused bodily injury to me, had physical contact of an insulting or provoking nature, or caused me to fear bodily injury. (Assault can include use of a weapon against you.)
- **C. INTIMIDATION** Respondent threatened me with physical harm or confinement, so I would obey him/her.
- **D. ENDANGERMENT** Respondent created a risk of death or serious bodily injury to me.
- **E. KIDNAPPING**/ **RESTRAINT** Respondent held me against my will and interfered with my liberty.
- **F. ARSON** Respondent burned my property or placed me in danger of death or bodily injury by fire or explosives.
- **G. INCEST** I am a family member of Respondent and he/she had sexual contact with me.
- **H. SEXUAL ASSAULT** Respondent had sexual contact with me without my consent.
- I. SEXUAL INTERCOURSE WITHOUT CONSENT— Respondent had sexual intercourse with me without my consent.
- **J. STALKING** Respondent caused me emotional distress or fear of death or injury by repeatedly following me, harassing me, or threatening me in person, by phone, by mail, or by some other method.
- K. DELIBERATE HOMICIDE or MITIGATED DELIBERATE HOMICIDE
   Respondent killed my partner or family member.

PETITION FOR TEMPORARY ORDER OF PROTECTION AND REQUEST FOR HEARING PAGE 3 OF 8 PAGES

Explain in your own words what the Respondent has done to you. Tell the Judge why you are afraid of the Respondent at this moment. Be as specific as you can. Write down places and dates as well as you can remember. Use additional sheets of paper as may be necessary. I does not matter when the abuse happened or whether you reported it to the police, but you must tell the judge why you are afraid <u>now</u> .  Start with the most recent events of abuse.				

PETITION FOR TEMPORARY ORDER OF PROTECTION AND REQUEST FOR HEARING PAGE 4 OF 8 PAGES

# **FIREARMS**

List all firearms and other weapons currently possessed by Respondent:				
		CHILDRE	<u>N</u>	
Complete	e this section if you have c	hildren.		
	ent and I are the parents of irth, and with whom each of			ame and age of each child,
1	Name: Last, First	Date of Birth	Race/Sex	Lives With
	owing children live with mo	<u>-</u>		
<u> </u>	Name: Last, First	Date of Birth	Race/Sex	
	ARE FILLING OUT THI ETE APPENDIX A.	ESE FORMS IN D	ISTRICT OR T	TRIBAL COURT, PLEASE
		OTHER COURT	<u>CASES</u>	
	re other court cases between sother information not cover the coverage of the			em here. ne Judge should know, put it
CIRCLE	E any of the following state	ements that apply to	you:	
	divorce, legal separation of	_	been filed in _	County,

PETITION FOR TEMPORARY ORDER OF PROTECTION AND REQUEST FOR HEARING PAGE 5 OF 8 PAGES

В.		are other court cases between Respondent and me. List nature of the case and e it is filed:
C.	A crin	minal charge of was filed against Petitioner or Respondent in County.
D.	List ar	ny other cases pending against the Respondent that you are aware of:
		REQUEST FOR RELIEF
contain order):		oner respectfully requests that this Court issue a Temporary Order of Protection e following (CIRCLE all of the provisions you want the court to include in your
	1.	Respondent is restrained from assaulting, threatening, abusing, harassing, following, or stalking me. Respondent must not harass, annoy, or disturb my peace or do any of those things to the following people (may include family members, witnesses to the offense, or other victims of the offense):
	2.	Respondent must not threaten to commit or commit acts of violence against me or against these family members:
	3.	The following applies to my present residence:
		a. My current location is a secret and I want it to remain confidential.
		— OR —
		b. Respondent must stay away from my residence at:

PETITION FOR TEMPORARY ORDER OF PROTECTION AND REQUEST FOR HEARING PAGE 6 OF 8 PAGES

4.	Respondent must stay 1500 feet or other appropriate distance ( feet) away from
	me: at my residence;
	at my place of work;
	at my place of school;
	other
5.	Respondent must not telephone e-mail, write, contact, or otherwise communicate, directly or indirectly or through a third party with me or the following people (may include family members, witnesses to the offense, or other victims of the offense):
6.	Respondent must not take the following child(ren) out of this county:
7.	Respondent used or threatened me with a firearm. Respondent is prohibited from owning, possessing, and/or purchasing a firearm.
8.	Respondent must not take, hide, sell, damage, or dispose of our/my property.
9.	Respondent must give me possession or use of the following items (items may include the residence, automobile, and other essential personal property regardless of ownership):
10.	I need a peace officer to come with me to pick up the property listed in Number 9, or I request that Respondent be accompanied by a peace officer when picking up his/her property or to accompany Respondent to pick up his/her belongings.
11.	The Court should order the following to provide for my safety and welfare and my family's
	safety and welfare:
12.	Other relief requested:

PETITION FOR TEMPORARY ORDER OF PROTECTION AND REQUEST FOR HEARING PAGE 7 OF 8 PAGES

# **HEARING**

Petitioner respectfully requests that the Court set a hearing on this case within 20 days as required by Mont. Code Ann. § 40-15-202. The Respondent will then have a chance to be heard and explain why the Order of Protection should not be issued. I request that the Court issue an Order of Protection with the above listed protection after the hearing.

	<u>OT</u>	<u>'HER RELIEF</u>	
The C	ourt should order other protection fo	r me as it deems just and proper.	
		Petitioner	
	NOTARY SEAL	OR JUDGE'S SIGNATURE	
STAT	E OF MONTANA )		
Count	;ss y of)		
	as follows: That I have read the above Petition vn knowledge, except those stated u		tatements are true of
iruc.	DATED this day of	, 20	
		Petitioner	
	SUBSCRIBED AND SWORN TO	before me this day of	, 20
		Notary Public/Judge My Commission Expir	res:

PETITION FOR TEMPORARY ORDER OF PROTECTION AND REQUEST FOR HEARING PAGE 8 OF 8 PAGES

# **APPENDIX**

Complete this form if you are asking a district court for an order of protection and there are children for which a temporary visitation schedule needs to be established.

If you and the Respondent have children together, the Judge will ask you and the Respondent how temporary visitation is to take place under safe and peaceful conditions. You must have a very good reason before the Judge will deny the Respondent visitation.

Visitation schedules generally provide for:

- Exchanges that are made in public places;
- Visits that take place on a regular basis;
- Visits that vary in length depending on the age and attitudes of the children.

Respondent and I are the parents of the following children (state name and age of each child, date of birth, and with whom each child is presently living):

Name: First, Last	DOB	Lives With
L	<u>I</u>	<u> </u>
<b>CIRCLE</b> the visitation option that app	lies to you:	
<b>A.</b> I request the following visitatio	n schedule:	
D. I no guest the Desmandant have		a ahilduan haaassaa
<b>B.</b> I request the Respondent have r	io visitation with th	ne children because:

# ORDER OF PROTECTION INSTRUCTIONS

# THE ORDER OF PROTECTION FORM <u>MUST</u> BE EXAMINED AND ATTESTED TO BY A JUDGE FOR THE ORDER TO BE VALID

- **1. Temporary Order** Check this box if the order is temporary. Temporary order generally refers to an order issued by the Judge without prior notice to the Respondent and is effective until the 20-day hearing.
- 2. **Permanent Order** Check this box if the Respondent received notice and an opportunity to participate. Permanent orders are issued after the 20-day hearing. Permanent orders may have an ending date or be effective indefinitely.
- 3. Order effective until Indicate date the order will expire. Temporary orders may use the 20-day hearing date as the expiration date.
- 4. Amended Order If this order of protection is changed/modified by the Court in any way, a new face sheet should be prepared and attached, and the amended order box should be checked. Any time an order of protection is changed in any way, a new face sheet must be prepared and the amended box must be checked.
- 5. Dissolved If the Order of Protection is dissolved by the Court, a new face should be prepared and attached, indicating the date the order was dissolved.
- **6.** Case No. Enter a case or docket number.
- 7. Court List the name of the Court issuing the Order (e.g. Lewis & Clark County Justice Court; Fort Belknap Tribal Court).
- **8. State** Name of the issuing state (Montana).
- 9. **Tribal** If the Order of Protection is being issued by a Montana Tribal Court, the Tribal Court should indicate its jurisdiction. If not a Tribal Court, leave blank.
- 10. Blank space left for official Court Seal, if applicable.
- **11. Petitioner Name** Indicate the first, middle, and last name of the person requesting the order of protection.
- **12. Minor family member(s)** Indicate:
  - **a.** The first and last name of each minor family member.
  - **b.** The birth date of each minor family member (mm/dd/yyyy).
  - **c.** The sex (F/M) of each minor family member.
  - **d.** The race (Caucasian, Native American, Black, Hispanic).
- 13. Petitioner Identifiers:
  - a. Indicate Petitioner's date of birth (mm/dd/yyyy).
  - **b.** Indicate Petitioner's race (Caucasian, Native American, Black, Hispanic) and sex (F/M).

- 14. Other protected Person(s) (i.e. other family members or witnesses) Indicate the:
  - **a.** Protected person's first, middle, and last name.
  - **b.** Protected person's date of birth (mm/dd/yyyy).
  - **c.** Protected person's race (Caucasian, Native American, Black, Hispanic).
  - **d.** Protected person's sex (F/M).
- 15. Respondent's Name Indicate the first, middle, and last name of the person who will be served with this order of protection.
- **16. Respondent's Address** Indicate the Respondent's address including apartment/unit numbers. **Do Not** use a post office box address; use the address of the actual location where the Respondent lives.
- 17. Federal Firearm Disqualification Criteria: If any one element describing each section (indicated by  $\Box$ ) applies, then the section (indicated by  $\Box$ ) must be checked.

The Brady disqualification will attach ONLY on permanent orders of protection and only if all four criteria (Hearing, Child/intimate partner, Order restrains, Order finds a credible threat) are met and checked.

The Brady disqualifier will never attach on a Temporary Order of Protection because the temporary order hearing is exparte (only the Petitioner is heard) and the respondent has not received notice nor had the opportunity to participate in a hearing. The maximum number of boxes that can be checked are 3, therefore, Brady will not attach.

- **a. Hearing/actual notice** Check this box if the Respondent received actual notice and an opportunity to participate.
- **b.** Child/Intimate Partner Check this box if the Petitioner (person requesting the order of protection) is a Child, Stepchild, or Intimate Partner of the Respondent. The Petitioner is an intimate partner if any of the following apply:
  - A spouse or former spouse of the Respondent;
  - An individual who is a parent of a child of the Respondent; or
  - An individual who cohabitates or has cohabited with the Respondent.
- **c. Order restrains** Respondent from future conduct Check this box if this order restrains the respondent from harassing, stalking, or threatening the intimate partner, child of the Respondent, or child of the Respondent's intimate partner; or the order restrains the Respondent from engaging in other conduct that would place the intimate partner in reasonable fear of bodily injury to the partner or child.
- **d.** Order finds a credible threat Check this box if the order includes a finding that the Respondent is a credible threat to the physical safety of the intimate partner or child; or the order, by its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

- 18. Caution This information is vital for the safety and protection of all parties including law enforcement officers. The Caution indicator is not related to the Brady disqualifier and may be used whether or not the Brady criteria are met.
  - **a.** Weapon involved Check this box if a weapon was involved in the act of violence.
  - **b.** Weapon on Property Check this box if the Respondent has a weapon on the property, regardless of whether it was used in the act of violence.
- 19. Respondent identifiers: (Please provide as much information as possible)
  - a. Sex Indicate (F) for female and (M) for male.
  - b. Race Indicate Caucasian, Native American, Black, or Hispanic.
  - c. DOB Indicate date of birth (mm/dd/yyyy).
  - **d. HT** Indicate approximate height in feet and inches, such as 5'10".
  - **e.** WT Indicate approximate weight in pounds.
  - **f.** Eyes Indicate eye color (brown, blue, hazel).
  - **g.** Hair Indicate hair color (brown, blonde, red, black).
  - **h. Social Security** # Indicate the nine digit social security number (xxx-xxxxx)
  - i. **Drivers License** # Indicate the drivers license number.
  - **i. State** Indicate the name of the state that issued the drivers license.
  - **k.** Exp. Date Indicate the date that the drivers license will expire (mm/dd/yyyy).
  - **l. Vehicle Make/Model** Indicate the make and model of the Respondent's vehicle (Example: Ford, Explorer).
  - **m.** Color Indicate the color of the vehicle.
  - **n. Plate** # Indicate the state issuing the vehicle license plates and the plate number.
- **20. Distinguishing Features** Describe any scars, tattoos, birthmarks, or other identifying features.
- **21.** The Court Hereby Orders Check each box  $(\Box)$  that applies.
  - a. Check this box if the Respondent is prohibited from committing acts of abuse or threats of abuse.
  - b. Check this box if the Respondent is ordered to stay a minimum number of feet away from the petitioner's person, home, workplace, vehicle, children's school/daycare or other. If this box is checked, you must fill in the number of feet and place a check ( $\sqrt{}$ ) or an (X) before the areas that apply (person, home, workplace, etc.).
  - c. Additional terms of this order are as set forth herein Check this box if you have circled any item 1 through 12 on pages 2 and 3 of a standard Order of Protection Form or if the protection order is part of a District Court document.
- 22. Date Issued Indicate the date the Order was Issued/Amended/Dissolved.
- **23. Signature** The District Judge/Justice of the Peace/Municipal Judge/City Judge who issued the Order should sign.
- **24.** The Court Finds (pages 2 and 3) Circle the appropriate orders numbered 1 through 12 on pages 2 and 3.
  - 1. If number one is circled and other people in addition to the Petitioner are being protected, the judge must list the names of the people that are to be protected.
  - 2. If number two is circled, the judge must list the names of the family members.
  - 3a. Circle 3a if the Petitioner's location should remain confidential.

- 3b. If number 3b is circled, the judge must indicate the Petitioner's address.
- 4. If number four is circled, the judge must note the distance from Petitioner the Respondent must remain at all times. The judge must also note the specific places in which this condition is in effect; this includes addresses of schools for minor children.
- 5. If number five is circled, the judge must indicate the names of the people that the Respondent is prohibited from communicating with.
- 6. If number six is circled, indicate the name of the child or children the Respondent is prohibited from taking out of the county.
- 7. Circle 7 if the Respondent used or threatened the Petitioner with a firearm or if the Respondent is prohibited from owning, possessing, and/or purchasing a firearm.
- 8. Circle 8 if the Respondent is prohibited from taking, hiding, selling, damaging, or disposing of the Petitioner's property.
- 9. If number 9 is circled, the judge must indicate which items the Petitioner will have possession or use of.
- 10. Circle 10 if the court orders a peace officer to accompany the Petitioner or the Respondent when picking up property described in number 9 above.
- 11. Allows the court to order other conditions not specifically set forth above, as it deems necessary.
- 12. As in question 11 above, question 12 allows the court to order other conditions, not specifically set forth above, as it deems necessary.
- **25. A hearing on Petitioner's request** Indicate the date of the hearing mm/dd/yyyy; the time of the hearing including a.m. or p.m.; and the address and location of the courtroom.
- 26. This Order of Protection Indicate the date of expiration of the order of protection. This date must agree with the date in question number 3 on page 1.
- **27. The Sheriff/Police Officer is hereby directed to serve** Indicate the name and address of the law enforcement agencies that will receive a copy of this order of protection together with a copy of the proof of service.
- **28. Issued this** The judge should indicate the day, month, year, and hour including a.m. or p.m. that this order was issued. The judge must sign the order of protection.
- **29. Sheriff's/Police Officer's Return** This is the notice of service. The law enforcement officer delivering a copy of the order of protection to the Respondent must complete this form. The law enforcement officer should indicate the time of day including a.m. or p.m., the month, day, and year of service. Date this proof of service document with the month, day, and year of service and sign the proof of service document.

**Note:** Use second group of Order of Protection Forms (No information reference numbers) to formulate Protective Orders that are to be issued.

<sup>\*\*</sup> Please Note that all Instructions in red are mandatory reporting fields.

# **FINDINGS**

**THE COURT** from the Petition that the Petitioner is in danger of harm. This Court acts without notice or upon hearing to the Respondent because harm may result to the Petitioner if the Order of Protection is not issued immediately.

1.	Respondent is restrained from assaulting, threatening, abusing, harassing, following, or stalking the Petitioner. Respondent must not harass, annoy, or disturb Petitioner's peace or do any of those things to the following people (may include family members, witnesses to the offense, or other victims of the offense):				
2.	Respondent must not threaten to commit or commit acts of violence against Petitioner or against these family members.				
3.	The following applies to Petitioner's present residence:				
	a. Petitioner's current location is a secret and should remain confidential.				
	— OR —				
	b. Respondent must stay away from Petitioner's residence at:				
4.	Respondent must stay 1500 feet or other appropriate distance ( feet) away from Petitioner's person, home, workplace, school, vehicle, children's school/daycare, other:				
5.	Respondent must not telephone, e-mail, write, contact, or otherwise communicate directly or indirectly or through a third party with Petitioner or the following people (may include family members, witnesses to the offense, or other victims of the offense):				
6.	Respondent must not take the following child(ren) out of this county:				
7.	Respondent used or threatened Petitioner with a firearm. Respondent is prohibited from owning, possessing, and/or purchasing a firearm.				
8.	Respondent must not take, hide, sell, damage, or dispose of Petitioner's property.				
9.	Respondent must give Petitioner possession or use of the following items (items may include the residence, automobile, and other essential personal property regardless of ownership):				

	iber 9	titioner needs a peace officer to accompany him/her to pick up the property listed in or Respondent must be accompanied by a peace officer when picking up his/her to accompany Respondent to pick up his/her belongings.
	11.	The Court orders the following to provide for Petitioner's safety and welfare and Petitioner's family's safety and welfare:
	12.	Other relief:
25	spec	earing on Petitioner's request that this order be made an Order of Protection for a lific time or effective permanently will be held before this Court on, 20, at the hour of m., or as soon thereafter as
	the n	natter may be heard, in the courtroom at:
26	This	Order of Protection shall continue in full force and effect until:
	abou	oondent: If you fail to appear for the hearing the judge will make a decision at the order of protection in your absence. This decision could affect your ability wn or possess firearms.  — <u>WARNING</u> —
	law	ation of this Order may be a criminal offense under applicable Federal or Tribal and is a criminal offense under Mont. Code Ann. § 45-5-220 or § 45-5-626 and carry penalties of up to \$10,000 in fines and up to a 5 year jail sentence.
	in th	Order is issued by the Court and the Respondent is forbidden to do any act listed to Order, even if invited by the Petitioner or another person. This Order may be nded only by further order of this Court or another court that assumes ediction over this matter.
27	with a This s Order	theriff is hereby directed to serve, without cost to Petitioner, a copy of this Order of Protection together a copy of Petitioner's petition upon Respondent and to file a return of service with the clerk of this court. Service will be as soon as possible and before the date of the hearing. Upon receipt of proof of this t, the clerk is hereby directed to mail or otherwise promptly deliver a copy of this Order, together with a of the proof of service, to the following law enforcement agencies:
28	ISSU	ED this day of, 20, at the hour ofm.
		Judge/Justice

# **SHERIFF'S RETURN**

I served thi	is Order of Protection on the	e Respondent by delivering a copy to him/her at
:	m. on	, 20
		Signature
		Signature
		Title and/or Badge No.

# **FINDINGS**

**THE COURT** from the Petition that the Petitioner is in danger of harm. This Court acts without notice or upon hearing to the Respondent because harm may result to the Petitioner if the Order of Protection is not issued immediately.

	peace or do any of those things to the following people (may include family members, witnesses to the offense, or other victims of the offense):
2.	Respondent must not threaten to commit or commit acts of violence against Petitioner or against these family members.
3.	The following applies to Petitioner's present residence:
	a. Petitioner's current location is a secret and should remain confidential.
	— OR —
	b. Respondent must stay away from Petitioner's residence at:
4.	Respondent must stay 1500 feet or other appropriate distance ( feet) away from Petitioner's person, home, workplace, school, vehicle, children's school/daycare, other:
5.	Respondent must not telephone, e-mail, write, contact, or otherwise communicate directly or indirectly or through a third party with Petitioner or the following people (may include family members, witnesses to the offense, or other victims of the offense):
6.	Respondent must not take the following child(ren) out of this county:
7.	Respondent used or threatened Petitioner with a firearm. Respondent is prohibited from owning, possessing, and/or purchasing a firearm.
8.	Respondent must not take, hide, sell, damage, or dispose of Petitioner's property.
9.	Respondent must give Petitioner possession or use of the following items (items may include the residence, automobile, and other essential personal property regardless of ownership):

10.	Petitioner needs a peace officer to accompany him/her to pick up the property listed in Number 9, or Respondent must be accompanied by a peace officer when picking up his/her property or to accompany Respondent to pick up his/her belongings.
11.	The Court orders the following to provide for Petitioner's safety and welfare and Petitioner's family's safety and welfare:
12.	Other relief:
spec	earing on Petitioner's request that this order be made an Order of Protection for a ific time or effective permanently will be held before this Court on, 20, at the hour of m., or as soon thereafter as
the 1	natter may be heard, in the courtroom at:
This	Order of Protection shall continue in full force and effect until:
	tioner: You should immediately report any violation of this order to law orcement. You also have the right to return to court to report any violation of this er.
abo	pondent: If you fail to appear for the hearing the judge will make a decision ut the order of protection in your absence. This decision could affect your ability wn or possess firearms.  — <u>WARNING</u> —
law	ation of this Order may be a criminal offense under applicable Federal or Tribal and is a criminal offense under Mont. Code Ann. § 45-5-220 or § 45-5-626 and carry penalties of up to \$10,000 in fines and up to a 5 year jail sentence.
in tl ame	So Order is issued by the Court and the Respondent is forbidden to do any act listed ne Order, even if invited by the Petitioner or another person. This Order may be ended only by further order of this Court or another court that assumes saliction over this matter.
with This Orde	Sheriff is hereby directed to serve, without cost to Petitioner, a copy of this Order of Protection together a copy of Petitioner's petition upon Respondent and to file a return of service with the clerk of this court. service will be as soon as possible and before the date of the hearing. Upon receipt of proof of this r, the clerk is hereby directed to mail or otherwise promptly deliver a copy of this Order, together with a of the proof of service, to the following law enforcement agencies:
ISSU	ED this, 20, at the hour ofm.
-550	, 20
	Judge/Justice

# **SHERIFF'S RETURN**

I served th	is Order of Protection on th	e Respondent by delivering a copy to him/her at
:	m. on	, 20
		Signature
		Title and/or Badge No.

# INSTRUCTIONS TO PEACE OFFICER FOR SERVICE

(Please fill out as much as possible)

	Temporary Order of Prote		
	Serve the documents on (the Resp	nondent):	
•	Home Address:	pondent).	
	Home Phone:		
	Place of employment:		
•	Work Address:		
	Work Phone:		
	Hours of employment:		
	Identifying characteristics: Sex		
	DOBSex	Race	Height
	Color of hairOther unusual physical characteristics.	Color of eyes	
	Other unusual physical characteri	istics (i.e. Tattoos, mustaches, or	r scar):
	Known vehicle description:  License plate no.:  Other leasting (include times)		
	Known vehicle description:  License plate no.:  Other locations (include times) w		
•	License plate no.:	where Respondent might be found	
•	Other locations (include times) w  Persons who might know the whe	where Respondent might be found ereabouts of the Respondent:	d:
•	Other locations (include times) w  Persons who might know the whe	where Respondent might be found ereabouts of the Respondent:	d:
•	Description of the control of the co	where Respondent might be found ereabouts of the Respondent:	d:
	Description of the control of the co	ereabouts of the Respondent: Address: Address:	d:
	Description of the control of the co	rhere Respondent might be found ereabouts of the Respondent: Address: Address:  nt behavior:	d:
	Description of the control of the co	ereabouts of the Respondent: Address: Address: nt behavior:	d:
	Description of the control of the co	rhere Respondent might be foundereabouts of the Respondent: Address:Address: nt behavior:y to have in possession:	d:
	Dersons who might know the who (1) Phone: (2) Phone: List Respondent's previous violes  List weapons Respondent is likely	rhere Respondent might be found ereabouts of the Respondent: Address:Address:  nt behavior:  y to have in possession:  as history of violent behavior	d: with law enforcement
	Describe Respondent's previous  Describe Respondent's previous  Other locations (include times) were represented by the control of the contro	rhere Respondent might be found ereabouts of the Respondent: Address:Address:  nt behavior:  y to have in possession:  as history of violent behavior	d: with law enforcement

# FILE INFORMATION — ORDER OF PROTECTION

NAME:
TEMPORARY ADDRESS:
PERMANENT ADDRESS:
PERMANENT TELEPHONE NUMBER:
HEARING DATE:
DISPOSITION AT HEARING:
LAW ENFORCEMENT AGENCIES NOTIFIED:
REMARKS:

IN THI	E CO	OURT OF	CI'	TY/COUNTY	, STATE OF M	IONTANA
BEI	FORE		, JUST	ICE OF THE	PEACE/CITY	JUDGE
*	*	*	*	*	*	*
	Petitioner,				TO DISSOLV	
	Petitioner, vs		)	and	RDER OF PRO Vor PROTECTION	
	Respondent.			Case No		
*	*	*	*	*	*	*
dissolve	the <b>Temporary O</b> wing reasons:  I no longer am in I and the Respor	rder of Prote	ection and/or to	the <b>Order of l</b> reparable injur	Protection now y from the Res	in effect for
3.	Other:					
	d this day			, 20		

Page 1 of 2 Pages

# 

Notary Public for the State of Montana

Residing at \_\_\_\_\_\_\_
My Commission expires \_\_\_\_\_\_

# SCRIPT — ORDER OF PROTECTION HEARING

"Today is the day set for the hearing of the case,
"Today is the day set for the hearing of the case
I will only allow testimony that pertains to this issue. I expect each of you to present your testimony in an orderly and courteous manner. I will not allow any misbehavior by either party.
I cannot issue an order affecting custody of any children that may be involved. I can, however, issue an order that will temporarily affect visitation by the non-custody parent, under some circumstances.
You must remember that this procedure in Justice/City Court is a temporary, amended, extended, permanent, or dissolved one. This is a court of limited jurisdiction and any further proceedings, such as dissolution of marriage or child custody, <u>must be filed in the District Court</u> .
Are there any questions before we proceed?
Is the Petitioner ready for hearing? Is the Respondent ready?
The Court will now hear evidence from the Petitioner " (Place all testifying parties under oath.)
**** Remember the Petitioner is the moving party. Refer to the TOP checklist for the steps to take if only one or both of the parties appear.
After you have heard evidence from all parties present, make the decision to either continue or amend the TOP or make the order permanent. You must make a finding to determine if good cause exists to continue the order.
"The judgment of the Court is to (dissolve / amend the TOP / issue an Order of Protection for the period of The Order of Protection will read as follows:)"

It is helpful if you review each proposed restriction on the Temporary Order form and ask specific questions, much like writing up a contract between parties. Maintain control of the courtroom and do not let the parties argue about who may be at fault or trade petty accusations that seem to go along with these cases. Keep the parties on the issues.

<u>If the matter</u> is transferred to the District Court, you will lose jurisdiction to enforce the TOP or Order of Protection. Be sure that the parties are aware that they <u>must</u> advise you when they file in District Court. This is true for attorneys as well as for *pro se* parties

Be sure you have current addresses and phone numbers for all parties. If the Petitioner does not want the Respondent to know where she/he is, then they can give the Court this information in writing and not be required to share it with the other party.

Page 1 of 2 Pages

If the order is to be continued, advise the Respondent that any violation of the order is a misdemeanor and advise what the penalties could be. Read each part of the Order of Protection and verify with the parties, exactly how the injunction will read.

Enter all proceedings in your case docket. Be sure all law enforcement agencies are aware of the results of the hearing.

# **MISCELLANEOUS SECTION**

# **GENERAL GLOSSARY**

**Acquit** The act of freeing a person from a charge or an offense by

means of a decision, verdict, or other legal process.

**Acknowledgment** A sworn declaration or a vow of one's act or a fact to give

it legal validity.

**Adjournment** To temporarily suspend the proceedings of a case until a

future time.

**Adjudication** The process of hearing and deciding on a case filed. Also,

used as the "disposition" of a case.

**Affiant** A person who makes a signed sworn statement in writing.

**Affidavit** A sworn or affirmed statement made in writing and signed.

Affirm 1. An appellate court's act of upholding as correct a

decision or judgment of a lower court.

2. An act of declaring something to be true under the penalty of perjury by a person who conscientiously declines

to take an oath for religious or other pertinent reasons.

Allege The act of a party to a legal action of stating what he

intends to prove.

**Answer** A paper submitted by a defendant in which he responds to

and/or denies the allegations of the plaintiff.

**Appeal** A proceeding to have a case examined by a higher court to

see if a lower court's proceedings and decisions were made

correctly.

**Appellant** The party who takes an appeal to a higher court.

**Arraign** An official reading of the offense the defendant is charged

with, an advising of his rights, and a taking of that person's

plea by a judge.

**Arraignment** The proceeding at which a person is arraigned.

**Arrest Warrant** An order of a court directing a peace officer to arrest a

named person and bring him/her before the court for his/her

initial appearance for the purpose of arraignment.

#### **Bench Warrant**

An order of a court in which a criminal action is pending directing a peace officer to take into custody the defendant who has been previously arraigned and to bring him/her before that court.

# **Beyond a Reasonable Doubt**

Proof beyond a reasonable doubt is proof of such a convincing nature that a reasonable person would rely and act upon it in the most important of his own affairs. Beyond a reasonable doubt does not mean beyond any doubt or beyond a shadow of.

# Certiorari

An order of a superior court calling for the case records of a lower court for the purpose of hearing an appeal.

MCA 27-25-101. <u>Name of writ</u>. The writ of certiorari may be denominated the writ of review.

(MCA 27-25-102). When and by whom granted. A writ of review may be granted by:

- (1) the supreme court and any justice of the supreme court, in proceedings for contempt in the district court; or
- (2) the supreme court or the district court or any judge thereof, when an inferior tribunal, board, or officer and there is no appeal or, in the judgment of the court, any plain, speedy, and adequate remedy.

# Citation/Cite

A group of numbers and letters used to locate a previously decided case in a law casebook. Example: 15 N.Y. 2d 500. Look in volume 15 of the New York Reports, second series, page 500.

# Common Law

The body of law which originated in England and upon which present day United States law is based.

# **Complaint**

The initial pleading in an action formally setting forth the allegations in issue.

# **Concur / Concurring Opinion**

An opinion of a judge or justice of an appellate court which agrees with the result reached in the opinion of another judge or justice for the same or different reasons.

# **Concurrent Sentence**

A sentence of imprisonment which is to be served at the same time another sentence is running.

## Condition

A clause in a contract or agreement (sentence) which has for its object to suspend, rescind, or modify the original or principal obligation; a prerequisite or stipulation.

# **Consecutive Sentence**

A specified sentence of imprisonment which will be served <u>after</u> another sentence is served by the defendant, usually jail.

## 212 – Miscellaneous Section

**Conviction** A finding of guilt by plea or trial.

Corroborating Evidence Evidence submitted to substantiate or back up evidence

which is already submitted.

**Counterclaim** A claim by the defendant in a civil action that he is entitled

to damages or other relief from the plaintiff arising from

the same occurrence.

**Credibility of a Witness** The believability of a witness.

Crime An offense which is enumerated in any law governing

conduct as a misdemeanor or a felony. (Note: Infractions

and violations are not crimes.)

**Cross-Examination** The questioning by a party or his attorney of the other party

or a witness called by the adverse party.

**Decision** A judgment or decree pronounced by a court in settlement

of a controversy submitted to it by way of authoritative

answers to the questions raised before it.

**Defendant** 1. Civil case – party being sued.

2. Criminal case – the party accused of committing the

offense charged.

**Deposition** Sworn written testimony of a witness who may not be

present in court.

**Direct Examination** The questioning of a party or a witness called by the

questioning party or the party's attorney.

**Disposition** Final decision or judgment of any case.

**Dissent / Dissenting Opinion** An opinion of a judge or justice of an appellate court which

does not agree with the opinion of the majority of the

judges.

**Eligible Youth** A person who is eligible for youthful offender treatment.

**Estoppel** A bar or impediment which precludes allegation or denial

of certain facts in light of previous deeds, or statements.

**Evidence** Any form of proof or probative matter legally presented at

the trial of an issue by the acts of the parties and through witnesses, records, documents, concrete objects, etc., for the purpose of introducing relief in the minds of the court

or the jury.

**Exhibit** A paper, document, item, or picture provided during trial

and which is submitted to the courts.

213 – Miscellaneous Section

Gross Deviation A deviation that is considerably greater than lack of

ordinary care. Relevant terms such as "negligent" and

"with negligence" have the same meaning.

**Hearsay** Out of court statements offered to prove the truth or falsity

of the matter asserted in the statements.

**Impeaching a Witness**To weaken the credibility of a witness by showing bias,

prejudice, or interest in the outcome of the action or other

relevant factors.

**In Camera** In the judge's office or chambers out of the presence of the

jury and the public.

**Infant** A person under the age of 18.

In forma Pauperis Describes permission given to a poor person (indigent) to

proceed with a case without payment of fees and costs.

**Injunction** An order of a court ordering a party to stop doing or to start

doing a specific act.

**Inter alia** Among other things.

Judicial Notice The judge may personally acknowledge or he may instruct

the jury that a certain fact submitted into evidence is true and need not be proven. These facts are those all persons would have knowledge of the particular fact or be able to ascertain by consulting indisputable sources. (i.e., Montana

is a state)

**Jurisdiction** The geographical and "type" limitations of a court. For

example: Westchester County Family Court has jurisdiction over family matters within the limits of <u>Westchester</u>

County.

Miranda Warning A warning reciting a person's constitutional rights which is

read to that person before initiating custodial questioning.

Misdemeanor An offense in which the sentence imposed upon conviction

is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment for any term

of 1 year or less.

Mittimus An order from a court to a Sheriff or person responsible for

a jail facility to accept and hold someone in custody. This

is the same as an Order of Commitment.

**Motion** An oral or written request made by a party to the court.

# **Negligently**

...a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense which he/she consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation.

**Nunc Pro Tunc** 

Allowing acts to be done after the time when they should have been done with retroactive effects.

Offense

... a crime for which a sentence of imprisonment or a fine or death is authorized. Offenses are classified as felonies or misdemeanors.

**Official Proceeding** 

...means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

**Omnibus Motion** 

A motion made by a party in an action which contains several requests in one application for relief to the court.

**Omnibus Hearing** 

A hearing to examine and decide on pretrial motions. Usually held for jury trials but it is also helpful for bench trials.

**Parol Evidence** 

Oral or verbal evidence spoken by a party or a witness.

**Peremptory Challenge** 

A phrase used in a case report when an opinion is written by the whole court rather than by one single named judge. An objection to a prospective juror for which no reason need be given.

**Petitioner** 

The party bringing an appeal to a higher court or party requesting relief by means of a temporary or permanent order of protection or an injunction.

**Plaintiff** 

The party bringing the action - i.e., the party suing in a civil action or the state or city filing the criminal charge.

Plea

A criminal defendant's response to the charges, i.e., guilty, nolo contendere, or not guilty.

**Pleadings** The written allegations of what is claimed by one side or

denied by the other which disclose to the court and/or the

jury the matter in dispute.

**Practipe** A directive, usually to a sheriff or constable, giving specific

instructions on where and how a paper should be delivered.

**Preliminary Injunction** An order issued after notice and hearing that restrains a

person from doing a specific thing.

**Preponderance of Evidence** The evidence submitted by one side is more than the

evidence submitted by the other side.

**Presentence Report** A report issued by the probation department or other

agency containing the defendant's prior record and other relevant information about him which will guide the judge

in formulating a just sentence.

Privileged Communications Communications made between persons in certain

relationships which are not subject to disclosure into evidence without the permission of the person or persons

benefited by the privilege.

**Pro Se** A person appearing in court for himself; action without the

aid of an attorney.

**Prosecutor** A district attorney, attorney general, their assistants, or any

other public official who represents the people in a criminal

action.

**Real Evidence** Evidence furnished by the viewing or inspecting of items

themselves as distinguished from a description of them by a

witness.

Replevin An action brought for the owner of items to recover

possession of those items when those items were

wrongfully taken or are being wrongfully kept.

**Reply** A plaintiff's response to a defendant's answer when the

answer contains a counterclaim.

**Res Ipsa Loquitur** A rebuttal presumption that the defendant was negligent,

which arises upon showing that the instrumentality causing the injury was in the defendant's exclusive control and that the accident was one which ordinarily does not happen in

the absence of negligence.

**Res Judicata** A rule which prevents the rehearing of a matter which has

already been fully decided.

Respondent

The party against who an appeal is taken, i.e., the appellee or a party against whom relief is sought by a protective order, temporary restraining order, or injunction.

**Sandoval Hearing** 

A hearing to determine if and/or to what extent the prosecution may use the prior convictions of the defendant for the purposes of impeachment of the defendant's credibility if he chooses to testify.

Scienter

A degree of knowledge which makes an individual legally responsible for his act.

**Search Warrant** 

A court order directing a police officer to conduct a search of a designated premise, vehicle, or person for the purpose of seizing designated property so obtained.

**Statute of Frauds** 

A common name for an old English statute, the intent of which has been adopted in the Uniform Commercial Code. It provides that no actions shall be maintained in certain contracts unless those contracts are in writing.

Statute of Limitations

A statute which declares that no actions of a specified kind be tried after a specified period of time after the cause of action arose.

**Stipulation** 

An agreement by the parties or their attorneys about some matter in the case.

Subpoena

An official order to a person to attend court and give testimony.

**Subpoena Duces Tecum** 

A subpoena requiring the witness to bring with him and produce specified physical evidence.

**Summons** 

A process issued by a local court directing a person to appear before it at a designated future time in connection with a particular proceeding.

**Suppression Hearing** 

A pretrial hearing upon a motion to exclude evidence in which the judge must decide whether or not improper procedures were used to obtain evidence which should therefore be excluded from the trial.

**Testimony** 

An oral declaration made by a witness or party <u>under oath</u>.

**Trier of Fact** 

The person or persons who decide what are the true facts of the issue, i.e., the judge in a trial without a jury or with the jury.

Vacate

To set aside a previous action, i.e., a trial date.

**Verdict** The decision of a jury.

**Verify** To confirm or substantiate by oath. A swearing to a fact by

the truth.

Voir Dire A questioning of prospective jury members by the judge

and/or attorneys to see if any of them should be disqualified

or removed by challenge.

Examination of a witness about foundation on a specific

line of testimony.

# RULES FOR COURTS OF LIMITED JURISDICTION TRAINING AND CERTIFICATION OF JUDGES

- **Rule 1. Scope of rules.** A. DEFINITIONS. As used in these rules, the following definitions apply:
- (1) "Commission" means the commission on courts of limited jurisdiction established by the supreme court.
- (2) "Governing body" means:
  - (a) for a justice court:
    - (i) the board of county commissioners; or
    - (ii) the commissioners for the consolidated local government; and
  - (b) for a city court or municipal court:
    - (i) the city council; or
    - (ii) the commissioners for the consolidated local government.
- (3) "Judge" means:
  - (a) a municipal court judge;
  - (b) a justice of the peace; or
  - (c) a city judge.
- B. WHO MUST BE CERTIFIED. Pursuant to MCA 3-1-1502 and 3-1-1503, a judge selected for a term of office on or after January 6, 1986, may not assume the functions of office unless he or she has filed a certificate of completion or a temporary certificate with the county clerk and recorder in that district.

- **Rule 2. Certification of new judges.** A. DUTIES OF COURT ADMINISTRATOR. Under the direction of the commission, the supreme court administrator shall:
- (1) send governing bodies a letter containing information on certification of judges;
- (2) send to each new judge an information packet containing:
  - (a) an application for temporary certification;
  - (b) a questionnaire on what books, references, and other materials are available in the judge's office;
  - (c) a checklist of materials needed by the judge.
  - (d) information on the next available training session;
  - (e) notification of options in case of failure to obtain a certificate of completion, including information on available study materials; and
  - (f) a copy of these rules;
- (3) notify the Montana Magistrates' Association of the name and address of each new judge;
- (4) notify the commission of the name and address of each new judge; and
  - (5) monitor the temporary certificate status of each new judge and report to the commission on the status of each application for a temporary certificate.
- B. DUTIES OF NEW JUDGE. A new judge shall:
- (1) return the completed request for a temporary certificate to the supreme court administrator;
- (2) return the completed questionnaire to the supreme court administrator;
- (3) apply to the supreme court administrator for enrollment in the next semiannual training session; and
- (4) enroll with the supreme court administrator for testing for a certificate of completion.
- C. DUTIES OF GOVERNING BODY. The governing body shall:
- (1) immediately notify each newly elected or appointed judge of the requirement to contact the supreme court administrator's office.
- (2) complete the notification of election or appointment and mail it to the supreme court administrator's office; and

## Rule 3. Temporary certificate. A. APPLICATION.

- (1) A judge shall apply in writing to the commission for a temporary certificate;
  - (a) immediately upon assuming office as a successor or new judge; or

- (b) within 15 days of receipt of notification by the commission that a certificate of completion has expired or that a renewal will not be granted.
- (2) The commission shall act promptly upon an application for a temporary certificate and may take action appropriate to the circumstances.

#### B. ISSUANCE.

- (1) The commission may issue temporary certificates to judges under the terms and conditions set forth in Rule 3B(3).
- (2) A temporary certificate may contain conditions considered appropriate by the commission. The certificate is effective for a period not to exceed 6 months and has the same effect as a certification of completion.
- (3) (a) The commission may issue a temporary certificate to a judge who:
  - (i) is appointed or elected for the first term of office following a general election and after the course of education and training has been held;
  - (ii) did not attend the required course of education and training because of personal illness, death in the family, or other good cause and was excused by the commission;
  - (iii) has failed to obtain a certification of completion before assuming office;
  - (iv) has failed to obtain a renewal of the certificate of completion; or
  - (v) is eligible for other good cause.
  - (b) The commission may issue a temporary certificate to a judge who has received a waiver of training from the commission.

# Rule 4. Education and training — judicial education policy — certificate of completion.

- (1) The commission shall prescribe an annual course of education and training that must be completed by all judges of courts of limited jurisdiction. The course of education and training must include the successful completion of a certification test pursuant to Rule 6, and such other testing as the commission shall authorize. Attendance is required at all training sessions pursuant to MCA 3-10-203 and MCA 3-11-204. Only presiding judges and their clerks in Montana courts of limited jurisdiction justice, city, and municipal courts shall be allowed to attend training sessions.
- (2) The commission hereby establishes a "Judicial Education Policy" which shall address issues relating to implementation of education and training of judges, including but not limited to; special training for new judges or judges exhibiting deficiency in a particular subject matter, scheduling of training conferences; conference registration; testing; attendance requirements and penalties for violation thereof.

- (3) The commission shall issue a certificate of completion to all judges who successfully complete the course of education and training.
- (4) A judge must file with the clerk and recorder of that jurisdiction a certificate of completion:
  - (a) at the beginning of the judge's term of office; and
  - (b) after each general election; or
  - (c) every 4 years after the date of taking office.

#### Rule 5. Waiver.

- A. WAIVER COMMITTEE. The commission shall annually name a three-member waiver committee. The committee shall recommend action to the commission on all applications from judges for waivers of annual training, and shall act on all applications for waivers of training for substitute judges.
- B. WAIVER OF ANNUAL TRAINING. (1) To obtain a waiver of attendance at a training conference, the judge must make written application to the commission, stating the reason why a waiver is requested. Except for requests for a waiver under B(2), the request for a waiver must be submitted to the commission at least forty (40) days prior to the scheduled date the training conference will begin. A notice of the waiver committee's proposed recommendation to the commission will be sent to the applicant five (5) days prior to the commission's action thereon. If the applicant objects to the proposed recommendation, the applicant may appear at the next regular commission meeting and present his or her position to the commission. The commission shall consider the request for waiver and shall advise the judge in writing of its determination at least ten (10) days prior to the scheduled date the training conference will begin.
- (2) The commission may grant a waiver of annual training because of illness, death in the family, or other good cause. Only one annual training session may be waived by virtue of attendance at an out-of-state training program.
- (3) Any request for permission to leave a biannual training conference prior to its completion shall be presented to the commission and shall constitute an application for a waiver. Emergencies shall be addressed to the commission at the training conference for approval.
- C. WAIVER OF TRAINING FOR SUBSTITUTE JUDGES. (1) When a substitute judge is named to act for an absent judge or perform daily operations on an occasional basis pursuant to MCA 3-10-231(2) through (5), the substitute judge is required to obtain a waiver of training from the waiver committee. A substitute judge must be of good moral character and must have good community support, a sense of community standards, and a basic knowledge of court procedure.

- (2) The elected or appointed judge must complete and submit the request for waiver of training for the substitute judge. The prescribed forms may be obtained by writing to the commission.
- (3) The waiver committee shall review each request for waiver of training and shall advise the judge of its decision. No more than five substitute judges in one jurisdiction may receive a waiver of training in 1 year.
- (4) If the waiver committee does not approve the application for waiver of training for the substitute judge, the judge making the application may file a written request with the commission requesting a review of the matter by the commission. Upon receipt of the judge's written request for review, the commission shall consider the matter at the next regular meeting and advise the judge of its decision. The judge making the request is encouraged to appear at the commission meeting where the matter is being considered.

#### Rule 6. Certification test.

- A. PREPARATION. Beginning in November 1986 and every 4 years thereafter, the commission shall prepare a certification of completion test which shall be administered after the general election in conjunction with the training conference. This test must be used for all interim certification testing. The test must cover subjects commonly encountered by judges of courts of limited jurisdiction.
- B. ADMINISTRATION. Under the supervision of the commission, the supreme court administrator shall monitor the integrity of the certification test, administer and grade the tests, and notify the judges of the test results. The commission shall establish what constitutes a passing grade.
- C. OPTIONS IN CASE OF FAILURE. (1) A judge who fails the certification test may request from the commission an opportunity to retake the test. The test may be retaken only once unless there is a showing to the commission of exceptional circumstance justifying an additional retest.
- (2) Prior to retaking the certification test, the judge shall apply to the commission for a temporary certificate. The commission may grant a temporary certificate as provided in Rule 3B and may also require the judge to meet certain conditions prior to allowing the judge to retake the test. The judge may be required to review videos, receive special assistance, or complete an independent study of selected materials.

- (3) Upon completion of the temporary certificate conditions, the commission may authorize the judge to retake the certification test.
- (4) A certification test must be retaken within a period of time set by the commission, but in no event may it be taken sooner than 30 days or later than 6 months after failing the certification test.
- Rule 7. Failure to obtain certification notice. (1) Upon failure of a judge to obtain a certificate and after the expiration of the period within which an application for a temporary certificate may be made, the judge is disqualified and there is a vacancy in the office.
- (2) The commission shall send notice of the disqualification and vacancy to:
  - (a) the judge;
  - (b) the supreme court;
  - (c) the clerk and recorder of the judge's jurisdiction; and
  - (d) the governing body.

# MONTANA SUPREME COURT COMMISSION ON COURTS OF LIMITED JURISDICTION JUDICIAL EDUCATION POLICY

- 1. NEW JUDGES. Upon notification of election or appointment pursuant to MCA 3-1-1503 or MCA 13-15-405, the Court Administrator's Office shall without unnecessary delay, mail or deliver available training materials, together with instructions, to the elected or appointed judge.
- 2. TRAINING CONFERENCES. Pursuant to MCA 3-10-203 and MCA 3-11-204, the Commission will conduct two training conferences each year Spring and Fall.
- 3. TRAINING CONFERENCE SCHEDULING. At each training conference judges will be notified of the dates and location of the next training conference to the extent that the date and location are known. Judges are responsible for calendaring training conferences.
- 4. CONFERENCE REGISTRATION. It is the duty of each judge to notify the Court Administrator's Office of a change of address for the court or judge. The Court Administrator's Office shall mail registration materials to each judge at least 45 days prior to the beginning of a conference. Registration materials shall include a registration form, "Tentative Agenda" identifying the beginning and ending of the conference, a room reservation form if provided by the hotel, and other appropriate information. Each judge shall:
  - (1) complete the registration form including questions relating to the court;
  - (2) make appropriate arrangements with the city or county for payment of the registration fee, and
  - (3) return the completed form together with the registration fee to the Court Administrator's Office by the deadline listed.
- 5. HOTEL RESERVATIONS. The conference facility will block a sufficient number of rooms and will set a deadline for making reservations. Each judge is responsible for making room reservation within the allotted time.
- 6. NON-SMOKING ENVIRONMENT. Smoking is not permitted in classrooms, breakout rooms, break areas, hallways adjacent to any area used by judges, or during meals provided by the conference. Smoking is only allowed outside the conference facility, in a judge's private room, or areas specifically designated by the conference facility as smoking areas.

7. BEGINNING OF CONFERENCE. All judges shall be present when the conference begins unless a waiver has been granted by the Commission.

(See Rule 5B of Limited Jurisdiction Training and Certification of Judges.)

- 8. SIGN IN / SIGN OUT. Judges should plan their arrival to allow time to acquaint themselves with the layout of the conference facility and location of the classes. Judges are required to sign in at the conference registration table and pick up their conference folder during the times listed on the Tentative Agenda. Judges will also be required to sign out after the last session of the conference.
- 9. DAILY SCHEDULE. Judges are responsible for knowing and complying with the daily class schedule, including times scheduled for breaks and lunch. Attendance at every class in its entirety is mandatory unless excused by the Commission.

(See Rule 5B Courts of Limited Jurisdiction Training and Certification of Judges.)

- (1) Judges who attend classes while exhibiting signs of alcohol or other chemical impairment will be removed from the class and will not receive credit for attending that class. (See Rule 11, below.)
- 10. BREAKS. Classes will be scheduled with at least one (1) break each hour. Judges should promptly return to the classroom before the class is scheduled to begin. Judges should remain in the classroom for the **entire session** unless a physical condition requires a break more often.
- 11. CERTIFICATES. Conference certificates will be mailed to each judge after the conference is concluded. Judges failing to attend all conference classes in their entirety, unless excused by the Commission, will not be given a conference certificate and will not receive credit for the conference.
- 12. TESTING. In addition to the certification test as provided in *Rule 6 Courts of Limited Jurisdiction and Certification of Judges*, judges are subject to testing during all training conferences, depending upon the educational objectives and the material presented.

Testing results, other than the certification test, will *not* be reported on a pass/fail basis, but will be used to determine if:

- (1) the material presented was adequately covered and understood by a judge(s);
- (2) judge(s) would benefit from further instruction in any area of the law, and
- (3) an individual judge needs special assistance on a specific subject matter.

- 13. VIOLATION OF POLICY. Judges failing to attend a conference in its entirety, including late registration, failing to attend classes, late for classes, or leaving classes early, shall be grounds for action by the Commission. Upon determination that a judge has violated the attendance policy, the Commission may:
  - (1) withhold a certificate of completion, creating a violation of MCA 3-10-203 or MCA 3-11-204;
  - (2) require a judge to appear before the Commission to explain a lack of attendance;
  - (3) require a judge to attend, at his or her own expense, a State Bar CLE or other structured educational class as a makeup;
  - (4) notify the city or county of the judge's violation of attendance policy, or
  - (5) take other appropriate action after considering the circumstances of non-attendance.
- 14. AMERICANS WITH DISABILITIES ACT (ADA). The Commission will make reasonable accommodations for any judge covered by the ADA with respect to training, certification, and participation at training conferences. Due to the logistics of planning a statewide conference, any judge claiming reasonable accommodations under the ADA should endeavor to do the following not less than 90 days prior to a conference:
  - (1) Notify the Commission in writing of his or her request for reasonable accommodations at a training conference;
  - (2) List with reasonable specificity what accommodations are requested.

# MONTANA UNIFORM RULES FOR THE JUSTICE AND CITY COURTS

- **Rule 1.** Scope of Rules. A. These rules, together with the Montana Justice and City Court Rules of Civil Procedure, govern the practice of all justice and city courts of the State of Montana.
- B. No local rules shall be adopted in conflict with these rules.
- **Rule 2.** Multi-Judge Courts Allocation of Cases. A. If there is more than one justice of the peace in the same county, or more than one city judge in the same city, the judges shall by agreement divide the court caseload, civil and criminal, among the judges.
- B. In the event that an agreement cannot be reached, upon application of one of the judges listed above, the district judge of the judicial district or the chief district judge in a multi-judge district, shall enter an order which equitably apportions the caseload among the judges considering whether the judges are full or part time.
- C. All law enforcement agencies within the court's jurisdictional area shall be informed of the order dividing the jurisdictional area. Complaints shall be filed with the court in compliance with the division order of the judges. A complaint improperly filed shall be reassigned to the proper judge and not dismissed.
- **Rule 3. Files and Exhibits.** A. The court is the custodian of all court files. Files shall not be taken from the court without the consent of the judge.
- B. Every exhibit placed on file or offered in evidence shall be held in the custody of the court. Unless there is good reason why the original of an exhibit should be retained, upon application, the court may order a copy filed in its place. Public records offered in evidence may be withdrawn at the conclusion of the hearing on order of the court.
- C. Exhibits may be withdrawn by the party offering them thirty days after a judgment has become final. Forty-five days after a judgment has become final, a party may apply to the court for an order to dispose of exhibits, and shall notify the other party of said application. Twenty days after mailing of said notice the court may enter its order authorizing disposition of exhibits.

- **Rule 4. Docket and Index.** A. The court shall assign each citation and complaint a docket or case number. All docket or case numbers shall be in numerical order.
- B. The court shall maintain an alphabetical index to the docket as provided under MCA 3-10-503.
- Rule 5. Form and Quality of Paper Filed. A. All papers, except the Uniform Complaint and Notice to Appear, shall be written in ink or typed on a good grade of white paper 8½" by 11" in size.
- B. At the upper left margin of the first page of all papers filed with the court, shall be the name, address, and telephone number of the responsible attorney or party.

Below the responsible party information shall appear the title of the court, the case title and the docket number.

- **Rule 6. Motions.** A. All motions or application for orders in civil or criminal cases must be made in writing as required by Rule 9 of the Montana Justice and City Court Rules of Civil Procedure. This rule does not apply to motions made during the progress of a trial.
- B. At the time of filing the motion, there shall be filed supporting affidavits or documents, if referred to in the motion or notice of motion.
- C. Failure to file briefs may subject the motion to summary ruling. Failure to file a brief within five days by the moving party shall be deemed an admission that the motion is without merit. Failure to file an answer brief by the adverse party within ten days shall be deemed an admission that the motion is well taken. Reply briefs are optional and failure to file will not subject a motion to summary ruling.
- D. The court may order oral argument on the motion.
- E. Unless oral argument is ordered, or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of the applicable time limits.
- F. The requirement of a brief is fulfilled by a written statement or summary setting forth the facts and basis of the motion. The brief may be made a part of or attached to the motion.

- **Rule 7.** Ex Parte Matters. All requests for extension of time or continuances and other permissible ex parte matters shall be in writing. The request must provide that the opposing party has been contacted and given reasonable notice of:
  - a. the time and place of the ex parte conference or meeting;
  - b. the substance of the order sought, and
  - c. whether the party opposes the matter.
- **Rule 8.** Presenting Orders, etc. A. It shall be the duty of a party obtaining any order, judgment, warrant, summons, subpoena, or like order to present the same in written form for the signature of the judge at the time of applying for the same.
- B. Two copies of any order, warrant, summons, subpoena, or like order requiring service shall be presented to the judge for signature, both shall be signed by the judge as original orders. One shall be retained as part of the court file, and the other used for service and returned to the court after service
- **Rule 9. Witness Subpoenas.** A. When a case is set for trial, the parties shall file with the court a written request for subpoenas for all known witnesses, and for any additional witnesses as soon as they are ascertained.
- B. The requesting party shall cause the subpoenas to be served as provided by law.
- C. No motion for continuance will be entertained unless a substantial compliance with this rule is shown.
- **Rule 10. Duty to Make Service.** A. It shall be the duty of the parties when personal service is required of an order, warrant, summons, subpoenas, or any such order, to cause it to be delivered to the chief of police, sheriff, or other qualified person for service.
- B. It shall be the duty of the parties in all cases to simultaneously serve their adversaries with a copy of all motions, pleas, and briefs on the same day as filing with the court.
- **Rule 11. Filing of Discovery.** Depositions upon oral or written examinations, interrogatories, and answers thereto, requests for production of documents and responses thereto, shall not be routinely filed. When any motion is filed making reference to discovery, the party filing the motion shall submit with the motion relevant portions of unfiled documents.

- **Rule 12. Request for Jury Trial.** A request for a jury trial made within seven (7) days of the time set for trial may be treated by the court as a motion for continuance and the trial date vacated and reset.
- **Rule 13. Decorum.** A. When the court convenes, all persons in attendance in the courtroom shall rise until the judge has taken the bench.
- B. The judge of the court shall, when presiding in open court, wear judicial robes.
- C. All persons shall, when in the courtroom, wear appropriate clothing.

## **Rule 14. Representation.** A. A party may represent oneself, or be represented by counsel.

- B. No representation can be made on behalf of a party by another person except an attorney duly licensed by the State of Montana. A nonresident attorney may be permitted to represent a party upon a motion of a licensed resident attorney as provided under MCA 37-61-208.
- C. Death or removal of an attorney shall be governed by Rule 10 of the Uniform District Court Rules.
- **Rule 15. Office Hours.** A. On judicial days, regular office hours shall be designated by the court for the transaction of business. Notice of the hours shall be posted in the court's office.
- B. The court shall establish a regular time for initial appearances and arraignments on traffic and criminal actions. Notice of the time set shall be posted in the court's office.
- **Rule 16. Pre-trial Conference.** A. Pre-trial conferences shall be governed by Rule 14 of the Montana Justice and City Court Rules of Civil Procedure.
- B. Unless otherwise ordered by the court no pre-trial conference will be set. A party may request a pre-trial conference not less than seven (7) days before trial.
- C. An attorney representing a party at a pre-trial conference shall appear with sufficient authority from the party so as to expedite the settlement of the action.

- **Rule 17. Payment of Bonds.** A. Bonds established by the judge in a schedule of bail for offenses may be paid to the court during business hours on every day except nonjudicial days. The schedule of bail shall be posted in the court's office.
- B. Bonds shall only be returned in the name of the person who deposited the same.
- **Rule 18.** Continuances. A. A continuance or resetting of a trial or hearing may be granted upon showing of good cause. The motion for continuance must be made in writing and served upon the opposing party or counsel.
- B. No continuance will be granted if not timely made. A continuance will not be granted if a party appears at the time set for a hearing or trial unprepared.
- C. A continuance will not be granted except for good cause, without timely notice given to all parties.
- **Rule 19. Jury Instructions.** A. In criminal actions, the general criminal jury instruction set forth in the Montana Judges Deskbook: Municipal, Justice, and City Courts shall be given.
- B. In civil actions the general civil jury instruction set forth in the Montana Judges Deskbook: Municipal, Justice, and City Courts shall be given.
- C. Any party may request special jury instructions. All proposed jury instructions and verdict forms must be delivered to the court in duplicate and a copy served upon all opposing parties not less than twenty-four (24) hours before trial.
- **Rule 20. Voir Dire.** Unless good cause shown, voir dire examination shall be limited to thirty (30) minutes for each party. Requests for additional time are to be made prior to voir dire examination.
- **Rule 21. Time Computation.** A. Time shall be computed as provided under Rule 6 of the Montana Justice and City Court Rules of Civil Procedure.
- B. When the period of time prescribed or allowed is ten days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded.