

*******RULE 62*******

<u>MONTANA'S PRESENT RULE :</u>	<u>RECOMMENDED RULE:</u>
<p>Rule 62. Stay of Proceedings to Enforce a Judgment</p> <p>(a) [Superseded – M. R. App. P., Rule 7].</p> <p>(b) Stay on Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the district court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).</p> <p>(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the district court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.</p> <p>(d) [Superseded. – M. R. App. P., Rule 7].</p>	<p>Rule 62. Stay of Proceedings to Enforce a Judgment</p> <p>(a) Automatic Stay; Exceptions for Injunctions, and Receiverships. Except as stated in this rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 14 days have passed after its entry. But unless the court orders otherwise, the following are not stayed after being entered, even if an appeal is taken:</p> <ul style="list-style-type: none">(1) an interlocutory or final judgment in an action for an injunction; or(2) receivership. <p>(b) Stay Pending the Disposition of a Motion. On appropriate terms for the opposing party's security, the court may stay the execution of a judgment – or any proceedings to enforce it – pending disposition of any of the following motions:</p> <ul style="list-style-type: none">(1) under Rule 50, for judgment as a matter of law;(2) under Rule 52(b), to amend the findings or for additional findings;(3) under Rule 59, for a new trial or to alter or amend a judgment; or(4) under Rule 60, for relief from a judgment or order.

*******RULE 62 (continued)*******

MONTANA'S PRESENT RULE
(continued):

(e) Stay in Favor of the State of Montana or Agency Thereof. When an appeal is taken by the state of Montana or an officer or agency or governmental subdivision thereof, and the operation or enforcement of the judgment is stayed, no security shall be required from the appellant. In all cases, the parties may by written stipulation waive the filing of security.

(f) [Omitted].

(g) Power of Appellate Court Not Limited. The provisions in this rule do not limit any power of the supreme court of the state of Montana or of a justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of Judgment upon Multiple Claims. When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

RECOMMENDED RULE (continued):

(c) Injunction Pending an Appeal. While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

(d) Stay with Bond on Appeal. If an appeal is taken, the appellant may obtain a stay by supersedeas bond, except in an action described in Rule 62(a)(1) or (2). The bond may be given upon or after filing the notice of appeal or after obtaining the order allowing the appeal. The stay takes effect when the court approves the bond.

(e) Stay Without Bond on an Appeal by the State of Montana, Its Officers, or Its Agencies. The court must not require a bond, obligation, or other security from the appellant when granting a stay on an appeal by the state of Montana, its officer, or its agencies or on an appeal directed by a department of the state of Montana.

(f) Security Other Than Bond - Stipulation of Parties.

(1) In all cases under this rule where supersedeas bond or other terms that secure the opposing party's rights are required, the court, in its discretion, may allow alternate forms of security other than a bond, when adequate equivalent security is provided and the appealing party can show that the judgment creditor's recovery is not in jeopardy.

*******RULE 62 (continued)*******

	<p><u>RECOMMENDED RULE (continued):</u></p> <p>(2) In all cases, the parties may by written stipulation waive the filing of security.</p> <p>(g) Appellate Court's Power Not Limited. This rule does not limit the power of the appellate court or one of its judges or justices:</p> <p>(1) to stay proceedings – or suspend, modify, restore, or grant an injunction -- while an appeal is pending; or</p> <p>(2) to issue an order to preserve the status quo or the effectiveness of the judgment to be entered.</p> <p>(h) Stay with Multiple Claims or Parties. A court may stay the enforcement of a final judgment entered under Rule 54(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.</p>
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COMMITTEE NOTES

The language of Rule 62 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

Additionally, Rule 62(a), providing for a 14-day automatic stay period, except in cases of injunction and receivership, has been reinstated, following the Federal Rule. It is unclear to the Committee why Rule 62(a) was previously abrogated.

Subsection (f)(2) preserves language from previous Rule 62(e) ("In all cases, the parties may by written stipulation waive the filing of security."). Subsection (f)(1) is new and substantive. Because the definition of supersedeas bond has never been entirely clear and, in some cases, works harsh consequences, the decision was made to allow for the provision of other forms of security such

as cash (as provided in § 25-1-401, MCA), an appropriate irrevocable letter of credit, a certificate of deposit, or other security in the court's discretion.

Stay of execution and bond practice is also governed by Rules 22 and 23 of the Montana Rules of Appellate Procedure.

*******RULE 62.1*******

	<p><u>RECOMMENDED RULE:</u></p> <p>Rule 62.1. Indicative Rule on a Motion for Relief That is Barred by a Pending Appeal.</p> <p>(a) Relief Pending Appeal. If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may:</p> <ul style="list-style-type: none">(1) defer considering the motion;(2) deny the motion; or(3) state either that it would grant the motion if the Supreme Court remands for that purpose or that the motion raises a substantial issue. <p>(b) Notice to the Supreme Court. The movant must promptly notify the Supreme Court clerk if the district court states that it would grant the motion or that the motion raises a substantial issue.</p> <p>(c) Remand. The district court may decide the motion if the Supreme Court remands for that purpose.</p>
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COMMITTEE NOTES

Montana adopts new Rule 62.1, following Federal Rule 62.1, allowing “indicative” rulings where a district court has lost jurisdiction because a matter is pending before the Supreme Court, but it may be beneficial to obtain a district court ruling. The rationale for adopting this new rule is the same as the Federal rationale. The Federal rationale for Federal Rule 62.1 from the Federal Committee Notes is as follows:

This new rule adopts for any motion that the district court cannot grant because of a pending appeal the practice that most courts follow when a party makes a Rule 60(b) motion to vacate a judgment that is pending on appeal. After an appeal has been docketed and while it remains pending, the district court cannot grant a Rule 60(b) motion without a remand. But it can entertain the motion and deny it, defer consideration, or state that it would grant the motion if the court of appeals remands for that purpose or state that the motion raises a substantial issue. Experienced lawyers often refer to the suggestion for remand as an “indicative ruling.” (Appellate Rule 4(a)(4) lists six motions that, if filed within the relevant time limit, suspend the effect of a notice of appeal filed before or after the motion is filed until the last such motion is disposed of. The district court has authority to grant the motion without resorting to the indicative ruling procedure.)

This clear procedure is helpful whenever relief is sought from an order that the court cannot reconsider because the order is the subject of a pending appeal. Rule 62.1 does not attempt to define the circumstances in which an appeal limits or defeats the district court’s authority to act in the face of a pending appeal. The rules that govern the relationship between trial courts and appellate courts may be complex, depending in part on the nature of the order and the source of appeal jurisdiction. Rule 62.1 applies only when those rules deprive the district court of authority to grant relief without appellate permission. If the district court concludes that it has authority to grant relief without appellate permission, it can act without falling back on the indicative ruling procedure.

To ensure proper coordination of proceedings in the district court and in the appellate court, the movant must notify the circuit clerk under Federal Rule of Appellate Procedure 12.1 if the district court states that it would grant the motion or that the motion raises a substantial issue. Remand is in the court of appeals’ discretion under Appellate Rule 12.1.

Often it will be wise for the district court to determine whether it in fact would grant the motion if the court of appeals remands for that purpose. But a motion may present complex issues that require extensive litigation and that may either be mooted or be presented in a different context by decision of the issues raised on appeal. In such circumstances the district court may prefer to state that the motion raises a substantial issue, and to state the reasons why it prefers to decide only if the court of appeals agrees that it would be useful to

decide the motion before decision of the pending appeal. The district court is not bound to grant the motion after stating that the motion raises a substantial issue; further proceedings on remand may show that the motion ought not be granted.

*******RULE 63*******

<p><u>MONTANA'S PRESENT RULE:</u></p> <p>None.</p>	<p><u>RECOMMENDED RULE:</u></p> <p>Rule 63. Judge's Inability to Proceed</p> <p>(a) Replacement Judge May Proceed. If a judge conducting a hearing or trial is unable to proceed, any other judge may proceed upon certifying familiarity with the record and determining that the case may be completed without prejudice to the parties. In a hearing or a nonjury trial, the successor judge must, at a party's request, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor judge may also recall any other witness.</p> <p>(b) Chief Justice to Assign. The successor judge shall be assigned by the chief justice of the Supreme Court by written order and may be from a different district.</p>
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COMMITTEE NOTES

For reasons which are unclear, Montana did not have a counterpart to Federal Rule 63. It appears that Montana statutes, particularly §§ 3-5-111 and 112, MCA do not directly deal with a situation in which a judge is unable to act because of disability, death or disqualification which arises mid-trial or mid-hearing. Accordingly, it was decided to follow the Federal Rule. Prior to the 1991 amendment to Federal Rule 63, the rule authorized a successor judge to continue with the proceedings only when the original judge's disability arose after a verdict was returned or findings of fact and conclusions of law were filed. Thus, most circuit courts of appeal held that if the judge's disability occurred at an earlier point in the proceedings, a new trial was necessary. *See 12 Moore's Federal Practice, 3d, § 63 App. 101[1].* The amended rule allows a successor judge to assume duty and continue the proceedings at any time after a trial or hearing is commenced, if the judge is able to certify familiarity with the record and make a determination that the case may be completed without prejudice to the parties.

The rule provides for assignment of the replacement judge by the chief justice because replacements envisioned by this rule will usually be in emergencies and the regular rotation rules of the particular district may interfere with speedy replacement.

*******RULE 64*******

<u>MONTANA'S PRESENT CHAPTER TITLE AND RULE:</u>	<u>RECOMMENDED CHAPTER TITLE AND RULE:</u>
VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS	TITLE VIII. PROVISIONAL AND FINAL REMEDIES AND SPECIAL PROCEEDINGS
RULE 64. Seizure of Person or Property	Rule 64. Seizing a Person or Property
<p>At the commencement of and during the course of an action, all remedies providing for seizure of person or property for the purpose of securing satisfaction of the judgment ultimately to be entered in the action are available under the circumstances and in the manner provided by law.</p>	<p>(a) Remedies Under Montana Law – in General. At the commencement of and throughout an action, every remedy is available that, under Montana law, provides for seizing a person or property to secure satisfaction of the potential judgment.</p> <p>(b) Specific Kinds of Remedies. The remedies available under this rule include the following – however designated and regardless of whether Montana procedure requires an independent action:</p> <ul style="list-style-type: none">• arrest;• attachment;• garnishment;• replevin;• sequestration; and• other corresponding or equivalent remedies.

COMMITTEE NOTES

The language of Rule 64 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. These changes are intended to be stylistic only.

*******RULE 65*******

<u>MONTANA'S PRESENT RULE:</u>	<u>SUBSTANTIVE CHANGES TO RULE:</u>
<p>RULE 65. Injunctions</p> <p>The procedure for granting restraining orders and temporary and permanent injunctions shall be as provided by statute.</p>	<p>RULE 65. Injunctions</p> <p>The procedure for granting restraining orders and temporary and permanent injunctions shall be as provided by statute.</p>

COMMITTEE NOTES

The Committee opted to continue Montana's practice of governing injunction practice by statute. There is substantial case law in Montana regarding injunction procedure. The statutes and case law provide adequate guidance.

*******RULE 65.1*******

<u>MONTANA'S PRESENT RULE:</u>	<u>RECOMMENDED RULE:</u>
Federal Rule 65.1 is labeled "Proceedings Against A Surety."	No Montana Rule 65.1.

COMMITTEE NOTES

The Committee opted not to adopt the equivalent of Federal Rule 65.1 which deals with security and proceedings against sureties. Although Federal Rule 65.1 follows Rule 65, which deals with injunctions, Rule 65.1 regarding security and proceedings against sureties is broader than injunction bonds. Professor Moore describes some of the situations in which a surety may be required or permitted by the Federal rules to enter into a bond or stipulation or other undertaking, including: (1) state proceedings to enforce a judgment, including a stay on appeal; (2) incidental to attachment, garnishment and other provisional remedies where state law requires security; (3) as a condition to granting a TRO or preliminary injunction; and (4) security for costs under Rule 83. Moore's Federal Practice, Third, § 65.1.02. Rule 65.1 provides a summary procedure for the enforcement of a surety's liability under these circumstances. "The importance of this provision is that it obviates the need to bring an independent action to enforce a liability of a surety and alternatively allows for a summary procedure on motion." *Id.* Nothing in Rule 65.1, however, precludes a judgment creditor from bringing a wholly separate and independent action to enforce a surety's liability. *Id.*, § 65.1.03.

With respect to proceedings against a surety relating to a supersedeas bond for stay pending appeal, Rule 24(c), M. R. App. P., covers this, allowing a surety's liability to be enforced on motion in the district court and irrevocably appointing the district court's clerk as the surety's agent on whom any papers may be served.

*******RULE 66*******

<u>MONTANA'S PRESENT'S RULE:</u>	<u>RECOMMENDED RULE:</u>
<p>RULE 66. Receivers</p> <p>An action wherein a receiver has been appointed shall not be dismissed except by order of the court. The practice in the appointment of and administration of estates by receivers or other similar officers shall be in accordance with the Montana statutes and with the practice heretofore followed in the courts of this state. In all other respects, the action in which the appointment of the receiver is sought or which is brought by or against a receiver is governed by these rules.</p>	<p>Rule 66. Receivers</p> <p>These rules govern an action in which the appointment of a receiver is sought or a receiver sues or is sued. But the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in Montana courts or with a local rule. An action in which a receiver has been appointed may be dismissed only by court order.</p>

COMMITTEE NOTES

The language of Rule 66 has been amended as part of the general restyling of the Civil rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. These changes are intended to be stylistic only.

*******RULE 67*******

<u>MONTANA'S PRESENT RULE:</u>	<u>RECOMMENDED RULE:</u>
<p>RULE 67. Deposit in Court</p> <p>In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of chapter 8, Title 25, Montana Code Annotated.</p>	<p>Rule 67. Deposit into Court</p> <p>(a) Depositing Property. If any part of the relief sought is a money judgment or the disposition of a sum of money or some other deliverable thing, a party – on notice to every other party and by leave of court – may deposit with the court all or part of the money or thing, whether or not that party claims any of it. The depositing party must deliver to the clerk a copy of the order permitting deposit.</p> <p>(b) Investing and Withdrawing Funds. Money paid into court under this rule must be deposited and withdrawn in accordance with the provisions of Chapter 8, Title 25, Montana Codes Annotated.</p>

COMMITTEE NOTES

The language of Rule 67 has been amended as part of the general restyling of the Civil rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. These changes are intended to be stylistic only. Note, however, that Federal Rule 67(b) requires that “The money must be deposited in an interest-bearing account or invested in a court-approved, interest-bearing instrument.” Montana did not adopt that language because it is potentially inconsistent with the statutory language in Title 25, Chapter 8, MCA.

*******RULE 68*******

MONTANA'S PRESENT RULE:

Rule 68. Offer of Judgment.

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

RECOMMENDED RULE:

Rule 68. Offer of Judgment

(a) Making an Offer; Judgment on an Accepted Offer. More than 10 days before the trial begins, a party defending against a claim may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If, within 10 days after being served, the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The clerk must then enter judgment.

(b) Unaccepted Offer. An unaccepted offer is considered withdrawn, but it does not preclude a later offer. Evidence of an unaccepted offer is not admissible except in a proceeding to determine costs.

(c) Offer After Liability is Determined. When one party's liability to another has been determined but the extent of liability remains to be determined by further proceedings, the party held liable may make an offer of judgment. It must be served within a reasonable time – but at least 10 days – before a hearing to determine the extent of liability.

(d) Paying Costs After an Unaccepted Offer. If the judgment that the offeree finally obtains is not more favorable than the unaccepted offer, the offeree must pay the costs incurred after the offer was made.

COMMITTEE NOTES

The language of Rule 68 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. These changes are intended to be stylistic only.

*******RULE 69*******

<u>MONTANA'S PRESENT RULE:</u>	<u>RECOMMENDED RULE:</u>
<p>Rule 69. Execution</p> <p>The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of and supplementary to execution shall be in accordance with the statutes of the state of Montana. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions.</p>	<p>Rule 69. Execution</p> <p>The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of and supplementary to execution shall be in accordance with the statutes of the state of Montana. In aid of the judgment or execution, the judgment creditor or a successor in interest when that interest appears of record, may examine any person, including the judgment debtor, in the manner provided in these rules for taking depositions.</p>

COMMITTEE NOTES

The Committee recommends that the present Montana rule be re-adopted with no changes. The Federal rule is complicated by Federal statutory idiosyncrasies and the fact that Federal procedure incorporates "the procedure of state where the court is located."

*******RULE 70*******

MONTANA'S PRESENT RULE:

Rule 70. Judgment for Specific Acts -- Vesting Title.

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the court may order the clerk to issue a writ of attachment or sequestration against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the state, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

RECOMMENDED RULE:

Rule 70. Enforcing a Judgment for a Specific Act

(a) Party's Failure to Act; Ordering Another to Act. If a judgment requires a party to convey land, to deliver a deed or other document, or to perform any other specific act and the party fails to comply within the time specified, the court may order the act to be done – at the disobedient party's expense – by another person appointed by the court. When done, the act has the same effect as if done by the party.

(b) Vesting Title. If the real or personal property is within the state, the court – instead of ordering a conveyance – may enter a judgment divesting any party's title and vesting it in others. That judgment has the effect of a legally executed conveyance.

(c) Obtaining a Writ of Attachment or Sequestration. On application by a party entitled to performance of an act, the court may order the clerk to issue a writ of attachment or sequestration against the disobedient party's property to compel obedience.

(d) Obtaining a Writ of Execution or Assistance. On application by a party who obtains a judgment or order for possession, the clerk must issue a writ of execution or assistance.

(e) Holding in Contempt. The court may also hold the disobedient party in contempt.

COMMITTEE NOTES

The language of Rule 70 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. These changes are intended to be stylistic only.

*******RULE 71*******

<u>MONTANA'S PRESENT RULE:</u>	<u>RECOMMENDED RULE:</u>
<p data-bbox="145 333 770 406">Rule 71. Process in Behalf of and Against Persons Not Parties</p> <p data-bbox="145 447 770 752">When an order is made in favor of a person who is not a party to the action, that person may enforce obedience to the order by the same process as if a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, that person is liable to the same process for enforcing obedience to the order as if a party.</p>	<p data-bbox="770 333 1391 406">Rule 71. Enforcing Relief For or Against a Nonparty</p> <p data-bbox="770 447 1391 752">When an order grants relief for a nonparty or may be enforced against a nonparty, the procedure for enforcing the order is the same as for a party.</p>

COMMITTEE NOTES

The language of Rule 71 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. These changes are intended to be stylistic only.

*******RULE 71.1*******

<u>MONTANA'S PRESENT RULE:</u>	<u>RECOMMENDED RULE:</u>
Montana has no Rule 71.1. Federal Rule 71.1 is labeled "Condemning Real or Personal Property."	Montana has no Rule 71.1.

COMMITTEE NOTES

Condemnation law is addressed by statute in Montana, so the Committee opted to adopt no counterpart to Federal Rule 71.1.

*******TITLE IX*******

<u>MONTANA'S PRESENT CHAPTER TITLE:</u> IX. APPEALS	<u>RECOMMENDED CHANGE TO CHAPTER TITLE:</u> TITLE IX. APPEALS
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COMMITTEE NOTES

The Federal rule's title "IX" is for "Special Proceedings" and includes Rules 71 through 76, dealing with "condemnation" and with magistrate judges. Montana's title IX, on the other hand, is labeled "Appeals." Recommendation is to retain Montana's title "IX. Appeals" in connection with Rule 72.

*******RULE 72*******

<u>MONTANA'S PRESENT RULE:</u>	<u>RECOMMENDED RULE:</u>
<p>Rule 72. Appeal from a district court to the supreme court.</p>	<p>Rule 72. Appeal From A District Court To The Supreme Court.</p>
<p>When an appeal is permitted by law from a district court to the supreme court of Montana, or in any case where original proceedings are commenced in the supreme court, such appeal or original proceeding shall be taken, perfected, and prosecuted pursuant to the provisions of the Montana Rules of Appellate Procedure and controlling statutes to the extent that they are not superseded by the Montana Rules of Appellate Procedure.</p>	<p>When an appeal is permitted by law from a district court to the supreme court of Montana, or in any case where original proceedings are commenced in the supreme court, such appeal or original proceeding shall be taken, perfected, and prosecuted pursuant to the provisions of the Montana Rules of Appellate Procedure and controlling statutes to the extent that they are not superseded by the Montana Rules of Appellate Procedure.</p>

COMMITTEE NOTES

The Committee decided not to change Rule 72.

*******TITLE X*******

<p><u>MONTANA'S PRESENT CHAPTER</u> <u>TITLE:</u></p> <p>X. DISTRICT COURTS AND CLERKS</p>	<p><u>RECOMMENDED RULE:</u></p> <p>TITLE X. DISTRICT COURTS AND CLERKS: CONDUCTING BUSINESS; ISSUING ORDERS</p>
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*******RULES 73 - 76*******

<u>MONTANA'S PRESENT RULES:</u>	<u>RECOMMENDED RULES:</u>
None.	None.

COMMITTEE NOTES

Federal Rules 73 through 76 address magistrate judges. There are no counterpart Montana Rules 73 through 76.

*******RULE 77*******

MONTANA'S PRESENT RULE:

Rule 77. District Courts and Clerks

(a) District Courts Always Open. The district courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

(b) Trials and Hearings -- Orders in Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

(c) Clerk's Office and Orders by Clerk. All motions and applications in the clerk's office for issuing mesne process, for issuing final process to enforce and execute judgments, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

RECOMMENDED RULE:

Rule 77. Conducting Business; Clerk's Authority; Notice of an Order or Judgment

(a) When Court Is Open. Every district court is considered always open for filing any paper, issuing and returning process, making a motion, or entering an order.

(b) Place for Trial and Other Proceedings. Every trial on the merits must be conducted in open court and, so far as convenient, in a regular courtroom. Any other act or proceeding may be done or conducted by a judge in chambers, without the attendance of the clerk or other court official, and anywhere inside or outside the district. But no hearing – other than one ex parte – may be conducted outside the district unless all the affected parties consent.

(c) Clerk's Orders. Subject to the court's power to suspend, alter or rescind the clerk's action for good cause, the clerk may: (A) issue process; (B) enter a default; (C) enter a default judgment under Rule 55(b)(1); and (D) act on any other matter that does not require the court's action.

(d) Notice of Entry of Judgment or Order Served. Within 10 days after entry of judgment or an order in an action in which an appearance has been made, notice of such entry, together with a copy of such judgment or order or general description of the nature and amount of relief and damages thereby granted, shall be served by the prevailing party upon all parties who have made an appearance, but any other party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers.

*******RULE 77 (continued)*******

<p><u>MONTANA'S PRESENT RULE</u> <u>(continued)</u></p>	<p><u>RECOMMENDED RULE (continued)</u></p>
<p>(d) Notice of Entry of Judgment or Order Served. Within 10 days after entry of judgment or an order in an action in which an appearance has been made, notice of such entry, together with a copy of such judgment or order or general description of the nature and amount of relief and damages thereby granted, shall be served by the prevailing party upon all parties who have made an appearance, but any other party may in addition serve a notice of such entry in the manner provided in Rule 5 for the service of papers.</p>	<p>(e) Transmittal of File on Removal. Upon the filing of a copy of the petition for removal of any state district court action to the district court of the United States, district of Montana, and a request in writing therefor, the clerk of such state district court shall promptly deliver to the clerk of court of the district court of the United States, district of Montana, all papers then in the original state court file, or theretofore issued and subsequently filed and shall keep in the state court file only the copy of the petition for removal and such papers as were filed with the request for removal.</p>
<p>(e) Transmittal of File on Removal. Upon the filing of a copy of the petition for removal of any state district court action to the district court of the United States, district of Montana, and a request in writing therefor, the clerk of such state district court shall promptly deliver to the clerk of court of the district court of the United States, district of Montana, all papers then in the original state court file, or theretofore issued and subsequently filed and shall keep in the state court file only the copy of the petition for removal and such papers as were filed with the request for removal.</p>	

COMMITTEE NOTES

The language of Rule 77 has been amended as part of the general restyling of the Civil Rule to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. These changes are largely stylistic. Federal wording modifications of Rules 77(a) and (b) were followed. Also, Federal Rule 77(c)(2), *Orders*, is adopted as Rule 77(c). Federal Rule 77(c)(1), dealing with *Hours*, is not adopted because the Civil Rules do not need to micro-manage the operations of the offices of the clerks of court. Montana retains its previous practice under Rule 77(d) of requiring the prevailing party (or any other party) to serve the notice of entry of judgment, rather than have that done by the clerk of the court.

*******RULE 78*******

<u>MONTANA'S PRESENT RULE:</u>	<u>RECOMMENDED RULE:</u>
Federal Rule 78 is labeled "Hearing Motion; Submission on Briefs."	No Montana Rule 78.

COMMITTEE NOTES

Montana previously had no Rule 78. The Committee opted not to adopt counterpart Federal Rule 78. The Committee recommends that Montana not adopt a counterpart Rule 78. This matter is adequately addressed in the district court rules and in the local court rules.

*******RULE 79*******

<u>MONTANA'S PRESENT RULE:</u>	<u>RECOMMENDED RULE:</u>
Montana presently has no Rule 79. Federal Rule 79 is labeled "Records Kept by the Clerk."	No Montana Rule 79.

COMMITTEE NOTES

The Committee decided that Montana not adopt a counterpart to Federal Rule 79. This matter is adequately addressed in §§ 3-5-501 through 3-5-509, MCA.

*******RULE 80*******

<p><u>MONTANA'S PRESENT RULE:</u></p> <p>Rule 80. Stenographer -- stenographic report or transcript as evidence.</p> <p>Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.</p>	<p><u>RECOMMENDED RULE:</u></p> <p>Rule 80. Stenographic Transcript as Evidence</p> <p>If stenographically reported testimony at a hearing or trial is admissible in evidence at a later trial, the testimony may be proved by a transcript certified by the person who reported it.</p>
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COMMITTEE NOTES

The language of Rule 80 has been amended as part of the revisions to make the language consistent with the Federal rules which were recently restyled to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. These changes are intended to be stylistic only.

*******TITLE XI*******

<p><u>MONTANA'S PRESENT CHAPTER TITLE:</u></p> <p>XI. GENERAL PROVISIONS</p>	<p><u>RECOMMENDED CHAPTER TITLE:</u></p> <p>TITLE XI. GENERAL PROVISIONS</p>
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COMMITTEE NOTES

The Committee decided not to change Title XI.

*******RULE 81*******

<u>MONTANA'S PRESENT RULE :</u>	<u>RECOMMENDED RULE:</u>
<p>Rule 81. Applicability in General</p> <p>(a) Special Statutory Proceedings. The statutory proceedings listed in Table A and any other special statutory proceeding, whether or not listed in Table A, are excepted from these rules insofar as they are inconsistent or in conflict with the procedure and practice provided by these rules.</p> <p>(b) Appeals to District Courts. These rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, but shall govern procedure and practice relating thereto insofar as these rules are not inconsistent with such statutes.</p> <p>(c) Rules Incorporated into Statutes. Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding or listed in any table appended hereto, provides that any act in a civil proceeding in a district court shall be done in the manner provided by law or as in a civil action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, insofar as practicable.</p>	<p>Rule 81. Applicability in General</p> <p>(a) Appeals to District Courts. These rules do not supersede the provisions of statutes relating to appeals to or review by the district courts, but shall govern procedure and practice relating thereto insofar as these rules are not inconsistent with such statutes.</p> <p>(b) Rules Incorporated into Statutes. Where any statute heretofore or hereafter enacted, whether or not applicable to a special statutory proceeding, provides that any act in a civil proceeding in a district court shall be done in the manner provided by law or as in a civil action or as provided by any statute superseded by these rules, such act shall be done in accordance with these rules and the procedure thereon shall conform to these rules, insofar as practicable.</p>

COMMITTEE NOTES

Subsections (b) and (c) are retained in present form but relettered (a) and (b). Subsection (a) "Special Statutory Proceedings" is deleted because it is no longer useful.

*******RULE 82*******

<p><u>MONTANA'S PRESENT RULE :</u></p> <p>Rule 82. Jurisdiction and Venue Unaffected</p> <p>Except as provided in Rule 4 these rules shall not be construed to extend or limit the jurisdiction of the district courts of Montana or the venue of actions therein.</p>	<p><u>RECOMMENDED RULE:</u></p> <p>Rule 82. Jurisdiction and Venue Unaffected</p> <p>Except as provided in Rule 4 these rules do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts.</p>
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COMMITTEE NOTES

The language of Rule 82 has been amended as part of the general restyling of the Civil rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. These changes are intended to be stylistic only.

*******RULE 83*******

<u>MONTANA'S PRESENT RULE :</u>	<u>RECOMMENDED RULE:</u>
<p>Rule 83. Rules by district courts.</p> <p>Each district court, upon agreement of the judges or a majority thereof, may from time to time make and amend rules governing its practice not inconsistent with these rules or other rules prescribed by the supreme court. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the supreme court of this state. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.</p>	<p>Rule 83. Rules by district courts.</p> <p>Each district court, upon agreement of the judges or a majority thereof, may from time to time make and amend rules governing its practice not inconsistent with these rules or other rules prescribed by the supreme court. Copies of rules and amendments so made by any district court shall upon their promulgation be furnished to the supreme court of this state. In all cases not provided for by rule, the district courts may regulate their practice in any manner not inconsistent with these rules.</p>

COMMITTEE NOTES

The Committee decided not to change Rule 83.

*******RULE 84*******

<u>MONTANA'S PRESENT RULE :</u>	<u>RECOMMENDED RULE:</u>
Rule 84. Forms	Rule 84. Forms
The forms contained in the Appendix of Forms are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.	The forms in the Appendix suffice under these rules and illustrate the simplicity and brevity that these rules contemplate.

COMMITTEE NOTES

The language of Rule 84 has been amended as part of the general restyling of the Civil rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. These changes are intended to be stylistic only.

*******RULE 85*******

<p><u>MONTANA'S PRESENT RULE :</u></p> <p>Rule 85. Title.</p> <p>These rules shall be known as the Montana Rules of Civil Procedure and may be cited as M.R.Civ.P.</p>	<p><u>RECOMMENDED RULE:</u></p> <p>Rule 85. Title.</p> <p>These rules shall be known as the Montana Rules of Civil Procedure and may be cited as M.R.Civ.P.</p>
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COMMITTEE NOTES

The Committee decided not to change Rule 85.

*******RULE 86*******

MONTANA'S PRESENT RULE:

Rule 86. Effective Date - Statutes Superseded

(a) Effective Date and Application to Pending Proceedings. These rules became effective January 1, 1962. In accordance with Chapter 16, Laws of 1963, proposed amendments to these rules shall be first prepared by the advisory committee, which shall distribute copies thereof to the bench and resident bar of the state for their consideration and suggestions. Submission of proposed amendments to the court shall be made by the advisory committee only after the advisory committee has considered suggestions received from the bench and bar. Submissions to the court shall be noticed by the court by mailing notice, containing copies of the submitted proposals to all district judges and resident attorneys licensed to practice in the Montana courts as shown by the records of the clerk of the court, and the court will receive written suggestions and objections within the time fixed in the notice, which shall be not less than 90 days thereafter. Oral hearings on proposals will be held only on special order of the court. Amendments adopted by the court will become effective on January 1 unless a different time be fixed in the order.

The court will annually, at least 30 days prior to January 1, cause to be published all amendments to these rules which are to become effective on the succeeding January 1, and transmit the same to all judges and resident lawyers of the state. Such rules as are to

RECOMMENDED RULE:

Rule 86. Effective Date - Statutes Superseded

(a) In General. These rules and any amendments take effect at the time specified by the Supreme Court. They govern:

(1) proceedings in an action commenced after their effective date; and

(2) proceedings after that date in an action then pending unless:

(A) the Supreme Court specifies otherwise; or

(B) the court determines that applying them in a particular action would be infeasible or work an injustice.

(b) _____ [date] Amendments. If any provision in Rules 1-86 conflicts with another law, priority in time for the purpose of MCA §3-2-706 is not affected by the amendments taking effect on _____ [date].

*******RULE 86 (continued)*******

<u>MONTANA'S PRESENT RULE</u>	
<p data-bbox="156 300 327 335"><u>(continued):</u></p> <p data-bbox="156 372 758 866">become effective at times other than January 1 will be published and transmitted at least 30 days prior to their effective date. These rules and amendments govern all proceedings and actions brought after they take effect, and also all further proceedings in actions then pending, except to the extent that in the opinion of the district court their application in a particular action pending when the rules or amendments take effect would not be feasible, or would work injustice, in which event the procedure existing at the time the action was brought applies.</p> <p data-bbox="156 907 758 1129">(b) Statutes Superseded. Upon the taking effect of these rules or amendments thereto all statutes and parts of statutes in conflict therewith and the statutes listed in Tables B and C are superseded in respect of practice and procedure in the district courts.</p>	

COMMITTEE NOTES

The language of Rule 86 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules. Significant detail in previous Rule 86 concerning procedures for adoption of rule amendments, submission to the public and to the bar are deleted. Previous Rule 86(b) referenced "Statutes Superseded" and contained Tables B and C listing correlating rules with superseded statutes. Tables B and C, which reference the old Revised Codes Annotated, 1947, are no longer of utility and are deleted.