

**MONTANA TENTH JUDICIAL DISTRICT  
COURT RULES**

**FERGUS, JUDITH BASIN and PETROLEUM COUNTIES**

**PREFACE**

The following are the Rules of Procedure of the District Court of the Tenth Judicial District. Where indicated, these Rules incorporate the Uniform District Court Rules as adopted by the Order of the Supreme Court. These rules are meant to supplement the Uniform District Court Rules and the Montana Rules of Civil Procedure, and conflict shall be controlled by the Montana Rules of Civil Procedure and/or the Uniform District Court Rules.

These rules describe the usual manner in which the Court does business, including the processes which govern litigation. If counsel have an emergency which is not covered adequately by these rules, or need relief from the application of them, counsel may present such matters to the Court for its consideration.

If an order setting a requirement or restriction imposed by the Court in a particular case conflicts with these rules, the Court's order supersedes these rules.

**RULE 1 - LAW AND MOTION DAYS**

Law and motion days shall regularly be held in the courthouses in the county seats of the District as follows, except that the Court may, in its discretion, hear and dispose of all law and motion matters at any place and at any time in the District:

- Fergus County, Lewistown, Montana: Every Monday afternoon and Tuesday, except holidays and trial term.
- Judith Basin County, Stanford, Montana: The first and third Monday morning of each month, except holidays and trial term.
- Petroleum County, Winnett, Montana: The second Monday morning of each month, except holidays and trial term.

Additional law and motion days may be held in any county of the District when, in the discretion of the judge presiding therein, the business of the District so requires.

**Documentation Presentation.** No matter may be placed on the law and motion calendar until the motion or other documentation, and all relevant supporting documents, have been filed with the Clerk of Court.

**Routine Matters/Uncontested Matters.** Routine Matters for the purpose of law and motion shall include initial appearance, arraignment, judgment by consent or default, probate proceedings, uncontested ex parte matters, matters pertaining to questions of law only and any other matters reasonably anticipated to take less than 30 minutes to complete. Matters set for law and motion day, which become contested, are subject to postponement and rescheduling.

In all un-contested matters, the Findings of Facts, Conclusions of Law and Proposed Orders should be filed with the Clerk of Court no later than 48 hours before the Court is to hear the matter, unless not reasonable to do so. Each attorney should designate in advance the matters to be presented by him/her on law and motion day. The matters so designated should be listed by the Clerk on the law and motion calendar.

**Contested Matters.** Unless scheduled by the Judge, contested matters involving questions of fact, or matters requiring more than 30 minutes for presentation, shall be scheduled through the Court Administrator at (406) 535-8028 or the Clerk of Court (406) 535-5026.

**Calendar.** Counsel or parties shall notify the Court Administrator or Clerk of Court by noon on the preceding business day of matters to be placed on the law and motion calendar. Emergency matters may be presented to the Court at any time, upon adequate showing by the moving party. Parties or counsel not prepared when their matter is called from the calendar will be moved to the end of the calendar, and be heard subject to available time.

**Continuances.** Matters scheduled for law and motion may be continued by the Court on its own initiative. Ex parte requests to continue any matter set by Court order for law and motion, must comply with Rule 3, Uniform District Court Rules. Continuances are granted by motion only.

**Notice of Submittal.** The Moving Party is required to file a Notice of Submittal after all motions have been briefed, i.e. all responses filed and reply briefs filed for final order by the Court.

**RULE 2 - LAW LIBRARY**

The Law Library is no longer available for research and will not be updated on a regular basis. When required by statute and/or case law, legal research tools and materials will be made available upon written request of the individual or entity and approval by the presiding judge.

**RULE 3 - FACSIMILE & ELECTRONIC FILINGS**

The filing of any document with the Clerk of Court that may be done by mail, may be done by facsimile or electronic transmission, subject to the provisions of this rule and Montana Rules of Civil Procedure (M.R.Civ.P.). An attorney's copied or electronically-generated signature shall be deemed original for all court-filed documents.

**Filing of Facsimile or Electronic Document.** The date and time of receipt of the transmission by the Clerk of Court shall be the date and time of filing. If the original is not served on the same day as the facsimile or electronic transmission, service of the facsimile or electronic document must be made as provided in Rule 5, M.R.Civ.P. It is the obligation of the person faxing or filing electronically any document to arrange for it to be delivered to the Clerk of Court's office. A faxed or electronic document must show all necessary signatures or it will not be filed by the Clerk.

**Facsimile & Electronic Receivers.** Documents may be faxed/ emailed to the Clerk of Court in Lewistown (Fergus County) at (406) 535-6076/ [phsmith@mt.gov](mailto:phsmith@mt.gov); to the Clerk of Court in Stanford (Judith Basin County) at (406) 566-2211/ [jpeevy@mt.gov](mailto:jpeevy@mt.gov); and to the Clerk of Court in Winnett (Petroleum County) at (406) 429-6328.

**Fees and Costs.** The use of facsimile or electronic equipment shall not change or delay the required payment of fees. It shall be the obligation of the person filing the document to pay any required fees in the manner and within the time required by the Clerk of Court. It shall be the obligation of the person filing any document to pay any costs associated with use of facsimile, electronic equipment or telephone services.

**RULE 4 - SCHEDULING PROCEDURE AND CASE MANAGEMENT**

**Scheduling Procedure.** Rule 16(b), M.R.Civ.P., requires a scheduling order to be issued as soon as practical after consulting with the parties' attorneys and any unrepresented parties—or within ninety (90) days of request by a party. In the absence of the Court's order, the parties may file a request for the scheduling conference.

The attorneys for the parties and any unrepresented parties shall have a phone conference with the Clerk of Court (Fergus County) or the Court Administrator (Judith Basin, Petroleum, Out-of-Jurisdiction) to discuss a proposed scheduling order. Parties should be prepared at the scheduling conference with their calendars so firm dates can be set. A party desiring to participate via telephone or virtual meeting room must file a request to participate by the designated means. Following the scheduling conference, a Scheduling Order with discovery deadlines and trial dates will be issued by the Court.

The following matters (cases) shall be excluded from the foregoing under Rule 16(b), M.R.Civ.P.:

1. Youth Court Actions
2. Criminal Actions
3. Uncontested Probates
4. Adoptions
5. Mental Commitment
6. Small Claims Appeals
7. Abstract or Transcript of Judgment
8. Administrative Appeals
9. Habeas Corpus and Post-Conviction Relief
10. Name Changes
11. Abuse or Neglect Proceedings
12. Emancipation

**RULE 5 - PRE-TRIAL AND TRIAL**

**Trial Settings.** Trials shall be held throughout the year as scheduled. Trials may be stacked, i.e., more than one (1) trial may be set for the same time, and if so, the Court shall determine the order of priority. Regardless of order, counsel and parties should be prepared to commence trial at the time scheduled. If preempted by another trial, the Court will reset trial. Trial settings for Civil matters shall be set at the pre-trial conference. Trial settings for Criminal actions shall be set at the Omnibus hearing or

~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~ Rule Section ~



taking photographs in the courtroom and areas immediately adjacent thereto during sessions of Court, or recesses between sessions, shall be allowed only with prior notice to, and specific permission of, the presiding judge. All equipment used and persons using it shall remain behind the bar. No flashlights, or other lighting equipment, or large microphones shall be used. Photographers, television cameras, and other recording devices, when allowed, shall remain stationary, and shall be used so as to not disrupt the proceedings. No photographs of or televising of the members of a jury shall be permitted.

(c) Removal. Parties or other persons in the courtroom while the Court is in session shall be subject to removal for behavior or actions considered disruptive or threatening.

## RULE 11 - MARITAL DISSOLUTION CASES

**Child Support Guidelines.** As long as application of Uniform Child Support Guidelines is required under § 40-4-204(3)(a), MCA, a guidelines worksheet and financial affidavit(s), in accepted form, must be completed. In non-contested cases, these documents must be filed. In contested cases, these documents must be offered into evidence as exhibits.

**Support Variance.** A party seeking variance from the support guidelines or withholding requirements must furnish written proposed findings addressing their contention the variance is supported by clear and convincing evidence.

**Notice to Child Support Enforcement Division.** Any petition filed to commence proceedings involving modification of child support shall include a statement whether the requesting party has knowledge of the child(ren) receiving or applying for public assistance, and if so, petitioner shall immediately notify Montana's Child Support Enforcement Division in writing of the pending action and file proof of such notice with the Clerk of Court.

**Parenting Guidelines.** The Court adopts the Montana Tenth Judicial District Shared Parenting Guidelines (attached hereto as Exhibit "C").

## RULE 12 - CRIMINAL ACTIONS

**Financial Disclosure by Indigent.** Defendants desiring Court-appointed counsel due to indigence shall file the necessary documents with the Office of the State Public Defender, pursuant to its Rules and Procedures.

**Bail.** Initial Bail Request. At the time of seeking leave to file an Information, the County Attorney shall submit a proposed order and may provide recommendations for bail, pending initial appearance.

**Bail From Lower Courts.** Whenever bail has been furnished to a Justice or City Court, and the cause is transferred to District Court, bail bond or cash bond is to be transferred to the Clerk of Court by the initial appearance. If cash bail is furnished, the transfer to District Court shall identify the person or party who actually posted the cash bail. The District Court is not bound by the bail amounts set in the Lower Courts and may modify the same.

### Arraignment.

(1) Delivery of Charging Documents. In the absence of an emergency, and to assist in the speedy administration of justice in the District Courts, the prosecutors shall deliver a copy of any charging documents to the accused and/or his or her counsel at least 24 hours prior to the time set for arraignment in order that the accused may review them and make an informed plea at arraignment.

(2) Court Entered "Not Guilty" Plea. A defendant unwilling to enter a plea at the time of arraignment is subject to the Court entering a "not guilty" plea. In such event, the defendant, on request, will be allowed to reserve for a reasonable time the right to move against the charging document(s) and to file motions and assert all defenses to which he/she may be entitled.

### Omnibus Hearing.

**Setting.** Following a plea of "not guilty", the Court will set the omnibus hearing described in § 46-13-110, MCA, usually within 30 to 45 days. Upon agreement by counsel, the omnibus hearing may be held informally, and will be conducted as a scheduling hearing or conference with the Court Administrator or Clerk of Court. Omnibus Hearing Memorandum and Order form will be completed between the prosecution and defense counsel, and provided to the Clerk of Court (Fergus County) or Court Administrator (Judith Basin, Petroleum, and Out-of-Jurisdiction) prior to the informal omnibus hearing. Upon completion the form shall be submitted to the Court for approval.

**Discovery.** Unless motion is filed seeking protection, the prosecution shall make disclosure under § 46-15-322, MCA, or seek extension as allowed thereunder. The defendant shall make disclosure under § 46-15-323, MCA, unless a motion is filed seeking protection.

**Waiver.** Upon submission of a completed and signed Omnibus Hearing Memorandum form, counsel will be deemed to have waived an omnibus hearing before the Court, absent a request to the contrary. Motions may be made according to the Omnibus Hearing Memorandum form or by law.

**Mental Competency Issues.** Upon motions under § 46-14-202, MCA, requesting examination, defendant's counsel shall be prepared to identify the name and business address of a qualified professional sought to conduct the examination and to discuss the availability of this professional to do the examination. Should examination be ordered upon defendant's motion, defense counsel shall be responsible to assure a report of examination under § 46-14-206, MCA, is timely filed.

**Plea Agreement.** Plea Discussions. No defendant is required to discuss a plea agreement. Any proposed plea offers must be discussed with the Defendant by counsel.

**Written Plea Agreements.** Plea agreements under § 46-12-211, MCA, must be reduced to writing, signed by counsel and the defendant, and filed with the Clerk.

**Alford Pleas.** Counsel who intend to proffer an Alford plea or plea of nolo contendere under § 46-12-204, MCA, must present a factual basis showing good reason for the Court to accept the plea, § 46-12-212(2), MCA.

**Effect on Trial Setting.** At its discretion, the Court may refuse to vacate a trial setting by reason of a plea agreement until after defendant has appeared and entered a plea found acceptable to the Court.

**Pre-Sentence Investigation Report.** In preparing a Pre-Sentence Investigation Report (PSI), the probation officer shall make reasonable effort to contact any victim(s) and inform them of a right to be present and give testimony at the sentencing hearing and seek a written statement to be attached to the PSI. Unless effectively waived by a defendant, a PSI shall be completed and the original filed with the Court no later than one (1) week prior to sentencing. Prior to sentencing, defense counsel shall review the filed PSI with defendant.

## RULE 13 - CONFIDENTIAL CRIMINAL JUSTICE INFORMATION

A copy of any petition for the release of confidential criminal justice information under § 44-5-303, MCA, shall be served by petitioning party upon each agency maintaining such information. The petition shall inform the requested agency that within twenty-one (21) days of service, they shall deliver to the Court for in camera inspection true and correct copies of the requested information or, in lieu thereof, file any response it may have to the petition. A hearing may be held at the Court's discretion. Following in camera inspection, should dissemination of confidential criminal justice information be allowed, the information shall be returned to the requested agency for dissemination. Dissemination shall be subject to copying costs paid in advance to the requested agency.

## RULE 14 - BANKRUPTCY

Should a party file for protection in Bankruptcy Court, that party shall immediately notify the Court in writing of the filing and provide a copy of the bankruptcy cover sheet. Upon discharge of or confirmation of a bankruptcy reorganization plan superseding any claim made in this Court, notice thereof shall be filed and upon such filing, a party may request and obtain dismissal of the claim.

## RULE 15-APPEALS FROM JUSTICE COURT OR CITY COURT

**Scheduling.** When an appeal from Justice or City Court, being civil or criminal, has been filed and the record received by the Clerk of Court, the Clerk shall notify the Court so that a scheduling conference may be set. This provision does not apply to appeals on the record from Small Claims Court.

**Failure to Appear.** In any appeal from Justice or City Court, if one of the parties does not appear for scheduling, the Court may dispose of the matter as the ends of justice dictate, including issuance of order dismissing the appeal.

## RULE 16 - REMOVAL TO SMALL CLAIMS COURT

All actions for recovery of money or specific personal property where

