

**MONTANA ELEVENTH JUDICIAL DISTRICT
COURT RULES**

FLATHEAD COUNTY

IT IS HEREBY ORDERED that the existing rules of practice of the District Court of the Eleventh Judicial District of the State of Montana are revoked, and the following rules of practice are adopted as the Court's rules of practice, effective this 1st day of February, 1991. These rules supplement the Uniform District Court rules (UDCR), Title 25, Chapter 19, MCA. Where applicable, the rules of this Court, as well as the UDCR shall apply to criminal as well as civil proceedings.

RULE 1 - DEPARTMENTS AND ASSIGNMENT OF CASES

Updated 1/31/2014

A. Assignment of Cases. The District Court is divided into four Departments: Department 1, Judge Ted O. Lympus, Department 2, Robert B. Allison, Department 3, Heidi J. Ulbricht, and Department 4, David M. Ortley. All actions and proceedings shall be assigned to the departments on a random basis. Upon the filing of an action to which this rule applies, the Clerk shall append to the case number an "A", "B", "C" or "D" to designate that the cause has been assigned to Judges Lympus, Allison, Ulbricht, or Ortley, respectively, as determined by random selection.

B. Consolidation of Cases. A Petition for Consolidation, pursuant to Rule 42(a), Montana Rules of Civil Procedure, shall be filed in each action to be consolidated. The Judge in whose department the initial action was filed shall determine whether consolidation shall be ordered and all actions thus consolidated shall be assigned to that department.

C. The work in the District shall be interchangeable among the Judges thereof during the absence or disability or upon the request of the Judge. Any Judge making any Order for the Judge of another Department will be presumed to have acted with the consent of that Judge. Actions by one Department relative to a case assigned to any other Department shall not, by that fact alone, result in a transfer of the case.

D. Any Judge may, with the consent of the other, and after stating the basis therefor, transfer any action, matter or proceeding to another Department. Notice of said transfer shall be provided all parties.

E. In the absence of judicial disqualification, no cause may be transferred from one department to the other without the Court's order

RULE 2 - LAW AND MOTION

Updated 1/31/2014

Law and motion shall be set and heard at 8:30 A.M., Tuesday and Wednesday (Dept A-Lympus) at 8:45 A.M. Tuesday and Wednesday (Dept B-Allison), at 8:30A.M., Thursday and Friday (Dept C-Ulbricht) and at 8:45 A.M. Thursday and Friday (Dept D-Ortley). No matter may be set for Law and Motion until the motion and all documents relevant to the matter to be heard have been filed and any proposed Order or Decree has been submitted to the Clerk of Court 48 hours in advance.

Emergency, non-testimonial or self-evident documents requiring the Court's attention may be mailed to or left with the judicial assistant for the particular Court assigned to the case with a request for the Court's immediate attention. However, any document or request requiring further explanation or support must be presented by counsel to the Court at its regularly-scheduled time for law and motion.

RULE 2A - STANDING ORDER

Entered 9/25/1995

In order to more efficiently manage the ex parte motions being presented to the Court, the four Departments of the Eleventh Judicial District Court of the State of Montana will require the moving party and/or their attorney to personally present the ex parte motion to the Court. The motion and other necessary paperwork should be accompanied by the full court file. The Court also reminds and admonishes parties and/or their attorneys to submit the required affidavits setting forth the necessary information in order to meet the statutory requirements.

RULE 3 - HEARINGS ON MOTIONS

NOTE: See UDCR 2

A. When counsel desire oral argument on a motion, other than

a motion for summary judgment, they shall so state in a separate document entitled "Request for Oral Argument," including therein the reasons in support of oral argument and why they are unable to fully and satisfactorily articulate their position in a brief.

B. Counsel shall include with their Request for Oral Argument a proposed Order granting oral argument. In the event the Court determines that oral argument would be beneficial to a determination of the motion and grants oral argument, the moving party has a duty to schedule such argument with the appropriate Court personnel and to notify opposing counsel.

C. If the Court determines sua sponte that oral argument on a motion would be beneficial to a determination of the motion, it shall so order; the moving party then has the duty to schedule oral argument and to notify opposing counsel.

D. Scheduled hearings on motions pending may be continued by the Court, on its own initiative, or upon the written motion of any party, with notice to all adverse parties. All such motions to continue must be submitted in writing and accompanied by an appropriate formal order prepared for the Court's approval.

E. Time settings for hearing on contested motions will be obtained exclusively from the individual designated by the Court.

RULE 4 - ORDERS

Any motion filed with the Court shall be accompanied by a proposed Order granting the relief sought.

RULE 5 - SERVICE OF PROCESS AND PAPERS

Amended 5/9/2000

A. Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof exists as prescribed in the Montana Rules of Civil Procedure, or other applicable statute, shall be filed with the Clerk promptly, and in any event before any action is to be taken thereon by the Court or the parties. Failure to provide proof of service upon the applicable parties in any action will prohibit the filing of such documents with the Clerk of Court. Any communication with the Court including letters from parties in any actions shall also require proof of service before being filed by the Clerk of Court or submitted to the presiding Judge.

B. Parties shall furnish to the Clerk all necessary copies of any proposed judgment, order, or other document to be signed by the court, together with self-addressed, stamped envelope, so as to permit the Clerk to comply with the notice or service provisions of any applicable statute or rule.

RULE 6 - SCHEDULING ORDERS; COMMUNICATIONS WITH THE COURT

A. Scheduling Orders. Not later than 120 days after the filing of a Complaint in a Civil (DV) or Dissolution (DR) action counsel for the Plaintiff or Petitioner shall file a written Motion for Scheduling Order which shall be issued by the court in accord with Rule 16(b), M.R.Civ.P. Failure to file such motion in a timely manner may result in sanctions, including dismissal. Counsel for the Defendant or Respondent may also move for a Scheduling Order in their discretion.

B. Communications. The Court will not receive letters or other communication from counsel or parties which do not indicate on their face that copies have been sent to opposing counsel.

C. Ex parte Communications. There will be no ex parte discussion with the Court of substantive issues involved in pending or anticipated cases without the presence of or notice to all opposing counsel, or without prior approval or stipulation by such counsel. A violation of this rule may result in a disqualification of the Judge for cause as well as imposition of sanctions against the offending attorney or party.

D. Reminders to Court. In the event a Judge has under advisement any matter, including, but not limited to, a motion or decision in a bench trial, for a period of more than sixty (60) days, each party affected thereby shall send to the Judge a letter particularly describing the matter under advisement and stating the date the matter was taken under advisement.

RULE 7 - COURT RECORDS

A. The Clerk shall not permit any files or documents to be removed

~ Rule Section ~

for the services rendered. The party seeking an award of attorney fees shall file and serve upon opposing counsel an affidavit itemizing the claim. The opposing party shall within ten (10) days thereafter file a request for a hearing thereon. Failure to file such a request shall be deemed a waiver of the right to a hearing on fees. In a contested proceeding, receipt of evidence pertaining to attorney's fees shall be deferred until a final decision or order on the merits of the case has been issued by the Court.

F. When a final judgment or decree has been entered and the time for appeal has expired, all attorneys in any Probate (DP), Adoption (DA) or civil (DV) action shall be relieved of their duties as counsel of record. If any further pleading is filed in these cases, it must be served on the adverse party as provided in Rule 4(D) M.R.Civ.P. In Juvenile (DJ), Family (DR) or Criminal (DC) actions counsel shall be required to give notice of termination to the Court, opposing counsel and the client or they shall otherwise be considered as continuing as counsel of record for all subsequent matters in that case.

RULE 13 - EXHIBITS

A. The Clerk will mark for identification any proposed exhibit presented by a party in such manner as the party shall designate. The Clerk is required to keep a list of all exhibits offered and the ruling of the Court thereon. See, also, UDCR 12.

RULE 14 - EVIDENCE OF CHARACTER

In any trial, civil or criminal, no more than three (3) witnesses will be permitted to testify as to the character of a person without an order of the Court authorizing additional witnesses.

RULE 15 - STIPULATIONS

In any case, civil or criminal, no agreement or stipulation between the parties or their attorneys with respect to the proceedings in any cause will be considered for any purpose by the Court unless made in open Court in the record or entered on the minutes, or unless in writing, subscribed by the party against whom it is sought to be enforced, or by his attorney. It shall be the duty of the party relying upon any such minute entry to see that it is duly made.

RULE 16 - ARGUMENTS

The party whose duty it is to first offer proof in any trial or proceeding shall have the right to open and may close the argument. Should the adverse party waive argument, no rebuttal will be permitted.

RULE 17 - OFFERS OF PROOF

Offers of proof must be in writing, or may be entered in the Court Reporter's notes outside the presence and hearing of the jury, as may be decided by the Court.

RULE 18 - FINDINGS OF FACT AND CONCLUSIONS OF LAW

Updated 1/31/2014

NOTE: See UDCR 8

Proposed Findings of Fact and Conclusions of Law shall be submitted in a format suitable for signature by the Judge. A transmittal sheet shall accompany the Findings indicating the party submitting the Findings and containing a Certificate of Mailing. In addition, per the 06-18-2013 local District Court Order entitled *Order Vacating Order Re: Electronic or Facsimile Filing Dated 2-8-2012* proposed Findings of Fact and Conclusions of Law shall be accepted by the Clerk of Court via email through the Clerk's general office email address as follows: flatheadclerkofcourt@flathead.mt.gov.

RULE 19 - SECURITY

A. No officers of the Court, nor any member of the bar nor his office associates or employees, may act as a surety.

B. In lieu of surety in any case, there may be deposited with the Clerk lawful money or negotiable bonds or notes of the United States. The depositor shall execute a suitable bond, and if negotiable bonds or notes of the United States are deposited, shall also execute an agreement authorizing the Clerk to collect and sell the bonds or notes in the event of default. Such deposits shall be held by the Clerk until released by order of the Court.

RULE 20 - DECORUM

A. When the Court first convenes in the morning and after any recess, the Court Clerk or Bailiff shall announce the opening of Court, and all persons in attendance in the Courtroom shall rise until the Judge has taken the bench.

B. Each Judge may make such further rules or regulations regarding the hours of opening and closing Court, the conduct of its attendants, and the care and custody of its rooms and chambers, as such Judge shall elect.

C. Unless the Court Reporter's presence is waived by the parties and the Judge, a Court Reporter shall be on duty in the courtroom at all times the Judge is in the courtroom.

RULE 21 - GUN PERMITS

Vacated by Statute

RULE 22 - MARITAL DISSOLUTION ACTIONS

Updated 1/31/2014

A. Marital dissolution actions shall be governed by these Rules except as otherwise provided by this Rule and by statute. Proposed Findings of Fact and Conclusions of Law shall be submitted in a format suitable for signature by the Judge. A transmittal sheet shall accompany the Findings indicating the party submitting the Findings and containing a Certificate of Mailing. In addition, per the 06-18-2013 local District Court Order entitled *Order Vacating Order Re: Electronic or Facsimile Filing Dated 2-8-2012* proposed Findings of Fact and Conclusions of Law shall be accepted by the Clerk of Court via email through the Clerk's general office email address as follows: flatheadclerkofcourt@flathead.mt.gov.

B. Information and standard forms to be utilized in dissolution actions are attached hereto as Exhibit B and are described as follows:

Exhibit	Name
B(1)	Special Order of Support
B(1)(a)	Affidavit for Child Support
B(2)	Motion for Protective Custody and Affidavit with Accompanying Temporary Custody Order
B(2)(a)	Temporary Custody Order
B(3)	Temporary Order and Order to Show Cause
B(4)	Property Division Proposal
B(5)	[Specially designated as Exhibit A] Order for Custody, Visitation and Support. This exhibit shall be marked as Exhibit A and attached to all Final Decrees of Dissolutions involving children.

C. The forms identified as Exhibit B shall be adapted to the particular facts of each case.

D. Support of Minor Children

1. Whenever a marital dispute arises that results in a separation of parents and children, support payments shall commence immediately. Counsel for the parties shall meet within 10 days following service to determine the proper amount of child support based on the last two years tax returns and recent pay stubs in accord with the Child Support Guidelines. Failure to make such payments may result in the imposition of appropriate temporary custodial parent or the appropriate amount of payments either party may file a petition with the Court requesting a hearing on the matters in dispute. The Court may award attorneys' fees to the prevailing party in such hearing.

2. Upon request of either party, the Court shall order that the matter be referred to the Director of Family Court Services for investigation, report and recommendation regarding custody, support, and visitation rights of each child and parent. The report shall be returned to the Court, the parties and their attorneys as soon as reasonably possible thereafter.

3. The general schedule and guidelines for child support payments is hereby established as more particularly set forth in the

Court as provided in 1 or 2 above. The duplicate copy of the request must be filed with the Clerk of the District Court and the Justice of the Peace shall retain the original for his files. *(Please contact the local District Court for the form for transmitting bail as referred to in these rules)*

E. Release of Information by Law Enforcement Officers, Attorneys and Court Employees:

From the time of arrest, issuance of an arrest warrant or the filing of any complaint, information or indictment in any criminal matter until the completion of trial or disposition without trial, no law enforcement officer, attorney or court employee subject to the jurisdiction of this Court shall release or authorize the release of any extrajudicial statement, for dissemination by any means of public communication, relating to that matter and concerning:

1. The prior criminal record (including arrests, indictments, or other charges of crimes) or the character or reputation of the Defendant, except that the officer, attorney or employee may make a factual statement of the Defendant's name, age, residence, occupation and family status, and if the Defendant has not been apprehended may release any information necessary to aid in the apprehension of the Defendant or to warn the public of any dangers the Defendant may present.

2. The existence or contents of any confession, admission or statement given by the Defendant, or the refusal or failure of the Defendant to make any statement.

3. The performance of any examinations or tests or the Defendant's refusal or failure to submit to examinations or tests.

4. The identity, testimony, or credibility of prospective witnesses except the identity of the victim if such announcement is not otherwise prohibited by law.

5. The possibility of a plea of guilty to the offense charged or to a lesser offense.

6. The Defendant's guilt or innocence, or other matters relating to the merits of the case or the evidence in the case, except an announcement of the circumstances of the arrest, including the time and place of the arrest, resistance, pursuit and the use of weapons; an announcement of the identity of the investigating and arresting officer or agency and the length of the investigation; an announcement, at the time of the seizure, disclosing any evidence seized, and disclosure of the nature, substance or text of the charge, including a brief description of the offense charged; quotes from, inferences about or references without comment to public records of the result of any stage in the judicial process and requests for assistance in obtaining evidence.

Amended 1/31/2014

**MONTANA TWELFTH JUDICIAL DISTRICT
COURT RULES**

CHOUTEAU, HILL AND LIBERTY COUNTIES

RULE 1 - TERMS OF COURT AND CALENDAR

Terms of court shall be set for the trial of civil and criminal cases in each county by the judge at such times, as in the discretion of such judge, the matters pending in such county are sufficient to warrant such a term.

RULE 2 - 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 in the district: HILL COUNTY, Havre, Montana: The first Monday, second Friday, and third Monday morning of each month, except holidays CHOTEAU COUNTY, Fort Benton, Montana: The first and third Tuesday of each month, except holidays. LIBERTY COUNTY, Chester, Montana: The third Wednesday afternoon of each month, except holidays. 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. When the regular law and motion day falls on a holiday, the next following day will be law and motion day.

RULE 3 - TRIAL CALENDAR AND PRE-TRIAL PROCEEDINGS

(a) Scheduling Conference - Whenever a case is at issue and either party desires to have the case tried, counsel may file a request for a scheduling conference setting forth the title and number of the case. A copy of the request shall be served upon opposing counsel of record. The Court will issue its own Order for a Scheduling Conference. A trial date will be set at the time of the conference.

(b) Pre-trial Calendar and Hearing - The clerk shall keep a pre-trial calendar upon which all civil cases shall be entered as soon as they are at issue. Any case on the pre-trial calendar may be set for a scheduling conference by the Court at any time. The Clerk of Court, on the order of the Court, will give the parties 10 days notice of the scheduling conference.

(c) Pre-trial Procedure - Rule 16, Rules of Civil Procedure, and the pre-trial conference and pre-trial order of the Uniform District Court Rules, as amended from time to time, will govern all pre-trial matters.

RULE 4 - TRIAL CALENDAR AND CONDUCT OF TRIALS

(a) Regular Trial Calendar. Following a scheduling conference the cause shall be placed upon the regular trial calendar. Notwithstanding the above, the Court may, in its discretion, and upon such notice as the Court deems reasonable, set down for trial any cause coming to issue.

(b) Non-jury Cases. Non-jury cases may be set for trial on order of the Court upon motion of a party. Reasonable notice shall be given to opposing parties. The Court, of its own motion, may set such cases for trial on a date convenient to the Court upon an order giving the respective parties reasonable notice of the date of trial.

The foregoing rule shall apply where the presiding judge shall have been called in and assumed jurisdiction.

(c) Trial Briefs. Trial briefs shall be submitted as required in the pre-trial order.

(d) Continuances. When, after the day is fixed for the trial of any cause, if either party shall desire a continuance, they shall give their adversary five days' notice that application will be made therefor, and the grounds thereof. For good cause the time may be shortened. Continuances may be granted on the Court's own motion or upon motion of counsel or a party, if such a continuance does not inconvenience the Court in the progress of the trial calendar. Continuances, even when stipulated to by counsel, will not be routinely granted. If the application for a continuance is based on the absence of a witness, the testimony expected to be adduced by the witness shall be set forth in detail in the motion. A party opposing the continuance, without admitting the truth of the testimony, may admit the witness would so testify. In such event, the continuance shall be denied, unless in the opinion of the Court, manifest injustice may result.