

**MONTANA THIRTEENTH JUDICIAL DISTRICT
COURT RULES
YELLOWSTONE COUNTY**

PREFACE

The following Rules of Practice supplement the Uniform District Court Rules and the Montana Rules of Civil Procedure and any conflict shall be controlled by the Montana Rules of Civil Procedure and/or the Uniform District Court Rules.

RULE 1 - DEPARTMENTS - DIVISION OF BUSINESS

For the convenient classification and division of business, the District Court of the Thirteenth Judicial District is divided into six departments assigned to individual judges and their successors as follows:

- Department No. 1 Honorable Ingrid Gustafson
- Department No. 2 Honorable Russell C. Fagg
- Department No. 3 Honorable Susan P. Watters
- Department No. 4 Honorable Gregory R. Todd
- Department No. 5 Honorable G. Todd Baugh
- Department No. 6 Honorable Mary Jane Knisely

YELLOWSTONE COUNTY -- DIVISION OF BUSINESS. All cases of every nature shall be assigned by the Clerk in a random manner in equal numbers among the six departments, except that no assignment shall be made of the following: Abstracts of Judgment, Transcripts of Judgment, Warrants for Dstraint, Certificates of Amount Due and Abstracts of Administrative Orders.

If a criminal defendant, youth in need of care or delinquent youth has a second or subsequent case filed against him/her, the Clerk shall assign the new case to the Department previously assigned to that person's case, or, in youth court cases to the Department which has handled a former youth in need of care case related to the same family.

Post-conviction relief cases shall be assigned to the Department which was assigned to the underlying criminal case.

Protective Order matters shall be assigned to the Department previously assigned to the dissolution of marriage case, parenting plan case or paternity case between the same parties, if one exists.

Department No. 3 shall administer Family Drug Court, and the Clerk shall assign all DN, Youth In Need Of Care cases, not selected by the Family Drug Court, among the five other departments only.

FAMILY COURT. If a Judge is currently handling a DA, DG/C, DR, DF, DN, or DJ case, and an additional DA, DG/C, DR, DF, DN or DJ case is filed involving direct family members, (i.e., parent or child), the Clerk shall assign the new DA, DG/C, DR, DF, DN or DJ case to the Court assigned to the previous DA, DG/C, DR, DF, DN or DJ case. Counsel are requested to alert the Clerk of any previous cases that fall into this category.

MOTION TO CONSOLIDATE. A motion to consolidate cases (civil and criminal) filed in different departments shall be filed in each case but will be heard before the judge presiding in the department having the lowest cause number and, if the cases are consolidated, the trial will also be conducted in that department.

Whenever there exists an active and open file related to a Protective Order or a Temporary Protective Order and subsequently the same parties are involved in a pending dissolution file (DR), the Protective Order case shall be closed and the contents transferred and combined into the pending dissolution file.

RULE 2 - LAW AND MOTION

Law and Motion days are distributed among the six departments such that there will generally be four days of law and motion each week. Generally, each Department will have a law and motion day 3-4 times during a six (6) week period.

Consult the Clerk of Court to determine Law and Motion on any given day.

When Law and Motion falls on a holiday, all matters shall be deemed continued to the next regular Law and Motion day. In the event a judge is unable to hold Law and Motion on his/her assigned day, he/she shall

make arrangements with another judge to preside in his/her place, or, if it is to be cancelled, provide advance notice, if possible, to the Clerk of Court of such cancellation, when possible.

Law and Motion days are generally limited to uncontested matters. Contested matters and those involving presentation of evidence will not be heard on Law and Motion days except by leave of Court.

Only the judge presiding will hear matters presented on each Law and Motion day and that judge shall hear all matters presented, whether filed in his/her department or another department; provided that any motion which is resisted, or any other matter which is contested, shall be heard by the judge of the department where such motion or matter is pending. All matters presented on Law and Motion day shall be heard in open court, in the courtroom of the judge presiding, provided that uncontested matters of a self-evident nature, not including default divorces, if counsel so desires, may be left with the Clerk for presentation to the presiding judge.

Each attorney shall designate in advance the matters to be presented by him/her on Law and Motion day. The matters so designated shall be listed by the Clerk on a Law and Motion calendar, which calendar shall be closed at 3:00 p.m. the day previous to each Law and Motion day. On infrequent occasion exception to this cut-off time may be made on a case-by-case basis by the Court upon verbal request of a party. Immediately before the opening of Court on each Law and Motion day, the Clerk shall bring the Court file in each matter on the Law and Motion calendar to the courtroom of the presiding judge.

RULE 3 - SUBSTITUTION OF JUDGES

Substitution of Judges is governed by Mont.Code Ann. §3-1-804 and those rules are herein supplemented because the Thirteenth Judicial District is a multi-judge district.

When a party moves to substitute a judge in any case, the Clerk of Court shall at once reassign said case in a random manner to another department, making a memorandum thereof for the file and notifying the judges involved and all parties to said cause, or their attorneys, personally or by U. S. Mail.

In a case in which a judge recuses him/herself, the reassignment of the case shall be made by the Clerk of Court in the same manner as motions for substitution.

When an outside judge has been called in, it shall be the duty of plaintiff's counsel, a reasonable time in advance of any proceedings to be taken, to notify the local judge who was originally assigned to the case and with his/her assistance make arrangements for all personnel and facilities necessary to accommodate the needs of the case and the outside judge.

Nothing in these rules shall prohibit a judge having jurisdiction of a case from calling in an outside judge to take jurisdiction of the case, pursuant to Mont. Code Ann., §3-5-111.

RULE 4 - PLEADINGS/BRIEFS

Pleadings/briefs in all cases, except initial pleadings and except where otherwise limited in any statute or rule, shall be limited to 20 pages, not including attachments. Additional pages may be filed only with leave of the court upon a showing of good cause.

RULE 5 - MOTIONS - EXTENSIONS - PRESENTATION

Motions shall be governed by Rule 2, Uniform District Court Rules, except motions made pursuant to Rules 56, 59 and 60 of the Montana Rules of Civil Procedure with the provision of those Rules. Prior to noticing a contested motion for argument or hearing, the moving party shall obtain a date and time for same from the Court. All motions shall be identified in the title of the pleading with the applicable rule number of the Montana Rules of Civil Procedure.

Upon representation to the Court by the moving party that opposing counsel was notified and does not object to the motion, the Court may sign the order.

Pursuant to Rule 6(b) of the Montana Rules of Civil Procedure, extension of time for filing briefs may be granted on oral application without notice to the adverse party. All requests for extension of time, whether written or oral, shall be accompanied by an appropriate proposed order.

Following the filing of a reply brief or the lapse of the time allowed either party for filing of a brief, the Clerk shall present such motion to the Court for decision.

~ Rule Section ~

RULE 17 - STIPULATIONS AND AGREEMENTS

Stipulations and Agreements between the parties or their attorneys shall be made on the record and/or reduced to writing.

RULE 18 - EXAMINATION OF WITNESSES

On the examination of witnesses, only one attorney for each party will be permitted to examine or cross-examine the same witnesses, except by permission of the Court first asked and obtained; however, any attorney may make objections to the testimony of a witness.

RULE 19 - DECORUM

On the trial of any cause or in the presentation of any matter before the Court, only attorneys and parties engaged in the matter shall occupy positions before the bar, except by permission of the Court. No argument, motion or suggestion to the Court, other than a formal objection to the evidence, need be entertained unless the attorney making the same first rises in his place and addresses the Court.

RULE 20 - JUDGMENT ON WRITTEN INSTRUMENT

In all cases in which a judgment is entered upon a written instrument, the Clerk shall, at the time of entering judgment, note in ink over his/her official signature across the face of the instrument the fact of the entry of judgment and its date and attach his/her seal to the instrument, and file the instrument, which instrument shall not be removed except by order of Court. Then a proper entry of the same and of the order shall be made in the register of actions under the title of the case in which it was filed.

RULE 21 - DISCOVERY

Discovery shall not be routinely filed and shall only be filed upon certification of counsel that filing is necessary and appropriate to a pending motion or upon order of the Court.

In abuse and neglect cases brought by the Montana Department of Public Health and Human Services, counsel for the Department, at the time of the filing of a petition for termination of parental rights, shall provide to counsel for the parents, the guardian ad Litem, and the CASA worker (if any) copies of all documents sought to be admitted into evidence at the termination trial by the Department, including, but not limited to, all reports generated by third parties gathered by the Department in the course of its investigation and treatment of the family involved. Failure to provide documentation shall be grounds for rejection of documents into evidence at the time of the termination trial. Counsel for the Department, at the time of the filing of a petition for termination of parental rights, shall also provide to counsel for the parents any exculpatory documentation, including, but not limited to, documents supportive of a parent's ability to parent and documents evidencing completion of treatment plan tasks.

RULE 22 - INTERROGATORIES

The form of interrogatories and answers thereto shall conform to the requirements of Rule 33, Montana Rules of Civil Procedure.

The Court will, except in extraordinary circumstances, sustain a motion to quash all interrogatories if it appears that numerous frivolous interrogatories are asked therein. (Comment: This rule is intended to require the interrogator to custom prepare his interrogatories to the case at hand.)

RULE 23 - TRANSCRIPT

In the case of an appeal, a party must make a written request to the court reporter or transcriptionist for a transcript of the proceedings and make satisfactory arrangements to pay the estimated fees to obtain the transcript. The request must be filed in the court file and served upon the opposing party. Except for good cause shown, no extension of the time allowed by statute in which to prepare a transcript will be granted.

RULE 24 - EVIDENCE AS TO CHARACTER

Not more than two witnesses will be allowed to testify as to character in any cause, civil or criminal, without leave of the Court being first asked and obtained.

RULE 25 - GUILTY PLEA

Before the judge will accept any plea of guilty, the attorney for the defendant shall file with the Court a fully executed Acknowledgment of

Waiver of Rights by plea of guilty, in the form and with content consistent with the one on file with the Clerk in the general order file, copies of which shall be available from the Clerk. Copies of the executed document shall be served upon the persons designated by said form and at the time provided.

RULE 26 - CRIMINAL CASES

A. In a criminal case, if a not-guilty plea is entered at the time of the arraignment, the case will be set for Omnibus hearing at a later date. The State or the defendant may make any motion permitted under the Montana Rules of Criminal Procedure at any time after arraignment and the motion shall be noticed for hearing by the moving party. Dispositive motions shall be made within sixty (60) days of arraignment.

B. The Court urges full discovery, exploration and plea discussions be carried out between counsel prior to the Omnibus hearing.

C. It is contemplated that most cases will be on a course for trial or be ready for a guilty plea at the time of the Omnibus hearing. If a defendant is going to plead guilty, s/he shall do so as soon as possible and in all events prior to trial.

D. Unresolved cases will come on for trial after the Omnibus hearing.

E. On the form, the State and defense may check off the items called to the attention of the Court and note for their file copy the action taken. Such annotations will become a motion by the defense and by the prosecution for the relief requested and a shorthand record of the action taken. If a sufficient record has been made in the Omnibus hearing, the Court will summarily hear, consider and decide motions checked on the Omnibus form. However, the Court, upon request or upon its own direction, may permit the defendant or the State to submit written motions and supporting briefs with appropriate supporting documents for consideration by the Court. If witnesses are to be called, the Court will set a date certain for a hearing upon the motion.

F. In all cases in which the Court has discretion to consider a motion or allow the exercise of a defense at a later date than that designated in any statute, no party shall be deprived of the right to make such motion to designate such defense by waiting to present the same at the time of the Omnibus hearing, as contemplated by this rule.

RULE 27 - EVALUATIONS, THERAPY, COUNSELING AND DISPUTE RESOLUTION IN DR CASES

The Judge to whom a domestic relations case with parenting plan issues is assigned shall consider, at the time of the scheduling conference or at any subsequent time, the advisability of requiring the parties to participate at their own cost in such evaluation, counseling, therapy, course of education and/or dispute resolution as may appear necessary and appropriate in the circumstances relative to the parenting and/or dissolution issues. Any party may also request the Court to order the same at any time.

RULE 28 - (REPEALED)

RULE 29 - SETTLEMENT CONFERENCES AND ALTERNATIVE DISPUTE RESOLUTION

The Judge to whom a case is assigned shall consider, at the time of the scheduling conference or at any subsequent conference, the advisability of requiring the parties to participate in a settlement conference or other alternative dispute resolution process including, but not limited to, mediation. Any party may also request the Court to order a settlement conference or other alternative dispute resolution process.

The Chairman of the Yellowstone Area Bar Association Settlement Masters Committee shall maintain a list of settlement masters, comprised of attorneys duly licensed and admitted to practice law, who have engaged in the practice for a minimum of five (5) years, and have indicated their availability to act as settlement masters in cases pending before the Court. The parties may select any qualified person to act as a settlement master and shall not be limited to the list of settlement masters maintained by the Chairman of the Yellowstone County Bar Association Settlement Masters Committee.

If a settlement master or mediator is appointed by the Court or selected by the parties his/her fees shall be paid equally by the parties unless otherwise agreed. In the event that any party objects to a settlement

