



## **RULE 27 - NONJURY TRIAL SETTINGS**

Nonjury trials and hearings shall be scheduled throughout the year. The procedures which apply to scheduling orders as set forth in Rule 43 apply equally to jury and nonjury trials, except that trial settings for nonjury trials will be set forth in the initial scheduling order, whereas trial settings for jury trial will not be established until the final pretrial conference.

## **RULE 28 - REMINDERS TO THE COURT**

It is the Court's desire to make its rulings and render its decisions in a timely manner. In the event the Judge has under advisement any matter for a period of more than sixty (60) days, the parties, individually or jointly, may send the Judge a letter requesting a ruling.

### **SECTION C. FILES, PLEADINGS, AND DISCOVERY**

## **RULE 30 - CLERK OF COURT**

A. The Clerk of Court is the custodian of Court files and records. The Clerk shall make such rules allowing files to be taken from her office as she shall see fit, consistent with the applicable statutes and these rules.

B. No file or Court record may be taken from the Clerk's office for more than 5 days without a written order from the Court. No document may be removed from a Court file.

## **RULE 31 - YOUTH COURT RECORDS**

Whenever a request is made to review a Youth Court file by anyone except the County Attorney, a youth's attorney, or a probation officer, the Clerk shall first bring the file and the request to the attention of the Judge who shall review the file to determine if it contains any material which is confidential. If such confidential material is contained in the file, the Judge may direct the Clerk to remove it before the file is made available to the requesting party.

## **RULE 32 - PLEADINGS**

A. All pleadings shall be personally delivered or mailed to the Clerk for filing. Pleadings should not be sent directly to the Judge.

B. All pleadings, orders, and other papers presented to the Clerk for filing shall be clean and neat in appearance and shall be in conformance with UDCR Rule 1.

C. All pleadings and other papers to be filed shall be on letter size paper. If possible, attachments and exhibits should be reduced to letter size.

D. Pleadings may be single spaced, or double spaced. If single spaced, there shall be a double space between paragraphs. Quotes shall be single spaced and indented. Text should be printed on only one side of each page.

E. The title of all pleadings must be complete, and the complete title shall also be contained in the footer at the bottom of each page. For example, rather than titling a pleading, "Affidavit," it should be titled "Affidavit of John Smith in Support of Plaintiff's Motion for Summary Judgment."

F. Line 1 of the first page of proposed Orders, Decrees, or Judgments presented for the Judge's signature should not contain the name and address of the attorney who is submitting the document for the Court's consideration.

G. Each claim or cause of action contained in a Complaint should be identified as a separate count and should be labeled in such a manner that the nature of the claim is clear. For example:

COUNT I-BREACH OF CONTRACT; COUNT II-NEGLIGENCE.

H. A claim which alleges statutory violations must specify which statute or statutes are alleged to have been violated. It is not sufficient to refer generally to an entire Act, such as the Unfair Trade Practices and Consumer Protection Act. Complaints and Answers should be sufficiently detailed to place the opposing party and the Court on notice of what is being alleged.

I. The Clerk may refuse to file documents which do not conform to these rules.

## **RULE 33 - EXHIBITS**

A. The Clerk is the custodian of all exhibits.

B. In order to facilitate a smooth flow in the presentation of evidence, exhibits should be exchanged between counsel prior to trial. Attorneys are encouraged to stipulate in advance to any exhibits to which there is no objection.

C. The Clerk shall mark for identification all proposed exhibits and keep a list of all exhibits and the ruling of the Court thereon. A party or the Clerk may request that a copy of an exhibit be filed in place of the original.

D. After judgment has become final, the Clerk shall notify the attorneys that all exhibits and depositions may be retrieved from the Clerk's office within 30 days. Exhibits and depositions which are not retrieved within 30 days may be destroyed by the Clerk pursuant to a Standing Order from the Court. If the exhibit has historical value, it may be offered to a public museum for preservation. If the exhibit has more than nominal value, it shall be sold and the proceeds credited to the county general fund. Before an exhibit is made available to a museum or auctioned, however, the Clerk shall provide an additional 30 days notice of the need to retrieve the exhibit and the consequences for not doing so.

## **RULE 34 - DEPOSITIONS**

A. Pursuant to UDCR Rule 4, depositions and other forms of discovery shall not be routinely filed. When a motion or response is filed which makes reference to deposition testimony, the party filing the motion or response shall submit a copy of the relevant deposition testimony with the motion or response.

B. An attorney who instructs a witness not to answer a question during a deposition may be required to pay the cost of retaking the deposition if the question is later determined by the Court to have been proper. An attorney who engages in bullying, coaching, interrupting, or obstructing during a deposition may be required to pay the cost of retaking the deposition if the offending tactics interfere with the deposition.

## **RULE 35 - INTERROGATORIES AND DISCOVERY REQUESTS**

A. As with depositions, interrogatories and other types of written discovery shall not be routinely filed. Whenever a motion or response is filed which makes reference to interrogatory answers or other written discovery requests or responses, the party filing the motion or response shall submit the relevant interrogatory answers or discovery requests or responses with the motion or response. In the case of a motion or response based upon a failure to respond, a copy of the unanswered discovery requests shall be filed with the motion or response.

B. Interrogatories and other forms of written discovery may be single spaced, with double spacing between each question or subpart. It is not necessary to leave space for an answer or response.

C. Parties are encouraged to cooperate in the exchange of computer disks if the interrogatories or written discovery requests are lengthy or complex.

D. The Court will sustain objections to interrogatories and other discovery requests which are not designed to discover relevant facts pertaining to the case or which are burdensome or unnecessarily complex.

E. Motions to compel responses to written discovery or for protective orders to limit or deny certain discovery will not be considered by the Court unless the motion sets forth the efforts made by the parties to resolve their differences between themselves. It should rarely be necessary for the Court to referee discovery disputes. Sanctions will be considered whenever it appears that a party is obstructing the discovery process and there is not a reasonable basis to believe the party's position is well founded in the law.

## **RULE 36 - TELEFAX FILINGS**

Telefax filings are unnecessary unless there is a deadline problem, and they are discouraged as they create extra work for the Clerk of Court's staff. If a document is telefaxed to the Clerk of Court for filing, the following procedure shall be observed:

A. The Clerk shall stamp the document to show the date and time of its receipt. If a document is received after hours or on a weekend or holiday, it shall be considered to have been received at 8:00 a.m. on the first business day thereafter.

B. On the same day the fax is sent, the sender shall mail the original document to the Clerk of Court by first class mail. The Clerk shall file the original (mailed) document, showing the date and time of filing as

~ Rule Section ~



## ISSUES OF LAW

The following issues of law, and no others, remain to be litigated upon the trial: (Here set forth a concise statement of each.)

- 1.
- 2.

For such remaining legal issues, counsel will file and serve a brief on such issues at least 20 days before the scheduled trial unless the court orders otherwise.

### **RULE 45 - BRIEFS**

A. All briefs shall be filed with the Clerk, who shall stamp the date of filing on the brief and deliver all briefs on the pending motion or issue to the Judge as soon as all answer and reply briefs have been filed or the time has expired for doing so.

B. Briefs shall be concise and to the point, but as thorough as the complexities of the issues demand. The form, length, and additions to briefs shall conform to Rule 40 (H).

C. Rambling, verbose, inflammatory, or unintelligible briefs or pleadings may be ordered stricken by the Court.

D. The Clerk will return documents not meeting the above requirements. Those seeking an exception should request it before attempting to file a document.

### **RULE 46 - MOTIONS IN LIMINE**

The deadline for filing motions in limine shall be governed by the Court's scheduling order as it applies to the filing of motions generally. When, however, counsel could not have anticipated the circumstances giving rise to such motion prior to the motion deadline, the Court will consider motions in limine at any stage of a trial.

### **RULE 47 - SETTLEMENT CONFERENCES**

In all nonjury DV (civil) and all DR (domestic relations) cases in which all parties are represented, the Scheduling Order will contain a requirement that counsel and their clients must meet in a face-to-face settlement conference in the jury room in an effort to settle the case without the necessity of a trial. In such cases, the following procedure shall be followed:

A. Counsel shall consult among themselves and determine a date and time for the settlement conference, and one of them shall be appointed to contact the Court Administrator (293-8120) to reserve the jury room.

B. Counsel and their clients must attend the settlement conference in person and engage in a good faith effort to resolve the dispute. All parties necessary to effect a settlement shall attend the settlement conference.

C. At the conclusion of the settlement conference, one of the counsel shall notify the Court Administrator of the results of the settlement conference.

D. Nothing that is said or done at the settlement conference may be used as evidence in any subsequent proceeding.

E. Failure to participate in a settlement conference may result in the Court vacating the trial and rescheduling it after the settlement conference has been held.

### **RULE 48 - MEDIATION CONFERENCES**

The parties may request, or the Court on its own initiative may order, a mediation conference in any case. A mediation conference is a settlement conference presided over by a mediator. When a mediation conference is ordered, the following procedure shall be followed:

A. The parties shall agree upon a mediator, or if they are unable to do so, the Court will appoint one.

B. If a mediation conference is ordered, the parties must cooperate and participate fully in the process. Unless the parties and the mediator concur, or the Court authorizes in writing, all parties and agents necessary to effect a settlement must personally attend any mediation conference.

C. No later than five days prior to the mediation conference, the parties must submit a confidential settlement memorandum to the mediator, setting forth all relevant matters that pertain to issues of liability and damages, as well as any unique issues or problems raised in the case. The memorandum will be confidential and will not be shared with the opposing party or the Court.

D. The mediator shall file a report with the Court within five days after the settlement conference, advising the Court whether or not the parties cooperated in the mediation conference and whether or not a settlement was achieved.

E. Unless the Court orders otherwise, any expenses related to a Court-ordered settlement conference will be shared equally by the parties.

F. Nothing that is said or done at the mediation conference may be used as evidence in any subsequent proceeding.

### **RULE 49 - PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGEMENTS**

In all matters in which the Court must enter Findings of Fact and Conclusions of Law, at least three business days prior to the scheduled trial or hearing, the parties shall file and serve proposed findings of fact and conclusions of law. Failure to file proposed findings of fact and conclusions of law in a timely manner shall be cause for appropriate sanction including removal of the case from trial calendar, dismissal or granting of a judgment, precluding the offending party from presenting evidence or objecting to evidence submitted by the other party, or such other action as the Court deems appropriate. See, DCR Rule 8. Leave to file post-trial amended and supplemental findings of fact and conclusions of law will not be freely granted.

When the parties possess the necessary equipment, they may file copies of proposed findings, orders, and judgments in digital form simultaneously with the filing and service of written documents, which must be submitted in any case. Such filing includes attaching a copy of the filed documents to electronic mail addressed to the Court, so long as a copy is simultaneously sent to the Court Administrator and to all adverse counsel or unrepresented parties. When counsel or an unrepresented party does not have the means to receive and send electronic mail, counsel may file and serve a digital copy of a proposed document with the Clerk of the Court with a compact disk or other electronic media that can be accessed, but may not use electronic mail.

Digital copies of documents must be created using Microsoft Word or a program that produces documents accessible by Word without formatting difficulties. The digital document, or a copy of it, must be subject to editing or modification by Word. Consequently, a document in Public Document Format that cannot be edited is not acceptable.

## **SECTION E. PRETRIAL AND POST-TRIAL PROCEEDINGS-- CRIMINAL**

### **RULE 50 - GENERALLY**

Whenever a Defendant is addressed by the Court or wishes to address the Court, he or she shall rise and speak or respond in an appropriately respectful manner.

### **RULE 51 - ARRAIGNMENTS**

A. Prior to appearing in Court for an arraignment, a Defendant shall have reviewed the Information with his attorney. If the Defendant will be entering a plea of not guilty, he or she shall sign a document entitled, "Acknowledgment of Rights and Plea of Not Guilty." At the arraignment, the Court will determine if the information contained in the aforementioned document is true and correct, and if so, the Court will accept the plea and enter a scheduling order.

B. If a Defendant intends to enter a plea of guilty at his or her arraignment, the same procedure described above shall be followed, except the Defendant shall sign a document titled, "Acknowledgment of Rights, Waiver, and Plea of Guilty." If the Court accepts the Defendant's plea, the matter will be set for sentencing as discussed below.

C. If a Defendant has previously entered a plea of not guilty and wishes to change his or her plea, the Defendant shall sign a document entitled, "Acknowledgment of Rights, Waiver, and Change of Plea." If the Court accepts the Defendant's change of plea, the matter will be set for sentencing.



5. Counsel may not appeal to the passions or prejudices of the jury.
6. Counsel may not suggest the presence or absence of insurance.

## SECTION G. DISSOLUTIONS

### RULE 70 - OTHER RULES APPLICABLE, GENERALLY

A. Except as otherwise provided herein, the Court's procedural rules generally applicable to civil matters will also apply to dissolution actions.

B. Counsel are reminded that contested dissolution proceedings are emotional disputes, and if not handled with appropriate delicacy, they can leave permanent scars on litigants, and more important, on their children. In the heat of battle divorce clients may demand that their counsel take a position or employ a tactic that will work to the disadvantage of that client. Lawyers are expected to maintain client control and not pursue a "scorched earth" policy merely because their client is demanding such an approach.

### RULE 71 - FINANCIAL AFFIDAVITS

A. In all dissolution actions in which child support or maintenance are issues, a financial affidavit must be completed and filed by the Petitioner at the time of filing the Petition or as soon thereafter as practicable. A copy of Petitioner's financial affidavit must be served upon the Respondent, who must in turn file a completed financial affidavit, with a copy to Petitioner, within 20 days thereafter. Financial affidavit forms may be obtained from the Clerk of Court.

B. After filing the required financial affidavits, counsel shall calculate the nonresidential parent's child support obligation in accordance with the Montana Child Support Guidelines and shall file a copy of a proposed interim child support order, together with a copy of the child support worksheet by which the child support figure was derived. If opposing counsel disagrees with the child support figure thus calculated, he or she may file his or her own child support worksheet and proposed interim child support order. It is important that adequate child support payments be commenced as soon as possible after a separation.

### RULE 72 - TEMPORARY CHILD SUPPORT

A. The welfare of the parties' children is of paramount importance. Accordingly, parties will be expected to cooperate in making arrangements for the voluntary payment of temporary child support until a child support order can be entered.

B. If the parties are unable to agree upon the amount of temporary child support, the Court will entertain an emergency petition for a temporary child support order.

### RULE 73-DOCUMENTS TO BE FILED IN DISSOLUTION CASES

A. Parties are reminded of the duty to file a preliminary disclosure of assets and liabilities pursuant to § 40-4-252, MCA, and to file a final disclosure no later than 45 days before the first assigned trial date pursuant to § 40-4-253, MCA.

B. A Proposed Parenting Plan, making provision for the items recited in § 40-4-234, MCA.

### RULE 74 - PAYMENT OF CHILD SUPPORT

A. Except in cases where child support is paid through automatic withholding, child support payments must be mailed to the residential parent in care of the Clerk of Court at the following address:

Clerk of District Court  
Child Support Department  
512 California Avenue  
Libby, MT 59923

B. Child support payments shall be made payable to the residential parent.

C. Whenever a party is receiving AFDC or CSED services, counsel are reminded that § 40-5-201, MCA, et seq. contains provisions that should be reviewed with your client.

## SECTION H: ATTORNEYS

### RULE 80 - REPRESENTATION AND WITHDRAWAL

A. Attorneys not admitted to practice law in Montana will not be heard unless they associate with a licensed Montana attorney.

B. No attorney may withdraw from a case, civil or criminal, except with consent of the client or by leave of Court after notice served on the parties and opposing counsel. See § 37-61-404, MCA and UDCR Rule 10.

C. Until six months after the time for appeal from a final judgment or decree, unless earlier relieved, it shall be presumed that counsel of record continue to represent the parties. Thereafter, service upon a party must be accomplished in accordance with Rule 4(D) M.R.Civ.P., provided, however, that a courtesy copy of any pleading to be served upon a formerly represented party should be mailed to the party's last counsel of record.

### RULE 81 - ATTORNEY FEES

Attorney fees should not be requested unless authorized by statute, case law, or contract. In such cases, the authority for requesting an award of attorney fees should be specified. When attorney fees are recoverable and are awarded, the following procedure shall be followed:

A. If an award of attorney fees is justified under the law and deemed appropriate by the Court, the Court will recite in its Judgment, Order, or Decree that attorney fees are awarded, and the party to whom attorney fees are awarded must file an affidavit in support of the requested fee within 10 days. If no such affidavit is filed within 10 days, or there is no request for additional time in which to file the affidavit (also within 10 days), the attorney fee award shall be deemed to be waived.

B. Within 10 days after service of the affidavit in support of the attorney fee claim, the opposing party may file a written objection, setting forth in detail the items to which there is an objection and the grounds therefore. If no objection is filed within 10 days, or there is no request for additional time in which to file same (also within 10 days), any objection to the claimed fee shall be deemed to be waived.

C. If a written objection to a claimed fee is filed within the time provided, the Court will review the claim and objection and determine whether it believes a hearing on the claim and objection is necessary. If the Court determines that no hearing is necessary, the Court will issue a ruling awarding fees in the amount it deems to be appropriate. The Court may schedule a hearing on attorney fees on its own initiative, and either party may request a hearing when they file their claim or objection, although the Court reserves the right to deny such request.

### RULE 82 - COURT APPOINTED COUNSEL, COMPENSATION AND EXPENSES

Whenever it is necessary for the Court to appoint legal counsel outside of the indigent defense contract, the following rules shall apply:

A. Fees shall be billed at the rate of \$50 per hour, unless otherwise ordered by the Court.

B. Counsel shall maintain time records contemporaneous with the work performed, and at the end of each month, counsel shall submit a claim to the Court Administrator, detailing whatever work has been performed on behalf of the client during the preceding month.

C. Billing statements shall be rounded off to the nearest tenth of an hour.

D. Claims for legal work performed during the month of June must be submitted before June 25th, as that is the last date on which claims for the fiscal year can be processed. Claims submitted for a fiscal year after that date are not reimbursable by the State, and will therefore not be paid.

E. Any expense which exceeds \$100.00 requires prior approval from the Court.

### RULE 83 - EX PARTE MOTIONS AND CONTACT WITH THE COURT

*Ex parte* contact between the court and counsel or a party is governed by Rule 3, Uniform District Court Rules, Rules 3.3 and 3.5, Montana Rules of Professional Conduct, and Rule 210, 2008 Montana Code of Judicial Conduct. A court may contact counsel *ex parte* to direct counsel to prepare an order or other document but may not debate or discuss the merits of the document.

