

THINGS TO KNOW

The Federal Rules of Civil Procedure and the Montana Rules of Civil Procedure - Compared and Contrasted

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I. INTRODUCTION

The Supreme Court's Advisory Committee in 2006 undertook the major task of thoroughly revising the Montana Rules of Civil Procedure. The Advisory Committee submitted a complete re-draft of the Rules and transmitted them to the Court, who then published the draft for public comment. The Court held public hearings and accepted further comment. The Rules were approved in April and effective October 1, 2011. In addition, the Uniform District Court Rules have been amended and will be in effect March 1, 2012.

The purpose of this outline is to call to attention important areas where the Montana Rules of Civil Procedure are deliberately different from the Federal Rules and also to call attention to important areas where the Montana Rules changed long-standing rules in order to proceed in conformity with the Federal Rules.

II. THE APPROACH OF THE ADVISORY COMMITTEE

The guiding principle of the Committee - followed by the Court in almost all instances - was to adopt Federal Rules of Civil Procedure unless a specific determination was made that the existing or a slightly modified Montana Rule is better. The benefit is two-fold; first, practitioners do not have to learn two sets of rules and, second, identical rules allows Montana lawyers and courts to draw on the larger body of federal rule case law and scholarly interpretations.

III. MAJOR CHANGES ADOPTED OR REJECTED

1. Rule 4 – rejection of short time period for service of summons and complaint
2. Rule 6 – regarding counting of days/calculation of time periods
3. Rule 11 – adoption of Federal Rule verbatim
4. Rule 15 – modification of procedures/rights to amendment
5. Rule 23 – class actions
6. Rule 26 – no automatic pre-discovery disclosure; depositions of experts explicitly allowed
7. Rule 28 – adoption of Interstate Depositions and Discovery Act
8. Rule 58(e) – clarifying finality of judgments
9. Rule 62 – revising procedure regarding stays pending appeal and supersedeas bonds
10. UDC Rules - motion and brief now filed together; time periods modified to conform to the 7-day base period.

IV. ROLE OF COMMITTEE NOTES

Jim Goetz principal drafter of Committee Notes.
Can use Notes to identify major changes and reasons therefor.

V. RULE-BY-RULE ANALYSIS

Rules 1, 2, 3	Stylistic changes; removal of word “shall” due to inherently ambiguous nature.
Rule 4 – Jurisdiction and Service of Process	<ul style="list-style-type: none"> a. Time limit for service of process remains at 3 years. b. Various non-substantive language changes; decision to leave jurisdiction sections alone given development of existing case law.
Rules 5.1 and 5.2 – Notifying of Constitutional Challenge and Privacy	<ul style="list-style-type: none"> a. Rule 5.1 replaces previous Rule 24(d) with style changes. b. Rule 5.2 similar to Federal Rule 5.2, and changes to assist compliance with the Rules for Privacy and Public Access to Court Records.
Rule 6 – Computing and Extending Time (<i>Days are Days</i>)	<ul style="list-style-type: none"> a. Stylistic changes but almost verbatim adoption of Federal Rule 6. <i>See</i> Federal Commission Comments inserted in Advisory Committee Notes. b. Holidays specified in Rules 6(a)(4)(A) and (B). c. Federal Rule changes regarding calculation of days and time. Ripple effect on other rules – take note. Note changes to UDC Rules. d. Rule 6(c) requirement of written motion and notice of hearing at least 14 days before the time specified, with exceptions (<i>ex parte</i>, rules setting different time or court order on good cause). e. 3 days still added for mail service.
Rule 7 – Pleadings and Motions	<ul style="list-style-type: none"> a. Changes stylistic and to conform to recent Federal Rule changes. b. Rule abolishing demurrer, etc., abolished. No longer necessary.
Rule 7.1 – Disclosure Statement	New rule, requiring conformity to federal practice re filing of corporate disclosure statements.
Rules 8, 9 and 10 – General Rules of Pleading, Pleading Special Matters, and Form of Pleadings	Stylistic changes and conformity with Federal Rules. No substantive changes.

<p>Rule 11 – Signing Pleadings; Sanctions</p>	<p>a. Stylistic changes and conformity with Federal Rules. b. Signer of pleadings must include a telephone number. c. Rule 11(c)(2) follows Federal Rule approach mandating: i. that a sanctions motion be served, but <u>not</u> filed until 21 days after service. ii. Rule 11 motions must be separate from any other motion. iii. Does not apply to disclosures, discovery requests, responses, objections and motions under Rules 26 - 37.</p>
<p>Rule 12 – Defenses and Objections; Motion for Judgment on Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing</p>	<p>a. Stylistic changes and conformity with Federal Rules. b. Rule 12(a)(3) extends time for appearance by a state officer or employee to 42 days, the same as for State’s appearance. c. Rule 12(b)(3) re-incorporates improper venue as a Rule 12(b) defense.</p>
<p>Rule 13 – Counterclaim and Cross-Claim</p>	<p>a. Stylistic changes and conformity with Federal Rules. b. Rule 13(b) clarifies, by adoption of the Federal Rule, that a permissive counterclaim is everything that is not compulsory, as that term is defined in Rule 13(a)(1).</p>
<p>Rule 14 – Third-Party Practice</p>	<p>a. Stylistic changes and conformity with Federal Rules. b. Rules 14(a)(2)(B) and (a)(3) clarify third-party practice and follows the 2007 amendments to the Federal Rules. <i>See</i> Federal Committee Note for explanation. c. The time in Rule 14(a)(1) to serve a third-party complaint without leave of court is shortened to 14 days from 30 in the previous version of the rule. This conforms with the federal rule. d. Rule 14(b) clarifies procedure upon assertion of any “claim” (not just a counterclaim) against a plaintiff. <i>See</i> Federal Committee Note</p>
<p>Rule 15 – Amended and Supplemental Pleadings</p>	<p>a. Stylistic changes and conformity with Federal Rules. b. Rule 15(c)(1)(C)(I) changes reference to “institution” of an action and instead, refers to providing notice of the existence of an action.</p>

<p>Rule 16 – Pretrial Conferences; Scheduling; Management</p>	<p>a. Rule 16(b)(2) replaces the district court’s mandatory duty to issue a scheduling order 120 days after filing a complaint. Instead, parties have the right to request a scheduling order be issued 90 days after such a request. The purpose is to allow each party to assess need and timing for a scheduling order and to avoid routine, premature issuance of such orders when the parties agree such an order is not yet necessary.</p> <p>b. Rule 16(b)(3)(iv) and 16(c)(2)(D) - (F) and (M) - (P) are patterned after Federal Rule 16 to provide opportunities to parties to structure discovery and trial in ways that meet the particular needs of the case. Note that the amendments are non-binding but allow parties the opportunity to structure trials and to eliminate any question regarding the authority of the court to make appropriate orders designed either to facilitate settlement or to provide for an efficient and economical trial.</p> <p>c. Rule 16(c)(1), based on the federal rule, requires that lawyers attending pretrial conferences have authority to make stipulations and admissions. In addition, the court may require a party or representative present or “reasonably available” to consider possible settlement.</p>
<p>Rule 17 – Parties</p>	<p>Stylistic changes and conformity with Federal Rules. No substantive change other than an incorporation in Rule 17(d) of the provisions of former Rule 25(d)(2) regarding suit against a public officer who sues or is sued in an official capacity as that provision fits better in Rule 17 than Rule 25 on substitution of parties.</p>
<p>Rules 18, 19, 20 and 21 – Joinder of Claims and Parties</p>	<p>Stylistic changes and conformity with Federal Rules.</p>
<p>Rule 22 – Interpleader</p>	<p>a. Stylistic changes and conformity with Federal Rules.</p> <p>b. Rule 22(b) restates a procedure for interpleading a substitute defendant by deposit of property at issue that has no counterpart in the Federal Rules.</p>

<p>Rule 23 – Class Actions</p>	<ul style="list-style-type: none"> a. Both stylistic and substantive changes intended to conform to recent changes to the Federal Rules regarding class actions. Significant changes in Rules 24(f), (g) and (h), the adoption of which reflect an intent to follow the Federal Class Action Rule. b. Rule 23(f)(1) follows Federal Rule 23(f) regarding taking of an appeal from an order granting or denying class certification. The Montana Rule had no previous counterpart. Rule 23(f)(2) regarding appeal from an order rejecting a proposed class settlement does <u>not</u> have a counterpart in the Federal Rules but is based on an American Law Institute recommendation. c. Rules 23(g) and (h) govern appointment of class counsel and payment of fees and costs to class counsel. Montana’s existing Rule 23 does not address either topic, a glaring omission.
<p>Rules 23.1 and 23.2 – Derivative Actions and Actions Relating to Unincorporated Associations</p>	<p>Stylistic changes and conformity with Federal Rules.</p>
<p>Rule 24 – Intervention</p>	<ul style="list-style-type: none"> a. Stylistic changes and conformity with Federal Rules. b. Rule 24(d) requiring notice to the Montana Attorney General in cases involving the constitutionality of a Montana statute has been transferred to Rule 5.1 and now conforms to the Federal Rules.
<p>Rule 25 – Substitution of Parties</p>	<p>Stylistic changes and conformity with the Federal Rules.</p>

<p>Rule 26 – General Provisions Governing Discovery</p>	<ul style="list-style-type: none"> a. The proposed amendments conform to the Federal Rules with respect to language and style but there are significant substantive departures from Federal Rule 26. b. The federal initial disclosure and pretrial disclosure requirements of Federal Rule 26(a)(1) and 26(a)(3) <u>rejected</u> as potentially too costly and too complex for the majority of civil cases in state court. c. Note that, by virtue of a Commission Comment to Rule 26, there is explicit reference to and approval of a district court choosing to impose detailed disclosure requirements like those in the Federal Rules through exercise of its general powers and through orders issued following a preliminary pretrial conference held pursuant to Rule 26(f), which should eliminate any question regarding the authority of the district court to make such orders as may be necessary to properly handle discovery in light of the requirements of the case. However, the detailed expert disclosure requirements of the Federal Rule have been specifically rejected. d. Federal Rule 26(b)(1) contains a limitation on the scope of discovery and that limitation is rejected by the Committee in favor of retention of long-standing Montana practice. e. Discovery of insurance information, previously found at Rule 26(b)(2) has been carried forward without amendment and is found at Rule 26(b)(6). f. Rule 26(b)(4)(A)(ii) removes any doubt regarding expert depositions as a matter of right and makes clear the right to depose an opposing expert. g. Rule 26(b)(7) adopts, verbatim, Federal Rule 26(b)(5) regarding handling of information withheld under claimed privilege, creation of a privilege log and providing a procedure for handling inadvertent disclosure of privileged materials. h. Procedure regarding protective orders in Rule 26(c) is adopted verbatim from Federal Rule 26(c). i. Rules 26(d) and (e) are adopted from the Federal Rules with modifications necessary to reflect the Committee’s rejection of the expert disclosure requirements of Rule 26(a)(2). j. The previous Rule 26(f) regarding non-mandatory discovery conferences is carried forward and the Committee seeks in its comment to underscore that the rule provides a useful vehicle for adoption of case-specific discovery procedures.
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<p>Rule 26 – General Provisions Governing Discovery Cont.</p>	<p>k. Federal Rule 26(g) is adopted with a minor change, that being a change in Rule 26(g)(1)(B)(i) of the word “nonfrivolous” to “good faith.”</p> <p>l. There is an artifact in the Committee Note regarding a privilege for communication between counsel and an expert. That privilege exists in the federal rule but was not adopted by the Court.</p>
<p>Rule 27 – Depositions to Perpetuate Testimony</p>	<p>Stylistic changes and conformity with the Federal Rules, with one exception and that is a reference to cases in state district court rather than the Federal Rule’s reference to cases in U.S. District Court.</p>
<p>Rule 28 – Persons Before Whom Depositions May Be Taken</p>	<p>a. Stylistic changes and conformity with the Federal Rules.</p> <p>b. Rule 28(a) is the previous Rule 28(a) with middle portions of that paragraph removed because they are covered and clarified by the Uniform Interstate Depositions and Discovery Act, which appears as Rule 28(c).</p> <p>c. Rule 28(c) is the adoption of the Uniform Interstate Depositions and Discovery Act. It changes and simplifies procedures for taking of foreign depositions.</p> <p>d. Previous Rule 28(c) regarding disqualification for interest is carried forward and is now part of an expanded Rule 28(d) relating to the prohibited agreements with respect to court reporters. Of particular note, a deposition cannot be taken by a reporter who has provided exclusive monetary or other advantage to one of the parties or who offers their services to one party on different financial terms than other parties. This amendment was proposed by the Court Reporters Association.</p>
<p>Rule 29 – Stipulation Regarding Discovery Procedure</p>	<p>The previous Rule 29 was edited to read in a manner more consistent with the stylistic changes in the Federal Rules, but the core of the Montana Rule was retained due to the Committee’s preference.</p>

<p>Rule 30 – Depositions by Oral Examination</p>	<ul style="list-style-type: none"> a. Federal Rule adopted with exceptions. b. Removal of all references to initial disclosure requirements of Federal Rule 26. c. Carry-forward of previous Montana provision relating to court approval of a deposition taken prior to expiration of 30 days after service of summons and complaint. d. Prohibition of second deposition absent agreement of the parties or leave of court. e. One day of seven hours and ten deposition limit absent agreement or court order. Rule 30(a)(2)(A). f. Rejection of federal approach whereby Rule 615 exclusion of witnesses rule does not apply at depositions. Thus, Rule 615 of the Montana Rules of Evidence may be invoked and witnesses excluded, save for party representative.
<p>Rules 31 and 32 – Depositions by Written Questions; Use of Depositions</p>	<p>Adoption of Federal Rules with only minor changes in Rule 32. <i>See Notes.</i> Federal Rule 32(a)(5)(B) rejected by virtue of the rejection of rediscovery disclosure rules in Federal Rule 26.</p>
<p>Rule 33 – Interrogatories to Parties</p>	<ul style="list-style-type: none"> a. Adoption of Federal Rule with minor exceptions. b. Number of interrogatories limited to 50 rather than 25 under Federal Rule 33. c. Time for answering interrogatories served with summons and complaint remains 45 days after service, a rule not present under Federal Rule 33. d. Carries forward intent of language appearing in previous Rule 33(b) making it clear an interrogatory is not objectionable “merely because it asks for an opinion or contention that relates to fact or the application of law to fact.” Specific agreement with Committee Note to Rule 33 of the Federal Rules and its statement that “opinion and contention interrogatories are used routinely.”
<p>Rule 34 – Production of Documents</p>	<p>General adoption of Federal Rule with minor changes:</p> <ul style="list-style-type: none"> a. Carry-forward of 45-day response period provided by previous rule following service of summons and complaint on defendant. b. Specific adoption of Federal Rule regarding production of electronically-stored information (ESI.)

<p>Rule 35 – Physical and Mental Examination</p>	<p>a. Verbatim adoption of Federal Rule with one adaptation.</p> <p>b. The provision carried forward comes from previous Rule 35(b)(2) limiting the waiver of doctor-patient privilege in instances where treatment, consultation, prescription or examination relates to a mental of physical condition “not related to the pending action.” Rule 35 more narrowly protects conditions “not related” to the condition claimed in the proceeding than does the federal rule.</p>
<p>Rule 36 – Requests for Admission</p>	<p>a. Adoption of Federal Rule with one addition.</p> <p>b. The time period for response to requests for admission after service of summons and complaint remains 45 days.</p>
<p>Rule 37 – Failure to Make Discovery; Sanctions</p>	<p>a. General adoption of Federal Rule with certain exceptions/additions.</p> <p>b. As with Rules 26 and 30, reference to initial disclosures is deleted.</p> <p>c. Adoption of Federal Rule’s “confer and certify” requirements regarding motion practice relating to discovery. Rules 37(a)(1).</p> <p>d. Adoption of federal provision in situation where a motion to compel is filed and, in response, the requested discovery is provided. In that instance, the court is required, after notice and hearing, to order payment of reasonable expenses, including fees. NB: The initial motion to compel <u>must</u> be presented only <u>after</u> the “confer and certify” requirement has been satisfied.</p> <p>e. Sanction provisions explicitly extended, in Rule 37(c)(1) to failure to disclose both discovery and expert opinions.</p> <p>f. Motions for sanctions explicitly subject to “confer and certify” requirement of Rule 37(d)(1)(B).</p> <p>g. Previous Rule 37(e) is carried forward unchanged as Rule 37(f), but is identical to the Federal Rule relating to failure to provide ESI and limits the Court’s ability to impose sanctions so long as the loss is the result of routine, good-faith operation of an electronic information system.</p>

<p>Rules 38 and 39 – Right to a Jury Trial; Demand; Trial by Jury or Court</p>	<ul style="list-style-type: none"> a. Rules 38 and 39 as proposed adopt the Federal Rules 38 and 39 nearly verbatim with a handful of minor changes, such as the deleted reference in Rule 38(e) of language relating to admiralty and maritime claims. b. Rule 38(d) simplifies and buttresses language regarding waiver of a jury trial and withdrawal of such a demand. A proper jury demand may be withdrawn “only if the parties consent.” c. The language of Rule 39 is more direct and easy to understand than the previous Montana rule.
<p>Rules 40, 41 and 42 – Scheduling Trial; Dismissal; Consolidation</p>	<ul style="list-style-type: none"> a. The three rules are, generally, adoptions of Federal Rules 40, 41 and 42. Modifications of note are below. b. Rule 41(a)(1)(B) adopts the two-dismissal language from the Federal Rule, the result being a dismissal on the merits. c. Rule 42(b) contains additional language, from the Federal Rule, regarding separate trials to “expedite and economize.” It also adds language preserving the right to jury trial, specifically making reference to “any” constitutional right to a jury trial - both state and federal.
<p>Rule 43 – Taking Testimony</p>	<ul style="list-style-type: none"> a. Rule 43 is amended as part of general restyling and generally adopts Federal Rule 43. The proposed Montana Rule no longer starts with paragraph (d). b. Rule 43(a) is adopted from the Federal Rule regarding testimony in open court and the ability to take testimony “by contemporaneous transmission from a different location.” Though often done, there was no existing Montana rule allowing practices such as remote video conferencing and the like.
<p>Rules 44, 44.1, 45 and 46 – Proving an Official Record; Determining Foreign Law; Subpoena; Objecting to a Ruling or Order</p>	<p>Federal Rules adopted with minor stylistic changes.</p>
<p>Rule 47 – Jurors</p>	<p>Rule 47 is the same as the previous Rule 47 but the format has changed. An outline format is used in order to make its style consistent with the style of the Federal Rules. The changes are intended to be stylistic only.</p>
<p>Rule 48 – Juries – Verdict</p>	<p>Rule 48 is unchanged.</p>

<p>Rule 49 – Special Verdicts and Interrogatories</p>	<p>The changes to Rule 49 are intended to be stylistic to conform to format of the Federal Rules and to make the rule more easily understood.</p>
<p>Rule 50 – Judgment as a Matter of Law in a Jury Trial; Related Motion for New Trial; Conditional Ruling</p>	<p>a. Most changes to Rule 50 are stylistic in order to make them more consistent with the Federal Rule format and to make them more easily understood.</p> <p>b. Rule 50(b) adopts relevant language of the Federal Rules allowing the movant to file both a renewed motion for judgment as a matter of law and an alternative or joint request for a new trial. Such a motion must be filed no later than 28 days after the jury was discharged, if the motion addresses a jury issue not decided by verdict. Note the adoption in Rule 52(b) of the time for filing a motion to amend or make additional findings, which has been enlarged from 10 to 28 days in conformance with the Federal Rule 52 changes. The reason for the change is explained in a Federal Rules Committee Comment quoted in the Montana Committee Notes to Rule 50.</p> <p>c. Rule 50(b) also contains a provision subjecting a renewed motion for JMOL or new trial to the automatic 60-day denial.</p> <p>d. Rule 50(e) recognizes the appellate court’s ability to direct entry of judgment. The Federal Committee noted that the change simply acknowledged and canonized the development of the common law on this point.</p>
<p>Rule 51 – Instructions to the Jury; Objections; Preserving a Claim of Error</p>	<p>a. Submission of jury instructions by a party is a matter of right. Rule 51(a)(1).</p> <p>b. Rule 51(a)(2) allows parties to request instructions on issues not reasonably anticipated prior to the close of evidence.</p> <p>c. Rule 51(b)(3) allows the court to instruct the jury at any time prior to discharge rather than the previous rule’s restrictive rule requiring the instructions to be read prior to commencement of final arguments.</p> <p>d. Explicit preservation of the right to object if a party was not informed of an instruction or request.</p> <p>e. Rule 51(d) provides clear guidelines for assignment of error. There was no prior rule on this issue other than the statement that “no exceptions are necessary to the rulings of the court on the giving or refusal of instructions.”</p>

<p>Rule 52 – Findings and Conclusions; Judgment on Partial Findings</p>	<ul style="list-style-type: none"> a. Predominantly stylistic changes to conform to Federal Rule. b. Rule 52(b) motions to amend findings or make additional findings must be filed within 28 days, an enlargement of the 10-day period previously provided. This change was adopted to conform with the Federal Rule. The reference to an accompanying motion for new trial under Rule 59 then subjects the motion to deemed denial at 60 days.
<p>Rule 53 – Masters</p>	<p>Amendments to the present Montana Rule were adopted principally to smooth and clarify the rule. The Federal Rule was consulted and considered but was not adopted by the Supreme Court.</p>
<p>Rule 54 – Judgment; Costs</p>	<ul style="list-style-type: none"> a. The language has been restyled in accordance with the Federal Rules. b. Rule 54(b) adopts the relevant federal language but adds 54(b)(2) to harmonize with Montana’s rules as set forth in Rule 6(6) of the Montana Rules of Appellate Procedure. c. Rule 54(d)(1) allows the clerk to tax costs on 14 days’ notice, subject to court review on motion served within the next 7 days. d. Rule 54(d)(2) incorporates federal provisions regarding attorneys’ fees.

<p>Rule 55 – Default; Default Judgment</p>	<ul style="list-style-type: none"> a. Rule 55(a) contains an important change also reflected by the 2007 change to the Federal Rules. Former Rule 55(a) directed the clerk to enter a default when a party failed to plead or otherwise defend “as provided by these rules.” The implication from the reference to defending “as provided by these rules” seemed to be that a clerk should enter default even if a party did something showing an intent to defend if that intent was not reflected in a way specifically addressed by the rules. That implication has been rejected by various courts. Accordingly, the Federal Rule drafters specifically chose to delete the language in order to reflect Rule 55(a)’s actual meaning. The Montana Committee chose to adopt the same approach. b. Rule 55(b)(1) drops the explicit personal service requirement and prohibition on service by publication found in the prior Montana Rule. The previous 3-day period of Rule 55(b)(2) for application for judgment is changed to 7 days. c. Rule 55(c) adopts the very short and straight-forward approach of the Federal Rule. d. Rule 55(d) of the Federal Rule was incorporated, with state-specific revisions, to limit the availability of default judgment against the state and “political subdivisions.”
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<p>Rule 56 – Summary Judgment</p>	<p>The changes in Rule 56 adopt the general restyling of the Federal Rule to make the rule more easily understood. Rules 56(a) and (b) adopt federal language, substituting “relief” for “claim, counterclaim, or cross-claim or to obtain a declaratory judgment” where that phrase is found in the present subsections of Montana Rule 56. Relief is a more straightforward term. The Committee quotes the explanation of the Federal Committee regarding summary judgment and the procedures, especially as they relate to timing, that are to be followed in summary judgment practice. The four specific changes from Federal Rule 56 are:</p> <ul style="list-style-type: none"> a. In the Federal Rule, it is specifically noted that the timing provisions are presumptive only and may be modified by court order or local rule. The Committee believes that different Rules in various judicial districts do not make sense and, therefore, Rule 56(c)(1) controls absent specific court order. Thus, a response is to be filed within 21 days after the motion is served or a responsive pleading is due, whichever is later, and the reply brief is due 14 days thereafter. b. The Federal Rule allows any party to move for summary judgment at any time “until 30 days after the close of all discovery,” but that provision is modified to maintain existing Montana summary judgment practice allowing such a motion “at any time unless the court orders otherwise.” c. Unless the court orders otherwise, Rule 56(c)(a)(B) requires any opposing affidavits to be filed according to the briefing schedule, rather than allowing an opposing party to surprise the moving party anytime “prior to the day of the hearing.” d. Rule 56(c)(2) expresses the parties’ general entitlement to hearings on summary judgment. Practitioners should specifically note the provisions of Rule 56(c)(2).
<p>Rule 57 – Declaratory Judgment</p>	<p>The language of Rule 57 has been amended by generally adopting the restyled language of the Federal Rule and by making the specific references to the Montana declaratory judgment statutes.</p>

<p>Rule 58 – Entering Judgment</p>	<ul style="list-style-type: none"> a. The language of Rule 58 has been amended as part of the general restyling of the civil rules and generally adopts the language of the Federal Rules, some of which is stylistic and some of which is substantive. b. Rule 58(a) adopts the federal “separate document” requirement and exceptions. No such provision previously existed in the Montana Rule. c. Rule 58(b)(2)(A) adds “or a general verdict with answers to written questions” to the language of the rule, an addition derived from the Federal Rule. d. Rule 58(d) incorporates the Federal Rule “request for entry” provision into the Montana Rules. No similar provision existed under previous Rule 58. e. Rule 58(e) reflects the changes made to Rule 54(d) regarding motions for attorneys’ fees and costs. The effect is to add motions under Rule 54(d)(2) for fees and costs to the list of motions under Rule 4(5)(a)(iv) of the Montana Rules of Appellate Procedure, extending the time to appeal.
<p>Rule 59 – New Trial; Altering or Amending Judgment</p>	<ul style="list-style-type: none"> a. Rule 59 is adopted generally from the Federal Rule and makes changes both stylistic and substantive. b. Rule 59(c) was changed to conform to the Federal Rules. The opposing party now has 14 days rather than 10 days, after being served, to file opposing affidavits. The language allowing an extension for up to 20 days either by the court for good cause or by the parties’ stipulation has been deleted to conform with federal deletions. c. The previous Rule 59(d), with the exception of the 60-day timing requirement, was not carried forward into the proposed Rule 59. The language was regarded as unnecessary. A decision on the motion would instead be entered according to the relevant provisions of Rule 58. d. The 10-day time periods previously provided under Rules 59(b), (d) and (e) were all changed to 28 days to conform to the Federal Rules changes. e. The Committee retained Montana’s 60-day fuse for action upon certain motions and, therefore, added the deemed denial after 60 days language to Rule 59(f).

<p>Rule 60 – Relief from Judgment or Order</p>	<ul style="list-style-type: none"> a. The changes to Rule 60, adopted from the Federal Rule, are both stylistic and substantive. b. Rule 60(c)(1) adopts the language of the corresponding Federal Rule but adds the language of present Montana Rule 60(c)(1) regarding the time for court action on certain motions and deemed denial of the motion if not acted upon by the district court within 60 days.
<p>Rule 61 – Harmless Error</p>	<p>The language of Rule 61 was amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes are intended to be stylistic only.</p>
<p>Rule 62 – Stay of Proceedings to Enforce a Judgment</p>	<ul style="list-style-type: none"> a. The language of Rule 62 was amended as part of the general restyling of the Civil Rules to make them more easily understood. b. Rule 62(a), providing for a 14-day automatic stay period against execution, except in cases of injunction and receivership, has now been inserted in the Montana Rule. It had been previously deleted, using a shorter time period, from the Montana Rule for reasons unclear to the Committee. Following the Federal Rule, it has been reinstated. c. Rule 62(f)(2) preserves language from previous Rule 62(e) allowing for stipulation to waive the filing of security. d. Note that Rule 62(f)(1) is new and substantive. Because the definition of supersedeas bond has never been entirely clear, is sometimes difficult to obtain, and in certain instances can work harsh consequences, Rule 62(f)(1) is intended to allow for the provision of other forms of security, such as cash or irrevocable letter of credit, CD, or other security, in the court’s discretion. e. The Committee specifically notes that stay of execution and bond practice is also governed by Rules 22 and 23 of the Montana rules of Appellate Procedure.
<p>Rule 63 – Judge’s Inability to Proceed</p>	<p>For reasons which are unclear, Montana had no previous counterpart to Federal Rule 63. Further, Montana statutes do not directly deal with a situation in which a judge is unable to act due to disability, death or disqualification that arises mid-trial or mid-hearing. Accordingly, the Committee chose to follow the Federal Rule which 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.</p>

Rule 64 – Provisional and Final Remedies and Special Proceedings	The language of rule 64 is amended as part of the general restyling of the Federal Rules. The changes are intended to be stylistic only.
Rule 65 – Injunctions	The Committee chose to continue Montana’s practice of governing injunction practice by statute. The statutes and case law decided under those statutes provide adequate guidance. Thus, the Federal Rule on injunctions was specifically not adopted.
Rule 65.1 – Proceedings Against a Surety	The Committee chose not to adopt Federal Rule 65.1 which deals with security and proceedings against sureties. Refer to the Committee Note for a complete explanation.
Rule 66 – Receivers	The amendments to Rule 66 are intended to be stylistic only.
Rule 67 – Deposit into Court	The amendments to Rule 67 are intended to be stylistic only. Note, however, that the Committee did not adopt the language of Federal Rule 67(b) regarding the type of account into which money must be deposited because the language of the Federal Rule is potentially inconsistent with the statutory language of Title 25, Chapter 8, MCA.
Rule 68 – Offer of Judgment	The amendments to Rule 68 are intended to be stylistic only.
Rule 69 – Execution	The Committee recommended that the present Montana Rule be re-adopted with no changes, principally due to the fact that the Federal Rule has various complicating idiosyncracies and is drafted to take into account the quirks and vagaries that can arise with a rule intended for national application. Further, the Federal Rule adopts “the procedure of the state where the court is located” anyway, so that brings us back around to the Montana procedure in any event.
Rules 70 and 71 – Enforcing a Judgment for a Specific Act; Enforcing Relief for or Against a Nonparty	The changes to Rules 70 and 71 are intended to be stylistic only.
Rule 71.1 – Condemnation (Federal Rule)	Condemnation law is addressed by statute in Montana, so the Committee chose not to adopt Rule 71.1 of the Federal Rules.

Rule 72 – Appeal From a District Court to The Supreme Court	No change to the existing Rule 72.
Rules 73-76 (Federal Rules)	There is no reason to adopt Federal Rules 73 through 76 dealing with magistrate judges.
Rule 77 – Conducting Business; Clerk’s Authority; Notice of an Order or Judgment	The changes to Rule 77 are largely stylistic with adoption of certain portions of the Federal Rule. The Committee chose to not adopt the Federal Rule provision regarding hours of the clerk’s office. Further, the Rule retains the practice of requiring the prevailing party (or any other party) to serve the notice of entry of judgment rather than having notice provided by the clerk of the court as is done in federal court.
Rule 78 (Federal Rule)	There is no Montana Rule 78 and the Committee recommended that Rule 78 of the Federal Rules not be adopted as the matters contained therein are adequately addressed in the district court rules and by local court rules.
Rule 79 (Federal Rule)	There is no Montana Rule 79 regarding records kept by the clerk. The issues contained in Federal Rule 79 are adequately addressed in Montana statutes, Mont. Code Ann. §§ 3-5-501 through 3-5-509.
Rule 80 – Stenographic Transcript as Evidence	The amendments to Rule 80 are intended to be stylistic only.
Rule 81 – Applicability in General	Subsections (b) and (c) regarding appeals to district courts and rules incorporated into statutes are retained without change but re-designated paragraphs (a) and (b). Subsection (a) regarding special statutory proceedings is deleted because it is no longer useful.
Rule 82 – Jurisdiction and Venue	Changes to Rule 82 are intended to be stylistic only.
Rule 83 – Rules by district courts	No changes to Rule 83 are proposed.
Rule 84 – Forms	Changes to rule 84 are intended to be stylistic only.
Rule 85 – Title	No changes to Rule 85 are proposed.
Rule 86 – Effective Date – Statutes Superseded	Portions of the previous rule, no longer of utility, have been deleted.

VI. Changes to the Rules of Appellate Procedure

Rule 4 - Time for Filing Cross-Appeal	will now be 15 days OR time otherwise allowed for appeal, whichever is <u>longer</u>
Rule 6(3)(d)	allows direct appeal from order finally and definitively rejecting a proposed class settlement
Rule 7	ten days for substitute mediator by stipulation of parties (but does not affect any other deadlines in the mediation rule)
Rule 9	appellant to pay cost of returning the record on conclusion
Rules 11 and 12 - format of briefs and appendices	<ul style="list-style-type: none"> i. appellee’s brief cover is salmon, not red ii. no plastic tabs or covers iii. appendices separated by paper tabs
Rule 13 - number of copies	<ul style="list-style-type: none"> i. if separate appendix filed, only original and 7 ii. Still file 9 copies
Montana Rules of Professional Conduct - Limited Scope Representation	Changes to Rules 1.2, 4.2, and 4.3
Montana Rules of Civil Procedure - Limited Scope Representation	Changes to Rules 4.2, 4.3, and 11

VI. Summary and Conclusion.

1. Do not rely on this outline – read the rules and comments yourself.

**CHANGES TO MONTANA RULES OF CIVIL PROCEDURE
(EFFECTIVE OCTOBER 1, 2011)**

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NOTE: This does not include all the changes to the rules. It mostly refers to rules where computing time deadlines may apply.

RULE	DESCRIPTION	CHANGE
Rule 4(d)(3)(C) & (D)	Acknowledgment of Service	Change from 20 days to 21 days
Rule 4(o)(5)	Service by Publication	Changed from 10 days to 14 days
Rule 4.1	Limited Representation Permitted - Process	New rule
Rule 4.2	Notice of Limited Appearance and Withdrawal as Attorney	New rule
Rule 5(d)(1)	Required Filings; Certificate of Service	Notices of depositions are <u>not</u> filed.
Rule 5.1	Constitutional Challenge to a Statute - Notice and Intervention	Moved from Rule 24(d)
Rule 5.2	Privacy Protection for Filings Made With the Court	New rule
Rule 6(a)(1)(B)	Computing Time	Count <u>every</u> day (there is no longer an exception for excluding weekends and holidays if the time prescribed is <u>less than 11 days</u>)
Rule 6(c)(1)	Motions, Notices of Hearing, and Affidavits - In General	Changed from 5 days to 14 days
Rule 6(c)(2)	Motions, Notices of Hearing, and Affidavits - Supporting Affidavit	Changed from 1 day to 7 days

RULE	DESCRIPTION	CHANGE
Rule 6(d)	Additional Time After Certain Kinds of Service	It used to be 3 mailing days were added first (<i>DeTienne Assoc. v. MRL</i> ; <i>Dunkelberger v. BNSF</i>), now they are “added after” the period would otherwise expire
Rule 7.1	Disclosure Statements	New rule
Rule 11(a)	Signing Pleadings, Motions and other Papers, etc. - Signature	Changed to include a telephone number and email address of signer
Rule 11(c)	Signing Pleadings, Motions and other Papers, etc. - Sanctions	New rule - motion must be <u>served but not filed or presented to court</u> if the challenged paper, etc., is withdrawn or appropriately corrected within 21 days after service, etc. Does not apply to disclosures and discovery requests, responses, and motions under Rules 26 through 37
Rule 12(a)(1)(A)(B)(C)	Defenses and Objections, etc. - In General	Changed from 20 days to 21 days to file answer to complaint, counterclaim, or crossclaim and 21 days if a reply to an answer is ordered
Rule 12(a)(2)(3)	Defenses and Objections, etc. - State of Montana and Its Agencies, etc.	Changed from 40 days to 42 days
Rule 12(a)(4)(A)	Defenses and Objections, etc. - Effect of a Motion	Changed from 20 days to 14 days
Rules 12(e)	Defenses and Objections, etc. - Motion for More Definite Statement	Changed from 10 days to 14 days
Rule 12(f)	Defenses and Objections, etc. - Motion to Strike	Changed from 20 days to 21 days
Rule 12(h)	Defenses and Objections, etc. - When Some are Waived	New portion of rule regarding raising a defense of improper venue based on inability to obtain impartial trial.
Rule 15(a)(1)	Amended and Supplemental Pleadings - Amending as a Matter of Course	Changed from 20 days to 21 days
Rule 15(a)(3)	Amended and Supplemental Pleadings - Time to Respond	Changed from 10 days to 14 days

RULE	DESCRIPTION	CHANGE
Rule 16(b)(2)	Pretrial Conferences; Scheduling; Management - Time to Issue	Within 90 days of a request by a party; was within 120 days of filing the complaint
Rule 26(f)(6)	General Provisions Concerning Discovery - Discovery Conference	Changed from 10 days to 14 days
Rule 27(a)(2)	Depositions to Perpetuate Testimony - Notice and Service	Changed from 20 days to 21 days
Rule 31(a)(5)	Depositions by Written Questions - Questions by Other Parties	Cross-questions changed from 30 days to 14 days ; redirect changed from 10 days to 7 days ; recross-questions changed from 10 days to 7 days
Rule 32(a)(5)	Using Depositions in Court Proceedings - Limitation on Use of Deposition Taken on Short Notice	New rule
Rule 32 (d)(3)(C)	Using Depositions in Court Proceedings - Waiver of Objections - Objections to Written Questions	Changed from 5 days to 7 days
Rule 38(b)(1)	Right to a Jury Trial; Demand - Demand	Changed from 10 days to 14 days
Rule 38(c)	Right to a Jury Trial; Demand - Specifying Issues	Changed from 10 days to 14 days
Rule 45(c)(1)	Subpoena - Notice of Service	New rule - 10 days
Rule 45(d)(2)(B)	Subpoena - Protecting a Person Subject to a Subpoena - Command to Produce Materials or Permit Inspection - Objections	14 days
Rule 50(b)	Judgment As a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling - Renewing the Motion After Trial; Alternative Motion for a New Trial	Changed from 10 days to 28 days ; deemed denied after 60 days if not ruled on by court (<i>much discussion in the Committee Notes</i>)
Rule 50(d)	Judgment As a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling - Renewing the Motion After Trial; Time for a Losing Party's New-Trial Motion	28 days (<i>much discussion in the Committee Notes</i>)

RULE	DESCRIPTION	CHANGE
Rule 52(b)	Findings and Conclusions by the Court; Judgment on Partial Findings - Amended or Additional Findings	Changed from 10 days to 28 days (<i>much discussion in the Committee Notes</i>)
Rule 54(d)(1)	Judgment; Costs - Costs Other Than Attorney Fees	New rule - clerk may tax costs on 14 days' notice; on motion served within the next 7 days , court may review clerk's action
Rule 54(d)(2)(B)(i)	Judgment; Costs - Costs Other Than Attorney Fees - Timing and Contents of Motion	Filed no later than 14 days after entry of judgment
Rule 55(b)(2)	Default; Default Judgment - By the Court	Change from 3 days to 7 days
Rule 56(c)	Summary Judgment - Time for a Motion, Response, and Reply; Proceedings	<p>A party may move for summary judgment at any time <i>(changed from: for <u>claimant</u>, after expiration of 20 days from commencement of the action or after service of a motion for summary judgment by adverse party; for <u>defending party</u>, at any time)</i></p> <p>Response briefs and any opposing affidavits within 21 days after motion is served or a responsive pleading is due <i>(changed from 10 days per UDCR 2 for motions)</i></p> <p>Reply briefs due within 14 days after response is served <i>(changed from 10 days per UDCR 2 for motions)</i></p>
Rule 56(c)(2)	Summary Judgment - Time for a Motion, Response, and Reply; Proceedings - Hearing	New rule - right to a hearing waived unless party requests a hearing within 14 days after time for filing reply has expired
Rule 58(c)(2)(B)	Entering Judgment - Time of Entry	New rule
Rule 59(b)	New Trial; Altering or Amending a Judgment - Time to File a Motion for a New Trial	Changed from 10 days to 28 days after entry of judgment
Rule 59(c)	New Trial; Altering or Amending a Judgment - Time to Serve Affidavits	Changed from 10 days to 14 days

RULE	DESCRIPTION	CHANGE
Rule 59(d), (e)	New Trial; Altering or Amending a Judgment - New Trial on Court's Initiative; Motion to Alter or Amend a Judgment	Changed from 10 days to 28 days
Rule 59(f)	New Trial; Altering or Amending a Judgment - Motion Deemed Denied	Language added - 60 days
Rule 60(c)(1)	Relief from Judgment or Order - Timing and Effect of the Motion - Timing	Language added - no more than a year after entry of judgment or order or the date of the proceeding
Rule 62(a)	Stay of Proceedings to Enforce a Judgment - Automatic Stay; Injunction; Exceptions	Language added - 14 day stay period
Rule 62.1	Indicative Ruling on a Motion for Relief That is Barred by a Pending Appeal	New rule
Rule 68(a)	Offer of Judgment - Making an Offer; Judgment on an Accepted Offer	Changed from 10 days to 14 days
Rule 77(d)	Conducting Business; Clerk's Authority; Notice of an Order or Judgment - Notice of Entry of Judgment or Order Served	Change from 10 days to 14 days
UNIFORM DISTRICT COURT RULES - Effective March 1, 2012		
UDCR 2(a) and (b)	Filing a brief and motion/response and reply times	Changed from 5 days to 0 days - now required to file a brief simultaneously with the motion. Time to file a response and reply brief went from 10 days to 14 days . Motions for summary judgment governed by M.R.Civ.P. 56(c).
UDCR 5(b)	Conference to prepare a pre-trial order	Changed from 5 days before pre-trial conference to 7 days before
UDCR 8	Submit proposed findings of fact and conclusions of law	Changed from 5 days before the scheduled trial or hearing to 7 days before
UDCR 10(b)(3) and 9(d)	Time to appear as attorney when removal of attorney	Changed from 20 days to 21 days
UDCR 12(b)	Time for Court to enter order telling clerk to dispose of exhibits	Changed from 20 days to 21 days

RULE	DESCRIPTION	CHANGE
UDCR 13	Out of state lawyer to associate with local counsel to make first appearance	Change from 10 days to 14 days