

MONTANA FAMILY LAW

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July 16, 2013

AREAS OF FAMILY LAW

- Premarital agreements
- Marriages (solemnization, declaration, common law)
- Rights of cohabiting parties (not addressed)
- Dissolution of marriage
- Legal separation
- Parenting action
- Orders of protection
- Name change
- Adoption
- Child-care power of attorney
- Guardianships and conservatorships
- Third-party parenting action
- Grandparent-grandchild contact
- Caretaker relatives
- Montana Rules of Professional Conduct
- Practice pointers

PREMARITAL AGREEMENTS (MCA §§ 40-4-601 to -610)

- Often considered in second marriages, particularly when children from prior relationships are involved. Also used to guard against gold diggers.
- Enforceable if executed on or after October 1, 1987. Agreements executed prior to that date are considered one of the factors to be taken into consideration by the court when distributing a marital estate.
- Generally address rights of spouses during marriage, upon dissolution or legal separation of marriage, and upon death of a party to the marriage. MCA § 40-2-605. Generally vary what statutory or case law would otherwise provide in each of those instances.
- Agreement must be made voluntarily. MCA § 40-2-608(1)(a)
- Did the parties have a meaningful opportunity to discuss the agreement with an attorney prior to execution?
- Agreement must not be “unconscionable” (shocking to the conscience). MCA § 40-2-608(1)(b)

- May be considered unconscionable if the parties were not provided a fair and reasonable disclosure of the property or financial obligations of the other party. MCA § 40-2-608(1)(b)(i)

MARRIAGES (SOLEMNIZATION, DECLARATION)

- In Montana, marriage is defined as a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. MCA § 40-1-103; Mont. Const. art. XII, § 7
- To obtain a marriage license, must complete a marriage application and sign it by both parties to the prospective marriage. At least one party has to appear before the clerk of district court and pay the marriage license fee of \$53. Must present satisfactory proof that both parties are 18 years of age (or 16 or 17 if party has judicial approval) the marriage is not prohibited, and any necessary certificate of the results of medical examination (received a blood test for rubella immunity or an informed consent form acknowledging receipt and understanding of written rubella immunity information and declining rubella immunity testing). MCA §§ 40-1-202, -203
- The court may allow a 16 or 17 year old to marry if the party has no parent capable of consenting or has the consent of both parents or the parent having the actual care, parenting authority, and control to the party's marriage, or the parent's guardian. The court must find that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve the party's best interests. Pregnancy alone does not establish that the best interests of the party will be served. MCA § 40-1-213
- Cannot obtain a license if either of the applicants is under the influence of intoxicating liquor or narcotic drug at the time of making the application. MCA § 40-1-210
- Marriages may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor, city judge, or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. MCA § 40-1-301(1)
- Proxy marriage is allowed (where one party is a member of the U.S. armed forces on federal active duty or a resident of Montana at the time of application for a marriage license) if a party is unable to be present at the solemnization. The absent party must give a third person written authorization to act as a proxy. The other party must personally appear before the clerk of court and pay the marriage license fee. MCA § 40-1-301(2), (4)
- Persons can also consummate a marriage by written declaration stating their names, ages, and residences; the fact of the marriage; the name of the father and maiden name of the mother of both parties and address of each; and a statement that both parties are legally competent to enter into the marriage contract. The declaration must be subscribed by the parties and attested to by at least two witnesses and formally acknowledged before the clerk of district court. \$53 filing fee. MCA § 40-1-311

COMMON LAW MARRIAGE

- Issue arises in dissolution of marriage situations and upon the death of one of the parties.
- The Supreme Court of Montana has stated that the concept of common law marriage is designed, in part, to prevent an unjust economic harm to couples who have held themselves out as husband and wife as our common law marriage cases typically deal with the equitable distribution of economic benefits after the death of one of the parties or separation of the relationship. *Snetsinger v. Montana Univ. System*, 325 Mont. 148, 104 P.3d 445 (2004).
- The party asserting a common law marriage must provide three elements:
 - (a) the parties are competent to enter into a marriage;
 - (b) the parties assumed a marital relationship by mutual consent and agreement; and
 - (c) the parties confirmed their marriage by cohabitation and public repute. *In re Marriage of Goertz*, 232 Mont. 141, 755 P.2d 34 (1988).
- A common misconception amongst the public is that if parties live together for a certain number of years (often cited as seven years), a common law marriage will come into being. No such time frame exists under Montana law, and a common law marriage cannot arise from mere cohabitation. Thus, parties may live together indefinitely without fear of a common law marriage springing out of their cohabitation at some point in the future.
- The mutual consent of the parties to a marital relationship, as an element of a common law marriage, does not need to be expressed in any particular form and can be implied from the conduct of the parties. Specifically, the Supreme Court has stated, “One cannot become married unwittingly or accidentally. The consent required by our statutes, as well as the statutes of every state, and by the common law, must be seriously given with the deliberate intention that marriage result presently therefrom.” *In re Slavens’ Estate*, 162 Mont. 123, 509 P.2d 293 (1973).
- In addition to the consent required for a valid common law marriage, there must be cohabitation and public repute of the marriage. These latter two factors do not take place instantly, but are continuing factors that extend through the life of the marriage. In fact, the Supreme Court has expressly overruled prior case law that stated it was necessary to prove that “common law marriage must come instantly into being or not at all.” *In re Marriage of Swanner-Renner*, 351 Mont. 62, 209 P.3d 238 (2009).

DISSOLUTION OF MARRIAGE AND PARENTING ACTIONS

Exceptions exist, but Montana district courts generally have jurisdiction over dissolution actions when a party has resided in the state for at least 90 days (MCA § 40-4-104(1)(a)) and jurisdiction over parenting actions when Montana is the home state of the child at the commencement of the action (MCA § 40-4-211).

“Venue” is the location of the court where the matter will be filed and tried. For dissolution actions, venue is the county where one of the parties resides during the 90 days preceding filing of the action. MCA § 25-2-118(3). For parenting actions, venue generally is the county in which the child is permanently residence or found. MCA § 40-4-211(4).

Montana adopted the Uniform Marriage and Divorce Act in 1975. One of the most fundamental changes in the law at that time was the concept of “fault” was removed as a basis for ending a marriage. Under current law, the court must find that the marriage is irretrievably broken, which is defined as evidence showing: (1) the parties ahve lived separate and apart for a period of more than 180 days preceding the commencing of the dissolution action, or (2) there is serious marital discord that adversely affects the attitude of one or both of the parties toward the marriage. MCA § 40-4-104(1)(b). “Fault” has no relevance to distribution of property or debts, spousal maintenance, or support issues. MCA §§ 40-4-202(1), -203(2), -204(1) (“without regard to marital misconduct”). It may have relevance to parenting.

Subsequent legislatures have amended the Uniform Marriage and Divorce Act to address parenting and financial disclosures. In the process of these legislative changes, old concepts and terms have been replaced with new concepts and terms:

OLD TERMINOLOGY	NEW TERMINOLOGY
Divorce	Dissolution of marriage
Annulment	Declaration of invalidity of marriage
Custody and visitation	Parenting
Complaint	Petition
Plaintiff	Petitioner
Defendant	Respondent
Alimony	Spousal maintenance

Court process:

One or both parties initiate a legal action by filing a verified Petition with the District Court. MCA § 40-4-105. The Petition generally asks that the court issue orders concerning some or all of the following matters:

- Division of property and allocation of responsibility for payment of debts. MCA § 40-4-202.
- Parenting of minor children. MCA §§ 40-4-211 through -234.
- Child and medical support for minor children. MCA § 40-4-204.
- Spousal maintenance. MCA § 40-4-203.
- Temporary orders. MCA § 40-4-121.
- Professional fees (attorneys, experts). MCA § 40-4-110.
- Change of name for the wife if she requests. MCA § 40-4-108(4).

The clerk of court issues a Summons that notifies the other party that an action has been brought. Mont. R. Civ. P. 4(c).

In a dissolution action, the clerk automatically includes a Economic Restraining Order in the Summons. MCA § 40-4-121(3).

The Petition and Summons must be served on the other party, who then has an opportunity to respond to the Petition and state whether he or she is in agreement with the relief sought. Mont. R. Civ. P. 4.

Financial disclosures

The parties have 60 days after service of the summons to exchange preliminary financial disclosure (assets, liabilities, income, and expenses) statements executed under penalty of perjury. MCA § 40-4-252.

Final statements of income, expenses, assets, and liabilities executed under penalty of perjury are due before or at the time the parties enter into an agreement for resolution of property or support issues or, in the event the case goes to trial, no later than 45 days before the first assigned trial date. MCA § 40-4-253.

In addition to any other civil or criminal remedy available for the commission of perjury, the court may set aside the decree, or a portion of the decree, if the court discovers that a party committed perjury in his or her preliminary or final financial disclosures. MCA §§ 40-4-252(6), -253(5).

Pretrial process

The court issues a scheduling order setting deadlines for such matters as:

- Exchange of completed child support financial affidavits
- Discovery (written interrogatories, requests for production, requests for admissions, depositions, inspection of property, examinations of the parties or children)
- Disclosure of experts (often related to property values or parenting issues)
- Filing motions
- Informal settlement conference involving attorneys only
- Formal settlement conference involving parties, attorneys, and third-party settlement master
- Trial preparations

Ideally the parties will reach agreement on all outstanding matters. If some matters are not resolved, the matters are submitted to the court for trial, and the parties lose control over the outcome of such matters. If agreement is reached, it must be reduced to writing and signed by both parties, as verbal agreements are not enforceable in dissolution actions. MCA § 40-4-201.

PROPERTY DISTRIBUTION (MCA § 40-4-202)

- Property is divided “equitably” (Montana is not a community property state)
- All property, regardless of how owned or when acquired, is considered part of the marital estate and subject to distribution
- The court takes into account various factors when distributing property and debts (duration of the marriage and prior marriage of either party; age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income).
- Premarital, gifted, and inherited property may be distributed to the party who brought the property to the marriage or acquired the property during the marriage, unless the other party can show: the nonmonetary contribution of a homemaker, the extent to which the other party’s contribution facilitated the maintenance of the property, or whether the property division serves as an alternative to spousal maintenance. This area of the law is evolving. *In re Marriage of Funk*, 363 Mont. 352, 270 P.3d 39 (2012).
- The court is limited in its ability to change pre-existing contractual obligations with creditors

Property settlement agreements must be in writing and signed by the parties and often include provisions on:

- Division of assets (MCA § 40-4-202)
 - Residence and other real properties
 - Businesses
 - Bank accounts
 - Investments
 - Retirement
 - Vehicles
 - Personal property such as household furnishings and personal effects
 - Family photographs
- Division of debts (MCA § 40-4-202)
 - Debts secured by properties distributed between the parties
 - Credit card obligations
 - Medical expenses
 - Student loans
 - Attorneys' fees
- Spousal maintenance (MCA § 40-4-203)
- Health insurance
 - COBRA benefits may be available to a non-employee spouse
- Federal and state income tax (MCA § 40-4-202(4))
- Testamentary disposition of property (MCA § 72-2-812)
- Restoration of wife's maiden or former name, if she requests (MCA § 40-4-108(4))

MCA § 40-4-201.

PARENTING

- There is no maternal preference.
- The level of conflict between the parents is considered the single most important in how well children will adjust to their parents' divorce. The higher the conflict, the lesser the adjustment, which may adversely impact children's future relationships with others.
- Both the 4th Judicial District and the 21st require parents to attend a mandatory parenting plan orientation program at the outset of any action involving children.
- The initial standard is the children's "best interests" MCA § 40-4-212.
- A higher standard applies when parties request a parenting plan be modified. This is known as the "modification" standard. It, in part, requires a substantial and continuing change of the child's circumstances and that the amendment serves the child's best interests. MCA § 40-4-219.
- There is no magic age at which children get to decide where they want to live; however, the court will give more consideration to a child's wishes once they reach age 14. In the

end, however, the court is charged with doing what is in the child's best interests, regardless of what the parents or child wishes. MCA §§ 40-4-212, -219.

- The court can appoint guardians ad litem and/or attorneys to represent the children (MCA § 40-4-205); require the parents engage in education, counseling, or mediation; and order parenting evaluations, which are expensive (MCA § 40-4-215).
- The court always retains the right to modify parenting and support arrangements for minor children.
- Interference with parenting can result in criminal charges. MCA § 40-5-631
- Day-to-day decisions (housing, nutrition, travel, entertainment and other minor decisions concerning the children's conduct, activity, and welfare while the children are in that parent's custody) are generally made by the parent with custody of the child at that time. MCA §§ 40-4-218, -234(5)
- Major decisions (marrying prior to the age of majority, enlisting in the armed services prior to attaining the age of majority, getting a tattoo, having a body part pierced, medical care, issues regarding the children's developmental needs, educational concerns, spiritual upbringing, discipline involving school or law enforcement authorities) are, by agreement, usually made jointly by the parties

Parenting plan and support agreements often contain provisions on:

- Residential schedule (school year, summer, vacations, and holidays/special days)
- Transportation arrangements
- Decision making. MCA § 40-4-218(1)
- Access to records (medical, psychological, counseling, dental, law enforcement, day care, school, etc.). MCA § 40-4-225
- Clothing and personal effects
- Exchanging contact information. MCA § 40-4-204(6)
- Travel involving the children
- Review/amendment of parenting plan
- Communicating with the children
- Choice of school/homework
- Attendance at activities
- Alternate care when custodial parent is not available
- Procedure when a parent intends to change a residence and the proposed change will significantly affect the children's contact with the other parent. MCA § 40-4-217.
- Dispute resolution unless abuse is involved. MCA § 40-4-219(9); *Hendershott v. Westphal*, 360 Mont. 66, 253 P.3d 806 (2011).

MCA § 40-4-234.

CHILD AND MEDICAL SUPPORT

- Both parents have an obligation to support and educate their children. MCA § 40-6-211.
- Unless the parties agree otherwise, continues until the later of the child's emancipation or graduation from high school, but not beyond the child's 19th birthday, even if they are still attending high school. MCA § 40-4-208(5). Court generally has no authority to extend child support beyond that, such as for college, although court's authority in parenting actions separate from dissolution actions differs somewhat in this respect. MCA § 40-6-118.
- Child support is based on guidelines adopted by the Montana Department of Public Health and Human Services, Child Support Enforcement Division ("CSED"). MCA § 40-4-204(3).
- Computer calculation, although it can be done manually
- Principally takes into consideration the parents' income from all sources, allowed deductions, specific out-of-pocket expenses for the children (day care, the children's portion of health insurance, extraordinary medical expenses), and the allocation of overnight parenting time between the parents.
- The guidelines calculation is presumed to be appropriate, but evidence can be submitted to rebut the calculation. MCA § 40-4-204(3).
- Parents have an obligation to provide health insurance coverage for their minor children. MCA § 40-4-204(4), (5).
- A parent providing health insurance is given credit in the child support guidelines calculation for the portion of the premium attributable to the children. ARM 37.62.123(1)(b).
- The children's uninsured medical, dental, optical, counseling, orthodontia, co-payments, and deductibles are pro rated between the parents proportionate to their incomes. ARM 37.62.123(3).
- Child support and parenting rights are not dependent upon each other. MCA § 40-4-234(6). In other words, a parent cannot withhold contact with a child if the other parent does not pay support.

Child and medical support agreements generally contain provisions on:

- Child support
- How support is paid (income withholding, through the CSED, through the clerk of court, directly to recipient). MCA § 40-4-204(5).
- Provision of health insurance coverage for the children. MCA § 40-4-204(4).
- Pro ration of children's uninsured medical, dental, optical, orthodontic, and counseling expenses, including co-payments and deductibles
- Tax benefits (dependency exemption, child tax credit, earned income credit, dependent care credit)
- Extracurricular activity expenses
- College

SPOUSAL MAINTENANCE

- Generally disfavored in Montana. *In re Marriage of Luisi*, 351 Mont. 71, 209 P.3d 249 (2009).
- Generally considered “rehabilitative” rather than “permanent.” *In re Marriage of Bee*, 309 Mont. 34, 43 P.3d 903 (2002).
- Based on one party’s need and other party’s ability to pay. MCA § 40-4-203.
- Unless the parties agree otherwise, terminates by law upon either party’s death or remarriage of the party. MCA § 40-4-208(4).
- Tax deduction to the party paying, taxable income to the party receiving
- Can be modified under certain circumstances unless the parties agree it will be non-modifiable. MCA §§ 40-4-208, -201(6).

TEMPORARY ORDERS

- The Economic Restraining Order described above is automatic with issuance of the Summons in a dissolution action. MCA § 40-4-121(3).
- Orders of Protection differ. MCA, Title 40, ch. 15.
- Other temporary orders can include restraint on contact, possession of the marital residence, child support, family support, etc. MCA § 40-4-121.
- Temporary orders can be issued without notice and opportunity to be heard by the other side, if the circumstances warrant, but a hearing must be held within 20 days to determine whether the order should continue. MCA § 40-4-121(5).

COSTS AND PROFESSIONAL FEES (MCA § 40-4-110)

- Unlike most civil actions, the court can award professional fees to either party.
- Awarded after considering the financial resources of both parties
- Legal and professional services rendered and costs incurred prior to, during, and after a proceeding
- Purpose is to ensure both parties have timely and equitable access to marital financial resources

NAME CHANGES (MCA §§ 40-4-108(4), 27-31-101 *et seq.*)

- Wife may elect to have a maiden or former name restored upon entry of the final decree of dissolution. MCA § 40-4-108(4).
- Will require updating records such as social security, driver's license, bank and investment accounts, employment, etc.
- Requires consent of both parents or a court order for minors - no longer a paternal preference. MCA § 27-31-101 *et seq.*
- Adults must publish notice of intent to change name in newspaper if name change is done other than in conjunction with dissolution action. MCA § 27-31-201(1).

LEGAL SEPARATION

- Informal (no court action involved) versus formal separation (MCA § 40-4-104(2))
- A decree of legal separation may be converted into a decree of dissolution by either party at anytime after six months have passed since entry of the decree of legal separation. MCA § 40-4-108(2).
- Depending on the health insurance plan, may allow a party to remain on the other party's health insurance after the decree of legal separation is entered
- May result in income tax benefits

ADOPTIONS (MCA, Title 42)

- Putative father registration to protect father's rights. MCA, Title 42, ch. 2
- Agency (State, licensed adoption agencies). MCA, Title 42, ch. 4, part 2
- Direct parental placement. MCA, Title 42, ch. 4, part 1
- Step-parent. MCA, Title 42, ch. 4, part 3
- Adults and emancipated minors. MCA, Title 42, ch. 4, part 4
- Involve a combination of voluntary or involuntary termination of a natural parent's parental rights (MCA, Title 42, ch. 2, part 2) and granting an adoptive parent parental rights (MCA, Title 42, ch. 5)

CHILD-CARE POWERS OF ATTORNEY

- Allows a parent or guardian to delegate another person any powers regarding care, custody, or property of a minor child or ward (except not the power to consent to marriage or adoption) for a period not to exceed six months. MCA § 72-5-103.
- Six-month limitation does not apply to National Guard or federal reserve members serving more than 180 continuous days on duty and members of the active duty U.S. military forces,

GUARDIANSHIPS AND CONSERVATORSHIPS (MCA, Title 72, ch. 5)

- Can be temporary or permanent, full or limited
- Can involve care of child or adult and/or financial responsibility for their assets. MCA § 72-5-231
- Used only as necessary to promote and protect the well-being of the person and must be designed to encourage the development of maximum self-reliance and independence of the person and may be ordered only to the extent that the person's actual mental and physical limitations require it. MCA § 72-5-306
- Incapacitated person retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the court. MCA § 72-5-306
- Guardian/conservator must account to court for the incapacitated person's assets not less often than annually unless the court directs otherwise. MCA § 72-5-438

THIRD-PARTY PARENTING ACTIONS

- While parents have a fundamental right to parent their children, that right is not absolute when the parent's conduct is contrary to the child's interests and the parent-child relationship. *Kulstad v. Maniaci*, 352 Mont. 513, 220 P.2d 595 (2009); MCA § 40-4-227
- Must establish a child-parent relationship by having provided for the physical and psychological needs of the child. MCA §§ 40-4-121(4)(b), -121(6), and -228
- Can be granted visitation rights or a parental interest. MCA § 40-4-228
- To be awarded a parental interest, must prove by clear and convincing evidence that the natural parent has engaged in conduct that is contrary to the child-parent relationship and it is in the best interests of the child to continue the child-parent relationship established by the petitioning party. MCA § 40-4-228(2)
- Do not need to prove the natural parent unfit in order to grant a parental interest. MCA § 40-4-228(5)
- For an award of visitation rights, court may order visitation based on the child's best interests. MCA § 40-4-228(3)

GRANDPARENT-GRANDCHILD CONTACT (MCA § 40-9-101 et seq.)

- Court may grant reasonable rights to contact with the child.
- If parent objects, court must make a determination after a hearing as to whether the objecting parent is a fit parent
- Fitness must be determined on the basis of whether the parent adequately cares for the child
- Court may grant contact over the objection of a parent determined to be unfit only if the court also determines by clear and convincing evidence that the contact is in the best interests of the child

- Court may grant contact over the objection of a fit parent only upon a finding based on clear and convincing evidence that the contact with the grandparent would be in the best interests of the child and that the presumption in favor of the parent's wishes has been rebutted

CARETAKER RELATIVES (MCA § 40-6-501)

- Parents have temporarily surrendered the custody and care of a child to a grandparent or other caretaker (individual related to the child by blood, marriage, or adoption, who has care and custody of a child but who is not a parent, foster parent, stepparent, or legal guardian of a child) for a lengthy period of time
- If parent voluntarily gives custody of a child to a relative and the child has remained with that relative for at least six months under circumstances in which it is unclear whether or when the parent will return and retake custody of the child, the caretaker relative provisions apply, unless during the six-month period the parent expresses a firm intention and date on which the parent will return and resume custody of the child and subsequently adheres to that schedule
- Caretaker files affidavit with court when parent returns to reassert parent's rights of custody and control
- Department of Public Health and Human Services proceeds and, within 48 hours of filing of the affidavit, the district court shall review and determine ex parte with the affidavit contains sufficient evidence that the child was abandoned by the child's parent. If so, within three business days, the court is to determine whether the caretaker shall continue custody and control. The order is effective for 14 days, allowing the caretaker time to commence a parenting action or petition for guardianship

MONTANA RULES OF PROFESSIONAL CONDUCT

- Always pursue the truth. Preamble, (1)
- Behave consistently with the requirements of honest dealings with others. Endeavor to provide a client with an informed understanding of the client's legal rights and obligations and explain their practical implications. Seek a result advantageous to the client but consistent with requirements under the Rules of Professional Responsibility of honest dealings with others. Preamble, (2)
- Be competent, prompt, and diligent. Maintain communication with a client concerning the representation. Preamble, (5)
- The scope of representation may be limited if the limitation is reasonable under the circumstances and the client gives informed consent in writing. Rule 1.2(c).
- Maintain communication with the client. Rule 1.4.
- The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible must be communicated to the client in writing, before or within a reasonable time after commencing the representation. Must also communicate

- in writing any changes in the basis or rate of the fee or expenses. Rule 1.5(a).
- Do not charge a contingent fee in a domestic relations matter, where the payment or amount of the fee is contingent upon the securing of a divorce or upon the amount of maintenance or support or property settlement in lieu thereof. Rule 1.5(b). Can, however, charge a contingent fee in matters such as enforcement of an existing child support order where an obligor has failed to pay his or her obligation subsequent to the divorce.
 - Avoid conflicts of interest. Rules 1.7-1.12. In addition to the parties, consider the potential client's employer, business interests, former spouses, significant others, etc.
 - If representing an individual with diminished capacity, if you reasonably believe the client is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in his or her own interest, take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seek appointment of a guardian ad litem, conservator, or guardian. Rule 1.14.
 - Do not commingle client's retainer or funds you may hold on client's behalf (e.g., proceeds from sale of a marital residence) with your own funds. Rule 1.15.
 - If representation is terminated, deliver to the client any client property, papers, or materials reasonably necessary to protect the client's interest in the matter to which the property, papers, or materials related. Rule 1.8(i)(3). Can otherwise retain and are not obliged to deliver to a client or former client papers or materials personal to the lawyer or created or intended for internal use by the lawyer. Rule 1.16(d). Except for what you're allowed to retain as described above, deliver the originals or copies of papers or materials requested or required and bear the copying costs involved. Rule 1.16(d).
 - No sexual relations with a client unless a consensual sexual relationship existed between attorney and client when the client-lawyer relationship commenced. Rule 1.8(j)
 - Maintain the confidence of a person who consults with you about the possibility of forming a client-lawyer relationship. Rule 1.20.
 - Exercise independent professional judgment and render candid advice, including reference to the law and other relevant considerations such as moral, economic, social, and political factors. Rule 2.1.
 - Can serve as a third-party neutral (arbitrator, settlement master, mediator, or in such other capacity as will enable the lawyer to assist the parties to resolve the matter) but must inform all parties that you are not representing them and explain the difference between a lawyer's role as a third-party neutral versus a lawyer's role as one who represents a client. Rule 2.3
 - Ensure a bona fide basis in law and fact exists for any position to be advocated and do not assert or controvert an issue for the purpose of harassment, delay, advancement of a nonmeritorious claim, or solely to gain leverage. Rule 3.1(a)
 - Make reasonable efforts to expedite litigation consistent with the interests of the client. Rule 3.2
 - Do not make false statements of fact or law to the court and correct any false statement of material fact or law previously made to the court. Do not offer evidence that you know to be false and take remedial measures to correct false statements of material evidence

made by yourself, your client, or a witness you have called. In an ex parte proceeding, inform the court of all material facts known to you that will enable the court to make an informed decision, whether or not the facts are adverse. Rule 3.3

- Among other things, do not unfairly obstruct another party's access to evidence, falsify evidence, or assist a witness to testify falsely. Rule 3.4.
- In trial, do not assert personal knowledge of facts in issue except when testifying as a witness or state a personal opinion as to the justness of a cause, or the credibility of a witness. Rule 3.4.
- Do not communicate ex parte with a judge except as permitted by law. Rule 3.5.
- Do not make false statements of material fact or law to a third person or fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6. Rule 4.1.
- Do not communicate about the subject of the representation with a person you know to be represented by another lawyer in the matter, unless you have the consent of the other lawyer or are authorized to do so by law or a court order. Rule 4.2(a).
- Do not mislead an unrepresented person as to your role in the matter and make reasonable efforts to correct a misunderstanding. Do not give legal advice to an unrepresented person, other than the advice to secure legal counsel. Rule 4.3
- Do not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person. Rule 4.4(a)
- Promptly notify the sender upon receipt of a writing you know or reasonably should know was inadvertently sent. Rule 4.4(b)
- Satisfy your obligation to provide legal services to those who are unable to pay. Rule 6.1
- Do not make statements that are likely to create an unjustified expectation about results the lawyer can achieve. Rule 7.1(b)

PRACTICE POINTERS

- Recognize that clients are going through a particularly difficult time in their lives. Assist clients in obtaining professional help and refer them to community resources where appropriate.
- Help clients distinguish between "street law" and what occurs in their case, as every court and every judge differs, so results vary.
- Focus on identifying and resolving issues. Be creative with solutions.
- Recognize clients need to have their story heard.
- Help clients focus on the future rather than past events.
- Retain professional objectivity at all times. Remember, the dispute is between the parties and not between the attorneys.
- Recognize there are two or more sides to every story—not just your client's. Do not become merely a mouthpiece for your client—use your judgment as to the appropriateness of a client's requests.
- Communicate clearly and free of jargon, emotion, and threats. Avoid protracted,

unnecessary, hostile, and inflammatory exchanges with opposing counsel—whether verbal or written. Do not make personal attacks upon or bad mouth opposing counsel, their client, or the court. Recognize a phone call or personal meeting can often be more productive than a protracted exchange of nasty correspondence.

- Consider the effect of correspondence upon client and other family members.
- Be aware of the risks of sending email correspondence, as it often has a life beyond its intended recipient.
- Recognize you cannot represent both parties to a dissolution action.
- Discuss with client the cost/benefit involved in preparing, filing, and litigating various matters.
- Recognize the difficulties of dealing with pro se litigants.
- Recognize your obligation to present evidence (e.g., sworn affidavits) as opposed to making unsubstantiated statements of purported fact in documents filed with the court.
- Withdraw as counsel of record when your representation is concluded to avoid the risk of being unable to timely defend against future litigation years in the future merely by remaining as counsel of record. *In re Marriage of Weber*, 2004 MT 206, 322 Mont. 324, 95 P.3d 694 (2004).