PRO SE LITIGANTS AND PROCEDURAL STANDARDS:

***Gehring v. Warner*, 169 Mont. 275, 546 P.2d 260 (1976)**

Gehring, a pro se litigant, filed a petition seeking injunctive relief, which the District Court dismissed for failure to state facts entitling one to relief. The Court affirmed, noting that the District Court pointed out the deficiency at a hearing, and had provided Gehring with an opportunity to respond.

***First Bank (N.A.)-Billings v. Heidema*, 219 Mont. 373, 711 P.2d 1384 (1986)**

The Heidemas, pro se litigants and promisors, fell behind on their repayment of a loan to promisee First Bank. First Bank filed suit to recover. The District Court granted First Bank's motion for an entry of judgment after the Heidemas repeatedly failed to appear for scheduled depositions. The Court affirmed the District Court, stating it had authority under M. R. Civ. P. 37(b)-(d) to enter judgment due to the Heidemas failure to appear and produce documents. The Court stated:

> [w]hile we are predisposed to give pro se litigants considerable latitude in proceedings, that latitude cannot be so wide as to prejudice the other party. . . To do so makes a mockery of the judicial system and denies other litigants access to the judicial process. It is reasonable to expect all litigants, including those acting pro se, to adhere to the procedural rules. But flexibility cannot give way to abuse. We stand firm in our expectation that the lower courts hold all parties litigant to procedural standards which do not result in prejudice to either party.

219 Mont. at 376, 211 P.2d at 1385.

***Rudolph v. Dussault*, 234 Mont. 449, 763 P.2d 1139 (1988).**

As to the remaining defendants, the Court recognized that Mr. Rudolph was appearing pro se and would not be held to the standards of pleading expected of attorneys. Though it did not expressly name the statute, Mr. Rudolph's complaint, broadly viewed, stated that a cause of action under 42 U.S.C. Section 1983 for violation of civil rights. In such a case, collateral estoppel applied as to previous criminal proceedings. *Allen v. McCurry* (1980), 449 U.S. 90, 101 S.Ct. 411, 66 L.Ed.2d 308. Collateral estoppel is the doctrine that issues previously argued and ruled upon cannot be relitigated. *Aetna Life and Cas. Ins. Co. v. Johnson* (1984), 207 Mont. 409, 414-16, 673 P.2d 1277, 1280-81. Mr. Rudolph's claims may be barred under a theory of collateral estoppel as a result of the decision in the criminal proceeding against him

***Thomas v. Wilson*, 236 Mont. 33, 767 P.2d 1343 (1989)**

The Thomases, pro se litigants, appealed a dismissal of a malpractice claim against Wilson for failure to prosecute. The Court affirmed the lower court because the Thomases conducted no discovery, delayed responses to discovery requests, and showed no reasonable excuse for failure to move for trial setting until two and a half years after filing.

***Huffine v. Boylan*, 239 Mont. 515, 782 P.2d 77 (1989)**

In *Huffine*, the Court affirmed the District Court's dismissal of Huffine's pro se cause of action due to deliberate and intentional failure to comply with M. R. Civ. P. 37(d), stating, "[w]hile this Court accommodates pro se litigants when possible, Huffine is no stranger to litigation. He has been involved in thirteen district court cases and has attempted several appeals." 239 Mont. at 517, 782 P.2d at 78.

***In re Marriage of Broere*, 263 Mont. 207, 867 P.2d 1092 (1994)**

After being served with a dissolution petition, a pro se husband faxed his response to his wife's attorney. The attorney sent the husband a note of issue, mistakenly believing that the husband had filed his response with the District Court. The attorney then noticed that the husband had failed to properly file the response, and obtained a default judgment which dissolved the marriage, determined the custody of the parties' children, and ordered support. The husband timely filed a motion to have the default set aside, which was not addressed, and deemed denied. The Court reversed the District Court's denial, finding that the husband's neglect was excusable pursuant to M. R. Civ. P. 60(b) because the attorney had assisted the husband in forming the mistaken belief that a proper response had been made, and because, upon learning differently, the attorney underhandedly obtained the default judgment.

***Greenup v. Russell*, 2000 MT 154, 300 Mont. 136, 3 P.3d 124 (citing *Heidema*)**

Under pressure of bank foreclosure, pro se litigant Greenup conveyed real property to Russell. Approximately one year later, Russell sought a determination that Greenup had no interest in the property and obtained a default judgment. Greenup then filed a breach of contract suit in which he asked the District Court to set aside his prior conveyance to Russell for lack for consideration. Greenup argued that the default judgment should be set aside because, as a pro se litigant, he was entitled to the extra latitude. The Court affirmed the prior conveyance, stating that Greenup offered no excuse for waiting more than a year and a half to raise the issue of improper default. The Court stated, "[w]hile pro se litigants may be given a certain amount of latitude, that latitude cannot be so wide as to prejudice the other party, and it is reasonable to expect all litigants, including those acting pro se, to adhere to procedural rules." *Greenup*, ¶ 15.

***Lundquist v. McBeth*, 2001 MT 311, 308 Mont. 1, 38 P.3d 831 (2001)**

In *Lundquist*, the Court held that the trial court erred when it ordered the withdrawal of the pro se litigants' complaint, because their misstatement of the cause number was merely a technical defect. The Court adopted a Wisconsin line of cases that distinguished between a technical defect and a fundamental defect. The Wisconsin court stated:

> If the defect is fundamental, the court has no jurisdiction to proceed and dismissal of the summons and complaint is required. If the defect is technical and the plaintiff can show that the defendant was not prejudiced by the defect, the error will not defeat personal jurisdiction and the court may proceed with the case. The burden

> is on the complainant to show there was no defect, or, if there was a defect, that it was not fundamental but technical and did not prejudice the defendant.

Lundquist, ¶ 18 (internal citations omitted).

Fundamental defects are typically significant procedural errors, i.e., failure to file a summons and complaint which names the defendant, failure to authenticate the copy served on the defendant, and failure to timely serve the defendant. Technical defects generally involve errors in content and form, including naming someone other than the pro se litigant as agent for receipt of the answer, failing to direct the defendant to answer within 20 days, failing to properly sign the summons and complaint, and the erroneous assignment of an incorrect case number on a summons and complaint.

***In re Marriage of McMahon*, 2002 MT 198, 311 Mont. 175, 53 P.3d 1266**

In *McMahon*, the Court dismissed a pro se wife's appeal for failure to comply with appellate procedural rules requiring citation of legal authority. The Court stated:

> While dismissal is a harsh result, it is nonetheless necessary when the utter failure to comply with the rules of appellate procedure results in an appellate filing that can neither be comprehended by this Court or realistically responded to by the opposing party. In the past, we have demonstrated that we are willing to make accommodations for pro se parties by relaxing those technical requirements which do not impact fundamental bases for appeal. However, a district court's decision is presumed correct and it is the appellant who bears the burden of establishing error by that court.

McMahon, ¶ 6 (internal citations omitted).

***Sun Mountain Sports, Inc. v. Gore*, 2004 MT 56, 320 Mont. 196, 85 P.3d 1286 (citing *Broere*, *Greenup*)**

In *Gore*, pro se litigant Gore submitted an answer to Sun Mountain's action, but the answer was returned with a note stating that Gore had failed to include the required filing fee. Before Gore received the returned answer, the District Court entered a default judgment in favor of Sun Mountain. Gore then hired an attorney who moved to set aside the default, which was denied. On appeal, the Court held that Gore satisfied the M. R. Civ. P. 55(c) criteria for good cause and the M. R. Civ. P. 60(b) criteria for mistake, stating that Gore's actions constituted excusable neglect, like that of the pro se litigant in *Broere.* The Court distinguished *Greenup*, in which it refused to set aside a default judgment entered against a pro se litigant who had waited a year and a half after entry to have the default judgment aside, stating that in this case Gore "caused no prejudice to Sun Mountain by any such delay." *Gore*, ¶ 28.

***In re P.D.L.*, 2004 MT 346, 324 Mont. 327, 102 P.3d 1225 (citing *Greenup*)**

A pro se father appealed his termination of parental rights two years late, which the Court denied. Citing *Greenup*, the Court stated, "[a]lthough we typically provide wide latitude to pro se litigants in their attempts to comply with the technicalities of pleadings, we have stated that all litigants,

including those acting pro se, must adhere to our procedural rules." *P.D.L.*, ¶ 13. The Court held "[i]n termination cases where subsequent adoption proceedings inevitably follow, the timeliness of filing such a motion is critical. For [father] to wait more than two years is untimely as a matter of law." *P.D.L.*, ¶ 17.

***State v. Frazier*, 2005 MT 99, 326 Mont. 524, 111 P.3d 215**

In *Frazier*, the Court found that the District Court had discretion to dismiss a pro se appeal from a Justice Court of record for non-compliance with rules of procedure setting forth a time for filing an appellate brief. The Court stated:

> [w]hile we are willing to make accommodations for parties choosing to represent themselves in proceedings before us and in proceedings below, we must, nonetheless, balance that willingness against our policy of deferring to a district court's application of rules of procedure. . . we will not reverse a district court for insisting that the parties before it timely comply with statutory directives and rules of civil procedure.

Frazier, ¶¶ 7, 9.

***Xin Xu v. McLaughlin Research Instit.*, 2005 MT 209, 328 Mont. 323, 119 P.3d 100**

Pro se litigant Xu filed suit against employer McLaughlin, claiming that he was wrongfully terminated and discriminated against. McLaughlin served written discovery requests upon Xu, who did not respond. Ultimately, the District Court dismissed the case with prejudice. On appeal, the Court affirmed, stating that Xu's failure to comply with the rules was dilatory in that his actions effectively halted discovery, required the trial court to hold hearings, and prevented the case from progressing. The Court stated, "[w]hile we typically provide wide latitude to pro se litigants in their attempts to comply with the technicalities of pleadings, we have repeatedly stated that all litigants, including those acting pro se, must adhere to our procedural rules." *Xu*, ¶ 23.

***Neil Consultants, Inc.* v. *Lindeman*, 2006 MT 80, 331 Mont. 514, 134 P.3d 43 (citing *Greenup*)**

In *Lindeman*, Neil Consultants filed suit against pro se litigant Lindeman to recover damages for breach of contract and non-payment of an account. Lindeman failed to allege that the services were not performed or that the amount billed was incorrect. Neil Consultants moved for a judgment on the pleadings, which the District Court granted. On appeal, Lindeman argued that he was denied the right to be heard and defend himself because of his inability to afford legal counsel. The Court affirmed, stating that Lindeman "identified no impediment beyond his pro se status that prevented him from pleading a legal defense. Lindeman's argument that he was denied access to the courts is not well taken." *Lindeman*, ¶ 8.

***Lynes v. Helm*, 2007 MT 226, 339 Mont. 120, 168 P.3d 651**

The Lynes, pro se litigants, filed a motion to compel discovery requests. Respondents filed a notice that they had served responses to the Lynes' discovery. The Lynes then moved to vacate the trial, arguing that Respondents' discovery responses were incomplete, despite Respondents' supplementation of their discovery responses. There was no indication of what information the

Lynes had requested that Respondents had failed to provide, so the District Court ordered the Lynes to list the discovery responses that they deemed insufficient. Because the Lynes did not comply with the order, the Court found that the District Court did not abuse its discretion in ultimately denying the Lynes' motion to compel.

The Lynes also argued that the District Court erred in denying their motion for additional time to file further affidavits and documents in opposition to Respondents' motion for summary judgment. The Court affirmed the District Court, stating:

> the litigation on Lynes' third-party complaint took almost two years during which Lynes could have presented the tax records of [Respondents] they now claim would create an issue of material fact. We conclude that the District Court was correct in not letting the case languish. It set reasonable times for completion of discovery, heard motions as necessary, and fairly scheduled pre-trial proceedings. The District Court admonished Lynes that they must comply with court orders, and gave them latitude because they were proceeding pro se. In particular, the District Court advised Lynes that the Respondents' motion for summary judgment needed to be answered in a timely fashion, and then granted them more time after the hearing to further respond. The District Court then extended the response time even further. Still, Lynes did not comply. Under these circumstances, we will not hold that the District Court manifestly abused its discretion by not considering documents and arguments submitted after the time allowed.

***State v. Ferre*, 2014 MT 96, 374 Mont. 428, 322 P.3d 1047**

Ferre appealed a district court decision allowing the Department of Corrections to garnish his prison wages to satisfy the restitution obligation of his sentence, despite the fact that he had already discharged the prison portion of the sentence. *Ferre*, ¶¶ 8-9. In his brief to the Montana Supreme Court, Ferre relied on *State v. Dickerson*, 2006 MT 197N (an unpublished Montana Supreme Court opinion). *Ferre*, ¶14. Ferre improperly cited this unpublished opinion in violation of the Montana Supreme Court's rules on unpublished opinions. *Ferre*, ¶ 15. Citing *Neil Consultants, Inc*, the Montana Supreme Court noted it is reasonable to expect "pro se litigants to adhere to procedural rules" despite a court's ability to grant wider latitude to pro se litigants. *Ferre*, ¶ 16. The Court remedied the error by disregarding the portion of Ferre's argument that relied on the unpublished opinion. *Ferre*, ¶ 16.

***Hall v. Hall*, 2015 MT 226, 380 Mont. 224, 354 P.3d 1224**

Petitioner Gregory Hall sued pro se respondent Don Hall (no relation), among others, for damages arising out of Gregory's purchase of a home that Don had inspected. *Hall*, ¶ 1. In response to the complaint, Don mailed a letter to Judge Prezeau, who had been replaced by another judge on the case. *Hall*, ¶ 3. In the letter, Don responded to the accusations against him and requested the case be dismissed. *Hall*, ¶ 3. The letter had no date to indicate when Don wrote or sent the letter. *Hall*, ¶ 3. The clerk of court filed the letter in the case file five months after the response deadline had passed. *Hall*, ¶ 3. The clerk of court copied the letter to the judge assigned to the case and docketed it as "Answer of Don Hall/Motion to Dismiss." *Hall*, ¶3.

Gregory's counsel filed a "Motion to Determine Sufficiency of Writing and an Answer" and the judge found Don's answer did not comply with M. R. Civ. P. Rule 8. The court gave Don 10 days to file a conforming response, which he failed to do. *Hall*, ¶ 4.

One year later, the District Court granted summary judgement in favor of all other respondents besides Don. *Hall*, ¶ 5. Another year later, Gregory motioned for a default judgment against Don. *Hall*, ¶ 6. Attorneys for the other respondents filed objections to the entry of default against Don. *Hall*, ¶7. The District Court granted the default judgment against Don and Gregory made multiple attempts to execute the judgement for the next three years. *Hall*, ¶¶ 9-12. In response to these attempts, Don filed additional letters with the court and finally obtained an attorney to represent him. *Hall*, ¶¶ 10-12. Don moved for a hearing to assert exemptions to the seizure of his assets, the District Court denied this motion, and Don appealed to the Montana Supreme Court. *Hall*, ¶ 12.

The Montana Supreme Court granted Don relief from judgment under M. R. Civ. P. 60(b) (2009) citing the unique circumstances of the case, Don's lack of representation and unfamiliarity with the legal system, the lack of liability of other defendants, and Don's good faith attempts to defend his case. *Hall*, ¶¶ 20-23. Relying on the principle that self-represented litigants should be granted some degree of latitude as well as M. R. Civ. P. 5(d)(4) ("The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rule or local procedure."), the Montana Supreme Court granted Don equitable relief from the judgment. *Hall*, ¶ 24.

***In re Estate of Mills*, 2015 MT 245, 380 Mont. 426, 354 P.3d 1271**

In a formal probate, pro se respondent David Mills objected to the appointment of his brother, Howard W. Mills, as personal representative, and questioned the validity of the will being probated. *Mills*, ¶19. David attended some of the hearings telephonically from New York and missed others. *Mills*, ¶¶ 4, 8. He also missed the deadline for filing an objection to the petition for formal probate. *Mills*, ¶ 6. After Howard W. obtained a default judgment against David, David filed a pro se motion to set aside the default judgment, which the District Court denied. *Mills*, ¶ 11.

On appeal, the Montana Supreme Court reversed and remanded, holding that David had shown good cause for missing the deadline. *Mills*, ¶¶ 21-22. David sent a letter by certified mail to Howard W.'s counsel which, although incorrect in form, demonstrated that he was not willfully ignoring the court's procedures for objecting to a petition for formal probate. *Mills*, ¶ 18. Additionally, David raised several issues about the loss of his father's previous wills, constituting a meritorious defense. *Mills*, ¶ 19. This good cause entitled David to have the default judgment set aside and his objections adjudicated on the merits. *Mills*, ¶ 21.

***Wagenman v. Wagenman*, 2016 MT 176, 384 Mont. 149, 376 P.3d 121**

In *Wagenman*, this Court concluded that Tammy, a pro se litigant, was blameless for failing to discover an issue, as the error was not due to her actions. *Wagenman*, ¶ 20. Because the District Court had a duty to inquire about the equity of the agreement, the Court did not fault Tammy as a

pro se litigant who had little previous contact with the court system and who was relying on the marital dissolution statutes, and the court, to uphold their agreement.

Accordingly, the District Court's subsequent decision to deny her Rule 60(b)(6) motion was an abuse of discretion. The District Court's legal error prevented an "accurate determination of the merits" regarding the property settlement agreement; thus, the Supreme Court reverse the District Court's denial of Tammy's Motion to Amend under Rule 60(b)(6) because it was an abuse of the District Court's discretion. *Wagenman*, ¶ 21.

***Nolan v. RiverStone Health Care*, 2017 MT 63, 387 Mont. 97, 391 P.3d 95**

Nolan filed a pro se complaint against RiverStone asserting a crudely pled civil claim alleging that RiverStone violated the Eighth and Fourteenth Amendments to the U.S. Constitution (prohibiting cruel and unusual punishment) by denying him access to a prescribed pain medication (Hydrocodone) while incarcerated. Nolan subsequently filed additional pro se documents and mailed some to RiverStone's general business address. Nolan failed to meet the requirement for non-mail personal service on authorized corporate agent within 3 years of filing date of complaint. Nolan appealed asserting that pro se litigants are entitled to relief from mandatory procedural rules. Citing *Estate of Mills*, 2015 MT 245, ¶¶ 23-25, 380 Mont. 426, 354 P.3d 1271, *Hall v. Hall*, 2015 MT 226, 380 Mont. 224, 354 P.3d 1224 he claimed that he lacked the knowledge and ability to follow the exacting rules for service of process. However, *Mills* and *Hall* are distinguishable in the sense that they did not involve a mandatory threshold for jurisdictional matter; they provide no support for Nolan's assertion that pro se litigants are entitled to relief from mandatory service of process rules. Though this Court often affords pro se litigants wide latitude regarding substantive pleading requirements, they must still strictly comply with procedural rules. Strict compliance is particularly important where, as here, the procedural rules at issue are jurisdictional in nature. Consequently, the District Court correctly concluded that Nolan was not entitled to relief from the mandatory Rules for service of process. *Xu*, ¶ 23. Strict compliance was particularly important where the procedural rules at issue are jurisdictional in nature.

***Cox v. Magers*, 2018 MT 21, 390 Mont. 224, 411 P.3d 1271**

While the Court has generally encouraged trial courts to accommodate self-represented parties, such "'flexibility cannot give way to abuse.'" *Cox*, ¶ 15 (quoting *Heidema*, 219 Mont. at 376, 711 P.2d at 1386). Any latitude given to self-represented litigants "'cannot be so wide as to prejudice the other party. . . . To do so makes a mockery of the judicial system and denies other litigants access to the judicial process.'" *Cox*, ¶ 15 (quoting *Heidema*, 219 Mont. at 376, 711 P.2d at 1386). "'It is reasonable to expect all litigants, including those acting pro se, to adhere to the procedural rules.'" *Cox*, ¶ 15 (quoting *Heidema*, 219 Mont. at 376, 711 P.2d at 1386).

PRO SE LITIGANTS AND COMPETENCY

***In re Marriage of Valkoff*, 252 Mont. 56, 826 P.2d 552, 554 (1992)**

A pro se husband appealed a District Court's distribution of the marital estate, arguing that it erred in allowing him to appear pro se, when it had knowledge of his diminished mental capacity. The Court affirmed, finding that he had the mental capacity to proceed as a pro se litigant under § 37-61-416, MCA. Although he had suffered some disability as the result of a stroke, the record did not demonstrate any aspect in which he failed to competently represent himself. He presented no evidence that he was judicially incompetent and failed to state what evidence he would have introduced that would have affected the outcome of the proceeding.

***Halley v. State*, 2008 MT 193, 344 Mont. 37, 186 P.3d 85**

In *Halley*, pro se litigant Halley argued that the District Court erred by failing to hold a hearing before releasing appointed counsel and ordering Halley to represent himself. *Halley*, ¶ 13. The Court agreed. *Halley*, ¶ 21. The Court explained that the District Court must ensure that a defendant is competent to abandon his right to assistance of counsel and proceed pro se. *Halley*, ¶ 20. Competence on the part of a defendant to proceed pro se does not necessarily require the skill and experience of a lawyer, but it does require substantial credible evidence that the defendant's relinquishment of his or her right to counsel was made voluntarily, knowingly, and intelligently. *Halley*, ¶ 20. The Court determined that there was "no evidence that the District Court made *any* inquiry of Halley *before* granting Halley's request to waive his right to counsel," and thus reversed the District Court. *Halley*, ¶¶ 21, 25.

***City of Missoula v. Fogarty*, 2013 MT 254, 371 Mont. 513, 309 P.3d 10**

Fogarty appealed her various convictions on the grounds that she was not capable of representing herself at trial. *Fogarty*, ¶ 17. The Court disagreed and found that she was competent to proceed pro se, noting that:

> Fogarty had refused to pursue any inquiry into a possible claim that she was mentally incompetent for purposes of defending the charges against her. She told the court she had represented herself in criminal proceedings before, in Minnesota. In discussing the current charges against her, while she tended to ramble into other matters, she also was able to discuss the particulars of the current charges, and certainly seemed to comprehend the possible penalties she faced if convicted. A court cannot deny a request to represent oneself on the basis that the defendant.

***Stewart v. Rice*, 2013 MT 55, ¶ 31, 369 Mont. 203, 296 P.3d 1174**

In *Stewart*, Edyth Rice and her son Clark Rice were both found liable for damages after a traffic accident involving a tractor driven by Clark and two other vehicles. Edyth, a pro se litigant, was originally represented by an attorney who withdrew without notice. *Stewart*, ¶ 28. Upon withdrawing, the attorney notified the District Court that Rice was incompetent and could no longer understand the proceedings. *Stewart*, ¶ 28. Edyth attended the trial but did not present a defense or participate. *Stewart*, ¶ 30. The District Court entered a judgment against Edyth. *Stewart*, ¶ 14. The Court reversed, ruling that Edyth should be evaluated to determine her need for a conservator. *Stewart*, ¶ 39.

When an attorney withdraws, Montana Uniform District Court Rule 10 and § 37-61-405, MCA, require that the attorney must provide the party notice requiring the party to either appoint new counsel or personally appear in further proceedings. The Court held that the opposing party's failure to provide Rule 10 notice to Edyth prejudiced her substantial rights and constituted reversible error. *Stewart*, ¶ 35. It also held that if the Court determines that evidence exists suggesting that a pro se party may be incompetent, the Court may rule that the party should be evaluated to determine if the party needs a conservator. *Stewart*, ¶ 31.

Clark also was originally represented by an attorney; however, unlike his mother, Clark consented to his attorney's properly noticed withdrawal. *Stewart*, ¶ 8. He represented himself at trial, and on appeal he argued that he should be granted a new trial and a new judge because he was entitled to court-appointed counsel, and because he did not knowingly and intelligently waive his right to a jury trial. *Stewart*, ¶ 18. The Court disagreed. *Stewart*, ¶ 23. It held that pursuant to *Turner v. Rogers*, 564 U.S. 431, 131 S. Ct. 2507, 2518 (2011), "there is no absolute right to counsel in civil proceedings . . . particularly where a defendant's deprivation of liberty is not at stake." *Stewart*, ¶ 22. The Court also found that there was no indication that Clark did not understand he was waiving his right to a jury trial. *Stewart*, ¶ 22. Thus, the Court affirmed the District Court's judgment against Clark. *Stewart*, ¶ 23.

***In re S.M.*, 2017 MT 244, 389 Mont. 28, 403 P.3d 324**

The State filed a petition to involuntarily commit S.M. after he told a friend he was going to commit suicide. At the initial hearing, S.M. advised the court that he wished to waive counsel and represent himself. *In re S.M.*, ¶ 2. The District Court ultimately denied S.M.'s request and appointed counsel over S.M.'s objection. S.M., together with his appointed counsel, entered into a stipulation for commitment to community-based treatment. *In re S.M.*, ¶ 2. The District Court approved the stipulation and ordered S.M.'s commitment. *In re S.M.*, ¶ 2. On appeal, S.M. contended that Montana law, § 53-21-119(1), MCA, prohibiting waiver of the right to counsel in certain circumstances, including involuntary commitment cases, violates his rights under the Sixth and Fourteenth Amendment to the United States Constitution. *In re S.M.*, ¶ 2. The Supreme Court analyzed S.M.'s due process concerns under § 53-21-119(1), MCA, and concluded,

> [T]he Legislature has taken extensive measures to preserve the integrity of the process and to uphold the interests of persons involved. Prohibiting the waiver of counsel is one such measure. Our examination reveals that a right of self-representation in civil commitment proceedings is neither "deeply routed in our nation's history," nor "implicit in the connect of ordered liberty. . . ." The Due Process Clause, therefore, does not establish as fundamental the right to represent oneself in civil commitment proceedings.

In re S.M., ¶ 28.

PRO SE LITIGANTS AND SANCTIONS:

***State ex rel. Lovins v. Toole Co.*, 278 Mont. 253, 924 P.2d 253 (1996)**

The District Court imposed a sanction after a finding of unreasonable and vexatious action by Lovins, a pro se litigant. The sanction prohibited him from commencing or filing any further litigation without first submitting pleadings to and obtaining permission from the District Court. The Court reversed the sanction on the grounds that it violated Lovins' right to due process, stating that Lovins should have been given notice, time to prepare, and a hearing to argue against the imposition of such a sanction.

***Motta v. Granite Co. Comm'rs*, 2013 MT 172, 370 Mont. 469, 304 P.3d 720**

In *Motta*, the District Court determined that pro se litigant Motta was a vexatious litigant, and imposed restrictions on his ability to file future pro se actions against government agencies in that district. *Motta*, ¶¶ 1, 17. It also ordered Motta to pay the County Commissioners' attorneys' fees. *Motta*, ¶ 1. The Court affirmed, except for the portion of the District Court's judgment that required Motta to pay the County Commissioners' attorneys' fees incurred for seeking attorneys' fees *Motta*, ¶ 1.

In evaluating the District Court's determination that Motta was a vexatious litigant, the Court cited Montana case law, along with a five-factor test from the Ninth Circuit U.S. Court of Appeals. *Motta*, ¶ 22. The Ninth Circuit test considers:

(1) the litigant's history of litigation and, in particular whether it has entailed vexatious, harassing, or duplicative lawsuits;

(2) the litigant's motive in pursuing the litigation; e.g. whether the litigant has an objective good faith expectation of prevailing;

(3) whether the litigant is represented by counsel;

(4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and

(5) whether other sanctions would be adequate to protect the courts and other parties.

Motta, ¶ 20 (citing *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1058 (9th Cir. 2007)). The Court noted that the District Court provided Motta with notice and an opportunity to be heard, made substantive findings about the frivolous and harassing nature of Motta's current and previous litigation, and also addressed the five substantive factors identified by the Ninth Circuit. *Motta*, ¶¶ 21-22. The Court found that the District Court's order restricting Motta's right to file pro se actions was narrowly tailored, and thus determined that the order was a proper exercise of the court's inherent authority to place reasonable restrictions on access to its resources. *Motta*, ¶ 22.

In partially upholding the District Court's order requiring Motta to pay attorneys' fees, the Court recognized that a party in a civil action generally is not entitled to attorneys' fees absent a specific contractual provision. *Motta*, ¶ 22 (citing § 27-8-311, MCA; M. R. Civ. P. 54(d); *Montanans for the Responsible Use of the School Trust v. State ex rel. Bd. of Land Comm'rs*, 1999 MT 263, ¶ 62, 296 Mont. 402, 989 P.2d 800). The Court then noted that an equitable exception exists when "the action into which the prevailing party has been drawn is without merit or frivolous." *Motta*, ¶ 29 (citing *Erker v. Kester*, 1999 MT 231, ¶ 44, 296 Mont. 123, 998 P.2d 1221). Based on its determination that Motta was a vexatious litigant, the Court concluded that the District Court acted within its equitable powers when it ordered Motta to pay the County Commissioners' attorneys' fees as a sanction for drawing the County Commissioners into a meritless and frivolous action. *Motta*, ¶ 30. However, the Court deducted the of attorneys' fees expended by the prevailing party in proving the amount and reasonableness of the attorneys' fees, stating that the case did not present extraordinary circumstances which would justify such an award. *Motta*, ¶ 31.

***Belanus v. Potter*, 2017 MT 95, 387 Mont. 298, 394 P.3d 906**

The District Court declared Belanus to be a vexatious litigant and imposed a pre-filing order against him. *Belanus*, ¶ 30. Belanus appealed, arguing the District Court abused its discretion. *Belanus*, ¶ 30. Belanus filed numerous pro se lawsuits against his victim, the prosecutors, law enforcement officers, probation officer, and judge, all stemming from his criminal conviction. *Belanus*, ¶ 33. The Supreme Court applied the five-factor test outlined in *Motta v. Granite City. Comm'rs* and determined that the District Court did not abuse its discretion. *Belanus*, ¶¶ 31, 37-38. Based upon the District Court's observations and the voluminous record of legal cases Belanus had produced since his criminal proceeding, the Supreme Court concluded that the District Court's pre-filing order was tailored to fit Belanus's "specific vice." *Belanus*, ¶ 37.

The Supreme Court noted that the District Court's effort to "weav[e] through the various actions and the procedurally unrecognizable pleadings that fill each file is an arduous process, albeit necessary to address Defendants' motion to have Belanus designated a vexatious litigant." *Belanus*, ¶ 33. The Supreme Court concluded that the District Court's "review of Belanus's past litigation cases and practices and its resulting order are adequate to support its determination that Belanus is a vexatious litigation." *Belanus*, ¶ 35. The Supreme Court observed, too, the various judges and forums, both state and federal, who deemed Belanus's filings frivolous and harassing. *Belanus*, ¶ 36.

***Stokes v. First Am. Title Co. of Mont., Inc.*, 2017 MT 275, 389 Mont. 245, 406 P.3d 439**

In *Stokes*, the Supreme Court noted that sanctions could be imposed upon a vexatious litigant pursuant to Mont. R. App. P. 19(5). *Stokes*, ¶ 4. The Supreme Court applied the five-factor test established in *Motta* and determined that a pre-filing order against one of the petitioners was justified when he was litigating pro se. Consistent with the Montana Constitution, Mont. Const. art. II, § 16, a pre-filing order had a direct relationship to the state interest of protecting other parties from the unnecessary expense of litigating against the petitioner and protecting the courts from the unnecessary expenditure of judicial resources.

The Court determined that Stokes had a history of vexatious, harassing or duplicative law suits, and Stokes's pro se appeals had repeatedly been found to be insufficiently presented, including a failure to provide a sufficient record or a failure to raise cognizable arguments, and had usually been affirmed in a memorandum opinion based upon the failure to meet Stokes's burden. *Stokes*, ¶¶ 5, 7. Based on Stokes's history, the Supreme Court concluded that sanctions other than a pre-filing motion would be inadequate. *Stokes*, ¶ 12. The Supreme Court concluded that Stokes's appeal was taken without substantial or reasonable grounds, *Stokes*, ¶ 5, and ordered that the motion to declare Stokes a vexatious litigant be granted in part, *Stokes*, ¶ 14.

***McCann v. McCann*, 2018 MT 207, 392 Mont. 385, 425 P.3d 682**

Upon the Appellee's motion pursuant to M. R. App. P. 19(5), the Supreme Court declared Genet McCann a vexatious litigant after applying the five-factor test outlined in *Motta v. Granite Cty. Comm'rs*, and imposed a pre-filing order. *McCann*, ¶¶ 38, 45. Notably, Genet was a lawyer but had been disbarred as a result of being "truly the poster child of not just a vexatious litigant, but a vexatious lawyer, unwilling or unable to see the outrageous nature of her conduct, both in the district court and in [other] disciplinary proceedings." Genet had numerous opportunities to correct or at least mitigate her conduct. *McCann*, ¶ 40. That Genet was unrepresented by counsel makes her litigation conduct even less excusable because she herself was an attorney licensed to practice law in Montana and should have known to not repeatedly initiate unsupported claims. *McCann*, ¶ 41. The Supreme Court found Genet's litigation had caused needless expense to other parties or had posed an unnecessary burden on the courts. *McCann*, ¶ 43. Genet argued the request should be denied because the District Court did not enter any findings regarding her status as a vexatious litigant. However, the Supreme Court held that it could undertake initial consideration of such a matter based upon the motion made in its court, when there was sufficient evidence in the record to impose the order. *McCann*, ¶ 41. Importantly, the Supreme Court considered not just the merits of a single position in that suit but Genet's litigation history. *McCann*, ¶ 39.

PRO SE MOTIONS:

***State v. Samples*, 2005 MT 210, ¶ 15, 328 Mont. 242, 119 P.3d 1191**

In *Samples*, the defendant Samples was represented by counsel but asked the District Court for permission to file a pro se motion challenging the Sexual or Violent Offender Registration Act and other constitutional issues. *Samples*, ¶¶ 4-5. The District Court gave Samples permission to file his pro se motion but refused to rule on some of the issues that Sample raised. *Samples*, ¶¶ 5-6.

The Court observed that normally a district court may refuse to accept pro se motions from defendants who are adequately represented by counsel. *Samples*, ¶ 15 (citing *State v. Weaver*, 2001 MT 115, ¶ 24, 305 Mont. 315, 28 P.3d 451). The Court determined, however, that a district court can authorize a represented party to file a pro se challenge. *Samples*, ¶ 15. Additionally, the

Court held that because the District Court authorized Samples's pro se motion, the District Court was obligated to address all issues raised in the motion. *Samples*, ¶ 15.

PRO SE LITIGANTS CAN REPRESENT ONLY THEMSELVES

***Weaver v. Graybill*, 246 Mont. 175, 803 P.2d 1089 (1990)**

In *Weaver*, pro se litigant Weaver attempted to bring a pro se action on behalf of a corporation in which he owned stock. *Weaver*, 246 Mont. at 177, 803 P.2d at 1090. The Court determined that a pro se litigant cannot bring an action on a corporation's behalf. *Weaver*, 246 Mont. at 178, 803 P.2d at 1091. The Court also determined that a pro se litigant can only represent himself; he cannot represent other parties involved in litigation. *Weaver*, 246 Mont. at 178, 803 P.2d at 1091 (Weaver was not permitted to appear on behalf of his wife or other parties involved in the litigation). The Court cited § 37-61-210, MCA, which states, "[i]f any person practices law in any court, except a justice's court or a city court, without having received a license as attorney, the person is guilty of a contempt of court." *Weaver*, 246 Mont. at 178, 803 P.2d at 1091.

***Zempel v. Liberty*, 2006 MT 220, 333 Mont. 417, 143 P.3d 123.**

In *Zempel*, the Supreme Court clarified that non-lawyers may not represent corporations in district court proceedings. *Zempel*, ¶ 18. Here, Liberty, who was acting pro se, purported to act on behalf of TTC in the District Court proceedings, filing an initial Motion to Dismiss as well as a "Response" to the District Court's Order and a subsequent Motion to Dismiss. In doing so, she acted in contempt of court. Liberty is not licensed to practice law in Montana, nor did she claim to be in the proceedings below. *Zempel*, ¶ 19. Yet, the District Court failed to hold her in contempt. *Zempel*, ¶ 19. In fact, the court granted one of the motions Liberty filed on behalf of TTC, allowing her to "represent" TTC and thereby practice law without a license. Consequently, the Supreme Court admonished district courts to observe our case law on this important issue and exercise vigilance in ensuring that only licensed legal practitioners represent corporate entities in district court proceedings. *Zempel*, ¶ 19.

***H & H Dev., LLC v. Ramlow*, 2012 MT 51, 364 Mont. 283, 272 P.3d 657**

In *Ramlow*, the Court held that a pro se litigant cannot represent a corporation and stated that this rule also applies to "partnerships, limited liability companies, and similar entities." *Ramlow*, ¶ 18.

However, the Court distinguished *Ramlow* from *Weaver*, because *Weaver* did not address whether a complaint filed on behalf of a corporation by a non-lawyer should be considered a nullity. *Ramlow*, ¶ 21. In this case, H & H filed a pro se complaint against Ramlow for legal malpractice and damages. *Ramlow*, ¶ 8. H & H argued that its amended complaint should relate back to the date of the filing of its pro se complaint in order to meet the statute of limitations for professional malpractice claims. *Ramlow*, ¶ 16.

The Court determined that a complaint filed on behalf of a corporation by a non-lawyer should not necessarily be considered a nullity. *Ramlow*, ¶ 24. The Court held that a district court has

discretion to determine whether a corporation should be able to relate back an amended complaint signed by a lawyer, to its original, pro se complaint. *Ramlow*, ¶ 24. In determining whether a corporate complaint signed by a non-lawyer constitutes a nullity, a district court should consider "whether the entity had knowledge that it could not file a pro se complaint, the amount of time that has elapsed between learning of the prohibition and seeking counsel, whether the pro se complaint caused prejudice to the opposing party, and how extensively the non-lawyer participated in the proceeding." *Ramlow*, ¶ 25. A district court's analysis of the factors will ensure that it does not declare an otherwise valid complaint void for technical reasons or take advantage of the relation back doctrine offered by M. R. Civ. P. 15(c). *Ramlow*, ¶ 27.

PRO SE LITIGANTS AND STANDBY COUNSEL:

***State v. Bartlett*, 271 Mont. 429, 898 P.2d 98 (1995)**

In *Bartlett*, defendant Bartlett was allowed to proceed pro se and standby counsel was appointed. *Bartlett*, 271 Mont. at 431, 898 P.2d at 99. Standby counsel submitted a motion for a mental examination of defendant, which the District Court denied. *Bartlett*, 271 Mont. at 431, 898 P.2d at 99. Bartlett appealed. *Bartlett*, 271 Mont. at 432, 898 P.2d at 99.

On appeal, the State argued that allowing standby counsel to force a mental examination would deprive Bartlett of his Sixth Amendment right to self-representation and cited to *Faretta v. California*, 422 U.S. 806, 95 S. Ct. 2525 (1975). *Bartlett*, 271 Mont. at 433, 898 P.2d at 100. The Court recognized that the right to self-representation imposes some limitations on standby counsel's unsolicited participation. *Bartlett*, 271 Mont. at 433, 898 P.2d at 100. In proceedings held in the presence of the jury, the pro se defendant must be allowed to preserve actual control over the case, and "standby counsel must not make or substantially interfere with any significant tactical decisions, control the questioning of witnesses, or speak instead of the defendant on any matter of importance." *Bartlett*, 271 Mont. at 433, 898 P.2d at 100-01. For proceedings outside of the jury's presence, pursuant to *Faretta*, defendant should be allowed to address the court freely on his or her own behalf and disagreements between standby counsel and the pro se defendant should be resolved in defendant's favor whenever the matter is one that would normally be left to the discretion of counsel. *Bartlett*, 271 Mont. at 433, 898 P.2d at 101.

However, § 46-14-202, MCA, allows the prosecution, defense, or the court itself, to initiate a mental examination of a defendant in a criminal proceeding. Therefore, the Court determined that requesting a mental examination of Bartlett was not a decision which would normally be left to the sole discretion of defense counsel and determined that standby counsel's motion did not interfere with Bartlett's right to self-representation. *Bartlett*, 271 Mont. at 434, 898 P.2d at 101.

***State v. Longjaw*, 2012 MT 243, 366 Mont. 472, 288 P.3d 210**

In *Longjaw*, the District Court granted Longjaw's motion to represent himself in relation to his criminal charges and appointed standby counsel from the public defender's office. *Longjaw*, ¶ 6. Standby counsel informed the District Court that the regional public defender's office had

previously represented a witness on the State's witness list in a different but tangentially related matter, and thus presented a potential conflict of interest. *Longjaw*, ¶ 7. The State did not call this witness to testify during the trial, but Longjaw did. *Longjaw*, ¶ 7. Standby counsel was not involved with Longjaw's examination of the witness. *Longjaw*, ¶ 16. Longjaw was ultimately found guilty on all charges. *Longjaw*, ¶ 5.

On appeal, Longjaw argued that standby counsel had an actual conflict of interest which violated his due process rights under the Fourteenth Amendment. *Longjaw*, ¶¶ 12-13. The State argued that no actual conflict of interest existed, and additionally, that the right to conflict-free representation did not extend to standby counsel. *Longjaw*, ¶¶ 12-13.

The Court ruled that Longjaw's standby counsel had no actual conflict of interest, and thus declined to decide the question on the merits. *Longjaw*, ¶¶ 13, 17. However, the Court strongly suggested that standby counsel for pro se criminal litigants must be free from actual conflicts. *Longjaw*, ¶¶ 14-15.

***In re N.A.*, 2013 MT 255, 371 Mont. 531, 309 P.3d 27**

In *In re N.A.*, the State instituted an involuntary civil commitment proceeding for N.A., who suffered from paranoid schizophrenia. *N.A.*, ¶ 8. The District Court committed N.A. to the Montana State Hospital and N.A. appealed. *N.A.*, ¶ 11.

N.A. argued that his participation in the commitment hearing made him essentially pro se, in violation of § 53-21-119(1), MCA. *N.A.*, ¶ 14. Although he had an attorney present, N.A. had an unusual level of participation in his defense. *N.A.*, ¶ 10. N.A. performed the overwhelming majority of cross examinations and delivered his own closing. *N.A.*, ¶ 10.

The Court recognized that the right to counsel cannot be waived in civil commitment proceedings pursuant to § 53-21-119, MCA. *N.A.*, ¶ 15. The Court also recognized that "standby" counsel does not qualify as counsel for the purposes of the Sixth Amendment. *N.A.*, ¶ 15. The Court held that a defendant's lawyer is reduced to standby counsel when he or she cannot: "(1) substantially interfere with significant tactical decisions, (2) control the examination of witnesses, (3) speak on matters of legal importance to the defendant, and/or (4) bear responsibility for defendant's defense." *N.A.*, ¶ 16. The Court ultimately determined that N.A had counsel (not just standby counsel), because the attorney exercised some control over all parts of the proceeding, including the questioning phase. *N.A.*, ¶ 17.

PRO SE LITIGANTS AND THE RIGHT TO COUNSEL:

***State v. Colt*, 255 Mont. 399, 843 P.2d 747 (1992)**

Colt appealed a conviction for issuing a bad check and two counts of deceptive practices. Prior to trial, Colt filed pleadings asking to be allowed to proceed with the defense pro se. An October 31, 1991 order gave Colt's court-appointed counsel permission to withdraw and allowed Colt to

proceed pro se. The District Court appointed standby counsel. Colt was aware of the right to counsel and the potential disadvantages of self-representation. However, The Court does not require district courts to adhere to a rigid set of requirements in ascertaining whether a defendant in a criminal proceeding has made a knowing and intelligent waiver of his right to counsel. District judges are in the best position to determine whether the defendant has made a knowing and intelligent waiver of his right to counsel. Requiring the district courts to specifically discuss the dangers and disadvantages of pro se representation is far beyond the scope of what *Faretta* or our case law requires. The Court held that an accused is permitted to conduct his own defense so long as he is able and willing to abide by the rules of courtroom procedure and substantive and procedural law. Where substantial credible evidence exists to support the District Court's decision requiring standby counsel to assist in the defense where a pro se defendant fails, or is unable, to adhere to proper courtroom procedure and protocol, it will not be disturbed on appeal.

***In re the Adoption of A.W.S. & K.R.S.*, 2014 MT 322, 377 Mont. 234, 339 P.3d 414**

Stepmother filed a petition for adoption of minor children A.W.S. and K.R.S., seeking to terminate Mother's parental rights. *A.W.S.*, ¶ 5. Stepmother was represented by counsel, Mother was not. *A.W.S.*, ¶ 6. At the hearing, Stepmother called Mother as a witness and Mother explained that she was unrepresented because she could not afford to hire an attorney. *A.W.S.*, ¶ 6. Mother called no witnesses and presented no evidence, although she did state her opposition to termination of her parental rights. *A.W.S.*, ¶ 7. The District Court terminated Mother's parental rights and Mother appealed to the Montana Supreme Court. *A.W.S.*, ¶¶ 8-9.

The Montana Supreme Court analyzed the case under Equal Protection and concluded that in cases initiated under the Adoption Act by private parties, a district court must appoint counsel for indigent parents who want representation. *A.W.S.*, ¶¶ 11, 26. An indigent parent may lose their parental rights in two ways in Montana: an involuntary proceeding by the state under § 41-3-422, MCA, or an adoption proceeding initiated by a private party under § 42-2-603, MCA. *A.W.S.*, ¶ 15. In the former proceeding, the indigent parent is entitled to appointed counsel, in the latter, he or she is not. *A.W.S.*, ¶ 15. The Montana Supreme Court found these classes of parents to be similarly situated for equal protection purposes. *A.W.S.*, ¶ 15. Applying strict scrutiny, the Montana Supreme Court found that the different treatment of these similarly situated classes was not narrowly tailored to serve a compelling governmental interest. *A.W.S.*, ¶ 23.

***In re J.W.M. & A.K.M.*, 2015 MT 231, 380 Mont. 282, 354 P.3d 626**

In response to J.M.'s drug use, failure to pay child support, and failure to maintain a relationship with his children, C.M. and R.H. petitioned to terminate J.M.'s parental rights and allow R.H. to adopt the children. *In re J.W.M. & A.K.M.*, ¶ 3. During proceedings, J.M.'s counsel notified the court that counsel could no longer represent J.M. *In re J.W.M. & A.K.M.*, ¶ 6. J.M. filed documents pro se and appeared at the termination hearing pro se. *In re J.W.M. & A.K.M.*, ¶¶ 6-7. At the hearing, the court expressly asked J.M. if he was representing himself and J.M. responded "Correct, Your Honor." *In re J.W.M. & A.K.M.*, ¶ 24. The District Court terminated J.M.'s parental rights and on appeal J.M. argued that the termination of his rights in the absence of legal

representation violated *In re the Adoption of A.W.S. & K.R.S.*, 2014 MT 322, 377 Mont. 234, 339 P.3d 414. *In re J.W.M. & A.K.M.*, ¶ 22.

The Montana Supreme Court held *A.W.S.* inapplicable because J.M. gave the trial court no indication that he wanted appointed counsel or that he could not afford an attorney. *In re J.W.M. & A.K.M.*, ¶ 24. While pro se litigants do not need to use "particular words" to request counsel, the litigant must give the court some indication that he needs appointed counsel because he is indigent for *A.W.S.* to apply. *In re J.W.M. & A.K.M.*, ¶ 25.

***In re Kesler*, 2018 MT 231, 392 Mont. 540, 427 P.3d 77**

A pro se litigant, Wendy Rogers, appealed the findings of fact, conclusions of law, and final parenting plan ordered by the Third Judicial District Court, Anaconda-Deer Lodge County. She alleged multiple errors in the District Court's factual findings and in its parenting plan determination. *In re Kesler*, ¶ 1. Representing herself, Wendy raised numerous issues on appeal. Wendy argued that she was denied due process of law because the District Court allowed multiple withdrawals of counsel and numerous continuances and because her counsel was ineffective. *In re Kesler*, ¶ 16. Wendy did not establish that the continuances or withdrawals of counsel affected Wendy's ability to attend trial or to present her evidence. A District Court's decisions to allow the withdrawal of counsel and to grant a continuance are within its discretion. *In re Kesler*, ¶ 29. Furthermore, this case was a custody dispute between private parties. There is no right to counsel afforded in a routine parenting plan action like this one. *In re Kesler*, ¶ 30. Rather, in our system of representative litigation, civil litigants "must be held accountable for the acts and omissions of their attorneys." *In re Kesler*, ¶ 30 (citations omitted).

RELEVANT CODE SECTION:

§ 37-61-421, MCA

An attorney or party to any court proceeding who, in the determination of the court, multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct.

§ 37-61-210, MCA

If any person practices law in any court, except a justice's court or a city court, without having received a license as attorney, the person is guilty of a contempt of court.

§ 37-61-405, MCA

When an attorney dies or is removed or suspended or ceases to act as an attorney, a party to an action for whom the attorney was acting as attorney must, before any further proceedings are had against the party, be required by the adverse party, by written notice, to appoint another attorney or appear in person.

§ 25-31-601, MCA

Except as provided in 35-8-301, a member with a majority interest in a limited liability company as defined in 35-8-102 may act as attorney for the limited liability company.

RELEVANT RULES OF PROCEDURE:

M. R. App. P. 19(5)

The supreme court may, on a motion to dismiss, a request included in a brief, or sua sponte, award sanctions to the prevailing party in an appeal, cross-appeal, or a motion or petition for relief determined to be frivolous, vexatious, filed for purposes of harassment or delay, or taken without substantial or reasonable grounds. Sanctions may include costs, attorney fees, or such other monetary or non-monetary penalty as the supreme court deems proper under the circumstances

RULES OF PROFESSIONAL CONDUCT:

M. R. Pro. Con. 1.2 (c) – Scope of Representation

New rule change effective January 1, 2020

M. R. Pro. Con. 4.2 – Communication with person Represented by Counsel

New rule change effective January 1, 2020

M. R. Pro. Con.4.3 – Dealing with Unrepresented Person

New rule change effective January 1, 2020

MONTANA UNIFORM RULES FOR THE JUSTICE AND CITY COURTS

(a) A party may represent oneself or be represented by counsel.

(b) Except as provided in (c) below, no representation can be made on behalf of a party by another person except an attorney duly licensed by the State of Montana. A nonresident attorney may be permitted to represent a party upon motion of a licensed resident attorney as allowed under Section IV, Pro Hac Vice, of the 1998 Rules for Admission to the Bar of Montana.

(c) Unless the articles of organization state otherwise, a member with a majority interest in a limited liability company may represent the limited liability company as an attorney in justice's court as provided in 25-31-601.

(d) Death or removal of an attorney shall be governed by Rule 10 of the Uniform District Court Rules.