

MONTANA TWLEFTH JUDICIAL DISTRICT COURT RULES CHOUTEAU, HILL, and LIBERTY COUNTIES

RULE 1 – TERMS OF COURT AND CALENDAR

Terms of court shall be set for the trial of civil and criminal cases in each county by the judge at such times, as in the discretion of such judge, the matters pending in such county are sufficient to warrant such a term.

RULE 2 – LAW AND MOTION DAYS

Law and motion days shall regularly be held in the courthouses in the county seats of the district as follows, except that the Court may, in its discretion, hear and dispose of all law and motion matters at any place in the district: **HILL COUNTY**, Havre, Montana: every Monday for criminal matters and every Wednesday for civil matters, except holidays and at the Court's discretion. **CHOUTEAU COUNTY**, Fort Benton, Montana: The first and third Tuesday of each month, except holidays and at the Court's discretion. **LIBERTY COUNTY**, Chester, Montana: The third Wednesday of each month, except holidays and at the Court's discretion.

Additional law and motion days may be held in any county of the district when in the discretion of the judge presiding therein, the business of the district so requires.

RULE 3 – TRIAL CALENDAR AND PRE-TRIAL PROCEEDINGS

(a) Scheduling Conference. Whenever a case is at issue and either party desires to have the case tried, counsel may file a request for a scheduling conference setting forth the title and number of the case. A copy of the request shall be served upon opposing counsel of record. The Court will issue its own Order for a Scheduling Conference. A trial date will be set at the time of the conference.

(b) Pre-trial Procedure. Rule 16, Rules of Civil Procedure, and the pre-trial conference and pre-trial order of the Uniform District Court Rules, as amended from time to time, will govern all pre-trial matters.

RULE 4 – TRIAL CALENDAR & CONDUCT OF TRIALS

(A) Regular Trial Calendar. Following a scheduling conference, the cause shall be placed upon the regular trial calendar. Notwithstanding the above, the Court may, in its discretion, and upon such notice as the Court deems reasonable, set down for trial any cause coming to issue.

(B) Non-jury Cases. Non-jury cases may be set for trial on order of the Court upon motion of a party. Reasonable notice shall be given to opposing parties. The Court, of its own motion, may set such cases for trial on a date convenient to the Court upon an order giving the respective parties reasonable notice of the date of trial.

The foregoing rule shall apply where the presiding judge shall have been called in and assumed jurisdiction.

(C) Trial Briefs. Trial briefs shall be submitted as required in the pre-trial order.

(D) Continuances. When, after the day is fixed for the trial of any cause, if either party shall desire a continuance, they shall give their adversary five days' notice that application will be made therefor, and the grounds thereof. For good cause the time may be shortened. Continuances may be granted on the Court's own motion or upon motion of counsel or a party, if such a continuance does not inconvenience the Court in the progress of the trial calendar. Continuances, even when stipulated to by counsel, will not be routinely granted. If the application for a continuance is based on the absence of a witness, the testimony expected to be adduced by the witness shall be set forth in detail in the motion. A party opposing the continuance, without admitting the truth of the testimony, may admit the witness would so testify. In such event, the continuance shall be denied, unless in the opinion of the Court, manifest injustice may result.

(E) Conduct.

(1) During any contested hearing no argument, or motion to the Court, other than a formal objection or exception, will be entertained, unless the attorney making the same first arises in his place to address the Court, and the Court grants a request for argument. Argument, when permitted by the Court, shall cease on completion of rebuttal.

(2) In the examination of witnesses, only one attorney for each party will be permitted to examine or cross examine the same witness, except by prior permission of the Court.

(F) Challenge to Jury. There shall be no verbal voice challenge of jurors except for cause. Peremptory challenges shall be exercised or waived by counsel indicating on the Clerk's jury list what jurors are peremptorily challenged.

(G) Jury's Notes. Jurors shall be allowed to take notes unless the presiding judge, considering the nature of the case, orders otherwise. Any party that wishes to request the jury to take notes shall provide adequate materials. No jury shall be required to take notes. Jurors' notes shall be collected by the bailiff at the end of each court day and returned to the jurors at the beginning of the next day. Jurors shall be allowed to have their notes during deliberation.

(H) Invoking 5th Amendment Privilege. Any attorney, party, or witness, who anticipates that any witness to be called in a trial by jury might refuse to answer a question on the grounds that the answer may tend to incriminate them, shall so advise the court in advance of such witness testifying. The court shall thereupon hold a hearing outside of the presence of the jury to determine if, in fact, such will be the case. An appropriate order will then be entered for the purpose of avoiding, if possible, "taking the 5th" in the presence of a jury.

(I) Attorney as Witness. If the attorney of either party offers himself as a witness on behalf of his client, and gives evidence on the merits of an issue, they shall not argue the case or sum it up to the jury unless by permission of the Court, and then shall not comment on their own testimony.

(J) Character Witnesses. Not more than three witnesses for each side will be allowed to testify as to character in any cause, civil or criminal, without leave of Court first obtained.

(K) Parenting Witnesses. Not more than three witnesses for each side will be allowed to testify concerning parenting practices and abilities in any contested action concerning custody or visitation of children, without leave of Court first obtained.

RULE 5 – PHOTOGRAPHY AND TELEVISION

Broadcasting, televising, recording, or taking photographs in the courtroom and areas immediately adjacent thereto during sessions of court, or recesses between sessions, shall be allowed only with prior notice to, and specific permission of, the presiding judge. All equipment used and persons using it shall remain behind the bar. No flashlights, other lighting equipment, or large microphones shall be used. Photographers, television cameras, and other recording devices, when allowed, shall remain stationary, and shall be used so as to not disrupt the proceedings. **No photographs of or televising of the members of a jury or lay witnesses shall be permitted.**

RULE 6 – FILINGS OF PLEADINGS

1. **Requirements and Briefs.**
 - a. No individual brief shall exceed twenty (20) pages in length, exclusive of indexes and appendices, without prior leave of the Court.
 - b. In a motion submitted to the Court, the moving party shall certify that the other parties have been contacted concerning the motion, and whether the parties object to the motion.
2. **Discovery.** Discovery shall not be filed without leave of the Court. With good cause, discovery referenced and attached to a brief may be filed. The party serving requests shall submit requests on paper and disk or e-mail to the opposing party.
3. **Notice of Issue.** In any civil, divorce, or invalidity actions, when the parties are fully joined, counsel shall prepare and present to the Clerk of Court a Notice of Issue. Counsel is encouraged to remind the Court by letter of any matter taken under advisement.

4. **E-Filing.** Parties shall adhere to the E-filing parameters set forth by the Montana Supreme Court. If and when available, attorneys shall use the State of Montana e-filing system to file all documents, including proposed Orders. All proposed Orders submitted through the e-filing system shall be word.doc format.

5. **Electronic Mail (email) and Telefax Filing.**

When E-filing is not available:

Unless contrary to Montana statute requiring an original signature filing, Email filing of any document with the Clerk of Court is preferred. The court discourages mail filings. Electronic signatures are accepted pursuant to Rule 11, Mont. R. Civ. Pro.

a. **Filing of Telefax or E-mail Document.**

The date and time of receipt of the fax shall be the date and time of filing by the Clerk of Court. If the original is not served on the same day as the telefax or e-mail transmission, service of the telefax or e-mail document must be made as provided in Rule 5, Mont. R. Civ. Pro. It is the obligation of the person telefaxing or e-mailing any document to arrange for it to be delivered to the Clerk of Court's office. A telefaxed or e-mailed document must show all necessary signatures and proof and method of service or it will not be filed by the Clerk.

b. **Filing the Original.** There is no need to file a paper copy of the original. The electronic filing must be signed pursuant to Rule 11, Mont. R. Civ. Pro.

c. **Electronic Mail (email).**

When E-filing is not available:

- i. Documents may be emailed to the Chouteau County Court in Fort Benton at:
clerkofcourt.chouteau@mt.gov.
- ii. Documents may be emailed to the Hill County Court in Havre at clerkofcourt.hill@mt.gov
- iii. Documents may be emailed to the Liberty County Court in Chester at
aseidlitzmelton@mt.gov.

d. **Telefax Receivers.**

When E-filing is not available:

- i. Fax-filing is not available in Fort Benton.
- ii. Documents may be telefaxed to the Court in Havre at (406) 265-3693.
- iii. Documents may be telefaxed to the Court in Chester at (406) 759-5996.

6. **Fees and costs.** The use of e-filing, e-mail and telefax equipment shall not change or delay the required payment of fees. It shall be the obligation of the person filing the telefaxed or e-mailed document to pay any required fees in the manner and within the time required by the Clerk of Court. It shall be the obligation of the person telefaxing any document to pay any costs associated with use of telefax equipment or telephone services.

7. **Copies to Presiding Judge.** When a non-resident judge accepts jurisdiction of a matter, the parties shall file all documents in the action with the Clerk of District Court in the appropriate county, providing a courtesy copy to the Judge in chambers. Prior to filing, the party shall contact the Judge's Judicial Assistant to ascertain if the Judge prefers a paper copy sent to chambers or an electronic copy emailed to Judicial staff. The Judge's name shall be added to the Certificate of Mailing on all documents to show the Clerk that the Judge has been served, including the mechanism of service.

RULE 7 – PROBATE AND ADOPTION MATTERS

(A) Adoption Investigation. In all adoption matters the records check required by §42-3-203 (1) (a), MCA will be ordered by the Court. The evaluation will be considered for waiver by the Court under §42-3-212, MCA.

(B) Payment of Fees. The amount and payment of administrator, personal representative, conservator, guardian, and attorneys' fees shall be governed by the Montana Uniform Probate Code, as amended from time to time.

(C) Petition for Probate of Will. Whenever a petition for the probate of a Will is filed, a copy of the

Will shall be attached, unless the original is already on file with the Clerk.

RULE 8 – JUDGMENT ON WRITTEN INSTRUMENT

In all cases in which a judgment is entered upon a written instrument, the instrument must be presented to the Clerk at the time the judgment is granted by the Court. The judge shall note across the face of the instrument the entry of judgment and its date. The instrument shall not be removed except by order of the Court – in writing, setting forth the facts of such removal.

RULE 9 – CLERK. CUSTODIAN OF FILES

Check Out of File. The Clerks of Court are the custodians of the file of this Court. Files may be taken from the Clerk's office only upon order of the Court.

RULE 10 – AMENDMENTS BY ERASURE OR ADDITIONS

No amendments shall be made to any filed document by erasing or adding any words in the original on file, except in the handwriting of the Judge, and initialed by the Judge, unless otherwise ordered by the Court. No documents shall be deleted from any file, nor shall any page in a document be removed and another substituted, therefrom.

RULE 11 – ATTORNEY FEES

Civil Actions. In cases other than probate where attorney fees are recoverable by law or contract, they shall be determined and fixed by the Court upon evidence as to the amount of a reasonable fee presented in open court at the trial or hearing, unless the Court allows presentation of such evidence at another time.

RULE 12 – ALTERNATE DISPUTE RESOLUTION

(A) **Mediation.** Parties, at their cost, may voluntarily retain a private individual for mediation of their case. In such case, mediation shall be a confidential meeting between the parties and the mediator to seek and promote communication between the parties with a view toward reaching a settlement agreement. Parties may agree to attend mediation without counsel. Any agreement reached in mediation shall be promptly reduced to writing and upon execution by parties, a written status report shall be filed no later than 5 days after the mediation with the Court.

(B) **Settlement Conference.** In all civil cases, the Court may require at any time a settlement conference before an appointment settlement judge or master. Any party may move the Court to order a settlement conference with an appointed settlement judge or master. At the discretion of the Court, trial may be postponed or not set until after a settlement conference.

- (1) **Settlement Judge or Master.** The settlement judge will be either a current or retired state District Court Judge. The settlement master may be any person qualified under Rule 53, M.R.Civ.P.2.
- (2) **Settlement Conference Defined.** A settlement conference is a confidential meeting between the parties, attorneys, and the settlement judge/master with a view toward negotiating a settlement. Each party will submit to the settlement judge/master a confidential settlement statement containing a summary of their case and description of strengths and weaknesses on each side. The parties and their attorneys must be present unless excused by the settlement judge/master.
- (3) **Sanctions.** Failure of a party or counsel to participate in a Court-ordered settlement conference may result in sanctions such as imposition of costs and attorney's fees incurred by opposing party in preparation for settlement conference.
- (4) **Attendance of Insurance Claims Persons.** In all cases where pertinent, claims representative(s) from insurance companies, with requisite settlement authority, shall be required to attend the settlement conference in person or by speaker phone. Upon good cause shown, the Court may require personal appearance.
- (5) **Fees.** Fees charged by a settlement judge/master may be imposed upon parties in discretion of the Court.

(C) **Settlement Documents.** If a case is settled by settlement conference or other method before the trial date without documentation, parties shall forthwith inform the Court in person or by conference call and a minute entry will be made vacating trial as the case has been settled. Once of record, the agreement is binding and

enforceable. Within thirty (30) days, settlement documents must be prepared and filed.

RULE 13- COURT APPEARANCES

(A) **Prisoners.** Prisoners may appear in court in jail clothing when a jury or jury panel is not present. While in the courtroom prisoners will have handcuffs, manacles, and other restraining devices removed unless, in the discretion of the Sheriff, they are deemed advisable. Prisoners shall not appear in court or in any place where they may be observed by a jury or jury panel in prison clothing or in restraints without permission of the Court. This includes Zoom and Judicial Video Network for electronic appearances. Suitable clothing for a criminal defendant who has none shall, on application of counsel, be provided by the Court for appearances before a jury.

(B) **Attorneys.** Attorneys shall appear before the Court in clothing that is appropriately formal for the conduct of serious matters and that meets current concepts of business attire. Attorneys shall advise their clients and witnesses to dress in clean clothes which shall be appropriate for serious occasions in the conduct of their ordinary business.

(C) **Conduct.** Spectators shall remain quiet while Court is in session. Court sessions are not an appropriate place for small children who cannot be expected to conduct themselves suitably.

(D) **Cellphones.** All cellphones must be turned OFF before entering the courtroom, except attorneys who shall have cellphones silenced. Contempt penalties or confiscation of a phone may occur for violation. No videos or recording devices will be used in the court unless authorized by the Court.

RULE 14- CRIMINAL PROCEEDINGS

(A) **Bail.**

- (1) **Initial Bail Request.** At the time of seeking leave to file an Information, the County Attorney shall submit a proposed order together with written recommendations for bail pending initial appearance.
- (2) **Bail From Lower Courts.** Whenever bail has been furnished to a Justice or City court and the cause is transferred to District Court, the County Attorney shall assure bail is delivered by the Justice or City court to the Clerk of Court by the initial appearance. If cash bail is furnished, the transfer to

District Court shall identify the person or party who actually posted the cash bail.

(B) **Arraignment.**

- (1) **Acknowledgment of Rights.** Prior to arraignment, defense counsel shall review Defendant's rights.
- (2) **Court Entered "Not Guilty Plea."** A Defendant unwilling to enter a plea at the time of arraignment is subject to the Court entering a "not guilty" plea. In such event, Defendant, on request, will be allowed to reserve the right to challenge the information.

(C) **Omnibus Hearing.**

- (1) **Setting.** Following a plea of "not guilty", the Court will set a deadline for a stipulated Omnibus Memorandum to be filed for the Court's consideration. If an Omnibus form is not filled out by Defense Counsel by the deadline, the prosecutor shall file for an omnibus hearing. At any time, either party may request an Omnibus Hearing as described in § 46-13-110, MCA, be set. An Omnibus Hearing may be conducted by telephone conference or video conference upon approval by the Court.
- (2) **Discovery.** Unless motion is previously filed seeking protection, the prosecution shall make disclosure under § 46-15-322 (1)-(4), MCA within twenty (20) days of Defendant's request. Defendant's failure to make request before the Omnibus Hearing can be grounds for attributing trial delay to Defendant. Defendant shall comply with disclosure deadlines under § 46-15-323, MCA or seek extension as allowed thereunder.
- (3) **Conduct of Hearing and Memorandum.** The Court has approved a memorandum form to be used in conducting an Omnibus Hearing. The Omnibus Hearing will be conducted after counsel has read and completed the form. The Omnibus Hearing Memorandum and Order form is available on request through the Clerk of Court. This form document as completed during the Omnibus Hearing will be the memorandum filed under § 46-13-110(4), MCA.
- (4) **Waiver.** Upon submission of a completed and signed Omnibus Hearing Memorandum form, counsel waives the

right to hold an Omnibus Hearing before the Court. Once the Omnibus Memorandum completed by counsel and filed through the e-filing system, it will be signed by the Court and filed with the Clerk.

(5) **Mental Competency Issues.** Upon motions under § 46-14-202, MCA, requesting examination, Defendant's counsel shall be prepared to identify the name and business address of a qualified professional sought to conduct the examination and to discuss the availability of this professional to do the examination. Should examination be ordered upon defendant's motion, defense counsel shall be responsible to assure a report of examination under §46-14-206, MCA is timely filed.

(D) **Plea Agreement.**

(1) **Plea Discussions.** No Defendant is required to discuss a plea agreement. The Court may summarily reject a plea agreement not presented at least one (1) business day prior to the scheduled jury confirmation hearing.

(2) **Written Plea Agreements.** Plea agreements under § 46-12-211, MCA, must present a factual basis showing good reason for the Court to accept the plea.

(3) **Nolo Contendre Pleas.** Counsel who intend to proffer a Nolo Contendre under §46-12-212(2), MCA, must present a factual basis showing good reason for the Court to accept the plea.

(4) **Effect on Trial Setting.** At its discretion, the Court may refuse to vacate a trial setting by reason of a plea agreement until after the Defendant has appeared and entered a plea found to be acceptable

(E) **Presentence Investigation.** In preparing a presentence investigation report (PSI), the probation officer shall make reasonable effort to contact any victim(s) and inform them of a right to be present and give testimony at the sentencing hearing and seek a written statement to be attached to the PSI. Unless

effectively waived by all parties, a PSI shall be completed and filed with the Court no later than five (5) days prior to sentencing, defense counsel shall review the filed PSI with Defendant.

(F) **Presentence of Sheriff's Department.** Upon order by the Court, an officer of the Sheriff's Department shall be present during sentencing.

(G) **Electronic Appearance.** Appearance via JVN and Zoom should be requested and provide notice to the Court and opposing parties five (5) days prior. Said Motion shall include whether the Motion is contested by opposing counsel.

RULE 15 – INTERACTIVE VIDEO CONFERENCING

Interactive video conferencing capability is available for court related purposes in all Twelfth Judicial District courtrooms. Benefits include time savings, decreased travel and transportation costs, minimizing judicial delay, and decreased court security. The Court, upon its own motion or upon motion of the parties, may conduct proceedings in civil actions by videoconference. Court related purposes include, but are not limited to, case management, depositions and discovery, pretrial conferences, settlement conferences, continuing legal education, court administration, and public information. Video conferencing is also available for juvenile, adult criminal, and mental illness proceedings consistent with Titles 41, 46, and 53 of the Montana Codes Annotated.

Any video conferencing under these rules must conform to the following minimum requirements:

- (1) All participants must be able to see, hear, and communicate with each other simultaneously.
- (2) All participants must be able to see, hear and otherwise observe any physical evidence or exhibits presented during the proceeding, either by video, facsimile, or other method. Copies of all exhibits shall be provided to all parties in advance of the hearing.
- (3) Video quality must be adequate to allow participants to observe each other's demeanor and nonverbal communications.
- (4) All persons appearing via electronic means shall follow the Court's verbal Orders during the proceedings, including but not limited to muting microphones, reducing background noise, and waiting for their turn to speak.

- (5) The proceeding shall be accessible to the public to the same extent as such proceeding would if not conducted by video conference. The court shall accommodate any request by interested parties to observe the entire proceeding.
- (6) A record of any proceedings conducted by video conference shall be made by the court reporter.
- (7) Sentencing or other dispositive proceedings are to be conducted in person unless parties request telephonic or video appearance as per statute and at the Court's discretion. §46-16-105, MCA (Plea). §46-18-102, MCA (Sentencing).

Arrangements must be made **in advance** through the Court's Judicial Assistant. The cost of the video conferencing shall be borne by the party requesting the use of the video conferencing.

RULE 16 – AMENDMENTS

(A) Amendments. Amendments to these rules may be made from time to time by Court order filed with the Clerk of Court.

(B) Applicability. These rules, in addition to the Uniform District Court Rules, shall apply to all cases in this Court of each County in said District and shall be entered upon the Minutes of this Court in each County of said District. The Clerks of Court shall each keep an original copy of these Rules and any amendments thereto.

(C) Standing Committee on Rules. A standing committee on rules is established, consisting of three or more attorneys appointed by the Court from this District, which committee may recommend to the Court changes in these rules as deemed advisable. The members of this committee for June 2020 revisions were: Theresa Diekhans, Tim Jeffrey, Brian Lilletvedt, and Lauren LeSueur

--AMENDED OCTOBER 2020 --