

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT RULES
RAVALLI COUNTY

These Local Rules promulgated under Montana Uniform District Court Rule 15 are issued by the Twenty-first Judicial District Court. They supplement the Montana Uniform District Court Rules (“M.U.D.C.R.”); the Montana Rules of Civil Procedure (“M.R.Civ.P.”); and other applicable Montana law.

RULE 1 – ASSIGNMENT OF CASES

A. Jurisdiction. The Twenty-first Judicial District Court assumes full jurisdiction of all cases on file in the district except for those cases transferred to outside courts where grounds for judicial disqualification exist or where the presiding judge is disqualified by one of the parties.

B. Departments. The Twenty-first Judicial District Court is divided into two departments. Pursuant to M.U.D.C.R. 14, the judge presiding over Department No. 1 is designated Chief District Judge during even-numbered years, and the judge presiding over Department No. 2 is designated Chief District Judge in odd-numbered years.

C. Youth Court. Pursuant to § 41-5-201, M.C.A., both judges are designated to act as youth court judges in the Twenty-first Judicial District during the entirety of their terms.

D. Allocation of cases. All matters filed in the Twenty-first Judicial District Court will be allocated between the two departments in random numerical rotation. The Clerk of Court will designate the assigned department in the caption of the first document filed in each new case. Trials and hearings in contested matters will be held before the judge of the assigned department except when emergency or exigent circumstances require otherwise. Cases that are linked by common proof and/or parties may be reassigned between departments upon concurrence of both judges.

E. Absence or Disability of Judge. In the event of a temporary absence or disability of either judge, work in the Twenty-first Judicial District will be interchangeable between judges. The judge present and presiding may sign routine orders in any case pending before the absent judge. When any order is made for a hearing, the judge present and presiding will make the order returnable before the absent judge. Upon consent of the parties, the present and presiding judge may issue any order or disposition, temporary or final, in any case pending before the absent judge.

RULE 2 (old 15) - ATTORNEYS OF RECORD

Except for an attorney appearing in a limited scope, all attorneys or attorney firms must enter a notice of appearance as counsel of record before participating in a case. Attorneys

appearing in a limited scope must comply with M.R.Civ.P. 4.1. Substitutions of counsel and other changes in representation must comply with M.U.D.C.R. 10 and §§ 37-61-403 through - 405, M.C.A.

RULE 3 – EX PARTE COMMUNICATIONS

Except as provided otherwise by statute, no ex parte discussion is permitted by any means of communication with the Court on any substantive issues involved in pending or anticipated cases without notice to all opposing parties or prior approval by or stipulation of the parties.

RULE 4 (old 2) – LAW AND MOTION

A. Wednesday and Thursday. Wednesday of each week is law and motion day for Department No. 1, and Thursday of each week is law and motion day for Department No. 2. Court will convene on law and motion day at 9:00 a.m. for criminal matters, at 1:30 p.m. for adoptions and uncontested civil matters, and at 2:30 p.m. for youth court and child abuse and neglect cases. When law and motion day falls on an official holiday, the law and motion calendar will be continued automatically to the next law and motion day absent an order setting it for a different date.

B. Matters for Law and Motion. Routine matters, uncontested matters, judgments by default, probate proceedings, uncontested ex parte matters, matters pertaining only to questions of law, and matters not expected to require more than 15 minutes will be heard on law and motion day.

C. Calendar Preparation. The law and motion calendar for Department No. 1 is prepared at 9:00 a.m. each Tuesday. The law and motion calendar for Department No. 2 is prepared at 9:00 a.m. each Wednesday. The Clerk of Court will list all matters on the weekly law and motion calendar in the following order: 9:00 a.m.: Criminal Matters; 1:30 p.m.: Adoption, Probate, and Miscellaneous Civil Matters; 2:30 p.m.: Youth Court, and Abuse and Neglect Matters. The weekly calendar will be posted for public information on the morning of each law and motion day prior to opening of court. Requests for continuances which are not made in writing by 9 a.m. the day prior to law and motion, must be made verbally at the scheduled time for the hearing.

D. Continuances. Any matter set on the law and motion calendar that proves to be contested is subject to continuance. If a party has reason to believe that a matter set on the law and motion calendar will be contested and will require more than 15 minutes, the party must notify the Court Administrator immediately and the hearing will be reset.

E. Law and Motion Scheduling. No matter will be set for law and motion day until a motion or other documentation and all relevant supporting documents have been filed with the

Clerk of Court. A proposed order, decree, or judgment must be provided to the Clerk when the motion is filed. To ensure that a hearing will be set on the next law and motion calendar, a party should file a motion prior to the calendar preparation day.

F. Minute Entries. Minute entries of all law and motion matters will be prepared, filed, and served on all parties within a timely manner.

RULE 5 (old 4) – MOTIONS

A. Procedure. Motions and briefs may be combined in a single document. Each motion must state within its body: (i) that opposing parties have been apprised of the motion, (ii) whether the motion is contested, and (iii) if applicable, that oral argument is requested. At the time of filing any motion other than a motion for summary judgment, a proposed order must be presented to the Clerk. All motions will be disposed of pursuant to M.U.D.C.R. 2 except for uncontested motions or matters that do not allow for a standard briefing schedule.

B. Continuances. Each party is expected to diligently prosecute or defend a case so as to avoid unnecessary delay. However, hearings on pending motions may be continued upon uncontested motion, for good cause upon motion of a party, or by the Court on its own initiative.

C. Notice of Issue. When all briefs have been filed or the time for filing briefs has expired, and oral argument, if requested, has been heard, either party may file a notice of issue. If more than 90 days have passed since a matter became ripe for ruling, either party may file a reminder notice of issue.

RULE 6 (old 5) – ORDERS, JUDGMENTS, AND DECREES

A. Separate Document. Any party seeking a civil order, judgment, or decree, whether contested or not, must present a separate proposed order to the Clerk of Court at the time of applying for the order, judgment, or decree.

B. Duplicate Originals. Two copies of any order to show cause, temporary restraining order, arrest warrant, order of apprehension, or like order must be presented to the Court. Both copies will be signed by the Court as original orders. One will be retained as part of the court file and the other used for the purpose of making service.

RULE 7 – SCHEDULING ORDERS

A. Issuance. The Court will routinely require the submission of a proposed case scheduling order. A party or counsel may request a pretrial conference in accordance with M.R.Civ.P. 16.

B. Exemptions. The following matters are exempt from the routine scheduling procedure:

1. Juvenile cases
2. Child abuse and neglect cases
3. Condemnation cases
4. Abstracts of judgment
5. Transcripts of judgment
6. Adoptions
7. Mental commitments
8. Uncontested Probates
9. Criminal cases
10. Small claims appeals
11. Administrative appeals
12. Seizures and forfeitures
13. Habeas corpus and postconviction petitions
14. Name changes
15. Paternity cases
16. Other special proceedings not subject to standard scheduling

RULE 8 (old 11) – FILINGS

A. Pleadings Requiring Leave of Court. Any motion for leave to file an amended pleading must have a copy of the proposed amended pleading attached to the motion and a separate copy of the proposed pleading to present to the Clerk of Court for future filing if the motion is granted.

B. Jury Demands. A party demanding a jury trial must set forth the demand in the caption of the pleading. Where jury demands have been made, the Clerk of Court will so note on the case file.

C. Striking Nonconforming Documents. Any filings that do not conform to M.R.Civ.P. 10 and 11 and M.U.D.C.R. 1 may be stricken by the Court at any time on its own initiative.

D. Length of Briefs and Colored Exhibits. No brief may exceed twenty pages in length, exclusive of exhibits or other attachments, without prior leave of Court. Original briefs with exhibits or attachments that exceed ten pages or with colored maps/photos should be mailed to the Clerk of Court along with a cover letter indicating that it is to replace a previous electronic filing.

E. Citations in Briefs. Citations to legal authorities should conform with *ALWD Citation Manual: A Professional System of Citation, 5th ed.*, or with *The Bluebook: A Uniform System of Citation, 20th ed.*

F. Signatures. An attorney's copied or electronically-generated signature on filed documents will be deemed original. Self-represented litigants and others must submit original documents with original signatures for filing. Signatures must comply with current e-filing standards.

G. Email Addresses. Attorneys and self-represented litigants must include their email addresses in the caption of their filed documents.

H. Fax and Email Filings. Documents may be submitted for filing by email or facsimile. Documents submitted by email must be emailed to courtfilings@rc.mt.gov and must be in a pdf format and submitted as an attachment to an email. Documents submitted by facsimile must be faxed to (406) 375-6721. All documents must be properly signed and dated.

I. Consent to Service of Emailed Documents. Attorneys must file written consent with the Clerk of Court to receive emailed service of documents from the Clerk of Court and other parties.

J. Consent to Service of Electronic Documents (at such time electronic filing is adopted). Attorneys must file written consent with the Clerk of Court to receive electronic service of documents from the Clerk of Court and other parties.)

K. Documents Containing Confidential Information. Prior to being filed, any documents that contain confidential information must be redacted in accordance with M.R.Civ.P. 5.2. Any party who believes it necessary to file a document that contains unredacted confidential information must: (1) obtain prior leave of Court, and (2) include "Filed under Seal" in the document's caption. "Confidential information" includes but is not limited to social security numbers, birth dates, financial account numbers, financial affidavits, medical and mental health information, and child support worksheets.

RULE 9 (old 12) – SETTLEMENT CONFERENCES

A. Settlement Conference Required. Except as provided in § 40-4-301, M.C.A., in each civil case subject to a scheduling order pursuant to Local Rule 7, a settlement conference is required before a case will be set for trial. The purpose of a settlement conference is to facilitate settlement, lessen congestion of the trial calendar, and reduce the cost of litigation. The Court Administrator maintains a list of Court-approved Settlement Masters for use in cases where the parties are unable to agree on a Settlement Master. A settlement conference does not obviate the independent duty of all parties to attempt in good faith to settle issues at the earliest opportunity.

B. Time and Attendance. A settlement conference is usually scheduled to be held after the close of discovery and rulings on pretrial motions but may be scheduled and held earlier upon stipulation of the parties. The Court will issue a separate order confirming the appointment of the Settlement Master, describing the procedure, and providing for the master's compensation.

All parties and counsel who will try the case must attend in person. Out-of-area corporations or insurance companies must have a representative with full settlement authority present in person or via speaker phone unless the Court has ordered personal attendance upon a showing of good cause. All participants must have requisite settlement authority.

C. Settlement Master's Report. Within five days after the settlement conference, the Settlement Master must complete and file his or her report on a form provided by the Court to indicate that the conference was held and describe the issues, if any, that were settled. If the case did not fully settle, the report must indicate the total length of time anticipated to be necessary for trial; dates that counsel or key witnesses are unavailable for trial; any special requests or needs regarding trial scheduling; and whether a reasonable prospect for settlement remains.

D. Confidential Proceedings. No person present at a settlement conference including the Settlement Master is subject to examination concerning statements or opinions made by any person at the settlement conference.

E. Trial Preparation Order. Upon the filing of the Settlement Master's report, a Non-Jury or a Jury Trial Preparation Order will be issued in cases that did not settle. This order will set dates for pretrial conferences and trial and will provide for the filing of jury instructions, pretrial order, or proposed findings of fact and conclusions of law as the case may require.

F. Domestic Matters. The Settlement Master may assist pro se parties in drafting settlement documents. The Settlement Master may make the following recommendations that:

- (i) communications between the parties be structured, limited, or monitored;
- (ii) the parties take co-parenting classes;
- (iii) a GAL be appointed; or
- (iv) property of the marital estate be appraised, or the value determined by an expert.

RULE 10 (old 13) – JURY TRIALS

A. Jury Instructions. Proposed jury instructions must be presented to the Court and served upon each adverse party in accordance with the Jury Trial Preparation Order. Objections to the opposing party's supplemental proposed instructions must be submitted in writing at or before the final pretrial conference, should be brief, and must contain citations to appropriate authority. Oral argument on contested instructions will be heard during final settlement of instructions.

B. Preliminary Pretrial Conference. At or before the preliminary pretrial conference, each party must submit:

1. One “clean” set of joint jury instructions
2. Two “working” copies of joint jury instructions
3. One “clean” set of proposed instructions not agreed upon
4. Two “working” sets of proposed instructions not agreed upon
5. A CD containing jury instructions in Word.

RULE 11 (old 14) – VOIR DIRE

A. Length. The Court may limit voir dire but in no case shall limit one side’s time more than another.

B. One Attorney Per Party. Only one attorney for each party will be allowed to question prospective jurors.

C. Scope of Questioning. In order to effectively and efficiently carry out the purpose of voir dire—to select a panel that will fairly and impartially hear the evidence presented and render a just verdict and to determine the grounds for any challenge for cause, counsel are discouraged from:

1. Asking questions of an individual juror that may be asked collectively;
2. Asking questions covered and answered in the juror questionnaire except to explore an answer in depth;
3. Repeating questions asked and answered;
4. Using voir dire for the purpose of attempting to instruct the jury on the law;
5. Using voir dire for the purpose of arguing the case;
6. Asking a juror what his or her verdict might be under a hypothetical situation;
7. Unnecessarily invading a juror’s right to privacy; or
8. Using voir dire for any other improper purpose.

RULE 12 (old 16) – EXHIBITS

A. Custody. The Clerk of Court is required to keep a list of all exhibits offered and the rulings on their admissibility. No exhibit admitted into evidence may be removed from the custody of the Clerk without the Clerk’s prior approval. Exhibits and any discovery documents filed with the Court will be disposed of as provided in M.U.D.C.R. 12 upon final disposition of each case.

B. Labeling. Parties should pre-label their proposed exhibits with standard exhibit labels pursuant to the trial preparation order issued by the Court. Plaintiffs and petitioners are to label their exhibits with numbers, and defendants and respondents are to label their exhibits with letters.

C. Mounted Exhibits. Parties should mount exhibits in such a fashion that they may be dismounted for folding, rolling, storage and/or shipping if necessary.

D. Oversize Exhibits. Letter-size copies identical to oversize exhibits are encouraged for use of the judge and jurors. After trial, oversize exhibits should be replaced with identical letter-size copies marked as duplicate originals.

E. Electronic Courtroom. Electronic technology may be available to facilitate greater efficiency and enhance the jury's ability to view exhibits contemporaneously. Parties are encouraged to contact the Court Administrator to determine what technology is currently available and to schedule time to become familiar with the technology before attempting to use it at trial or a hearing.

F. Admissibility. Prior to trial, parties are encouraged to review all proposed exhibits and stipulate to those for which there are no objections as to admissibility. Any party may use and refer to a stipulated exhibit.

RULE 13 (old 34) – SUBPOENAS AND WITNESSES

A. Subpoena Duces Tecum. In civil cases, a subpoena duces tecum may be issued in compliance with Rule 45, M.R.Civ.P., for only such information that is relevant and material.

In criminal cases, a subpoena duces tecum must comply with Title 26, chapter 2, part 1, and §§ 46-15-101 and -106, M.C.A.

A subpoena duces tecum seeking health care information must comply with the applicable provisions of §§ 50-16-535, -536, -811, and -812, M.C.A., before being issued.

A subpoena duces tecum seeking substance use disorder information must comply with the applicable provisions of 42 CFR § 2 before being issued.

A subpoena duces tecum seeking personal or confidential information about a crime victim may be served on a third party only by Court order.

Before a subpoena duces tecum seeking records from the Ravalli County Sheriff or Ravalli County Attorney may be presented to the Court for approval, the information sought must have been discussed with the relevant public official(s) and any objections noted for the Court.

The Court will not issue a subpoena that fails to meet the requirements of the law or is deemed insufficient.

B. Witness Examination. Examination and cross-examination of a witness may be conducted only by one attorney per side unless prior Court approval to do otherwise has been obtained.

C. Discharge of a Witness. A witness subpoenaed to testify at trial may be discharged by motion made in open court. If another party wishes the witness to remain subject to the subpoena, that party must procure the witness's further attendance by subpoena or order of the Court and will thereafter be responsible to the witness for witness fees and costs.

RULE 14 (old 17) – CHARACTER EVIDENCE

No more than three witnesses are permitted to testify as to the character of a person in any matter unless a court order has authorized additional witnesses.

RULE 15 (old 18) – STIPULATIONS

In order for an agreement or stipulation between the parties or their attorneys to be considered for any purpose by the Court, the agreement or stipulation must be either submitted in writing and signed by the party or the party's counsel against whom it is sought to be enforced or made on the record in open court and entered on the minutes. Any party relying on the minute entry bears the responsibility to see that a record of the stipulation is duly made. A party wishing to have a stipulation approved as binding must submit a proposed order to the Court. The Court reserves the right to decline to enforce an agreement or stipulation that fails to comply with law, that is inequitable or unconscionable, or that otherwise lacks good cause.

RULE 16 (old 19) – OFFERS OF PROOF

In jury trials, offers of proof must be submitted in writing or made outside the presence and hearing of the jury.

RULE 17 (old 30) – CONTINUANCE OF TRIALS AND HEARINGS

A. Absence of Witness or Evidence. Upon a motion to continue trial or hearing on the ground of absence of a witness or evidence, pursuant to § 25-4-501, M.C.A., if the testimony or evidence would be admissible upon the trial or hearing and the adverse party stipulates that it may be considered as if having been given at trial or hearing, the trial or hearing will not be continued unless the Court determines trial or hearing without the witness or evidence would cause injustice.

B. Sanction. Any party or counsel responsible for a late continuance of trial or hearing may be assessed a sanction equal to any court expenses and/or expenses of the adverse party, including attorney fees.

RULE 18 (old 37) – JURY SUMMONING PROCEDURE

A. Jury Lists. The Clerk of Court, as the County Jury Commissioner, must file by July 1 of each year an alphabetized computer database of potential jurors and their addresses along with an attached certificate signed by the Ravalli County Clerk and Recorder and the Ravalli County Commissioners that contains a description of the computerized random selection method employed to complete the list.

These certificates and lists will be kept in the office of the Clerk of Court and made available for public inspection during normal business hours.

From the alphabetized list of potential jurors, the Clerk will produce a randomized database and a certificate describing the process used to do so that must be presented to the Court for approval and preserved for public inspection.

B. Requests to Be Excused. Requests to be excused from jury duty will be determined by the Court and granted upon satisfactory showing of undue hardship or other compelling grounds.

C. Procedure.

1. The Court will issue a written order to the Clerk of Court specifying the date(s) of trial, the summoning method to be used, and the number of potential jurors to be summoned.
2. Trial will be set no sooner than three consecutive weeks after the date set for the pretrial conference.
3. Immediately after the preliminary pretrial conference, the Court will issue an order to the Clerk to summon a jury.
4. The Clerk will mail out summonses for jury service. After the procedural deadline has passed, the Clerk will send an Additional Juror Summons and a praecipe to the Ravalli County Sheriff for personal service upon non-responding potential jurors.

RULE 19 (old 20) – FINDINGS OF FACT AND CONCLUSIONS OF LAW

In all non-jury trials and in other contested matters at the discretion of the Court, an original set of proposed findings of fact and conclusions of law must be filed with the Clerk of Court along with a certificate of service in compliance with M.U.D.C.R. 8. no less than seven calendar days prior to the first day of trial or hearing. Additionally, a copy properly labeled and formatted in Word must be submitted by email to the Court Administrator.

RULE 20 - SPECIAL MASTER

Pursuant to Title 3, chapter 5, part 1, and upon the agreement of the parties, the Court may appoint a special master in civil matters, and the Court may designate a special master to hear and determine preliminary, nondispositive matters pending in criminal cases.

A. Civil matters. Pursuant to § 3-5-113(1), M.C.A., upon agreement of the parties, the Court may appoint a special master in civil matters.

1. Parties seeking the appointment of a special master in a civil matter should petition the Court under § 3-5-115, M.C.A. If the Court finds that the appointment is in

the best interest of the parties and serves justice, the Court may make the appointment and, if so, shall swear in the special master.

2. The appointment of a special master in a civil matter constitutes a waiver of the right to trial by jury by any party having the right.

3. A special master may be appointed to try all matters at issue in a civil matter; to resolve discovery, pretrial, or other issues; or for the purpose of issuing interim orders.

4. A special master in a civil matter has the authority and power of an elected district court judge in the particular civil matter over which the special master is appointed to preside.

5. All proceedings before a special master in a civil matter must be conducted in accordance with the rules of evidence, civil procedure and local rules.

6. Any order, judgment, or decree made or rendered in a civil matter by a special master has the same force and effect as if made or rendered by the district court with the regular judge presiding.

7. The salary of a special master and the court reporter and all other expenses associated with the trial or proceeding are the responsibility of the parties. The amount of salaries and other expenses and the manner of payment must be established by written agreement. The special master may not withhold judgment as security for compensation.

B. Criminal matters. Pursuant to § 3-5-113(2), M.C.A., the Court may appoint a special master in criminal matters.

1. Under § 3-5-122, M.C.A., the Court may designate a special master in a criminal matter to hear and determine any preliminary, nondispositive matters pending in a criminal case before the court if the court finds that the appointment serves justice.

2. All proceedings before a special master in a criminal matter must be conducted in accordance with the rules of evidence, rules of procedure governing criminal matters, and the local rules.

3. A special master in a criminal matter has the authority and power of a district court judge to issue orders pursuant to Title 46, chapter 9, concerning bail and conditions of release or detention of persons pending trial, and to conduct arraignments, initial appearances on warrants, and initial appearances on probation revocations.

4. An order issued by a special master in a criminal matter has the same force and effect as if made by a district court judge.

5. Under § 3-5-113(2)(d), M.C.A., within 10 days after issuance of an order by special master in a criminal matter, a party may object to the order as provided by rules of court and a district court judge shall make a de novo determination of that portion of the order to which objection is made. The district court judge may accept, reject, or modify the order in whole or in part. The district court judge may also receive further evidence or recommit the matter to the special master with instructions.

6. Under § 3-5-113(2)(e), M.C.A., all proceedings before a special master in a criminal case must be conducted in a suitable room in the courthouse, subject to the provisions of Title 46 relating to the use of two-way electronic audio-video communication. All records must be filed and kept in accordance with the rules governing the district court.

C. All matters.

1. An individual must meet the requirements of § 3-5-114, M.C.A., to serve as special master.

2. Under § 3-5-117, M.C.A., each trial before a special master must be conducted in a suitable room in the courthouse in the judicial district where the action was filed, unless the litigants stipulate in writing that the trial may be held elsewhere.

3. Under § 3-5-118, M.C.A., an appeal from a final judgment of a special master must be made in the same manner as an appeal from a final judgment of the district court.

4. The Court will maintain a list of approved special masters willing to serve pro bono.

RULE 21 (old 23) – MARITAL DISSOLUTION

A. Review of Pro Se Documents. In all dissolution and parenting cases where both parties are pro se, all completed form documents must be submitted to the Clerk of Court for appropriate review by the Court Administrator before the case will be scheduled on the Court's calendar.

B. Simplified Procedure. Upon request of both parties, the Court may order a simplified domestic relations procedure, pursuant to M.U.D.C.R. 6, to reduce the time, cost, and adversarial nature of proceedings. The Court will set an initial conference within 30 days of ordering a simplified and expedited procedure for the purpose of orienting the parties to the Court's case management process and planning future case activity.

RULE 22 (old 26) – PARENTING ACTIONS

A. Guidelines for Parenting Plan. The Twenty-first Judicial District Court has adopted guidelines for parents involved in parenting actions that are attached to these rules as **Exhibit A**. Parents are encouraged to consider these guidelines as they develop a parenting plan for their children.

B. Child Support. Upon commencement of an action for dissolution of marriage, legal separation, parenting plan, child support, invalidation of marriage, or modification of child support, both parties are required to comply with Montana's child support guidelines, pursuant to §§ 40-4-204 and -209, M.C.A., for a determination of child support. The party commencing the action must include a notification of the Child Support Enforcement Division for a determination of whether any children involved are recipients of or applicants for public assistance. Upon commencement of the action, one parent may become liable immediately for temporary child support.

All payments of child support or maintenance made to the Clerk of Court are assessed a handling fee of \$2.00 per payment that is to be directed to the Ravalli County District Court Operations Fund.

C. Parenting Evaluations. Upon request of either party, the Court may order that the matter be referred to appropriate professional persons at the cost of one or both parties for evaluation, investigation, report, and recommendation regarding a parenting plan for each child.

RULE 23 (old 27) – CRIMINAL AND DELINQUENCY ACTIONS

A. Arraignment; Waiver of Rights. At the arraignment, defense counsel must present an Acknowledgment of Rights form to the Court. At the time a guilty plea is entered, defense counsel must present a Plea of Guilty and Waiver of Rights form to the Court. These forms are available from the Court Administrator. No plea agreement will be considered valid unless it is in writing and has been filed.

B. Omnibus Hearing. Upon entry of a NOT GUILTY plea, the Court will set an omnibus hearing within a reasonable time thereafter (typically in three weeks but not less than thirty days before trial) for the purpose of expediting procedures leading up to trial.

Prior to the omnibus hearing, the prosecution and defense counsel must make a reasonable effort to meet privately and stipulate to a Court-approved omnibus memorandum form to be submitted to the Court before the day of the omnibus hearing. Upon Court approval of the submitted omnibus form, the hearing will be vacated.

If the prosecution and defense counsel are unable to stipulate, they must be prepared to address any pretrial issues at the hearing, including but not limited to the matters set forth in § 46-13-110(a) through (l), M.C.A. The defendant is not required to attend the omnibus hearing. All matters discussed and/or settled will be memorialized in an omnibus memorandum signed by counsel and the Court and filed. Typically, a four-week deadline will be set for the disclosure of

witnesses pertaining to an affirmative defense and for the filing of initial briefs in support of disclosed motions.

C. Face-to-Face Settlement Conference. A settlement conference will be set in all criminal and delinquency cases and must be attended by all counsel of record. Counsel and the defendant (or youth and parents) must attempt in good faith to resolve the case without a trial. Following the conference, a summary case status report must be promptly filed with the Clerk of Court indicating whether the case has resolved.

D. Pretrial Conference. In unresolved cases, a preliminary pretrial conference will be set during which the prosecution and defense counsel will meet with the Court to resolve any outstanding motions and to exchange exhibit and witness lists, proposed jury instructions, and verdict forms.

E. Presentence Investigation. All presentence investigations must be completed and the subsequent reports delivered to the Court and parties by the deadline set by the Court (typically six weeks, but no less than one business day before sentencing). In cases where the presentence investigation may be waived, it will be waived only upon the agreement of both parties. If waived, prior to sentencing, the parties must submit to the Court a stipulated criminal history and proposed or stipulated conditions of probation; and defense counsel must notify Probation and Parole of the upcoming sentencing.

F. Bail.

1. Cash or Real Estate Bail. Whenever cash bail is delivered to the Clerk of Court, the Clerk must deposit the cash as soon as possible in a trust account with the Ravalli County Treasurer where checks, warrants, or drafts can be drawn on the account for the transfer of these funds. In order for the Clerk of Court to accept real estate bail, such bail must be accompanied by: (1) a sworn schedule in accordance with § 46-9-403, M.C.A.; (2) a current title report by a land title insurance company; (3) a fair market appraisal by a certified real estate appraiser certifying that the unencumbered equity is worth at least double the amount of the bail; (4) written approval by the County Attorney; and (5) proof that a certified copy of the sworn schedule has been recorded with the Ravalli County Clerk and Recorder, which proof must be filed with the Clerk of Court.

2. Transfer of Bail to District Court. When a Justice Court or City Court case in which bail has been set and furnished is transferred to District Court, bail must be delivered to the Clerk of Court at the time the papers transferring the case to District Court are filed. The amount and nature of the bail must be endorsed upon the Justice or City Court order transferring the case to District Court.

If the bail is cash bail, the Justice or City Judge must provide a check, warrant, or draft for the full amount of the bail with a notation of the party or person who posted the

cash bond. Upon receipt of the check, warrant, or draft, the Clerk of Court must issue a trust fund receipt to the Justice or City Judge.

If the bail is a bail bond or other type of bail permitted by § 46-9-401, M.C.A., the Justice or City Judge must provide the actual bail documents to the Clerk of Court. All bonds presented to the District Court for approval must recite that they are payable to the District Court. The District Court may approve the bond or other bail by separate order if expressly made payable to the District Court.

3. Obligations When a Motion to File Information Is Filed. Whenever the County Attorney files a motion for leave to file an information in District Court against a defendant whose bail has been set and furnished in Justice Court, the County Attorney must contemporaneously file a written request with the Justice Court to transfer the bail to District Court and must deliver two original copies of the request to the Justice Court.

The Justice Court must endorse the proper information regarding the nature of the bail upon both copies of the request, one copy of which is to be retained for the Justice Court file and the other to be filed with the Clerk of Court; and must immediately transfer the bail to the District Court as provided in (2) above.

G. Restitution. A Ravalli County Restitution Fund has been established pursuant to § 46-18-250, M.C.A. The Clerk of Court and the Youth Court Probation Office must deposit into the Ravalli County Restitution Fund all unclaimed restitution payments made on behalf of any victim whose location is unknown despite reasonable efforts to locate the victim.

Disbursements from the Ravalli County Restitution Fund will be made by the Clerk of Court in the following order of priority: (1) to victims whose restitution payments were deposited into the fund whose location subsequently becomes known; and (2) to victims awarded restitution and where, due to circumstances beyond their offenders' control, the offenders are unable to pay any restitution or to pay restitution in a timely fashion and the victim has a need for more prompt payment, as determined by the Court on a case by case basis.

Offenders required to pay restitution whose victims' locations are unknown will not be excused from their restitution requirement; they will receive full credit for all restitution payments made on behalf of such victims.

When a victim has been paid full restitution from the fund but the offender still owes on a restitution obligation, any payments by or on behalf of the offender must be deposited into the fund until the obligation is fully satisfied.

RULE 24 (old 38) – CONSOLIDATION OF ABUSE AND NEGLECT CASES

A. Filing Standards. Each case should be opened by the Clerk of Court consistent with the Montana Judicial Branch District Court Uniform Caseload Filing Standards.

B. Consolidation. For administrative purposes only, and in order to avoid having to serve multiple substantively identical documents on the same parent or witness and to avoid unnecessary costs or delay, the Court exercises its authority, pursuant to M.R.Civ.P. 19(a) and 42(a), to consolidate all child abuse and neglect cases involving children of one or more common parent, stepparent, or guardian under the youngest child's case number before the show cause hearing; order joint hearings and/or trials; and issue joint orders. Each case will retain its separate case number. Upon any objection to consolidation, the Court will determine whether the cases should be alternatively grouped; for example, a case involving one mother and two fathers may be regrouped into separate cases for each father's children.

C. Case Caption. For orders to show cause, subpoenas, and summonses, one document will be issued and filed for each consolidated case that will include in the caption all case numbers of the individual cases. The original return of service will be filed in the youngest child's file, and copies will be filed in the files of all other children. If service by publication is required, one order and summons for publication will be issued for a consolidated case.

D. Notice. Notice of any consolidated hearing in a single child's name that lists consolidated cases of other children is legal notice that other children are involved.

E. Orders Approving Permanency Plans. Orders approving permanency plans must identify and be made applicable to each child in a consolidated case.

F. Appointed Counsel. Unless motion is made and granted otherwise, when the Court appoints counsel for a parent, child, or guardian ad litem, the appointment will apply to all consolidated cases that involve the same parent, child, or guardian ad litem of a sibling.

G. Guardian ad Litem. Unless motion is made and granted otherwise, one guardian ad litem will be appointed for each consolidated case to represent all of the children in the consolidated case. The guardian ad litem will submit one report to be filed in the youngest child's file, and copies of the report will be filed in the rest of the consolidated cases.

H. Confidentiality. All parties must abide by the confidentiality requirements of § 41-3-205, M.C.A., especially with regard to children for whom parties are not biological parents, stepparents, or guardians.

I. Court Authority. The Court reserves the right to exercise its separate consolidation authority to order a joint hearing or trial of any or all the matters at issue in the actions, to order all the actions consolidated, and to make any other orders to avoid unnecessary cost or delay pursuant to M.R.Civ.P. 42(a); and to exercise its authority of joinder pursuant to M.R.Civ.P. 19(a).

J. Duplicate Originals. The Clerk of Court will accept and file duplicate originals of all pleadings, petitions, motions, and reports in abuse and neglect cases designated for

consolidation. Following the hearing, the Court will enter one set of Findings and/or Order; however, duplicate originals of the Findings and/or Order will be signed by the presiding Judge and filed in each separate case file.

K. Conclusion of Case. Upon full adjudication of a consolidated case, each separate case file will be closed.

L. Dissemination of Documents. Dissemination of documents or information from an active or closed DN file is subject to relevant confidentiality laws and Court approval. Prior to any dissemination, the Court may require redaction of any material relating to witnesses, health care, or other confidential information.

RULE 25 (old 31) – PROBATE FEES

Attorney fees in informal probate matters will not be fixed by the Court unless there is a disagreement between the attorney and the personal representative. If fees are disputed, the Court will fix fees after hearing.

RULE 26 (old 35) – JUDGMENT ON WRITTEN INSTRUMENT

In all cases in which a party seeks judgment upon a written instrument, the instrument must be presented to the Court before judgment will be granted. Upon entry of judgment by the Court, the judgment and the written instrument will be presented to the Clerk of Court who will note in ink across the face of the instrument that judgment has been entered and the date of the judgment; sign the entry; and file the instrument and the judgment.

RULE 27 (old 21) – SURETY

Suretyship is governed by Title 28, Chapter 11, Part 4, M.C.A., and restrictions upon attorneys are set forth in § 37-61-408, M.C.A. In any case, there may be deposited with the Clerk of Court money or negotiable bonds or notes of the United States in lieu of surety. If negotiable bonds or notes of the United States are deposited, the depositor must also execute an agreement authorizing the Clerk of Court to collect and sell the bonds or notes in the event of a default. Any such deposits must be held by the Clerk until the Court has ordered their release.

RULE 28 (old 29) – COURT SECURITY

A. Weapons. No unauthorized person entering the judicial wing of the Ravalli County Courthouse may be in possession of firearms (concealed or otherwise), ammunition, knives, chemical spray devices, explosives, explosive devices, or other dangerous weapons. All persons are subject to search of their person and belongings by security personnel to detect the presence of weapons. No concealed weapon permits apply within the courthouse. All armed out-of-county law enforcement agents must check in with the Ravalli County Sheriff's office before entering the courtroom.

B. Contact with Prisoners or Detainees. Absent specific permission from the Court, no person other than detention center staff, court security, or counsel of record may communicate or have physical contact with in-custody prisoners or pretrial detainees while they are in the courtroom or being transported to or from the courtroom. Except when an in-custody person's case is being heard, consultation between in-custody persons and their counsel should occur outside the courtroom before or after court sessions.

C. Threat of Violence. In any case where a party believes or reasonably should believe a potentially violent physical situation may arise, that party, through counsel or pro se, must notify court staff and court security sufficiently in advance so that appropriate security measures can be taken.

RULE 29 (old 22 and old 36) – COURTROOM DECORUM AND MEDIA

A. Convening of Court. When court convenes in the morning and after any recess, the court clerk or bailiff will announce the opening of court, and all persons in attendance in the courtroom should rise until the presiding judge has entered and taken the bench.

B. Attire. Counsel should be dressed in appropriate business attire, and all parties and witnesses should be dressed in clean, appropriate clothing.

C. Counsel Table. Only parties and counsel of record and their associates may sit at counsel table during trial or hearings.

D. Food and Drink. No person may possess or consume food or beverages in the courtroom except by prior leave of Court. Water will be supplied at counsel table and to witnesses, jurors, and court staff by the Clerk of Court.

E. Cell Phones. All cell phones must be turned off or placed in silent mode.

F. Cameras and Recording Devices. Cameras and recording devices may be operated in the courtroom during courtroom proceedings only by credentialed members of press organizations. Members of the press must identify themselves and their media organizations to the uniformed security officer(s) prior to entering the courtroom. Members of the press will be accommodated on a first-come basis and must remain in designated media sections while court is in session.

G. Operation of Media Equipment. All cameras or electronic recording devices must be in place and ready to function prior to the beginning of the court proceeding. Equipment and personnel must remain in the courtroom until such time as a recess in proceedings is called by the Court. All equipment must be operated as quietly and inconspicuously as possible. Media personnel must respect the dignity and decorum of the Court and conduct themselves and their business accordingly. No additional lighting may be used without prior express approval of the Court.

H. Microphone Placement. No microphones or other types of broadcasting or recording equipment may be placed on or near the counsel table, the witness box or judge's bench without prior express approval of the Court.

I. Media Prohibitions. No recordings in any manner are permitted during jury voir dire, and no filming, photographing, or drawing of any juror, victim, or victim's family member is permitted. No interviews with jurors or prospective jurors are permitted until the conclusion of trial and only then at a juror's discretion.

J. Disobedience or Disruption. Any person disregarding these rules or causing disrupting to the proceedings may be asked to leave, escorted from the courtroom, denied re-admittance, and/or held in contempt of Court.

RULE 30 (old 39) – INTERACTIVE VIDEO CONFERENCING

Interactive video conferencing is available for case management, depositions and discovery, settlement conferences, continuing legal education, and court administration. Upon motion of the parties or the Court's own motion, the Court may conduct pretrial conferences by video conference. Video conferencing is available for juvenile, adult criminal, and mental illness proceedings consistent with Titles 41, 46, and 53, M.C.A. Video conferencing 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 hear and observe the demeanor and non-verbal communications of each other, and observe any physical evidence and exhibits presented during the proceeding;
3. When court proceedings are conducted via video conferencing, the judge will preside from a location accessible to the public. Any party wishing to observe the proceeding may do so.
4. A record of court proceedings conducted by video conference will be made by the court reporter.

Scheduling of and any applicable fee payment for all video conferencing must occur through the Court Administrator at least 10 days before the scheduled use.

MONTANA TWENTY-FIRST JUDICIAL DISTRICT COURT RULES
RAVALLI COUNTY
EXHIBIT A

Children's Rights When Parents Divorce.

The provisions within this and the following sections are intended to apply equally to both divorce and paternity actions.

1. The right to a continuing relationship with both parents.
2. The right to express and receive love and affection from both parents without fear of disapproval by the other parent.
3. The right to continuing care and guidance from both parents.
4. The right to a relaxed and secure relationship with both parents, free from abuse of any kind.
5. The right to know and appreciate what is good in each parent without one degrading the other or undermining the relationship with the other.
6. The right to regular and consistent contact with both parents and the right to know the reason for cancellation or alteration of the regular contact.
7. The right to fully participate in school and extracurricular events and activities, regardless of which parents scheduled time they may fall on, and the right to have both parents attend such events and activities.
8. Neither parent shall:
 - a. Speak badly about the other parent or the other parent's friends or relatives.
 - b. Argue in front of the child or on the telephone when the parent can be overheard.
 - c. Talk to the child about the divorce, the paternity action or any conflicts or issues between the parents.
 - d. Talk about the amount or payment of child support.
 - e. Ask the child to keep secrets from the other parent, or spy for a parent when at the other parent's home.
 - f. Ask the child to act as a messenger by delivering verbal or written messages to the other parent.
 - g. Prevent the child from freely taking items such as clothes and toys back and forth between the two households.
 - h. Ask the child where he or she wants to live.

Parenting Plans.

In circumstances where the children have established relationships with both parents, the preference of this Court is for as equal parenting time as is possible, regardless of age: meaning, shared parenting and shared residency. Where both parents have a continuous, strong, positive and loving relationship with the children, it is harmful to suddenly and significantly restrict contact with one parent. Post-separation parents who provide equal parenting support while the children are with them, as well as uniformity of schedule in each household, should have equal parenting time, and the children deserve the same. Both shared parenting time and shared residency require a higher degree of cooperation, communication and co-parenting to be child-oriented, than having a primary residence and parent. However, shared parenting and residency is the best opportunity to continue established bonds between parent and child. Children in shared parenting structures should avoid more than five days without seeing either parent, meaning that an evening or afterschool visit is appropriate with the parent who is not primary parent that week.

In situations where one parent has been the financial provider and the other the homemaker providing the parental responsibilities for preschool children prior to a separation or divorce, the fact that one parent was financially contributing and therefore could not be full time parenting, shall not be an automatic basis to provide substantially more parenting time to the non-working parent.

Parents know their children and their needs better than anyone in the court system. Parents are expected to work together to assess their children's needs and desires, and to work together to support the other parent's relationship with the child. The parents are further expected to work together to arrive at a parenting time schedule that meets the child's needs, that maximizes the child's time with both parents, and that accommodates the child's activities and events. They are further expected to communicate regarding the children's meal schedule and bedtime schedules, as consistency between two households is essential to the stability of the children. This does not mean one parent may dictate the schedule or control menu planning. The point is for communication and to establishing stability and consistency for the children as they change between households. This Court will presume that an agreement of the parents is in the best interests of their minor child(ren) and will not, without exceptional circumstances, disturb an agreed upon parenting plan.

Child support should reflect actual parenting time. An adjustment should be sought if a parent fails to take advantage of all parenting opportunities afforded by the parenting plan.

If a parent's parenting opportunities are constrained due to mental health, chemical dependency, the consequences of criminal activity, or similar considerations, the objective of the Court is for that parent to seek treatment or otherwise address the cause of the constraint so that parenting opportunities can be fully restored.

The following are age-based considerations which should be incorporated in any parenting plan.

Birth up to 2 ½ Years Old: Children need security and stability in the households. If there is not a continuous, strong, positive, loving relationship between both parents and the children, then the children should primarily residence with parent who has historically provided primary parenting; however, a bond with non-residential parent must be fostered through a predictable routine with regularly scheduled visits with the non-residential parent. There must be physical contact with non-residential parent three times each week. In cases where there is history of care and parenting by the non-residential parent, but potentially not a sufficient relationship to support an equal parenting structure, there should be an overnight stay each week with non-residential parent.

Age 2 ½ up to 5 Years Old. Children need security and stability in the households. If there is not a continuous, strong, positive, loving relationship between both parents and the children, then the children should primarily reside with parent who has historically provided primary parenting; however, a bond with non-residential parent must be fostered through a predictable routine with regularly scheduled visits with the non-residential parent. There should be no more than three days without seeing either parent. In cases where there is history of care and parenting by a non-residential parent, but potentially not a sufficient relationship to support an equal parenting structure, there should be two overnight stays each week with non-residential parent. Having one parent have all the weekends or only weekends with the children should be avoided. Both parents deserve weekend time with the children, and both parents need to shoulder the obligations of having children during workdays/school days.

Age 5 up to 9 Years Old: Shared time or shared residency if not already in place, should be implemented. Both parents shall support the child's growing extra-curricular activities and positive friendships. Children in shared parenting structures should avoid more than five days without seeing either parent, meaning that an evening or afterschool visit is appropriate with the parent who is not primary parent that week. In the summer, a midweek visit may be overnight.

Age 9 up to 13 Years Old: Shared time or shared residency if not already in place, should be implemented. Both parents shall support the child's growing extra-curricular activities and positive friendships. Children in shared parenting structures should avoid more than five days without seeing either parent, meaning that an evening or afterschool visit is appropriate with the parent who is not primary parent that week. In the summer, a midweek visit may be overnight. A child's relationship with same sex parent may become increasingly important and this must be accommodated and nurtured. Considering the age and maturity of the child, one midweek school night visit may be overnight with the parent not having primary parenting that week.

Age 13 up to 15 Years Old: All considerations from age group 9 – 13 and above; in addition, opinions and ideas of adolescents regarding parenting time are increasingly important and while the whims of the child shall not control, they are increasingly aware of their parenting structure

and its effect on them. They are finding their voice for boundaries and needs, and both parents need to be cognizant. This is a time where consistency and structure between households is vital, and if not implemented in prior years, will be very difficult to impose. The parenting plan and both parents shall actively support school, extra-curricular activities and friendships.

Age 15 up to 18 Years Old: All considerations from age group 13 – 15 and above; in addition, the interests, friendships, activities, events and employment of children at this age are crucial to their development, well-being and choices for life beyond age 18. As such, they shall be actively supported and encouraged by both parents. This is a time where lengthy summer visits away from the children's home base may be impacted by a child's extra-curricular or work activities. A child who voices a sincere desire to maintain such activities at the expense of a visit away with a parent should be given great consideration.

The above considerations and recommendations may be departed from depending upon the circumstances of each family, especially in circumstances of abuse or neglect or long-distance parenting.