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Montana Rules of Court

Title: Montana Justice & City Court Rules of Civil Procedure

Date of Last Amendment to these Rules: 26FEB2002

Administrative File Number for these Rules: AF 19-0073

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The rules provided on our website are for state courts in Montana. Please note that Montana courts may have their own local rules about procedure. You will need to research and apply those rules in certain circumstances. If you are in federal court, you will need to research and apply federal rules.

Montana Justice and City Court Rules of Civil Procedure

Rule 1. Scope of rules.

These rules govern the procedure in the justice or city courts of the state of Montana in all suits of a civil nature except in small claims actions and where otherwise provided by law. These rules must be construed and administered to secure the just, speedy, and inexpensive determination of every action. Parties should also consult the Montana Uniform Rules for the Justice and City Courts, and all statutory provisions relating to procedure in Montana's justice and city courts, including but not limited to Title 25, chapter 31 of the Montana Code Annotated.

Rule 2. Commencement of action.

(a) A civil action is begun by filing a complaint with the justice or city court. A concise written statement of the cause of action is considered a complaint. A person as defined in Rule 4(A)(1) may file individually or through an attorney. All others, as defined in Rules (4)(A) 2, 3, 4, and 5, must file through an attorney. The individual or the attorney must sign the complaint. Other requirements for the complaint are set out in Rule 7.

(b) Filing Fees. Before a complaint will be filed and an action commenced, the plaintiff must pay the filing fee specified by statute. However, indigent parties may request a waiver of this requirement as set forth in M.C.A. 25-10-404 and, if the waiver is granted, may proceed without prepaying the filing fee.

Rule 3. Place of trial or venue.

A. Proper place of trial.

The proper place for the trial of an action is called "venue". There may be one or more proper place(s) for the trial of a particular action, and justice and city courts may have concurrent venue under these rules. The proper place for trial is determined by the type of case or the residence of the defendant. If application of this rule to a particular case produces more than one proper venue, the plaintiff may file the case in any one of the proper venues. If the plaintiff does not file in any proper venue, the defendant may move to dismiss the action under subsection B of this rule. If plaintiff does file in a proper venue, either party may move to change venue under subsection c of this rule.

(1) Residence of Defendant.

(a) Venue is always proper in the county (for justice court actions) or city (city court actions) where the Montana defendant, or any one of the Montana defendants, reside(s) at the time the complaint is filed.

(b) If no defendant resides in Montana at the time the complaint is filed, venue is proper in any county (justice court actions) or city (city court actions) in Montana.

(c) (i) A defendant which is a corporation is a Montana resident if it is incorporated in the state of Montana at the time the complaint is filed. The Montana Secretary of State maintains records of incorporation. If the defendant corporation is incorporated in Montana, it shall be deemed to be a resident of each county (justice court actions) or city (city court actions) in which it has a place of business at the time the complaint is filed.

(ii) For a corporate defendant which is not incorporated in Montana, venue is proper in any county or city in Montana.

(d) If there is more than one defendant, a venue that is proper for any defendant is proper for all defendants, even if that venue would not be proper for one of the defendants if sued alone. If an action with two or more defendants is brought in a venue which is not proper for any of the defendants, any of the defendants may move to dismiss the action, without prejudice, for improper venue under Rule 3B.

(2) Additional Proper Venues.

In addition to the county or city of a defendant's residence as set forth in subsection (1), venue is proper as follows:

(a) Actions based on contract or other obligation. When the defendant or all of the defendants reside in a county other than that in which the right of action accrues and the action is for damages for violation of an express or implied contract or for money due on an express or implied contract, debt, note, or account, the action also may be commenced and, subject to the provisions of Rule 3C, may be tried in the county or city in which the contract or obligation must be performed. Unless the contract specifically provides otherwise, the place of performance of the contract or obligation is the county or city in which the payment was to be due or the act constituting the obligation was to be performed.

(b) Actions for damages for injury to person or property. When the action is for damages for injury to person or property, the action also may be commenced and, subject to the provisions of Rule 3C, may be tried, in the county or city where the injury was incurred.

(c) Actions for taking or recovery of personal property. When the action is for the recovery of personal property or its value or for damages for taking or detaining the personal property, the action also may be commenced and, subject to the provisions of Rule 3C, may be tried, in the county or city in which all or any part of the property is found, or in the county or city in which all or any part of the property was taken.

(d) Actions for forcible entry or unlawful detainer. An action for the recovery of the possession of real property may be commenced in the county or city in which all or any part of the real property affected by the action is situated.

B. Improper Place of Trial.

(1) Dismissal. When the county or city in which the complaint is filed is not the proper venue, and any party moves for dismissal because of the improper venue, the court must dismiss the complaint without prejudice. Any motion for dismissal for improper venue under this subsection must be made at least ten days before trial, or it is waived. A complaint dismissed because of improper venue may be refiled in another county or city upon the payment of the filing fee. If a complaint is filed in an improper venue and is subsequently dismissed under this subsection, the applicable statute of limitations stops running on the date the complaint is filed, and restarts thirty (30) days after the service on the opposing party of the order of dismissal.

(2) Consideration of Venue on Appeal. If a party moves to dismiss a complaint because of improper venue, and the motion is denied, the case shall continue through judgment.

C. Change of Venue.

(1) When change of venue permitted. At any time more than ten days before trial, any party may move for and the court may order a change in the place of trial when it appears to the satisfaction of the judge before whom the action is then pending:

- (a) by affidavit of either party, that the judge is a material witness for either party;
- (b) that, based on affidavit, a jury has been demanded and one or more of the part(y)ies cannot have a fair and impartial trial because of the bias or prejudice of the prospective jurors;
- (c) that the judge is disqualified from acting pursuant to Supreme Court rule published at Title 3, chapter 1, part 8, M.C.A.; or
- (d) that the judge is sick or unable to act.

(2) Where action to be transferred. When the court orders the place of trial to be changed, the action shall be transferred for trial to a court mutually agreeable to the parties or, if they do not agree, to the nearest appropriate court in which the judge agrees to accept the case.

(3) Papers to be transmitted. After an order has been made transferring the action or proceeding to another court for trial and on payment by the applying party of all accrued costs, the judge ordering the transfer shall immediately transmit to the judge of the court to which the trial is transferred the pleadings and all papers in the action, together with a certified transcript from the docket of the proceedings. The court to which the case is transferred must not charge any additional filing fee.

(4) Jurisdiction of transferee court. From the time the order changing the place of trial is made, the court to which the action or proceeding is transferred has the same jurisdiction over it as though it had been originally commenced in that court.

(5) Notice of time and place of trial -- pleading. On receipt of the papers, pleadings, and transcripts, the judge of the court to which the action or proceeding is transferred shall issue a notice stating the time and place of the trial and mail the notice to the parties at least 10 days before the time fixed for trial. If the defendant has not filed an answer, the court shall order an answer to be filed within 10 days.

Rule 4. Persons -- jurisdiction -- process -- service.

A. PERSON.

As used in this rule, the word "person", whether or not a United States citizen or resident of this state and whether or not organized under the laws of this state, includes:

- (1) an individual, whether operating in the individual's own name or under a trade name;
- (2) an individual's agent or personal representative;
- (3) a corporation, business trust, estate, trust, partnership, or limited liability company;
- (4) any two or more persons having a joint or common interest; and
- (5) any other legal or commercial entity.

B. JURISDICTION OF PERSONS.

(1) Subject to jurisdiction. All persons are subject to the jurisdiction of a justice or city court who reside or are found within the State of Montana.

(2) Acquisition of jurisdiction. A justice or city court may acquire jurisdiction over a person through service of process as provided in these rules, through the voluntary appearance in an action by a person, either personally or through an attorney or any other authorized officer, agent, or employee. Each defendant must be served separately.

C. PROCESS.

(1) Summons -- issuance. Upon the filing of the complaint, the judge or the clerk shall issue a summons upon request of a plaintiff. Separate or additional summons must be issued, upon request, against any parties designated in the original action or against any additional parties who may be brought into the action.

(2) Summons -- form. The summons must be directed to the defendant and signed by the judge or clerk and must contain:

(a) the title of the court, the name of the county and city in which the action is commenced, and the names of the parties to the action;

(b) a direction that the defendant appear and file a written answer in the justice or city court within 20 days after service of summons and complaint, exclusive of

the day of service, or such other period as may be specified by law, and serve a copy upon the plaintiff or the plaintiff's attorney;

(c) a statement that upon failure to appear and answer or assert a counterclaim, the plaintiff may take judgment against the defendant by default for the relief demanded in the complaint; and

(d) the name, address, and telephone number of the plaintiff or the plaintiff's attorney.

D. SERVICE OF PROCESS.

(1) By whom served.

(a) Service of all process must be made by a sheriff of the county where the party to be served is found, by a deputy, by a constable authorized by law, or by any other person 18 years of age or older who is not a party to the action.

(b) (i) A summons and complaint may also be served upon a defendant who is an individual, other than a minor or an incompetent person, or upon a domestic or foreign corporation or partnership or other limited liability company by mailing a copy of the summons and complaint by first-class mail, postage prepaid, to the person to be served, together with two copies of a notice and acknowledgment conforming substantially to Form 18-A, M.R.Civ.P., and a return envelope, postage prepaid, addressed to the sender. If an acknowledgment of service under this subsection is not received by the sender within 20 days after the date of mailing, service of the summons and complaint must be made by one of the persons specified in Rule 4D(1)(a) in the manner prescribed by Rule 4D(2) and (3).

(ii) If the person served does not complete and return the notice and acknowledgment of receipt of summons and complaint within the 20-day period, the court shall order the person to pay the costs of the personal service unless good cause is shown.

(iii) The notice and acknowledgment of receipt of the summons and complaint must be signed and dated. Service of the summons and complaint is complete on the date the defendant signs the acknowledgment.

(2) Personal service within court's jurisdiction.

(a) The plaintiff shall furnish the person making service with all necessary copies.

(b) Service must be made:

(i) upon an individual other than a minor or an incompetent person, by delivering a copy of the summons and complaint to the defendant personally or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, further notice as the statute requires must be given;

(ii) upon a minor, by delivering a copy of the summons and complaint to the minor and to the minor's guardian or guardian ad litem;

(iii) upon a person who has been adjudged of unsound mind by a court of this state or for whom a guardian has been appointed in this state by reason of incompetency, by delivering a copy of the summons and complaint to the person's guardian, if there is one residing in this state appointed and acting under the laws of this state. If there is no guardian, the court shall appoint a guardian ad litem for the incompetent person, with or without personal service on the incompetent, as the court may direct. When a party is alleged to be of unsound mind but has not been so adjudged by a court of this state, the party may be brought into court by service of process personally. The court may also stay any action pending against the person on learning that the person is of unsound mind.

(iv) upon a domestic corporation, partnership or other limited liability company, or a foreign corporation or partnership or other limited liability company established by the laws of any other state or country, that had a place of business within this state or was doing business in this state either permanently or temporarily at the time the claim for relief accrued:

(A) by delivering a copy of the summons and complaint to an officer, director, superintendent, managing or general agent, partner, or associate for the corporation, partnership, or association or by leaving the copy at the office or place of business of the corporation, partnership, or association within the state with the person in charge of the office;

(B) by delivering a copy of the summons and complaint to the registered agent of the corporation named on the records of the secretary of state or to any other agent or attorney-in-fact authorized by appointment or by statute to receive or accept service on behalf of the corporation, partnership, or association, provided that if the agent or attorney-in-fact is one designated by statute to receive service, any further notice required by statute must also be given;

(C) if the sheriff shall make return that no person upon whom service may be made can be found in the county, then by leaving a copy of the summons and complaint at any office of the corporation, partnership, or limited liability company within this state with the person in charge of the office; or

(D) if the suit is against a corporation whose charter or right to do business in the state has expired or been forfeited, by delivering a copy of the summons and complaint to a trustee for the corporation and to its stockholders or members.

(v) upon a city, town, school district, or public agency or board of such a public body, by delivering a copy of the summons and complaint to any commissioner, trustee, board member, mayor, or head of the legislative department of the public body;

(vi) upon an estate, by delivering a copy of the summons and complaint to the personal representative of the estate;

(vii) upon a trust, by delivering a copy of the summons and complaint to any trustee thereof.

(c) (i) When a claim for relief is pending in a justice or city court of this state against any of the following persons, the party causing the summons to be issued shall exercise reasonable diligence to ascertain the last-known address of:

(A) a corporation organized under the laws of this state or a corporation organized under the laws of any other state or country that has filed a copy of its charter in the office of the secretary of state of Montana and that is qualified to do business in Montana;

(B) a corporation organized under the laws of any other state or country that is subject to the jurisdiction of the justice or city courts of this state under the provisions of Rule 4B, even though the corporation has never qualified to do business in Montana; or

(C) a national banking corporation that, through insolvency or lapse of charter, has ceased to do business in Montana and when none of the persons designated in Rule 4D(2)(b)(iv) can with the exercise of reasonable diligence be found within Montana.

(ii) Upon the filing with the justice or city court in which the claim for relief is pending of an affidavit reciting that none of the persons designated in Rule 4D(2)(b)(iv) can after due diligence be found within Montana, reciting the last-known address of any of those persons, or reciting that after the exercise of reasonable diligence no address for any of the persons could be found and after deposit with the justice or city court of the sum to be paid to the secretary of state as a fee for each of the defendants for whom the secretary of state is to receive service, the judge shall issue an order directing process to be served upon the secretary of state or, if absent from the office, upon the deputy secretary of state. The affidavit is sufficient evidence of the diligence of inquiry made by the affiant if it recites that diligent inquiry was made. The affidavit need not detail the facts constituting the inquiry.

(iii) The judge shall mail to the secretary of state the original summons, one copy each of the summons and the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service.

(iv) The secretary of state shall mail a copy of the summons and complaint by certified mail with a return receipt requested to the last-known address of any of the persons designated in Rule 4D(2)(b)(iv) or, if no address is known and the person is a corporation not organized in Montana, to the secretary of state of the state in which the corporation was originally incorporated, if known, and the secretary of state shall make the return as provided under Rule 4D(5).

(v) When service is made upon the secretary of state, it is considered personal service on the corporation, and the secretary of state, or the deputy when the secretary of state is absent from the office, is hereby appointed agent of the corporation for service of process.

(vi) In an action in which due diligence has been exercised to locate and serve any of the persons designated in Rule 4D(2)(b)(iv), service is considered complete upon the corporation regardless of the receipt or advice of refusal of the addressee to receive the process mailed, as required by Rule 4D(5).

(vii) When the service of process is made as provided in this subsection (2)(c) and there is no appearance thereafter made by an attorney for the corporation, service of all other notices required by law to be served in the action may be served on the secretary of state.

(3) Other service. All process in any form of action must be served in the manner specified in this rule, with the exception that whenever a statute of this state or an order of the court made pursuant to this rule or a statute provides for the service of a notice or an order in lieu of summons upon a person, service must be made under the circumstances and in the manner prescribed by the statute or order and with the further exception that all persons are required to comply with the provisions of 33-1-603, 33-1-613, 33-1-614, 33-2-314, and 33-2-315 when the action pertains to the provisions of those sections.

(4) Service by publication -- when permitted -- effect -- manner -- proof.

(a) When permitted. A defendant, whether known or unknown, who has not been served under this rule may be served by publication only when the subject of the action is real or personal property in this state and:

(i) the defendant has or claims a lien or interest, actual or contingent, in the real or personal property; or

(ii) the relief demanded consists wholly or partially in excluding the defendant from any interest in the real or personal property.

(b) Effect of service by publication. When a defendant, whether known or unknown, has been served by publication as provided in this rule, any court of this state having jurisdiction may render a decree that will adjudicate any interest of the defendant in the status, property, or thing acted upon, but the court may not bind the defendant personally to the personal jurisdiction of the court unless some ground for the exercise of personal jurisdiction exists.

(c) Filing of pleading and affidavit for service by publication -- order for publication.

(i) Before service of the summons by publication is authorized in any case, there must be filed with the judge or court clerk of the justice or city court in which the action is commenced:

(A) a pleading setting forth a claim in favor of the plaintiff and against the defendant as provided in Rule 4D(4)(a); and

(B) upon return of the summons showing the failure to find any defendant designated in the complaint, an affidavit stating:

(I) that the defendant resides out of the state, has departed from the state, cannot after due diligence be found within the state, or is concealed to avoid the service of summons; or

(II) if the defendant is a domestic or foreign corporation, that none of the persons designated in Rule 4D(2)(b)(iv) can after due diligence be found within the state; or

(III) if the defendant is an unknown claimant, that the plaintiff has made a diligent search and inquiry for all persons who claim or might claim any right or title to, estate or interest in, or lien or encumbrance upon all or any part of the property that is adverse to plaintiff's ownership or all persons who may cloud the plaintiff's title to the property, whether the claim or possible claim is present or contingent, including any right of dower, inchoate or accrued; and

(IV) that the plaintiff has specifically named as defendants in the action all persons whose names can be ascertained.

(ii) The affidavit is sufficient evidence of the diligence of any inquiry made by the affiant if the affidavit recites the fact that diligent inquiry was made. The affidavit need not detail the facts constituting the inquiry. If desired, it may be combined in one instrument with the affidavit required under Rule 4D(2)(c) after presenting to the court proof that a valid attachment or garnishment has been effected.

(iii) Upon complying with this subsection (c), the plaintiff may obtain an order for the service of summons to be made upon the defendants by publication, which order may be issued by either the judge or the court clerk.

(d) Number of publications. Service of the summons by publication may be made by publishing the summons three times, once each week for 3 successive weeks, in a newspaper published in the county in which the action is pending. If no newspaper is published in the county, then the service of summons by publication must be made in a newspaper published in an adjoining county and having a general circulation in the county in which the action is pending.

(e) Mailing summons and complaint. At any time after the filing of the affidavit for publication and not later than 10 days after the first publication of the summons, a copy of the summons for publication and a copy of the complaint must be deposited in a post office in this state, postage prepaid, and directed to the defendant at the defendant's place of residence unless the affidavit for publication states that the residence of the defendant is unknown. If the defendant is a corporation and personal service cannot with due diligence be effected within Montana on any of the persons

designated in Rule 4D(2)(b)(iv), then service may be completed on the corporation by service upon the secretary of state pursuant to the provisions of Rule 4D(2)(c).

(5) Service on secretary of state.

(a) (i) Whenever service is to be made upon certain corporations as provided in Rule 4D(2)(c), the requirements of that subsection must be complied with. In all other cases, unless otherwise provided by statute, whenever the secretary of state of the state of Montana has been appointed or is considered by law to have been appointed as the agent to receive service of process for any person who cannot with due diligence be found or served personally within Montana, the party or the party's attorney shall:

(A) make an affidavit stating the facts showing that the secretary of state is the agent and stating the residence and last-known post-office address of the person to be served;

(B) file the affidavit with the justice or city court in which the claim for relief is pending; and

(C) provide sufficient copies of the affidavit, summons, and complaint for service upon the secretary of state.

(ii) When there has been deposited with the justice or city court in which the claim for relief is pending the sum to be paid to the secretary of state as a fee for each of the defendants for whom the secretary of state is to receive service, then the judge shall mail to the secretary of state the original summons, one copy each of the summons and the affidavit for the files of the secretary of state, one copy of the summons attached to a copy of the complaint for each of the defendants to be served by service upon the secretary of state, and the fee for service.

(b) Service on the secretary of state is sufficient personal service upon the person to be served, provided that notice of the service and a copy of the summons and complaint are sent by certified mail by the secretary of state or deputy to the party to be served at the party's last-known address, marked "deliver to addressee only" and "return receipt requested", and provided further that the return receipt is received by the secretary of state and purports to have been signed by the addressee or the secretary of state is advised by the post office that delivery of the certified mail was refused by the addressee, except in those cases where compliance is excused under the provisions of Rule 4D(2)(c). The date the secretary of state receives the return receipt or receives advice by the post office that delivery of the certified mail was refused by the addressee is considered the date of service. As an alternative to sending the summons and complaint by certified mail, the secretary of state or deputy may cause a copy of the summons and complaint to be served by a qualified law enforcement officer, in accordance with the procedure set out in Rule 4D(1), (2), or (3).

(c) (i) The secretary of state or deputy shall make an original and two copies of an affidavit reciting:

(A) the fact of service upon the secretary of state by the justice or city court, including the day and hour of the service;

(B) the fact that a copy of the summons and complaint and notice has been mailed to the defendant, including the day and hour of the mailing, except in those cases where the secretary of state is relieved from doing so under the provisions of Rule 4D(2)(c), in which case the affidavit must so state; and

(C) the fact of the receipt of a return from the post office, including the date and hour of receipt, with a copy of the return to be attached to the affidavit.

(ii) The secretary of state or deputy shall then transmit the original summons and the original affidavit, along with a copy of the notice to the defendant if a notice is required, to the justice or city court in which the claim for relief is pending, where it must be filed in the claim for relief by the judge. The secretary of state shall also transmit to the attorney for the plaintiff a copy of the affidavit of the secretary of state, along with a copy of the notice to the defendant if a notice is required.

(iii) The secretary of state shall keep on file in the office a copy of the summons, a copy of the affidavit served on the secretary of state by the judge, and a copy of the affidavit executed and issued by the secretary of state.

(6) Continuance to allow defense. In any of the cases provided for in Rule 4D(2)(c), the court in which the claim for relief is pending may order a continuance as may be necessary to afford reasonable opportunity to defend the action.

(7) Amendment. At any time, in its discretion, and upon such notice and terms as it considers just, the court may allow any process or proof of service to be amended unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process was issued.

(8) Proof of service.

(a) Proof of the service of the summons and of the complaint or notice, if any, accompanying the same must be as follows:

(i) if served by a constable or other officer, a certificate of service; or
(ii) if served by any other person, an affidavit of service; and
(iii) the written admission of the defendant showing the date and place of service.

(b) The certificate or affidavit of service mentioned in subsection (8)(a) must state the time, date, place, and manner of service.

(9) Contents of affidavit of service. Whenever a process, pleading, order of court, or other paper is served personally by a person other than the sheriff, constable, or person designated by law, the affidavit of service must state:

(a) that the person so serving is of legal age;
(b) the date and place of service; and

(c) that the person making the service knew the person served to be the person named and intended to be served.

(10) Procedure where only some of defendants served. If the summons is not served on all of the defendants, the plaintiff may proceed to trial and judgment against the defendant or defendants on whom the process is served and may at any time thereafter have a summons served against any defendant not served with the first process to cause that defendant to appear in court to show cause why that defendant should not be made a party to the judgment. Upon a defendant being duly served with the process, the court shall hear and determine the matter in the same manner as if the defendant had been originally brought into court, and the defendant must also be allowed the benefit of any payment or satisfaction that may have been made on the judgment before recovered.

Plaintiff/Plaintiff Attorney

Address

Plaintiff/Plaintiff Attorney telephone number

IN THE JUSTICE/CITY COURT OF _____ COUNTY, MONTANA
BEFORE _____, JUSTICE OF THE PEACE/CITY JUDGE.

* * * * *

_____,)
Plaintiff,) Civil Case _____

vs.) SUMMONS

_____,)
Defendant.)

_____)

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT, GREETINGS:

You are hereby summoned to answer the Complaint in this action which is filed in the office of the above-entitled Justice of the Peace/City Judge, a copy of which is herewith served upon you. In the event that you deny any or all of the material facts stated in the complaint, you must file your written answer together with a \$15.00 answer fee for each Defendant with the above-entitled Court, and serve a copy of your answer upon the Plaintiff or attorney at the address as shown on the Complaint.

The answer must contain a denial of any or all of the material facts stated in the Complaint that the Defendant believes to be untrue, and also a statement, in plain or direct manner, of any other facts constituting a defense. Any matter not denied shall be deemed admitted. If you fail to answer or assert a counterclaim within twenty (20) days after service of the Complaint and Summons, the Plaintiff may request entry of default judgment against you for the relief demanded in the Complaint.

GIVEN under my hand this _____ day of _____, 20__.

JUDGE/CLERK OF COURT

Rule 5. Service and filing of pleadings and other papers, excluding summons.

A. WHEN MADE.

Whenever a pleading permitted by Rule 7 is filed and served, the party served shall file and serve any further written pleading within 20 days, unless otherwise provided by law, after service unless the time period is extended pursuant to Rule 6B, M.J.R.Civ.P. The party served may file a written pleading after 20 days if no default has been entered. All original pleadings and other papers must be filed with the court. A copy must be served on all other parties or their attorneys as provided below.

B. HOW MADE.

(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service must be made upon the attorney unless service upon the party personally is ordered by the judge.

(2) Service must be made by delivering a copy to the attorney, or to the party if not represented by an attorney.

(a) Delivery of a copy to an attorney within this rule means:

- (i) handing it to the attorney;
- (ii) leaving it at the attorney's office with a person in charge;
- (iii) if there is no one in charge, leaving it in a conspicuous place in the attorney's office; or
- (iv) by mail directed to the attorney's last known address.

(b) Delivery of a copy to a party within this rule means:

- (i) handing it to the party; or
- (ii) by leaving it at the party's place of residence with a person of suitable age and discretion who resides there; or
- (iii) by mail directed to the party's last known address.

(c) Service by mail is complete upon mailing.

C. PROOF OF SERVICE.

Proof of service must be made by an affidavit of the party or the party's attorney making service, by the certificate of the attorney making service, or by an acknowledgment in writing from the party or attorney served. The affidavit, certificate, or acknowledgment must be filed with the court.

Rule 6. Time.

A. COMPUTATION. When the computation of any period of time prescribed or allowed by these rules is by order of a court or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run may not be included. The last day of the period so computed must be included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or legal holiday.

B. EXTENSION. When by these rules, by a notice given under these rules, or by order of a court an act is required or allowed to be done at or within a specified time, the judge for cause shown may extend the period if a motion is made before the expiration of the period originally prescribed or extended by previous permission of the court or after expiration of the specified period if failure to act was the result of excusable neglect.

C. ADDITIONAL TIME AFTER SERVICE BY MAIL. Whenever a party has the right or is required to do an act or take a proceeding within a prescribed period after service of

a notice or other paper and the notice or other paper is served by mail, 3 days must be added to the prescribed period.

Rule 7. Pleadings allowed.

In justice or city court there may be a complaint, answer, counterclaim, and reply to a counterclaim. No other pleadings are allowed, except that the court may order a reply to an answer. A "motion" is not a "pleading".

A. COMPLAINT.

The complaint is a concise written statement of the facts constituting the plaintiff's cause of action and the type and amount of relief requested.

B. ANSWER.

The answer must contain a denial of any or all of the material facts stated in the complaint that the defendant believes to be untrue and also a statement, in plain or direct manner, of any other facts constituting a defense. Any matter not denied shall be deemed admitted. If an answer is not filed within 20 days after service of the complaint and summons, the plaintiff may request entry of default as provided in Rule 21 of these rules.

C. COUNTERCLAIM.

(1) A defendant may file with the answer a counterclaim against the plaintiff. The defendant must file as a counterclaim any claim arising out of the same transaction or occurrence as the complaint, which is within the jurisdiction of the justice or city court, or it is deemed to be waived. The counterclaim must be a concise written statement of the facts constituting the defendant's cause of action and the type or amount of relief requested. Any counterclaim that exceeds the jurisdiction of the justice or city court must be dismissed without prejudice.

(2) If the counterclaim, after being dismissed without prejudice as outside the subject matter jurisdiction of the justice or city court, is filed in the district court, then upon order of the district judge the pending justice or city court action must be transferred to the district court.

D. REPLY TO COUNTERCLAIM.

The reply must contain a denial of any or all of the material facts stated in the counterclaim that the plaintiff believes to be untrue and also a statement, in plain or direct manner, of any other facts constituting a defense to the counterclaim. Any matter not denied shall be deemed admitted. If a reply to a counterclaim is not filed within 20 days after service of the counterclaim, the defendant may request entry of default as provided in Rule 21 of these rules.

E. CROSS CLAIMS.

Cross claims are not allowed in a justice or city court, unless, in accordance with Rule 12 of these rules, justice cannot be otherwise obtained.

F. GENERAL RULES OF PLEADING.

(1) Form -- pleadings in justice or city court. All pleadings must be in writing and filed with the court. They must be in a form that enables a person of common understanding to know what is intended.

(2) Effect of failure to deny. Allegations in a pleading to which a responsive pleading is required are admitted when not denied in the responsive pleading. A statement of fact in a pleading to which no responsive pleading is required or permitted must be taken as denied or avoided.

(3) New matter. New matter in the answer or reply to counterclaim is considered denied by the opposing party.

(4) Signing of pleadings. Every pleading of a party represented by an attorney must be signed by that attorney and must state the address and telephone number of the attorney. A party who is not represented by an attorney shall sign the pleading and state the party's address and telephone number.

Rule 8. Amendment of pleadings.

A. WHEN ALLOWED.

Each party may amend its pleading one time, without leave of court, if the amended pleading is filed within the following times:

(1) The plaintiff's amended complaint, if any, must be filed no later than 10 days after defendant's answer to the original complaint if served upon plaintiff.

(2) The defendant's amended answer, if any, must be filed no later than 10 days after the filing of the original answer. The amended answer may add a counterclaim consistent with Rule 7C. Further amendments may be granted only upon written consent of the opposing party or upon leave of the court for good cause shown.

B. ANSWER TO AMENDED COMPLAINT.

A defendant shall file and serve an answer within 20 days of the service of an amended complaint.

C. REPLY TO AMENDED COUNTERCLAIM.

A plaintiff must file and serve a reply within 20 days after service of an amended counterclaim.

D. LIMIT.

No other pleading to an amended pleading may be allowed, except that the court may order a reply to the amended answer.

Rule 9. Motions and other papers.

A. APPLICATION.

An application to the court for an order must be by motion, which, unless made during a hearing or trial, must be in writing. A motion must state with particularity the grounds for the motion and must set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing on the motion.

B. OPPOSITION.

Any party opposing a motion must do so in writing within 10 days of service.

C. GENERAL RULES.

The rules applicable to captions, signing, and other matters of form and the method and proof of service of pleadings apply to all motions and other papers provided for by these rules.

Rule 10. Naming of parties to action.

A. PARTIES.

(1) Actions must be prosecuted or defended in the name of the person who benefits from or is responsible for the satisfaction of any judgment rendered in justice or city court. That person is considered the real party in interest.

(2) A personal representative, administrator, guardian, conservator, fiduciary, bailee, trustee of an express trust, party with whom or in whose name a contract has been made for the benefit of another, or party authorized by statute may be named as a party to an action. In such a case, the pleadings must contain information concerning the circumstances or statute that enables the person to appear in the party's name and not in the name of the person for whose benefit the action is prosecuted or defended.

B. AMENDMENT -- DISMISSAL.

Upon motion of the opposing party or upon the court's own motion, the court must require an amendment of the pleadings to name the real party in interest. If the real party in interest is not named within 5 days, the action will be dismissed without prejudice.

Rule 11. Substitution of parties.

A. SUBSTITUTION.

If an original party to an action dies, becomes incompetent, transfers the party's interest, or is succeeded in office and the claim survives the absence of the original party, the justice or city court may order substitution of the proper party. The substitution is governed by Rule 10A.

B. FAILURE TO MAKE SUBSTITUTION.

If substitution is not made within twenty (20) days after being ordered, the action must be dismissed without prejudice.

Rule 12. Joinder of claims and parties necessary for just adjudication.

A. INVOLUNTARY JOINDER.

A person subject to service of process must be joined if in the person's absence:

- (1) complete relief cannot be accorded among those already parties;
- (2) the person will not be able to protect the person's interest in the subject of the action without being named; or
- (3) there is the likelihood of double, multiple, or otherwise inconsistent obligations incurred by reason of the person's claimed interest.

B. PERMISSIVE JOINDER.

All persons may join in an action if they assert any right to relief, whether jointly or as individuals, arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or of fact common to all will arise in the action.

C. MISJOINDER.

Misjoinder of parties not grounds for dismissal. The judge may add or dismiss parties by order either on motion of a party or on the judge's own initiative at any stage of the proceedings and on terms that are just. Claims against a party or parties may be added or severed and proceed to joint or separate trials as considered necessary by the judge in order to render a full adjudication of all claims in an orderly manner.

D. CLASS ACTIONS.

Class actions may not be permitted in justice or city court proceedings.

Rule 13. Discovery.

A. SCOPE AND LIMITS.

There shall be no formal discovery except pursuant to court order as provided by these rules.

(1) Either party may make a motion for an order to obtain discovery through the use of requests for production, depositions and written interrogatories, regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the parties seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not a ground for objection that the information sought is inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Any motion for formal discovery must include a statement that informal discovery was requested but was unsuccessful.

(3) (a) The frequency or extent of use of the discovery set forth in this rule must be limited by the court if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the party's resources, and the importance of the issues at stake in the litigation.

(b) The court may act upon its own initiative after reasonable notice or pursuant to Rule 9 or 14.

(4) The type and extent of discovery, as well as the appropriate timeframes, must be determined by the court. Either party may request, or the court may order on its own, a hearing on the motion for discovery.

(5) Deposition will be allowed only upon written motion and at the discretion of the judge and if allowed must be taken as provided in Rules 26 and 28 through 30 of the Montana Rules of Civil Procedure.

B. SANCTIONS.

If a party, or an officer, director, or managing agent of a party, or party's attorney fails to comply with this rule or a discovery order issued by a justice or city court, the court may award, against the party or attorney in violation, reasonable expenses, including attorney fees caused by failure to comply. Upon a showing of serious abuse of the discovery

process the court may dismiss the action or grant default judgment as an appropriate sanction, in addition to or in lieu of a monetary sanction. If the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust, the court is not required to impose sanctions. Nothing in these rules is meant to interfere with the inherent contempt powers of the court.

Rule 14. Pretrial conferences.

A. OBJECTIVES.

In any action, the court may, in its discretion, direct the parties' attorneys or the parties to appear before it for one or more conferences before trial for the following purposes:

- (1) expediting the disposition of the action;
- (2) establishing early and continuing control so that the case will not be delayed because of lack of management;
- (3) discouraging wasteful pretrial activities;
- (4) improving the quality of the trial with more thorough preparation; and
- (5) facilitating the settlement of the case. All pretrial scheduling shall be the duty of the judge.

B. SUBJECTS TO BE DISCUSSED AT PRE-TRIAL CONFERENCES.

The participants at any conference under this rule may consider and take action with respect to:

- (1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;
- (2) the necessity or desirability of amendments to the pleadings;
- (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authentication of documents, and advance rulings from the court on the admissibility of evidence;
- (4) the avoidance of unnecessary proof and of cumulative evidence;
- (5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;
- (6) the possibility of settlement;
- (7) the form and substance of the pretrial order;
- (8) the disposition of pending motions;
- (9) the time for submission of proposed findings of fact and conclusions of law in a non-jury action, or proposed instructions to the jury and form of verdict in a jury action, and such other matters as may aid in the disposition of the action.

Each party or an attorney for each party participating in any conference before trial must have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed. After any conference held pursuant to this rule, an order must be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order.

C. SANCTIONS.

If a party or a party's attorney fails to obey a pretrial order, if no appearance is made on behalf of a party at the pretrial conference, if a party or a party's attorney is substantially unprepared to participate in the conference, or if a party or a party's attorney fails to participate in good faith, the judge, upon the judge's own motion, may make orders as are just and may deal with the offending party pursuant to Title 3, chapter 10, part 4. In lieu of or in addition to any other sanction, the judge may require the party or the party's attorney, or both, to pay the reasonable expenses, including attorney fees, incurred because of any noncompliance with this rule unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

Rule 15. Right to jury trial.

A. RIGHT PRESERVED.

The right of a trial by jury as declared by the constitutions of the United States and the State of Montana or as given by statute must be preserved to the parties inviolate.

B. DEMAND.

At any time after the commencement of the action and not later than 5 days after the service of the last pleading directed to the issue, a party may demand a trial by jury, as allowed by law, of any issue of fact by filing in the court and serving upon the other parties a written demand for a jury trial. The demand may be stated in a pleading of the party.

C. HOW WAIVED.

A jury may be waived:

- (1) by consent of the parties entered in the docket;
- (2) by the failure of any party to demand a jury trial under this rule;
- (3) by the failure of either party to appear at the time fixed for the trial of an issue of fact.

Rule 16. Failure to appear or proceed.**A. DEFENDANT.**

If a defendant, who has been properly served, fails to appear at the time fixed for trial, the trial may proceed at the request of the adverse party or parties.

B. PLAINTIFF.

If a plaintiff fails to appear at the time fixed for trial, the judge shall dismiss the plaintiff's claim with prejudice and award costs to the defendant. The trial may proceed on any other pending claims of any other parties.

C. TIME.

If a party fails to pursue disposition of a matter filed in a justice or city court in a timely manner, the court may, on its own motion, dismiss the matter without prejudice. A dismissal at the court's discretion under this Rule 16C must be by written notice of the court to all parties and may not be made for at least 90 days after the last action. The notice must state that unless good cause is shown by a party or a party's attorney within 30 days of the court's notice, the matter must be dismissed without prejudice. If good cause is shown, in writing, by a party or a party's attorney, the court may set the matter for trial and no dismissal may be entered by the court.

Rule 17. Costs.

Jury fees and other costs as defined in 3-15-203, M.C.A., and Title 25, chapter 10, M.C.A., must be taxed as costs against the losing party as determined by the court, following the procedures set forth in Title 25, chapter 10.

Rule 18. Jury.**A. NUMBER OF JURORS.**

A jury in a justice or city court consists of six persons, but the parties may agree to fewer than six.

B. IMPANELING.

The jury in a civil action in justice or city court must be impaneled as provided in 25-7-202 through 25-7-209 and 25-7-221 through 25-7-224. Where the words "clerk" or "district court" occur in those sections, the words refer to the justice or city court in application under this rule.

C. SICKNESS OF JUROR.

If a juror becomes sick and is unable to perform the juror's duty after impaneling of the jury but before verdict, the judge may order the juror discharged and proceed with the other jurors, swear in an alternate juror, continue the case, or discharge the jury and impanel a new jury.

D. PREVENTION OF JURY FROM GIVING VERDICT.

When a jury is discharged or prevented from giving a verdict by reason of accident or other cause during the course of the trial, the judge may try the action with another jury again at a future time.

Rule 19. Order of trial.

In a nonjury trial or in a jury trial after the jury has been impaneled, the trial must proceed in the following order, unless the court, for good cause, otherwise directs:

(1) The party on whom rests the burden of the issues may briefly state a case and the evidence by which the party expects to sustain it.

(2) The adverse party may next briefly state a defense and the evidence the party expects to offer in support of it, or the party may reserve the opening statement for the beginning of the case.

(3) The party on whom rests the burden of the issues must first produce evidence. The adverse party will then produce evidence.

(4) The parties will then be confined to rebutting evidence unless the court, for good reasons, in furtherance of justice, permits them to offer evidence in their original case.

(5) The court shall charge the jury with its duties, instructing it in all matters of law that it finds necessary for the jury's information in rendering a verdict. Proposed instructions may be offered to the court by the parties. Instructions shall be offered if ordered at the pretrial conference.

(6) (a) The order for final argument is plaintiff, defendant, and rebuttal by plaintiff of defendant's argument. No further argument is allowed. If several defendants having several defenses appear by different counsel, the court shall determine their relative order in the evidence and argument.

(b) In arguing the case to the jury, a party or counsel may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence in the case.

Rule 20. Notice of trial.

After all parties served with process have appeared or some have appeared and the remaining have been defaulted, the judge, upon request of any party, shall fix a day for trial of the cause and shall provide notice of the trial date to the plaintiffs and defendants who have appeared.

Rule 21. Entry of judgment.

A. GROUNDS.

A judge shall enter judgment in the docket of the court in the following circumstances:

(1) Offer to compromise before trial. If the defendant, at any time before the trial, offers in writing to allow judgment to be taken against the defendant for a specified sum, the plaintiff may immediately have judgment therefor, with the costs then accrued.

However, if the plaintiff does not accept the offer before the trial and fails to recover in the action a sum in excess of the offer, the plaintiff cannot recover costs. In such a case, costs must be adjudged against the plaintiff and, if the plaintiff recovers, be deducted from the plaintiff's recovery. The offer and failure to accept may not be given in evidence or affect the recovery except as to costs.

(2) Judgment of dismissal without prejudice. Judgment that the action be dismissed without prejudice to a new action may be entered with costs against the plaintiff in the following cases:

(a) when the plaintiff voluntarily dismissed the action, at or before the close of the plaintiff's evidence, when there is no counterclaim;

(b) when the plaintiff fails to amend the complaint within the time allowed by the court;

(c) for improper venue under Rule 3B of these rules.

(3) Judgment by confession. Judgment by confession must be as provided for in Title 27, chapter 9.

(4) Judgment on pleadings. After the pleadings are closed but within a time as not to delay the trial, any party may move for judgment on the pleadings. Matters outside the pleadings may not be presented to the court. A court may grant judgment on the pleadings for either party. The court may only grant judgement on the pleadings if the pleadings themselves construed in the light most favorable to the party opposing the judgment, show that it would be impossible for the party against whom the judgment is entered to prevail at trial.

(5) Summary judgment. Either party may move for, and the judge may grant, summary judgment on one or more of the issues raised by the pleadings. In so moving, responding to the motion, and ruling on the motion, the parties and the court shall follow the procedures specified in Rule 56 of M.R.Civ.P.

(6) Upon verdict. After a trial by jury, the judge shall enter judgment at once in conformity with the verdict.

(7) After trial by judge. When the trial is by the judge, the judge shall enter judgment within 30 days.

(8) By default.

(a) (1) When a party against whom a judgment for affirmative relief is sought has failed to answer or reply as provided by these rules upon written motion by the plaintiff or counterclaiming defendant, the judge or clerk must enter the default against such party.

(2) When a default has been entered against a defendant for failure to answer and if the plaintiff's claim against the defendant is for a sum certain or for a sum that can by computation be made certain, upon the plaintiff's written request stating the amount due, the judge or clerk must enter judgment for that amount and costs against the defaulted defendant.

(b) If in order to enable the court to enter judgment or to carry it into effect it is necessary to determine the amount of damages or to establish the truth of any allegation by evidence, the court may conduct hearings it considers necessary and proper.

(c) A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment in the complaint or counterclaim.

B. MULTIPLE DEFENDANTS.

The court shall enter judgment only against those over whom it has obtained jurisdiction.

Rule 22. Relief from judgment.

A. RELIEF.

A judge may, on such terms as may be just and on the payment of costs, relieve a party from any judgment or other order taken against the party by mistake, inadvertence, surprise, or excusable neglect, but the application for relief must be made within 30 days after entry of the judgment and upon an affidavit showing good cause for it. The party applying for relief shall serve the application and give notice of hearing to all other parties. The court shall set a hearing within 10 days after receipt of the application.

B. CLERICAL MISTAKES.

Clerical mistakes or errors arising from oversight or omission in pleadings, judgments, orders, and other parts of the record may be corrected by the court at any time on its own initiative or on the motion of any party and after any notice the court may order.

Rule 23. Execution.

A. HOW ENFORCED.

(1) By justice or city court. A judgment may be enforced within the boundaries of the state by a writ of execution issued by the justice or city court or the clerk thereof.

(2) Issuance of execution by judge or clerk of justice or city court. From the time of docketing in the clerk's office, execution may be issued thereon by the judge or clerk to the sheriff, constable, or levying officer of any county in the state.

B. TIME.

The party in whose favor judgment is entered may request a writ of execution for its enforcement against the personal property of the judgment debtor. At any time within 10 years from the entry of judgment, the justice of the peace or city judge who entered the judgment or the successor in office or the clerk shall issue the writ upon request.

C. FORM AND CONTENT OF EXECUTION.

Determination of the amount of the judgment outstanding and the type, kind, description, and location of the personal property of the judgment debtor is the exclusive duty of the judgment creditor. The execution must be directed to the sheriff, a constable, or a levying officer of the county and must be subscribed by the judge or clerk and bear the date of its issuance. The execution must contain the following information and may be in the following form:

IN JUSTICE/CITY COURT,, COUNTY, MONTANA

BEFORE JUSTICE OF THE PEACE

..... CITY JUDGE

.....)

.....) Case No.

Plaintiff)

vs.) EXECUTION

.....)

.....)

Defendant

THE STATE OF MONTANA TO THE SHERIFF, A CONSTABLE, OR A LEVYING OFFICER OF COUNTY:

WHEREAS, on the day of, 20..., recovered a judgment in the said Justice/City Court against as follows:

Original or Balance Due on Judgment in the amount of \$.....

Together with accrued interest at ...% per annum on the Judgment \$.....

Costs & Disbursements Accrued \$.....

Credits \$.....

Total sum due & owing at date of this execution \$.....

Together with all costs of execution (and) (or) for personal property described as follows:

.....

.....

(Attach description if necessary)

NOW, you, the sheriff, constable, or levying officer, are hereby required to make this sum due on the judgment or damages, with interest, costs, and accruing costs, to satisfy the judgment out of the PERSONAL PROPERTY of the debtor NOT EXEMPT FROM EXECUTION on the day on which the judgment was docketed in the county, or at any time hereafter, and return this writ not less than 10 days nor more than 120 days after the date of receipt.

Given under my hand this day of, 20.....

.....

Justice of the Peace or Clerk

.....

City Judge or Clerk.

D. RETURN OF EXECUTION.

The writ of execution shall remain in effect for 120 days from the date of receipt by the sheriff or levying officer and may be served multiple times during that period at the direction of the judgment creditor. The execution must be returned to the court:

- (1) not less than 10 days nor more than one-hundred twenty (120) days after receipt of the recovery by the sheriff or levying officer;
- (2) if the judgment creditor has requested the return of the writ.
- (3) at the written direction of the officer, agent, or attorney who sent the writ, the sheriff or levying officer may return the writ to the requesting party.

E. RENEWAL.

If a writ of execution is returned unsatisfied or partially satisfied, a new writ may be issued for the unsatisfied portion of the judgment, together with costs and interest. No new or additional writ may be issued until any outstanding issued writ, together with the return thereon, is returned to the issuing justice or city court.

F. SUPPLEMENTAL PROCEEDINGS.

Proceedings supplementary to execution set out in 25-13-502, 25-14-101 through 25-14-105, 25-14-107, and 25-14-108 are applicable to justice or city courts, the word "constable" being substituted for the word "sheriff" and the words "justice or city judge" being substituted for the word "judge".

Rule 24. Appeal to district court.

Appeals from a justice or city court to a district court are governed by Title 25, chapter 33, except that the undertaking on appeal, when the judgment is for the payment of money, may be in the form of an appeal bond or a deposit of money in a sum equal to the amount of the judgment, including costs.