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Montana Rules of Court

Title: Uniform Municipal Court Rules of Appeal to District Court

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MONTANA
UNIFORM MUNICIPAL COURT
RULES OF APPEAL TO DISTRICT COURT

I. APPLICABILITY OF RULES

Rule 1. Scope of rules--limitation of appeal.

(a) Rules govern procedure. These rules govern procedure for appeals in civil and criminal cases from a municipal court judgment or order to a district court. The party appealing is known as the appellant and the adverse party as the respondent.

(b) Limitation of appeals. Appeal from a municipal court judgment shall be limited by city ordinance in the following cases:

(1) In civil causes, the ordinance shall require that a minimum amount in controversy shall exceed \$1,000.00, before the district court has jurisdiction to hear the appeal.

(2) In criminal causes, the ordinance shall require that a minimum amount in controversy, fine or restitution shall exceed \$300.00 before the district court has jurisdiction to hear the appeal, except if the judgment includes incarceration, no minimum fine may be required for appeal.

(3) Appeals may be taken in criminal cases as provided in §§ 46-20-103 and -104, MCA.

(c) Local rules. No local rules shall be adopted in conflict with these rules.

Rule 2. District court review on appeal.

(a) Review limited to record. Appeal from a municipal court judgment is confined to the record and questions of law.

(b) Record on appeal. The record on appeal to the district court consists of an electronic recording or stenographic transcription of a cause tried, together with all papers filed in the cause.

Rule 3. Interests of justice.

Upon petition by an aggrieved party, the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

II. APPEALS FROM MUNICIPAL COURT JUDGMENTS

Rule 4. How appeals are taken.

(a) Filing notice of appeal. An appeal shall be taken by filing a timely notice of

appeal in the municipal court.

(b) Joint or consolidated appeals. Two or more persons with interests making joinder practicable, may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the district court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(c) Content of notice of appeal. The notice of appeal shall specify the party or parties taking the appeal; and shall designate the judgment, order or part thereof appealed from. Form 1 in the Appendix of forms is a suggested form of notice of appeal. An appeal shall not be dismissed for informality of form or title of the notice of appeal.

(d) Service of notice of appeal. The clerk of the municipal court shall serve a copy of the filing of notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant, or, if a party is not represented by counsel, to the party at the last known address of that party, and shall mail a copy of the notice to the clerk of the district court. The clerk of the municipal court shall note on each copy served, the date on which the notice of appeal was filed. If an appellant is represented by counsel, such counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or a party's counsel. The clerk shall note in the docket the names of the parties to whom the clerk mails copies, with the date of mailing.

(e) Appeal of protective order. Appeal of a protective order is governed by §§ 40-4-124 and 40-15-302, MCA.

(f) Appeal from judgment by default. There is no appeal from a judgment by default rendered in a municipal court except on questions of law which appear on the face of the papers or proceedings and except in cases when the municipal court has abused its discretion in setting aside or refusing to set aside a default or judgment.

Rule 5. Time for filing notice of appeal.

(a) Appeals in civil cases.

(1) Notice of appeal. In civil cases notice of appeal required by Rule 4 shall be filed with the clerk of the municipal court within 30 days after the rendition of the judgment.

(2) Undertaking. An appeal is not effective until an undertaking is filed as provided by these rules.

(3) Appeal of an order of protection. An order of protection made pursuant to §§ 40-4-121 or 40-15-201, MCA, is immediately reviewable by the district court upon filing the notice of appeal. No undertaking is required for an appeal from an order of protection.

(b) Appeal in criminal cases.

(1) Scope of appeal by state. The scope of appeal by the state is governed by § 46-20-103, MCA.

(2) Scope of appeal by defendant. The scope of appeal by the defendant is governed by § 46-20-104, MCA.

(3) Notice of appeal. In criminal cases an appeal from a judgment must be taken within 10 days. An appeal from an order or judgment under § 46-20-103, MCA, must be taken within 10 days.

(2) No undertaking required in criminal cases. No undertaking for costs is required for appeals in criminal cases.

Rule 6. Undertaking on appeal.

(a) Undertaking on appeal in civil cases.

(1) Except as provided in subsection (4), an appeal from a municipal court is not effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to twice the amount of the judgment, including costs, when the judgment is for the payment of money. The undertaking must be conditioned, when the action is for the recovery of money, that the appellant will pay the amount of the judgment appealed from and all costs if the appeal be withdrawn or dismissed or the amount of any judgment and all costs that may be recovered against appellant in the action in the district court.

(2) Except as provided in subsection (4), an appeal from a municipal court is not effectual for any purpose unless an undertaking be filed, with two or more sureties, in a sum equal to twice the value of the property, including costs, when the judgment is for the recovery of specific personal property. When the action is for the recovery of specific personal property, the undertaking must be conditioned that the appellant will pay the judgment and costs appealed from and obey the order of the court made therein if the appeal be withdrawn or dismissed or pay any judgment and costs that may be recovered against appellant in said action in the district court and obey any order made by the court therein.

(3) Except as provided in subsection (4), when the judgment appealed from directs the delivery of possession of real property, the execution of the same cannot be stayed unless a written undertaking be executed on the part of the appellant, with two or more sureties, to the effect that:

(A) during the possession of such property by appellant, appellant will not commit or suffer to be committed any waste thereon; and

(B) if the appeal be dismissed or withdrawn or the judgment affirmed or judgment be recovered against appellant in the action in the district court, appellant will pay the value of the use and occupation of the property from the time of the appeal until the delivery of

possession thereof or appellant will pay any judgment and costs that may be recovered against appellant in said action in the district court, not exceeding a sum to be fixed by the municipal court judge of the court from which the appeal is to be taken, which sum must be specified in the undertaking.

(4) When the appealing party is determined by the court to be indigent, the district court shall waive the undertaking requirements of this rule.

(5) The provisions of Rule 8 apply to a surety upon a bond given pursuant to this rule.

(b) Undertaking when prevailing party appeals. If the party in whose favor the judgment is rendered appeals, the undertaking must be in the sum of \$100 and conditioned upon the party paying all costs that may be awarded against appellant and obeying any order of court made in the action.

(c) Criminal cases. No undertaking for costs is required in appeals in criminal cases.

Rule 7. Stay of judgment pending appeal.

(a) Stay in civil cases.

(1) Stay of judgment or order. Except when an undertaking is required under Rule 6(a), upon filing a notice of appeal from a judgment or order the appellant may apply to the municipal court on notice or ex parte for a stay of the execution of the judgment or order. The municipal court in its discretion may grant said stay for such period of time and under such conditions as the court deems proper, including restraining the party from disposing of, encumbering, or concealing the party's property. The municipal court may require an appellant to file a bond or provide other security in such form and amount as it finds necessary to insure payment of costs on appeal in a civil case. The provisions of Rule 8 apply to a surety upon a bond given pursuant to this rule.

(2) Stay when undertaking filed. On the filing of the undertaking required under Rule 6, the municipal court must stay the execution of the judgment or order.

(3) Stay of execution when undertaking filed. If an execution be issued, on the filing of the undertaking, the municipal court judge must direct the execution officer to stay all proceedings on the same. Such execution officer must, upon the payment of his fees for services rendered on the execution, thereupon relinquish all property levied upon and deliver the same to the judgment debtor, together with all moneys collected from sales or otherwise. If his fees on the execution are not paid, the execution officer may retain so much of the property or proceeds thereof as may be necessary to pay the same.

(4) Sale of perishable property. If the judgment or order appealed from directs the sale of perishable property, the municipal court may order the property to be sold and the proceeds thereof to be deposited, to abide the judgment of the district court.

(b) Stay in criminal cases.

(1) Stay of imprisonment. If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment shall be stayed by the municipal court.

(2) Stay of fine and costs. If an appeal is taken, a sentence to pay a fine, or a fine and costs, shall be stayed by the municipal court.

(3) Application to the district court. On application, the district court in the interest of justice may suspend, modify, restore, or grant any order made under this rule.

(4) Effect of appeal by the state. An appeal taken by the state in no case stays or affects the operation of the judgment or order in favor of the defendant until judgment or order is reversed by the district court.

(c) Stay of protective orders. An appeal from a protective order does not stay or affect the protective order. On application, the district court may stay a protective order. The district court may require certain conditions be met to protect the alleged victim before issuing a stay of the protective order.

Rule 8. Sureties and their justification.

(a) Justification of sureties. The adverse party may except to the sufficiency of the sureties within 5 days after the filing of the undertaking, and unless they or other sureties justify before the municipal court judge or a judge of the district court of the county in which such action has been tried within 5 days thereafter, upon notice to the adverse party, to the amounts stated in their affidavits, the appeal must be regarded as if no such undertaking had been given. The sureties on the undertakings mentioned in this rule must justify as provided in § 33-26-102, MCA.

(b) Deposit of money in lieu of undertaking. Whenever an undertaking is required on appeal by the provisions of these rules, a deposit in the municipal court below of the amount of the judgment appealed from plus \$300 or, if the judgment is for the recovery of specific personal property, the value of the property plus \$300 or, if the party in whose favor the judgment is rendered appeals, \$100 is equivalent to filing the undertaking. The municipal court clerk shall transmit the money to the clerk of the district court, who shall pay it out on the order of the court.

(c) Waiver of undertaking. In all cases where an undertaking is required on appeal by the provisions of these rules, the undertaking or deposit may be waived by the written consent of the respondent.

(d) Defective undertaking. No appeal shall be dismissed for insufficiency of the undertaking thereon or for any defect or irregularity therein if a good and sufficient undertaking be filed in the district court at or before the hearing of the motion to dismiss the appeal, which undertaking must be approved by the district judge.

Rule 9. The record on appeal.

(a) Composition of the record on appeal. The record on appeal to district court consists of the notice of appeal, an electronic recording or stenographic transcription of the case tried, together with the judgment entered and all papers and exhibits filed in the municipal court.

(b) Transcript of the proceedings. The electronic recording of the trial or proceeding will not be transcribed before transmission to the district court, except as provided by Rule 10 (f) of these rules. If the proceedings were stenographically recorded the notes will be transcribed in full or in designated parts as stipulated by the parties. The appellant shall order from the reporter a transcript of the proceedings for transmission to the district court. The reporter shall certify the correctness of the transcript. Copies of the transcript shall be sent to all the parties. The appellant shall be liable for the costs of the transcript.

(c) Copies of electronic recording of proceedings. A party may request a copy of the electronic recording of the proceedings. Except as provided under subsection (d), the requesting party shall be liable for the costs of producing a copy of the electronic recording.

(d) Defendants in criminal cases without financial means--petition in municipal court.

(1) Upon imposition of any sentence in a criminal case, a defendant may file in the municipal court a petition requesting that the defendant be furnished with a copy of the electronic recording, or if an electronic recording was not made a transcription of the stenographic record, of the proceedings. The petition shall be verified by the petitioner and shall state facts showing that the petitioner is at the time of filing the petition without financial means to pay for the costs of reproducing the recording or pay for the transcript. If the municipal judge who imposed sentence finds that the defendant is without financial means with which to obtain a copy of the electronic recording, or pay for the transcript, the judge shall order the municipal clerk of court to deliver a copy of the electronic recording, or the transcript, to the defendant without charge.

(2) If the petition provided for in subsection (1) is denied by the municipal court, a petition to proceed may be filed in the district court within the time required for transmission of the record. The petition shall be accompanied by a copy of the verification filed in the trial court and a copy of the statement of reasons for denial given by the municipal court. The district court upon a finding that the defendant is without financial means, shall order the municipal clerk of court to deliver a copy of the electronic recording, or the transcript, to the defendant without charge.

(e) Statement of the evidence or proceedings when no record was made or when record is unavailable. If no electronic recording, or stenographic record, of the evidence or proceedings at a hearing or trial was made, or if the recording, or record, is unavailable, the appellant may, within 3 days from the hearing or trial or such time extended as the municipal

court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 3 days after service. Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the municipal court judge, and as settled and approved shall be included by the clerk of the municipal court in the record on appeal.

(f) Agreed statement as the record on appeal. In lieu of the record on appeal as defined in subdivision (a) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the municipal court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary to fully present the issues raised by the appeal, shall be approved by the municipal court and shall then be certified to the district court as the record on appeal and transmitted thereto by the clerk of the municipal court within the time provided by Rule 10.

(g) Correction or modification of record. If any difference arises as to whether the record truly discloses what occurred in the municipal court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation, or the municipal court, either before or after the record is transmitted to the district court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the district court.

Rule 10. Transmission of the record.

(a) Time for transmission--civil cases. The record on appeal shall be transmitted to the clerk of the district court within 10 days after the filing of the notice of appeal or within an extension by order entered under subdivision (g) of this rule. The appellant shall comply with Rule 9(b) and take any other action necessary to enable the clerk of the municipal court to assemble and transmit the record.

(b) Time for transmission--criminal cases. The record on appeal shall be transmitted to the clerk of the district court within 30 days after the filing of the notice of appeal or within an extension by order entered under subdivision (g) of this rule. The appellant shall comply with Rule 9(b) and take any other action necessary to enable the clerk of the municipal court to assemble and transmit the record.

(c) Duty of municipal court to transmit the record. When the record is complete for

purposes of appeal, the clerk of the municipal court shall transmit it to the clerk of the district court. The clerk of the municipal court shall forward the electronic recording of the case to the district court, together with all papers and exhibits filed, certified to be accurate and complete. When the record is received and filed with the clerk of the district court, the clerk of the district court shall notify the parties in writing.

(d) Electronic recording. The electronic recording will not be transcribed for transmission to the district court, except as provided by subdivision (f).

(e) Stenographic record. A stenographic record is not required. A stenographic record will not be transcribed if the proceedings have been electronically recorded. If no electronic recording of the proceedings was made and it was stenographically recorded, the clerk of the municipal court shall transmit the transcript of the case to the district court. The appellant shall order from the reporter a transcript of the proceedings for transmission to the district court. The reporter shall certify the correctness of the transcript. Copies of the transcript shall be sent to all the parties. The appellant shall be liable for the costs of the transcript.

If the transcript is not filed with the clerk of the municipal court within the time for transmission to the district court, or within an extension previously granted, the clerk of the municipal court shall forward to the district court the record of the case without the transcript.

(f) Duty of appellant. It is the duty of the appellant to perfect the appeal. The appellant may have parts or all of the electronic recording transcribed for transmission to the district court. The appellant shall be liable for the costs of the transcript. It is the duty of the appellant to present the district court with a record sufficient to enable it to rule upon the issues of law raised. Failure to present the district court with a sufficient record on appeal may result in dismissal of the appeal.

(g) Extension of time. The municipal court may extend the time for transmitting the record. The municipal court shall not extend the time to a day more than 30 days past the time for transmission of the record under this rule.

(h) Transmission effected. Transmission of the record is effected when the clerk of the municipal court mails or otherwise forwards the record to the district court. The clerk of the municipal court shall indicate, by endorsement on the record or otherwise, the date the record is transmitted to the district court.

(i) District court fees--civil cases. In a civil case appealed to the district court, the appellant within 5 days of the transmission of the record shall pay to the clerk of the district court the district court fee required under § 25-1-201, MCA. Upon the failure of the appellant to pay the district court fee the district court may order dismissal of the appeal, except for appeals in forma pauperis under Rule 11.

III. APPEALS IN FORMA PAUPERIS

Rule 11. Application and manner of proceeding.

(a) Application to municipal court. A party in a civil case who desires to proceed on appeal in forma pauperis shall file in the municipal court a motion for leave so to proceed together with an affidavit showing, in the detail prescribed by Form 2 of the Appendix of Forms, the party's inability to pay the fees and costs of the appeal or to give security therefor, the party's belief that the party is entitled to redress, and a statement of the issues the party intends to present on appeal. If the motion is granted, the party may proceed on appeal without further application to the district court and without payment of fees or costs or the giving of security therefor. If the motion is denied, the municipal court shall state the reasons for the denial.

(b) Application to the district court. If the motion for leave to proceed on appeal in forma pauperis is denied by the municipal court, a motion for leave so to proceed may be filed in the district court within 10 days after entry of the order of denial. The motion shall be accompanied by a copy of the affidavit filed in the municipal court and of the statement of reasons for denial given by the municipal court.

IV. GENERAL PROVISIONS

Rule 12. Filing and service.

(a) Filing. Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing.

(b) Service of all papers required. Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for such party on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

(c) Manner of service. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) Proof of service. Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such

to be filed promptly thereafter.

(e) Number of copies to be filed. A signed original shall be filed with the clerk of the district court unless otherwise ordered by the court.

Rule 13. Form of briefs.

(a) Brief of appellant. The requirement of appellant's brief is fulfilled by a simple written memorandum or statement setting forth the judgment or order appealed from, the facts relevant to the issues presented for review, the points of error for the appeal, special points and legal authorities desired to be brought to the attention of the district court, and a short conclusion of the relief sought.

(b) Answer brief of respondent. The answer brief of the respondent shall conform to the requirements of subsection (a), except that a statement of the facts or issues need not be made unless the respondent is dissatisfied with appellant's statements.

(c) Reply brief. The appellant may file a brief in reply to respondent's answer. The reply brief must be confined to new matter raised in the brief of respondent. No further briefs may be filed except with leave of the district court.

(d) Length of briefs. Except by permission of the district court briefs shall not exceed 10 pages.

(e) Form and quality. All briefs shall be written in ink or typed on a good grade of white paper 8½" by 11" in size. On the first page of the brief shall appear the title of the district court; the title of the municipal court appealed from, adding to the words "Plaintiff" and "Defendant," the words "Appellant" and "Respondent" as the case may require; the title of the brief as "Appellant's Brief" or "Respondent's Brief" as the case may be; and the names, addresses and telephone numbers of the attorneys, or the parties if pro se. Form 4 is a suggested form of the first page of a brief.

(f) Brief references and abbreviations. References in the brief to the record must be specific as to the particulars and their location in the record. Reference to a stenographic record must be made to the specific page of the transcription. Reference to an electronic record must be made to its location on the electronic recording by an accurate recorder counter number. In the discretion of the district court, it may require parts or all of an electronic recording transcribed, and attached as part of the brief. References to exhibits shall be made to the specific page or location in the record where the exhibit was identified, offered, received or rejected. Understandable abbreviations may be used in the brief.

Rule 14. Filing and service of briefs.

(a) Time for filing briefs. The appellant shall serve and file a brief within 15 days after the date on which the record is filed. The respondent shall serve and file an answer

brief within 15 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 10 days after the brief of the respondent. The district court may extend the time for filing a brief. The request for extension must be made within the time originally prescribed or within an extension previously granted.

(b) Number of copies to be filed and served. A signed original brief and one copy shall be filed with the clerk of the district court. A copy of each brief shall be served upon all other parties to the appeal.

(c) Consequences of failure to file brief. Except for subsection (d), if an appellant fails to file a brief within the time provided by this rule, or within the time extended, the appeal shall be deemed without merit and subject the appeal to summary dismissal by the district court. Failure to file an answer brief by the respondent shall be deemed an admission that the appeal is well taken and subject to summary ruling by the district court. Reply briefs are optional and failure to file will not subject the appeal to summary ruling.

(d) Protective orders. No briefs shall be required upon filing a notice of appeal or notice of removal pursuant to §§ 40-4-124 or 40-15-302, MCA, except upon order of the district court.

Rule 15. Time for decision and oral argument.

(a) District court's time for decision. The district court shall consider and decide appeals brought under these rules within a reasonable period of time after the filing of the reply brief permitted.

(b) Decision. The district court shall render a decision upon the record and briefs on appeal. The district court may affirm, reverse, or amend any appealed order or judgment and may direct the proper order or judgment to be entered or direct that a new trial or further proceeding be had in the municipal court from which the appeal was taken. The decision of the district court may be by order or by memorandum opinion. Form 3 in the Appendix of Forms is an example of disposition by order.

(c) Oral argument. Oral argument shall not be held except on order of the district court.

(d) Protective orders. A municipal court order issued pursuant to §§ 40-4-121 or 40-15-201, MCA, is immediately reviewable at chambers by the district court upon filing a notice of appeal. The district court may affirm, dissolve, or modify an order of the municipal court.

Rule 16. Dismissal of appeal civil actions--costs and damages.

(a) Dismissal of appeal upon delay--costs and damages. For failure to prosecute an appeal or unnecessary delay in a civil action, the district court may order the appeal

dismissed, with costs, and if it appears to the district court that the appeal was made solely for delay, the district court may add to the costs such damages as may be just, not exceeding 25% of the judgment appealed from.

(b) Attorney fees and costs when appeal unsuccessful.

(1) In a civil action if the party appealing fails to reduce the judgment against him or to enlarge the judgment in his favor appealed from \$10 or more or reverse the same in the district court, he shall not recover any costs of appeal.

(2) In a civil action if the parties are represented by counsel on appeal, the district court may grant the prevailing party reasonable attorney fees, in addition to costs.

Rule 17. Effect of dismissal.

The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from, unless the dismissal is expressly made without prejudice to another appeal.

Rule 18. Notice and copy of decision--remittitur.

(a) Notice and copy of decision to be furnished. Upon the decision of a cause, notice thereof, together with a copy of the court's written order or opinion, will immediately be mailed to each party or their counsel.

(b) Remittitur--when issued--when copy of opinion to accompany. Remittitur may, in cases where it is deemed proper, be ordered forthwith; otherwise the same shall be issued promptly upon expiration of the time for filing appeal to the Montana Supreme Court. A copy of the order or opinion must accompany the remittitur when the judgment or order of the trial court is reversed or modified and the case remanded for further proceedings other than the entry of a final judgment or order terminating the proceedings in the trial court.

Rule 19. Motions.

All motions to the court for an order shall be in writing and served upon all parties to the appeal or their counsel.

Rule 20. Computation and extension of time.

(a) Computation of time. When the computation of any period of time prescribed or allowed by these rules is by order of court or by an 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 shall be included unless it is a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is 10 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded.

(b) Extension. The district court for good cause shown may upon motion extend the

time prescribed by these rules or by its order for doing any act, and may thereby permit an act to be done after the expiration of such time if the failure to act was excusable under the circumstances; except the time for filing a notice of appeal shall not extend more than 10 days past the time prescribed for filing a notice of appeal under Rule 5. The motion must be made before the expiration of the period originally prescribed or extended by previous order of the court.

(c) Additional time after service by mail. Whenever a party is required or permitted to do any act within a prescribed period after service of a notice or other paper and the notice or other paper is served by mail, 3 days shall be added to the prescribed period.

Rule 21. Voluntary dismissal.

If the parties to an appeal or other proceeding shall sign and file with the clerk an agreement that the proceeding be dismissed, specifying the terms as to payment of costs, and shall pay whatever fees are due, the clerk shall enter the case dismissed, and shall give to each party a copy of the agreement filed; but no mandate or other process shall issue without an order of the court. An appeal may be dismissed on motion of the appellant upon such terms as to costs as may be agreed upon by the parties or fixed by the court. If an appeal has not been docketed the appeal may be dismissed by the court from which the appeal was taken upon the filing in that court of a stipulation for dismissal signed by all parties, or upon motion and notice by the appellant. The clerk of the municipal court shall mail a copy of the order of dismissal to the clerk of the district court.

Rule 22. Title.

These rules shall be known as the Uniform Municipal Court Rules of Appeal to District Court and may be cited as U.M.C.R.App.

APPENDIX OF FORMS

FORM 1. NOTICE OF APPEAL TO A DISTRICT COURT FROM A JUDGMENT OR ORDER OF A MUNICIPAL COURT.

IN THE MUNICIPAL COURT OF THE CITY OF _____, IN THE
COUNTY OF _____, STATE OF MONTANA

A.B., Plaintiff,

vs.

Notice of Appeal

C.D., Defendant.

Notice is hereby given that C.D., defendant/plaintiff above-named, hereby appeals to
the _____ district court in the county of _____, state of Montana
(from the final judgment) (from the order) (describing it) entered in this action on the _____
day of _____, 19____.

Dated: _____, 19__.

(S)

Appellant or
Attorney for Appellant

FORM 2. AFFIDAVIT TO ACCOMPANY MOTION FOR LEAVE TO APPEAL IN
FORMA PAUPERIS.

IN THE MUNICIPAL COURT OF THE CITY OF _____, IN THE
COUNTY OF _____, STATE OF MONTANA

A.B., Plaintiff,
vs.
C.D., Defendant.

AFFIDAVIT IN SUPPORT OF APPLICATION
TO PROCEED ON APPEAL WITHOUT
PREPAYMENT OF COSTS

I, _____, being first duly sworn, depose and say that I am the
_____ in the above-entitled case; that in support of my application to proceed on
appeal without being required to prepay fees, costs or give security therefor, I state that
because of my poverty I am unable to pay the costs of said proceeding or to give security
therefor; that I believe I am entitled to redress; and that the issues which I desire to present
on appeal are the following:

I further swear that the responses which I have made to the questions and instructions
below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed?
 - a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.
 - b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.
2. Have you received within the past 12 months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?
 - a. If the answer is yes, describe each source of income, and state the amount received from each during the past 12 months.
3. Do you own any cash or checking or savings account?
 - a. If the answer is yes, state the total value of the items owned.
4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?
 - a. If the answer is yes, describe the property and state its approximate value.
5. List the persons who are dependent upon you for support and state your relationship to those persons.
6. List all your debts and moneys owed.

I understand that a false statement or answer to any question in this affidavit will subject me to penalties for perjury.

Signature of Applicant

Subscribed and sworn to before me this ____ day of _____, 19 ____.

Notary Public

ORDER

Let the applicant proceed without prepayment of costs.

DATED: _____

Municipal Court Judge

OR

The applicant's application to proceed without prepayment of costs is denied for the reason [state reason for denial]

DATED: _____

Municipal Court Judge

FORM 3. DISPOSITION OF APPEAL BY ORDER.

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY.

A.B., Plaintiff and Respondent,

vs.

ORDER

C.D., Defendant and Appellant.

The court having considered the appeal in this case, the (final judgment) (order) (describing it) entered by the municipal court in this action on the _____ day of _____, 19____ is [affirmed.] [the appeal is dismissed for (describe the reason)] [reversed and remanded to the municipal court for (describe action to be taken)] [amended as follows (describe amendment)].

[DATED AND SIGNED]

FORM 4. PAGE ONE OF BRIEF.

MONTANA _____ JUDICIAL DISTRICT COURT, _____ COUNTY

A.B., Plaintiff and Respondent,

vs.

C.D., Defendant and Appellant

Cause No. _____

District Judge: _____

BRIEF OF APPELLANT

ON APPEAL FROM THE MUNICIPAL COURT OF THE CITY OF _____, IN
THE COUNTY OF _____, STATE OF MONTANA, Municipal Judge
_____ Presiding, Cause No. _____

Name of Attorney/Party

Address

City, State Zip

Telephone No.

Attorney for Defendant and Appellant
[or Defendant and Appellant, Pro Se]

Name of Attorney/Party

Address

City, State Zip

Telephone No.

Attorney for Plaintiff and Respondent
[or Plaintiff and Respondent, Pro Se]