

## MONTANA SIXTH JUDICIAL DISTRICT COURT RULES

### PARK AND SWEET GRASS COUNTIES

These rules supplement the Montana Rules of Civil Procedure ("MRCP"), the Uniform District Court Rules ("UDCR"), and applicable statutory and case law.

#### RULE 1 - ASSIGNMENT OF CASES

The District Court of the Sixth Judicial District has assumed full jurisdiction of all cases on file with the Sixth Judicial District in Park and Sweet Grass Counties as of January 3, 1995, except for those cases which the Court elects to transfer to outside Courts where grounds for judicial disqualification exist or those in which the presiding Court is disqualified by one of the parties thereto within the time allowed by law. In addition, the Court may assign existing cases to outside Courts in those cases where such assignment is required in the interest of judicial economy.

#### RULE 2 - LAW AND MOTION

A. Monday/Tuesday. Mondays are law and motion days in Park County, and the second and fourth Tuesdays of each month are law and motion days in Sweet Grass County. Court shall convene on law and motion day at 9:00 a.m. in Livingston and 9:30 a.m. in Big Timber. When law and motion days fall on an official holiday, the law and motion calendar shall (be held on the following working day) be continued to the next scheduled law and motion day.

B. Uncontested Matters. All uncontested matters, judgments by default, probate proceedings, and other matters pertaining to questions of law not involving contested questions of fact shall be heard on law and motion days. Contested matters involving questions of fact will not be heard on law and motion day without written approval of the Court but will be set as to day and time by order of Court as provided in Rule 3.

C. Open Court. All matters presented to the Court shall be heard in open court, except for adoption hearings (Section 42-5-105, MCA), hearings and trials under the Uniform Parentage Act (Sections 40-6-111 and 40-6-120 MCA), and those other matters required to be closed by law or allowed to be closed in the interests of justice.

D. Calendar Preparation. Counsel must notify the Park County Clerk of Court, and opposing counsel by 10:00 a.m. each Thursday of matters to be placed on the law and motion calendar or set for hearing the following week. The matters filed shall be listed by the Clerk on a weekly law and motion calendar in the following order: 9:00 a.m.-- criminal matters; 10:00 a.m.-- adoption, probate and miscellaneous civil matters; and 10:30 a.m.-- youth court matters. Counsel must notify the Sweet Grass Clerk of Court by noon on Friday of matters to be placed on the law and motion calendar of the following Tuesday on which the Court will be in session. Matters to be heard in Sweet Grass County shall be set by the Clerk of Court.

E. Contested Matters. Any matter set for the law and motion calendar which proves to be contested is subject to postponement and shall be set on the contested calendar.

F. Document Presentation. No matter may be placed on the law and motion calendar until the motion or other documentation and all relevant supporting documents have been filed with the Clerk.

G. *Ex Parte* Matters. *Ex parte* motions are not favored. Emergency matters requiring the Court's attention may be mailed or delivered to the court with a request for the Court's immediate attention. No *ex parte* matter will be considered if the opposing party is represented by counsel or if the opposing party's location is known but that party has not been served. No *ex parte* family law matters will be considered without demonstrating clear and convincing evidence of imminent physical or mental harm. Any *ex parte* motion must be accompanied by a proposed order setting a time and date for further hearing.

#### RULE 3 - MOTIONS, BRIEFS, AND HEARINGS

A. Motion Procedure. All motions filed shall be ruled on pursuant to Rule 2, UDCR. All procedural motions shall be accompanied by a proposed Order.

B. Oral Arguments. Oral Arguments on motions under Rule 56, MRCP are waived unless a party requests a hearing within 14 days after the time for filing a reply brief has expired. Oral argument will be set only by Court order and at the Court's discretion. Oral arguments on all other motions must be requested by a party, or the court shall rule on written documents alone.

i) If a motion is not ruled upon within thirty (30) days of the date the motion and all supporting and opposing briefs are fully submitted for ruling, counsel may request that the Court review the motion.

ii) Counsel shall include with their motion a proposed Order granting oral argument if such is desired. In the event the Court determines that oral argument would be beneficial to ruling on a motion and orders oral argument, the moving party has the duty to obtain a hearing date and schedule such argument with the Court Administrator. The proposed Order granting oral argument shall include the date and time of argument or blanks for the Court to fill in the date and time.

iii) Counsel shall include with all motions a proposed Order for the Court's signature as stated in Rule 3A. All proposed Orders should also be e-mailed as attachments in either Word or WordPerfect format to the Court Administrator.

C. Continuances. Scheduled hearings on motions pending may be continued by the Court, on its own initiative, or upon the written motion of any party, with prior notice to all parties. All motions must be accompanied by an appropriate order for the Court's approval. All proposed Orders should also be e-mailed as attachments in either Word or WordPerfect format to the Court Administrator.

D. Petitions to challenge license revocation or suspension pursuant to §61-8-403, M.C.A. When a petition to challenge a driver's license suspension or revocation is filed and, as a part of the petition, a request is made by petitioner, pursuant to §61-8-403(3), M.C.A., to return his or her driver's license pending the hearing, the request will indicate whether the petitioner has had any prior DUI or *per se* convictions and when they occurred.

#### RULE 4 - ORDERS, JUDGMENTS, OR DECREES

A. The party obtaining any Civil order, judgment, or decree must present the same in written form for the signature of the Court at the time of applying for the Order, Judgment, or Decree. When directed by the Court to prepare an order after hearing, the moving party shall prepare the order, unless another party is designated by the Court. Interlocutory orders must be circulated to all counsel, (or unrepresented parties), prior to presentation to the Court. Final orders must be circulated to all counsel, (or unrepresented parties), at least five (5) working days prior to presentation to the Court to allow for comment or objection. A notice of entry of judgment must be sent to the last known address of the parties in all cases, including joint dissolution proceedings and default judgments. All proposed Orders should also be e-mailed as attachments in either Word or WordPerfect format to the Court Administrator.

B. Two (2) copies of any order to show cause, temporary restraining order, or like order shall be presented to the Court for signature. One shall be signed by the Court as an original order. One shall be conformed as part of the court files, and the other used for the purpose of making service. All proposed Orders should also be e-mailed as attachments in either Word or WordPerfect format to the Court Administrator.

C. No Appearance by Party Required: No personal appearance by the parties shall be required in the following cases and under the circumstances specified:

1. Quiet Title Actions- Where facts are uncontroverted and an affidavit of the salient facts has been filed with the Court and the opponents are in default.

2. Probate of Estates- Where proper documentation has been supplied and there is no objection from any interested party.

3. Dissolutions- a) Where both parties are represented by counsel or there is written certification that the opposing party recognizes that counsel is appearing only for one party and nonetheless decides to proceed without counsel; or b) both parties file a waiver of appearance; and c) there are notarized written agreements on all issues; and d) a completed Vital Statistics form, judgment fee and proposed order accompanies documents.



Clerk of Court shall file the original forthwith.

C. Discovery. Pursuant to Rule 4, UDCR, no discovery documents shall be filed with the Clerk of Court without prior leave of the Court. Upon receipt of a deposition, the Clerk of Court shall mark it received and place it in the court file.

D. Jury Demands. When a demand for a jury trial is incorporated in a pleading, parties shall so indicate in the title as well as the body of the pleading.

E. Striking Pleadings. Any papers filed which do not conform to Rule 10 or 11, MRCP, may be stricken by the Court, on its own initiative and upon such terms as to the Court may appear just.

F. Orders. When any written order or judgment is made by the Court, it must immediately thereafter be presented to the Clerk for filing.

G. Brief Deadlines. All briefs required by rule, statute, or Court order to be filed by a date certain shall be filed by 5:00 p.m. by the date certain. Except where approval from the Court is obtained prior to the date certain, and notice thereof is provided to each party by the party seeking an extension of time, filing beyond the date certain may result in the Court's disregarding the brief and citing the delinquent party's attorney for contempt.

H. Length of Briefs. No brief shall exceed 20 pages in length, exclusive of indices and appendices, without prior leave of the Court.

I. E-mail Address. Counsel shall include an e-mail address for themselves or their firm on all filings.

J. Telefax Filings. Counsel shall not submit documents to the Clerk of District Court by telefax absent actual emergency. Inability to submit a document by a previously Court-ordered deadline shall not be considered an emergency.

### **RULE 11 - ALTERNATE DISPUTE RESOLUTION**

A. Settlement Conference or Mediation Required. In each civil case subject to a Scheduling Order pursuant to Local Rule 6, a master-supervised Settlement Conference or Mediation is required, unless a stipulation executed by all counsel of record and any unrepresented party is filed with and approved by the Court waiving a Settlement Conference or Mediation. The Settlement Conference or Mediation shall be addressed in the Scheduling Order prepared and issued in accordance with Local Rule 6. The purposes of such conferences are to: (1) facilitate (but not coerce) settlement; (2) lessen congestion of the trial calendar; and (3) reduce the cost of litigation by providing a means to resolve contested cases prior to final trial preparation.

The Clerk of District Court shall maintain a list of Court-approved Settlement Masters and Mediators.

B. Report of the Settlement Master or Mediator. Within five (5) days of the completion of the Settlement Conference or Mediation, the Settlement Master or Mediator shall submit a report indicating that the conference was held and describing the issues that were settled, if any. The report shall be filed with copies to the Court, all counsel of record, and any parties not represented by counsel. In the event that the case is not fully settled, the form shall also state the following information obtained from counsel for the parties and any unrepresented party:

- (1) the length of time anticipated to be necessary for trial;
  - (2) dates counsel or key witnesses are legitimately unavailable for trial;
  - (3) any special requests or needs regarding trial scheduling; and
  - (4) whether there is still a reasonable prospect for settlement.
- Cases will be set for trial upon motion of any party after submission of the Settlement Master's report.

C. Proceedings Confidential. No person present at a Settlement Conference or Mediation, including the Settlement Master or Mediator, shall be subject to examination concerning statements made by any person at the Settlement Conference or Mediation. The parties will not subpoena or otherwise require the Settlement Master or Mediator to testify regarding the Settlement Conference or Mediation or the Settlement Master's or Mediator's opinions regarding the case.

### **RULE 12 - TRIALS**

A. Trial Settings. Non-jury trials shall be scheduled by the Court throughout the year as time is available. Jury trials shall be held throughout the year, except during the last half of December.

B. Criminal Trial Settings. The first three weeks of March, June,

September and December shall be set aside for criminal trials. The County attorney's office will provide the court with a list of all criminal matters ready for trial and trials shall be set for the next available criminal trial period.

C. Jury Instructions. Proposed instructions to the jury in a civil action shall be presented to the Court and served upon each adverse party as stated in the jury trial preparation order. The original and one copy of each instruction proposed must be furnished to the Court. The Court's working copy of each instruction shall indicate the party on whose behalf it is requested, be numbered consecutively, and, on an attached page, contain reference to the source thereof, and a citation of authority, if any, supporting the statement of law therein. The Court may receive additional proposed instructions relating to questions arising during the trial at any time prior to completion of settlement of jury instructions. Proposed forms of verdict must be submitted by each party at the same time and in the same manner as the jury instructions. The Court requests that each party submit proposed jury instructions to the Court Administrator via e-mail attachment in either Word or WordPerfect format.

### **RULE 13 - POSTPONEMENT OF TRIALS**

A. Absence of Witness or Evidence. Pursuant to Section 25-4-501 MCA, a motion to postpone or continue a trial on the grounds of absence of a witness or evidence shall be made upon affidavit showing: (1) the nature and materiality of the expected testimony or evidence; (2) that diligent effort was timely made to secure the witness or the evidence; and (3) that reasonable grounds exist for the production of the witness or evidence if postponement or continuance is granted. If the testimony or the evidence would be admissible upon the trial and the adverse party stipulates that it shall be considered as actually given on the trial, there shall be no postponement or continuance unless, in the opinion of the Court, a trial without the witness or evidence would work an injustice on the moving party.

B. Late Continuances. If any action set for a jury trial is continued within 96 hours of the trial date the Court may require the moving party to reimburse the Clerk of Court for any expenditures incurred by the Clerk of Court.

### **RULE 14 - VOIR DIRE**

A. Length. The length and conduct of voir dire examination shall not exceed one (1) hour per side without prior leave of the Court.

B. Questioning. Only one attorney for each party shall be allowed to question the prospective jurors on voir dire.

C. Purpose. The only proper purpose of voir dire is to select a panel which will fairly and impartially hear the evidence presented and render a just verdict, and to determine the grounds for any challenge for cause. Accordingly, the Court in exercising its discretion may discourage counsel from:

- (1) Asking questions of an individual juror that are susceptible of being asked collectively;
- (2) Asking questions covered by and answered in the juror questionnaire, except to explore some answer in greater depth;
- (3) Repeating questions asked and answered;
- (4) Using voir dire for the purpose of attempting to instruct the jury on the law;
- (5) Using voir dire for the purpose of arguing the case; or
- (6) Asking a juror what his verdict might be under any hypothetical situation based upon expected evidence or otherwise.

### **RULE 15 - ATTORNEYS**

A. Attorneys of Record. Unless appearing specially on behalf of one of the attorneys of record, no attorney, unless the attorney's name appears on the pleadings in the case, may participate in any proceedings in the case until the attorney's name has been entered of record.

B. Authority as Attorney. In case of a dispute over the authority of an attorney to represent a party to a proceeding pending before the Court, the Court will not recognize the right of the attorney to appear in such proceedings unless said attorney has an agreement in writing, signed by the client and filed in the record of the case, or unless the party has personally signed the pleadings by virtue of which the attorney appears therein.

C. Withdrawal by Attorney. Except as provided in Rule 15.F. herein, no attorney may withdraw from any case except by consent of



residential parent should be the base-line standard for both parents and any step-parents, and consistently enforced by all, so that the children do not receive mixed signals.

When a parent is granted parenting time, the parent is expected, by the child(ren), the other parent, and by the Court, to exercise that parenting time.

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. In Montana grandparents have a legal right to reasonable visits with their grandchildren, if it is in their best interests. Usually the children will visit with the paternal relatives during times the children are with their father and with the maternal relatives during times they are with their mother.

1.1 Parental Communication. Parents should always keep each other advised of their home and work addresses and telephone numbers. As far as possible, all communication concerning the children shall be conducted between the parents themselves in person, or by telephone at their residences and not at their places of employment.

1.2 Grade Reports and Medical Information. The residential parent shall provide the non-residential parent with grade reports and notices from school as they are received and both parents shall have the right to communicate concerning the child directly with the school and with the children's doctors and other professionals outside the presence of the other parent. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. The residential parent shall notify the non-residential parent of all school or other events (like Church or Scouts) involving parental participation. If the child is taking medications, the residential parent shall provide a sufficient amount and appropriate instructions for its use during the non-residential parent's parenting time.

1.3 Children's clothing for Parenting Time. The residential parent shall send an appropriate supply of children's clothing with them, which shall be returned clean (when reasonably possible), with the children, by the non-residential parent. The non-residential parent shall advise, as far in advance as possible, of any special activities so that the appropriate clothing may be sent.

1.4 Withholding Support or Parenting Time. Neither parenting time nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and parenting time, neither of which is dependent upon the other. In other words, no support does not mean no parenting time and no parenting time does not mean no support. If there is a violation of either a parenting or support order, the exclusive remedy is to apply to the court for appropriate sanctions.

1.5 Adjustments in the Parenting Time Schedule. Although there may be a specific court-ordered parenting time schedule, the parties are expected to fairly modify parenting time when family necessities, illnesses or commitments reasonably so require. The requesting parent shall act in good faith and give as much notice as circumstances permit.

1.6 Residential Parent's Vacation. Unless otherwise specified in a court order or agreed by the parties, the residential parent is entitled to a vacation with the children for a reasonable period of time, usually equal to the vacation time the non-residential parent takes with the children. The residential parent should plan a vacation during the time when the non-residential is not exercising extended parenting time, if possible.

1.7 Insurance Forms. The parent who has medical insurance coverage on the children shall supply, as applicable, insurance forms and a list of insurer- approved or HMO-qualified health care providers in the area where the other parent is residing. A parent who, except in an emergency, takes the children to a doctor, dentist or other provider not so approved or qualified should pay the additional cost thus created. However, when there is a change in insurance which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parties to what is more important: allowing the child to remain with the original provider or the economic consequences of changing. When there is an obligation to pay medical expenses, the parent responsible therefor shall be promptly furnished with the bill by the other. The parents shall cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the

balance of the bill shall make arrangements directly with the health care provider and shall inform the other parent of such arrangements. Insurance refunds should be promptly turned over to the parent who paid the bill for which the refund was paid.

1.8 Child Support Abatement. Unless a court order otherwise provides, support shall not abate during any parenting time.

1.9 Missed Parenting Time. When scheduled parenting time cannot occur due to events beyond either parents' control, such as illness of the parent who should have parenting time, or the child, a mutually agreeable substituted parenting time date shall be arranged, as quickly as possible. Each parent shall timely advise the other when a particular parenting time cannot be exercised. Missed parenting time should not be unreasonably accumulated.

1.10 Parenting Time a Shared Experience. Because it is intended that parenting time be a shared experience between siblings and, unless these Guidelines, a court order, or circumstances, such as age, illness, or the particular event, suggest otherwise, all of the children shall participate in any particular parenting time.

1.11 Telephone Communication. Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. The residential parent may call the children at reasonable hours during those periods the children are with the non-residential parent. The children may, of course, call either parent at reasonable hours during those periods the children are with the other parent. If the call initiated by the children is long distance, it shall be at the cost of the parent called. During long vacations the parent with whom the child is on vacation is only required to make the child available for telephone calls every five days. At all other times the parent the child is with shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned. Parents should agree on a specified time for calls to the children so that the children will be made available.

1.12 Mail Contact. Parents have an unrestricted right to send cards, letters and packages to their children. The children also have the same right with their parents. Neither parent should interfere with this right.

1.13 Privacy of Residence. A parent may not enter the residence of the other except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, the children shall be picked up and returned to the front entrance of the appropriate residence, unless the court has ordered a different transfer point. The parent dropping the children off should not leave until the children are safely inside. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is their own, and the children's time with that parent is equally private.

E. Parental Change of Residence. The provisions of Section 40-4-217, M.C.A. shall be followed with regard to parental changes of residence. If parenting time is disputed after the notice of intent to re-locate is filed, the parties shall mediate parenting time immediately, or at least 15 days before moving. A move involving relocation of the child(ren) which is opposed by the other parent shall be evaluated under the best interests of the child criteria. In addition, the Court shall consider the following:

- a. The parent's good faith in moving, including timeliness in disclosing the proposed move to the other parent;
- b. The possibility of devising a visitation schedule that will allow meaningful contact with the non-custodial parent; and
- c. The quality of life in the proposed new community.

F. Notice to Child Support Enforcement. The party commencing an action for dissolution of marriage, legal separation, child support, invalidation of marriage, or modification of child support, at the time the proceeding is begun, shall include in the petition a statement as to whether any of the children involved are at that time recipients of or applicants for public assistance. Upon filing of a complaint or petition which indicates the children involved are at that time recipients of or applicants for public assistance, the counsel for that party shall immediately notify the Child Support Enforcement Bureau in writing of the pending action and file proof of such notice with the Clerk of Court.

G. Execution for Support Payments. The Clerk of Court shall not issue any execution for support or alimony payments due under any decree of divorce without prior approval of the Court. Executions will not be issued unless supported by an affidavit affirmatively showing that the parties have not entered into any arrangements not contemplated by the



**RULE 28 - WEAPONS**

Only on-duty law enforcement officers or court security personnel shall be entitled to bring or carry firearms, knives, or other weapons in Park or Sweet Grass County Court. Anyone wishing to enter the courtroom may be required to submit to a search of his person or belongings by security personnel.

**RULE 29 - PROBATE FEES**

Attorney fees in informal probate matters will not be fixed by the Court, unless there is a disagreement between the attorney and the personal representative. Should there be a disagreement, either party may present the matter to the Court after giving proper notice and a hearing shall be conducted thereon.

**RULE 30 - SIX-PERSON JURIES**

Pursuant to Section 3-15-106, MCA, in all civil actions where the relief sought in the complaint is under the sum of Ten Thousand Dollars (\$10,000.00), the trial jury shall consist of six persons. The Court shall encourage the parties to stipulate to six-person juries in other civil cases where appropriate.

**RULE 31 - ESTATES TO BE CLOSED WITHIN TWO (2) YEARS, CLERK'S DUTIES**

In estate matters the Clerk shall notify the attorney of record ninety (90) days before the expiration of the two (2) year period following the appointment of the personal representative that it shall be called to the attention of the Court so that the Court may order the personal representative and his attorney to appear and show cause why the estate has not been closed, Section 72-3-1015, MCA. The Clerk of the District Court shall mail to the attorney of record the following notice:

MONTANA SIXTH JUDICIAL DISTRICT COURT  
PARK/SWEET GRASS COUNTY

IN THE MATTER OF	)	
THE ESTATE OF	)	Probate No.
_____	)	
Deceased.	)	NOTICE
_____	)	

Pursuant to Rule 31 of the Rules of Court for the Sixth Judicial District, notice is hereby given that in the absence of good cause shown to the Court, the above entitled matter will be called to the attention of the Court and the estate representative and heirs on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, as to why the estate has not been completed.

DATED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Clerk of Court

By \_\_\_\_\_ Deputy Clerk

**RULE 32 - WITNESSES**

A. Subpoena Duces Tecum. A subpoena duces tecum may be issued for only such material as is relevant and material. All subpoenas shall be issued in accordance with Rule 45, M.R.Civ.P.

B. Examination Limited. On the examination of witnesses, only one attorney upon each side will be permitted to examine or cross-examine the same witness, except by permission of the Court first asked and obtained.

C. Discharge of a Witness. A party having a witness subpoenaed in a civil cause may discharge the witness by motion made in open court. If an adverse party desires such witness to remain, the adverse party must procure the witness's further attendance by subpoena or order of the Court, and shall thereafter be responsible to the witness for the fees.

**RULE 33 - JUDGMENT ON WRITTEN INSTRUMENT**

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

**RULE 34 - PRIORITY RANKING OF PAYMENT OF FINES AND FEES**

Unless otherwise specifically order by the Court in a judgment regarding punishments imposed on a convicted criminal defendant, the Clerk of Court shall establish separate accounts for all categories of payment ordered by the Court and distribute payments received from the defendant to these accounts in the following priority order:

- A. Surcharges and Fees
- B. Public Defender
- C. Fines
- D. If Restitution ordered:
  - 1) Restitution- 50%
  - 2) Surcharges, fees and fines 50%.

Where ordered by the Court, restitution to the victim should be paid separately from the above listed fees and fines in the highest priority category.

**RULE 35 - DISMISSAL OF ACTION FOR LACHES**

The Clerk of Court will bring to the attention of the Court on a quarterly basis those actions which the pleadings show to have been at issue for more than three (3) years. Periodically, the Court will review the status of civil cases and request status reports. Parties are to comply with such request within 20 days in writing. In the event parties do not comply, the Court may dismiss the matter or issue further appropriate orders.

*Effective March 1, 2012*

~ Rule Section ~