MONTANA NINTH JUDICIAL DISTRICT COURT RULES

TETON, TOOLE, GLACIER and PONDERA COUNTIES

Rule 1 - Scope

These Rules govern the procedure in the District Court of the Ninth Judicial District of the State of Montana. They shall be construed to secure the just, speedy and inexpensive determination of every action.

These Rules supplement the Montana Rules of Civil Procedure, Uniform District Court Rules, statutes related to Criminal Procedure and other applicable provisions of Montana Code Annotated. All prior Rules issued by the Ninth Judicial District are superseded in their entirety.

Rule 2 - Law and Motion Days

Court will convene as set forth below on each judicial Law & Motion Day as set forth below, unless the Court orders otherwise. For example, telephonic scheduling conferences may be scheduled at 8:30 or 8:45 A.M. The typical schedule for Law and Motion Days/Terms is on a bi-weekly basis:

Every other Monday:	Pondera County, Conrad	9:00 a.m.
Every other Monday:	Teton County, Choteau	1:00 p.m.
Every other Tuesday:	Toole County, Shelby	9:00 a.m.
Every other Wednesday:	Glacier County, Cut Bank	9:00 a.m.

Counsel and parties should set and confirm hearing dates with the Clerk of District Court. In the event that counsel or parties encounter extreme difficulties because of the date selected, they should consult with the opponent and then advise the Court by stipulation or motion stating efforts to contact the opponent and the opponent's position.

Rule 3 - Filing of Pleadings and Other Papers

- **A. Civil Rules Applicable:** Any pleading filed in any civil action which does not conform to Rule 10 or 11 of the Montana Rules of Civil Procedure may be stricken by the court on its own initiative.
- **B. Form of Papers Presented for Filing:** Documents should be firmly bound with holes punched at the top ready for placement in the court file. Any filing fee required by statute must accompany the document or it will not be filed. All papers filed in any action must conform to Rule 1 of the Montana Uniform District Court Rules. Any paper not in conformity with this Rule shall not be filed by the clerk and shall be returned to the party submitting it. If filed, it may be stricken by the court.
- **C. Necessary Copies Presented:** When the clerk is required to provide copies, parties must furnish to the clerk all necessary copies of any such pleading, proposed order or other matter filed of record in any cause, so as to enable the clerk to provide conformed copies. Preaddressed envelopes for all parties of record are likewise to be provided for distribution of copies by the clerk.
- **D. When Leave of Court Required:** When leave of court is required before a pleading can be filed, a proper motion must be filed and served. An original of the pleading should be attached (to be removed and stamped for filing immediately upon granting of the motion). This rule does not apply to filing an Information in a criminal case.

Rule 4 - Court Records

- **A. Withdrawal of Files or Papers.** The clerk may not permit files or documents to be removed from the office except upon order of the court for good cause shown. The clerk must obtain a receipt from any party removing any file or court record.
- **B. Juvenile (Delinquent Youth and Youths In Need of Care) and Adoption Matters.** Except as provided by statute, the records and files in juvenile and adoption actions shall not be withdrawn, examined, or inspected by anyone except upon order of the court.
- **C. Withdrawal Prohibited.** No will, bond, or undertaking shall be taken from the clerk's office under any circumstances, and no judgment before it is recorded.
- **D. Exhibits.** Exhibits offered during a trial may be withdrawn at any time after trial upon stipulation of counsel. After a judgment has become final and appeal rights no longer exist, any party may withdraw any exhibit

which that person has offered into evidence, unless some person has filed with the clerk notice that a third person is entitled to the exhibit. Withdrawal shall then be permitted only on order of the court.

If exhibits are not withdrawn within thirty days after the judgment has become final and non-appealable, the clerk shall give ten days' notice to the party offering the exhibit of his/her intention to dispose of the same and may do so, if not then withdrawn, after obtaining a court order to destroy the exhibit.

Rule 5 - Contested Matters

- **A. Disposition of Motions.** All motions shall be disposed of pursuant to Rule 2 of the Uniform District Court Rules, or as otherwise required by the Montana Rules of Civil Procedure.
- **B. Notice of Issue.** When all briefs have been filed, or the time for filing of briefs has expired, at least one party shall file a "Notice of Issue" with the court indicating that the matter is ready for ruling by the court. The party filing the Notice of Issue shall additionally serve a copy of the Notice of Issue on the court at chambers and shall include certification of such supplemental service in the certificate of service for the original Notice of Issue. The clerk shall thereupon deliver the original Notice of Issue and the court file to the judge having jurisdiction.
- **C. Motions to Dismiss.** Motions to Dismiss by a Defendant not supported by a timely brief shall be deemed overruled and the moving party shall have twenty days after notice from the clerk to further plead.
- **D. Briefs.** Except with leave of court for good cause, Initial and Answer Briefs shall not exceed twenty pages. Reply Briefs shall not exceed ten pages.
- **E. Requests for Oral Argument.** When counsel desire oral argument on a motion, other than a motion in which oral arguments are mandatory unless waived by all parties, counsel shall state with their Notice of Issue or in a separate request for oral argument their reasons in support of oral argument and why the written briefs are inadequate to fully and satisfactorily articulate their position. Oral argument will be set only by court order, whether upon motion of a party or upon a *sua sponte* determination that oral argument would be beneficial. A proposed order shall accompany any request for oral argument and the Clerk of Court shall promptly deliver both documents to the judge.
- **F. Notice to the Judge of Settlement.** In the event any contested matter set for hearing is resolved between the parties, the judge's judicial assistant shall be immediately advised so that other matters may be scheduled in the time previously allotted for that case. A written stipulation or appropriate pleading shall subsequently be filed within two days. Failure to abide by this provision may result in imposition of sanctions by the court.
- **G. Discovery Motions.** The court will deny any motion pursuant to Rules 26 through 37 of the Montana Rules of Civil Procedure, unless counsel shall have conferred concerning all disputed issues before the motion is filed. If counsel for the moving party seeks to arrange such a conference, and opposing counsel willfully refuses or fails to confer, the judge may order the payment of reasonable expenses, including attorney's fees, pursuant to Montana Rules of Civil Procedure 37(a)(4). Counsel for the moving party shall include in the motion a statement of compliance with this rule. See also Rule 4 of the Uniform District Court Rules.
- **H. Contested Hearings.** Any motion requiring presentation of testimony shall be scheduled as a contested matter with the appropriate Request for Hearing pleading being presented to the judge's judicial assistant.
- **I. Courtesy Copies.** If any pertinent document is filed within fortyeight hours of a contested hearing or oral argument, a copy thereof shall be delivered to the judge's chambers.
- J. Motions to Continue or for Extensions. Motions to continue and for extensions must be in writing and shall state the position of opposing counsel to the motion. It is not sufficient that the motion state that opposing counsel could not be contacted. If a motion to continue or for extensions does not state the position of opposing counsel, the motion shall be subject to Rule 2, Uniform District Court Rules. The court will not rule on the motion until the response time has expired.
- **K. Reminders to the Court.** If a judge has any matter under advisement for more than ninety days, any party affected thereby may send to the judge a letter, with copies to all counsel, describing the matter under advisement and stating the date it was taken under advisement.

Rule 6 - Time Limits

In any hearing, contested or uncontested, or in any show cause hearing, injunction hearing or trial of any case, the court may direct the parties to state the amount of time their case will take to present. The court may then impose time limits on the presentation by each party, and retains the discretion to allot a lesser time than that requested by each party. In the event time limits are imposed, the court has full authority and discretion to enforce those limits.

Rule 7 - Scheduling Orders

- **A. Scheduling Orders.** When a case is at issue, any party may file a motion for a scheduling order, and a scheduling order shall be issued. In lieu of a motion for scheduling order, any party may move for a scheduling conference. The party filing the Motion shall serve a copy of the Motion on the court at chambers and shall include certification of such supplemental service in the certificate of service for the original Motion. The dates in the scheduling order shall not be changed absent court order upon a showing of good cause. Motions to extend deadlines or dates shall include a statement of the trial date, if set.
- **B. Exemptions.** Pursuant to Rule 16(b), M.R.Civ.P., the following matters are exempt from the scheduling procedure required by this Rule unless such a case becomes a contested case:
 - (1) juvenile cases;
 - (2) URESA actions:
 - (3) dependent and neglect cases;
 - (4) abstracts and transcript of judgment and enforcement of judgment;
 - (5) adoptions;
 - (6) sanity;
 - (7) probates;
 - (8) criminal cases (included to eliminate the possibility of confusion);
 - (9) municipal court, justice court and small claims appeals;
 - (10) administrative appeals;
 - (11) seizures and forfeitures;
 - (12) habeas corpus;
 - (13) name changes; and
 - (14) conservatorships and guardianships.

Scheduling in the above matters shall proceed according to orders issued in each case.

Rule 8 - Settlement Conferences

- A. Settlement Conferences Required. In each civil case, there will be a settlement conference. The conference shall be a master or mediator-supervised settlement conference, which is provided for in the Scheduling Order prepared and issued in accordance with Rule 7 of these Rules
- **B. Proceedings Confidential.** No person present at a settlement conference, including the settlement master or mediator, shall be subject to examination concerning statements made by any person or the positions of the parties at the settlement conference. The parties will not subpoena or otherwise require the settlement master or mediator to testify regarding the settlement conference or the settlement master's or mediator's opinions regarding the case. (§ 26-1-813, MCA.)

Rule 9 - Trials and Trial Settings

- **A. Trial Dates.** Trial dates shall be set at any stage of the proceedings deemed appropriate by the presiding judge.
- **B. Jury Panels.** At least thirty days prior to the commencement of the jury term, a panel of jurors shall be drawn to be used. The jury term is July through June. The Clerk of Court shall, upon a juror's service on a trial, remove that juror's name from the panel (unless requested by the juror to serve on more panels). Any juror who comes in for selection on a case and who is not called to serve on the trial, shall have their name put back into the panel for further selection.
- **C. Six Person Juries.** Pursuant to § 3-15-106, MCA, in all civil actions where the relief sought in the Complaint is under the sum of \$10,000.00, the trial jury shall consist of six persons. The parties may stipulate to six-person juries in other civil cases.
- **D. Voir Dire Examination.** Time limits for voir dire examination in civil cases may be set at the Final Pre-Trial Conference.

The only proper purpose of voir dire of jurors is to select a panel who

will fairly and impartially hear the evidence presented and render a just verdict and to determine the grounds for any challenge for cause.

As a general rule, counsel should not:

- (1) Ask any questions of an individual juror that are susceptible of being asked collectively.
- (2) Ask questions covered by and answered in the juror questionnaire, except to explore some questionnaire answer in greater depth.
- (3) Repeat questions asked and answered, even though asked by opposing counsel.
- (4) Use voir dire for the purpose of attempting to instruct the jury on the law. That is the court's function.
- (5) Use voir dire for the purpose of arguing the case.
- (6) Ask a juror what his or her verdict might be under any hypothetical situation based on any expected evidence or otherwise.

Upon failure of counsel to abide by this rule, the court may assume voir dire of the jury. In such case, the court may require counsel to submit in writing specific questions to be asked by the court.

Rule 10 - Criminal Actions

- **A.** Use of Forms. A written Acknowledgment and Waiver of Rights shall be presented to the court by defense counsel at or before the time of a guilty plea. Plea Agreements shall be submitted for either binding or non-binding.
- **B. Omnibus Hearings.** Except as otherwise provided by order of the presiding judge, an Omnibus Hearing Memorandum and Order form shall be completed at the Omnibus Hearing.
- **C. Status Hearings.** A Status Hearing shall be held on the record before the court. The Defendant shall be present. Prior to the Status Hearing, counsel for the prosecution and defense shall have conducted plea negotiations. They shall report thereon to the Court at the Status Hearing. If a Plea Agreement has been reached, the court may take the change of plea at that time. The parties shall be prepared to discuss the status of discovery, likely motions, the scheduling of hearings, whether there is reason to change the trial date and any other pre-trial issues.
 - **D. Arraignment.** At arraignment, the court shall issue an order.
- **E. Motions.** A courtesy copy of all motions shall be submitted to the presiding judge together with a proposed order setting hearing. Unless otherwise ordered, the following motions do not require a brief and may be ruled on summarily without prior notice to opposing counsel:

Motions to Set/Reset/Vacate Hearings for:

- Arraignments Bench Trials Telephonic Hearings
- Answer Hearing- Bail Hearing- Evidentiary Hearings
- Bail Hearing
 Status Conference Dispositional Hearings
- Omnibus Hearing Miscellaneous Hearings
- Final Pre-Trial Conference Vacate any Pre-Trial Hearing
- Jury Trials and Set for Change of Plea
- Sentencing

Miscellaneous Motions:

- Add Witnesses
- Additional Time to File/Respond to Briefs
- Change Conditions of Release
- Chemical Evaluation State to Pay the Costs
- Discovery Request
- Mental Evaluation State to Pay the Costs
- Neuro-Psycho Evaluation State to Pay the Costs
- Psychological Evaluation State to Pay the Costs
- Quash Order
- Quash Bench Warrant
- Quash Transportation Order
- Reinstate Bond and Release Defendant
- Release Quash Bench Warrant
- Release Defendant's Personal Property
- Request for Credit For Time Served
- Request for Defendant Attend Funeral and Wear Street Clothes
- Request for Defendant to Leave _____ County/State of Montana
- Request for Interpreter State to Pay Costs
- Seal Plea Agreement
- Sex Offender Evaluation State to Pay Costs
- State to Pay for Costs of Deposition
- Substitution of Counsel
- Transport Defendant

Rule 11 - Domestic Actions (REPEALED)

Rule 12 - STIPULATIONS

No agreement or consent between the parties, or their attorneys, shall be accepted by the court unless made in open court, and taken down by the court reporter or entered in the minutes by the clerk, or unless the same shall be in writing, signed by the party against whom the same may be urged, or by that party's attorney. It shall be the duty of the party relying upon such minute entry to see that the same is duly entered.

Rule 13 - Outside Judge

Pursuant to Section 3-1-308 MCA, the district judge substituted or disqualified shall call in a judge from another district. When a case is assigned to a judge from another district, the clerk shall make and forward to such judge a complete copy of the case file to date. Likewise, copies of documents subsequently filed shall be promptly transmitted to the judge. The outside judge shall be encouraged to schedule hearings and trials in consultation with the judicial assistant of the judge who originally had jurisdiction.

The judge of this district who originally had jurisdiction and the clerk shall promptly notify one another when they learn of any hearing or trial scheduled by the outside judge so that necessary arrangements can be made

Rule 14 - Dismissal of Action for Laches

The Clerk of Court will, on an annual basis, bring to the attention of the judge in whose department it is filed any cause which the pleadings show to have been at issue and no activity has occurred for more than one year. An order to show cause for failure of prosecution will be issued, and the court may dismiss the case unless good cause is shown that it should remain open.

Rule 15 - Order To Show Cause and Temporary Restraining Orders

Two originals of any order to show cause, temporary restraining order or like order shall be presented to the judge. One shall be signed by the judge as the original order and retained as part of the court file. The other shall be issued by the clerk and shall be used for the purpose of making service.

Rule 16 - Judgement 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. 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 the order of the court in writing setting forth the facts of such removal.

Rule 17 - Rules of Decorum

- **A. Opening Announcement.** When Court is first convened in the morning and after any recess, the Court Reporter, Clerk of Court, or Bailiff shall announce the opening or Court and all persons in attendance in the courtroom shall rise until the presiding judge has taken the bench.
- **B. Court Reporter.** Unless the presence is waived by the parties and the Court, a court reporter shall be on duty in the courtroom at all times the Court is in session.
- **C. Dress.** All counsel appearing before the Court shall be dressed in the appropriate business attire.
- **D.** At the trial of any cause or in the presentation of any matter before the Court, only attorneys and parties engaged in the matter shall occupy positions before the bar, except by permission of the Court. No argument, motion or suggestion to the Court, other than a formal objection to the evidence, need to be entertained unless the attorney making the same first rises in his place and addresses the Court.

Rule 18 - Free Press And Fair Trial

Within the spirit of the First Amendment, the presiding judge in any court proceedings open to the public shall permit the recording and

broadcasting by radio and television, and the taking of photographs in the courtroom unless the judge is convinced from the particular circumstances of the individual case, or any portion, that such recording, broadcasting, or photographing would substantially and materially interfere with the primary function of the court to resolve disputes fairly under the law.

The District Court has the responsibility to assure appropriate decorum within the courtrooms of this court and to assure no substantial or material interference with the primary function of the court to fairly resolve disputes. No still photography, videotaping, audio recording or broadcasting of court proceedings shall occur without prior consent of the presiding district judge. That in the event such coverage is granted, the following guidelines shall apply:

TELEVISION and RADIO.

No more than one camera will be permitted. It shall be located in a preselected position and operated by one cameraman. It will be the responsibility of each broadcast news representative to achieve an understanding as to who will function at any given time and as to how the coverage will be pooled. Permission for such coverage is on the condition that all representatives share in the pool arrangement. The television camera shall give no indication as to whether it is or is not operating and it shall remain stationary during the entire proceeding.

Sufficient film or tape capacities shall be available to alleviate film or tape changes except during court recess. Microphones, if utilized, shall be limited to three: one near counsel table, one on the bench, and one near the witness chair. The television microphone shall also serve the radio media. All equipment shall be in place at least fifteen minutes before each session.

Broadcast coverage outside the courtroom shall be handled with care and discretion, but need not be pooled. The Jury Voir Dire Process shall not be televised or broadcast.

PRINT MEDIA.

Print Media Representatives, including still photographers, will be accommodated on a first-come basis, and position themselves in the spectator section. Photographers and reporters will not be permitted to roam the courtroom. No flash cameras will be permitted and the cameras used shall operate with no distracting noise.

GENERAL.

There will be no interviews of jurors, witnesses, or court personnel either in or out of court during a trial or any ancillary proceeding. This rule applies to all of the media. There will be no available telephones on the courtroom floor. Representatives of the media shall not be dressed in a manner which would set them apart from other spectators.

Rule 19 - Treatment Court

A Treatment Court has been established by the Judge of the Ninth Judicial District Court of the State of Montana. The Ninth Judicial District Treatment Court seeks to improve the quality of life in our judicial district by establishing a comprehensive, diversionary program of incentives and sanctions aimed by breaking the offender's addiction.

Possible Treatment Court participants may be referred for screening by the County Attorney's Office or the defendant's attorney. The Treatment Court team will make a preliminary decision as to whether to accept the individual. The Court will make the final decision at sentencing of the defendant.

Eligibility for Treatment Court will be limited to defendants charged with one of the following enumerated offenses, or a probation violation:

CRIMINAL POSSESSION OF DANGEROUS DRUGS, A FELONY, in violation of Section 45-9-102, MCA;

THEFT, A FELONY, in violation of Section 45-6-301, MCA when motivated by addiction:

ISSUING A BAD CHECK, A FELONY, in violation of Section 45-6-316 MCA when motivated by addiction:

DECEPTIVE PRACTICES, A FELONY, in violation of Section 45-6-317, MCA when motivated by addiction:

FORGERY, A FELONY, in violated of Section 45-6-325, MCA when motivated by addiction;

DRIVING UNDER THE INFLUENCE OF ALCOHOL (fourth or sub sequent offense, A FELONY,

In violation of Section 61-8-401, MCA;

Any other non-violent offense in which drugs or alcohol were involved.

Defendants with prior violent or sexual offense convictions, or who have other pending felony charges, will not be eligible to take part. The Treatment Court Judge shall have the authority to impose conditions on participants pursuant to the Court's statutory contempt powers and contractual nature of plea agreements under Montana law. These legal bases also provide the Treatment Court jurisdiction to sanction these offenders for failure to comply with Treatment Court conditions.

Rule 20 - Cash Bail and Bail Bonds

A. Cash Bail Delivery.

Whenever cash bail is delivered to any Clerk of Court, justice of the peace, or municipal judge, the cash must, as soon as possible, be deposited in a special account with some financial institution where checks, warrants, or drafts can be drawn on the account for the transfer of funds.

B. Transfer to District Court.

Whenever bail has been set by and furnished to a justice of the peace and the cause in which the bail was furnished is being transferred to the District Court, the following must be followed:

At the time the papers transferring the case to the District Court are filed with the Clerk of Court, the bail must also be delivered to the clerk. The amount and nature of the bail furnished must be endorsed upon the order whereby the justice or judge transfers the cause to the District Court

- (1) If the bail furnished was cash bail, the justice or municipal judge must deposit a proper check, warrant or draft for the full amount of the bail. Upon receipt of the check, warrant or draft, the Clerk of Court must issue a trust fund receipt and deliver it to the justice of the peace.
- (2) If the bail furnished was a bail bond or other bail as permitted by \S 46-9-401,

MCA, the justice of the peace must deliver the actual documents furnished as bail to the Clerk of Court. Upon deposit of such bail, the clerk must issue a receipt specifying the documents received.

C. Action Originally in District Court.

Whenever bail has been set by and furnished to a justice of the peace in an action where the District Court has original trial jurisdiction, and the county attorney elects to proceed in District Court by filing a motion for leave to file an information direct, the following procedure must be complied with:

- (1) The county attorney must, contemporaneously with the filing of the motion in District Court, file a written request with the justice of the peace asking that the bail be transferred to the District Court;
- (2) The county attorney must deliver to the justice of the peace a duplicate copy of such request;
- (3) The justice of the peace must forthwith endorse upon the original request and the duplicate copy the proper information regarding the nature of the bail, and must forthwith transfer the bail to the District Court as provided in (1) or (2) above. The duplicate copy of the request must be filed with the Clerk of Court.
- (4) Prior to release of any bail or bond, the original receipt must be presented with appropriate identification. The funds will then be released to the posting party only, unless otherwise directed by the court. Cash bonds posted by a defendant may be applied (or at least a portion) to restitution, fines and fees prior to release.