

MONTANA FIFTH JUDICIAL DISTRICT COURT RULES

BEAVERHEAD, JEFFERSON and MADISON COUNTIES

RULE 1 - LAW AND MOTION

1.1 The typical schedule is:

- (1) Monday: Madison County;
- (2) Tuesday and Thursday: Beaverhead County; and
- (3) Wednesday and the third Thursday of every month:

Jefferson County.

1.2 A party shall set and confirm hearing dates with the Clerk of Court. In the event a party encounters extreme difficulties with a date ordered by the Court, the party shall consult with the opposing party and then advise the Court by stipulation or a motion supported by a brief and affidavit stating the efforts to contact the opposing party and the opposing party's position.

RULE 2 - PLEADINGS & MOTIONS

2.1 Briefs may not exceed 20 pages without leave of the Court for good cause demonstrated.

2.2 Proper documentation demonstrating service must accompany all documents offered for filing other than a complaint. The Court will not consider any documents requiring a certificate of service that do not have a certificate of service attached. The Clerk of Court shall return documents that are not in compliance with this subsection 2.2 forthwith and without further order.

2.3 A demand for a jury trial must be included in the caption of the complaint or answer.

2.4 All motions, stipulations, etc. must be a separate document from the proposed order.

2.5 When an issue is fully submitted and ready for a decision from the Court, the moving party may file a notice to bring the matter to the Court's attention if a decision has not been rendered within 30 days.

2.6 To promote the electronic storage and exchange of documents and reduce redundant scanning of documents produced by the Court, the Clerk of Court may distribute copies of Court orders and minute entries by email rather than by hard copy. A party shall provide the Clerk of Court with the email address(es) to which copies of orders or minute entries are to be mailed.

A party who has filed any document in the Court electronically is deemed to have provided written consent to receive documents electronically. (Rule 5(b)(2)(E), M. R. Civ. P.)

2.7 The following matters are exempt from the scheduling procedure required by Rule 16(b), M. R. Civ. P.:

- (1) youth court cases;
- (2) URESA actions;
- (3) abstracts of judgment and transcripts of judgment;
- (4) adoptions;
- (5) incompetency hearings;
- (6) probate cases;
- (7) small claims appeals;
- (8) administrative appeals;
- (9) name change cases;
- (10) seizures and forfeitures;
- (11) habeas corpus and post-conviction relief;
- (12) criminal cases; and
- (13) other cases for which good cause is shown.

2.8 Pursuant to Rule 26, M. R. Civ. P., the following discovery rules must be followed in every cause not exempted in subsection 2.7, except Domestic Relations Cases and those cases wherein good cause is shown by motion and affidavit:

(1) Except with leave of the Court, a party may not seek discovery from any source before making an appropriate pre-discovery disclosure and may not seek discovery from another party before serving that party with an appropriate disclosure. A party may serve written discovery requests upon a party simultaneously with service of the required disclosure statement upon that party. Each party shall serve

an appropriate disclosure not later than 30 days after entry of the case scheduling order. The disclosure must contain the following information:

(a) the factual basis of each claim or defense advanced by the disclosing party;

(b) the legal theory upon which each claim or defense is based, including, when necessary for a reasonable understanding of the claim or defense, citations or pertinent legal or case authorities;

(c) the name and, if known, the address and telephone number of each individual known or believed to have discoverable information about the claims or defenses and a summary of that information;

(d) a copy of or a description, including the location and custodian, of documents or data compilations and tangible things and relevant documents reasonably likely to bear on the claims or defenses;

(e) a computation of any damages claimed; and

(f) the substance of any insurance agreement that may cover any resulting judgment.

(2) The disclosure obligation is reciprocal and continues throughout the case. A party who has made a pre-discovery disclosure is under a duty to supplement or correct the disclosure within a reasonable time if the party learns that the information disclosed is not complete and correct or is no longer complete and correct.

RULE 3 - FAX & EMAIL FILINGS

3.1 (1) Documents may be submitted for filing by email or facsimile and must be accompanied by the fee of \$.50/page as required by §25-1-201(1)(r), MCA. Documents filed by email or facsimile are considered the originals (see exception 3.2(3) below). Mailed original documents are not required and duplicates may not be filed.

(2) Documents submitted by email must be emailed to:

Beaverhead County: canderson4@mt.gov AND cmcculloh@mt.gov

Jefferson County: dwoods@mt.gov

Madison County: kmiller@mt.gov AND chill@mt.gov

(3) Documents submitted by facsimile must be faxed to:

Beaverhead County: (406) 683-3728

Jefferson County: (406) 225-4044

Madison County: (406) 843-5207

3.2 When filing documents by email or facsimile, the following guidelines must be followed:

- (1) all documents must be properly signed and dated with the party's copied or electronically generated signature;
- (2) emailed documents must be in a PDF format and submitted as an attachment to an email; and
- (3) original exhibits and attachments to the documents must be mailed to the Clerk of Court.

3.3 For the purposes of this rule, the term "document" means any combination of a motion, brief, affidavit, etc., that is filed in a civil or criminal case.

RULE 4 - JURY INSTRUCTIONS

4.1 The parties shall confer with each other before submitting jury instructions. Duplicate instructions may not be submitted.

4.2 Requested instructions must include a cover sheet bearing the case number, caption, title, e.g., "Plaintiff's Requested Instructions," signature, and praecipe.

4.3 Each requested instruction must be identified by party and consecutive number, e.g., "Plaintiff John Smith's Requested Instruction No. 1," "Plaintiff John Smith's Requested Instruction No. 2," and so forth.

4.4 A clean copy of each instruction with the heading "Instruction No. _____," with no numbers inserted, and with no citations listed also must be provided to the Court. This copy will not be officially filed but will accompany the file as an official copy for jury instruction settlement. After settling of instructions, this copy will be sent with the jury.

4.5 Parties shall provide an electronic copy of instructions in Word format to Diane Kaatz, Judicial Assistant at dkaatz@mt.gov.

RULE 5 - ATTORNEYS

5.1 An attorney seeking to appear *pro hac vice* shall file a motion and proposed order accompanied by a copy of the State Bar of Montana *Pro Hac Vice* Application and confirmation correspondence from the Bar Admissions Administrator.

5.2 After the final disposition of a case and after the time for appeal has expired, an attorney is relieved of the attorney's duties as counsel

of record, provided the attorney first files a notice of termination with the Clerk of Court and serves the notice on their client and the opposing party. Thereafter, notice must be served on the opposing party as provided in Rule 4(D), M. R. Civ. P.

5.3 If no action occurs within 12 months of entry of a final decree or order in a Domestic Relations or Paternity case, an attorney is no longer considered to be counsel of record in the case and the attorney's designation as such must be terminated, unless the attorney provides notice to the Court otherwise.

RULE 6 - NO APPEARANCE BY PARTY REQUIRED

A personal appearance by a party may not be required in the following cases and under the circumstances specified:

- (1) quiet title actions when an affidavit of the salient facts has been filed with the Court and the opponents are in default;
- (2) probate of estates when proper documentation has been filed and there is no objection from any interested party; and
- (3) dissolutions when:
 - (a) there is filed a verified petition and uncontroverted affidavit, including proof of service upon the opposing party;
 - (b) 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 consents to proceed without counsel;
 - (c) there are signed written agreements on all issues; and
 - (d) a completed vital statistics form, judgment fee, and proposed order are provided.

RULE 7 - DEFAULT JUDGEMENTS AND WRITS OF EXECUTION

7.1 An application for default judgment must show how the total claimed with interest has been calculated, including but not limited to the interest rate (prime rate as of January of that year per fedprimerate.com), per diem, and number of days accrued.

7.2 Writs of execution must include information in accord with the format available from the Clerk of Court or in a substantially similar form.

RULE 8 - EXHIBITS

8.1 The Clerk of Court shall keep a list of all exhibits offered and the ruling of the Court thereon. An exhibit admitted into evidence may not be removed from the custody of the Clerk of Court without the Clerk's prior approval.

- 8.2 Exhibits must be pre-labeled as follows:
- (1) Plaintiff's/Petitioner's (Exhibit 1, 2, 3, etc.); or
 - (2) Defendant's/Respondent's (Exhibit A, B, C, etc.).

- 8.3 Exhibit's must be submitted as follows:
- (1) Court file (original);
 - (2) Court (copy);
 - (3) moving party; and
 - (4) other party(s).

RULE 9 - PROBATES

9.1 The Clerk of Court shall send notice to counsel for personal representative or personal representative of an Estate three months prior to the expiration of the two-year deadline.

9.2 If the Estate has not been closed by the expiration of the two-year deadline and good cause has not been shown why the Estate should remain open, the Court may order the personal representative and attorney to appear and show cause why the estate has not been closed in the time allowed.

RULE 10 - GENERAL PROVISIONS

- 10.1 No food or drink is allowed in the courtroom except for water and coffee that are in suitable covered containers.
- 10.2 Cell phones are allowed in the courtroom only when silenced.

RULE 11 - SECURITY

A person wishing to enter the courtroom may be required to submit to a search by security personnel.

RULE 12 - CHILD SUPPORT GUIDELINE REQUIREMENTS

Parent financial affidavits and uniform child support guidelines worksheets must be filed with the Court before entry of any child support order.

RULE 13 - PARENTING PLAN GUIDELINES

Parenting plan guidelines are available from Diane Kaatz at 406-843-4235, 406-683-3745, or dkaatz@mt.gov to assist parents in understanding what the Court generally believes is reasonable, unless special circumstances require a different arrangement.

RULE 14 - TELEPHONIC OR VIDEO TESTIMONY AND APPEARANCES

14.1 Telephonic testimony by witnesses, parties, or attorneys should be the exception and not the rule.

14.2 Telephonic or video teleconferencing testimony or appearances will not be permitted absent leave of the Court. Motions must be filed one week prior to any hearing.

14.3 If the Court allows telephonic or video teleconferencing testimony or appearances, the party seeking leave is responsible for making the necessary arrangements and any costs associated with procuring the testimony or appearance, including but not limited to telephone toll charges or video bridging costs. Problems with electronic appearances are the burden of the requesting party.

14.4 A party requesting an electronic appearance must be aware of potential limitations in court reporting. By filing a motion, a party accepts any issues that may arise. A party not in agreement shall appear in person.

RULE 15 - TREATMENT COURT

15.1 The Fifth Judicial District has established a DUI Accountability Court which seeks to improve the quality of life in our community and enhance public safety. The DUI Accountability Court has established a comprehensive and intensive treatment program with an incentives and sanctions system aimed at breaking the offender's addiction and increasing their ability to function successfully in society.

15.2 Potential DUI Accountability Court participants are screened by the County Attorney's Office and recommended to the Accountability Team for further screening and a determination of acceptance to the program. DUI Accountability Court is a voluntary program.

15.3 Eligibility for DUI Accountability Court is limited to defendants charged with one of the following enumerated offense or a probation violation thereof:

- (1) Driving Under the Influence of Alcohol in violation of Montana Code Annotated § 61-8-401; or
- (2) Operation of noncommercial vehicle by a person with alcohol concentration of 0.08 or more --- operation of commercial vehicle by person with alcohol concentration of 0.04 or more in violation of Montana Code Annotated § 61-8-406; or
- (3) Aggravated DUI in violation of Montana Code Annotated § 61-8-465; or
- (4) Criminal Endangerment in violation of Montana Code Annotated § 45-5-207, with a nexus to alcohol.

15.4 The DUI Accountability Court Judge has the authority to impose conditions on participants pursuant to the Court's statutory contempt powers and the contractual nature of plea agreements under Montana Law.

Dated: December 1, 2017

/s/LUKE BERGER
District Judge