

LOCAL RULES OF PRACTICE
OF THE DISTRICT COURT OF THE
THIRTEENTH JUDICIAL DISTRICT
OF THE STATE OF MONTANA
COUNTY OF YELLOWSTONE

PREFACE

The following Rules of Practice supplement the Uniform District Court Rules and the Montana Rules of Civil Procedure and any conflict shall be controlled by the Montana Rules of Civil Procedure and/or the Uniform District Court Rules.

RULE 1

DEPARTMENTS - DIVISION OF BUSINESS. For the convenient classification and division of business, the District Court of the Thirteenth Judicial District is divided into five departments assigned to individual judges and their successors as follows:

- Department No. 1 Honorable Ingrid Gustafson
- Department No. 2 Honorable Russell C. Fagg
- Department No. 3 Honorable Susan P. Watters
- Department No. 4 Honorable Gregory R. Todd
- Department No. 5 Honorable G. Todd Baugh

YELLOWSTONE COUNTY -- DIVISION OF BUSINESS. All cases of every nature shall be assigned by the Clerk in a random manner in equal numbers among the five departments, except that no assignment shall be made of the following: Abstracts of Judgment, Transcripts of Judgment, Warrants for Distrain, Certificates of Amount Due and Abstracts of Administrative Orders.

If a criminal defendant, youth in need of care or delinquent youth has a second or subsequent case filed against him/her, the Clerk shall assign the new case to the Department previously assigned to that person's case, or, in youth court cases to the Department which has handled a former youth in need of care case related to the same family.

Post-conviction relief cases shall be assigned to the Department which was assigned to the underlying criminal case.

Protective Order matters shall be assigned to the Department previously assigned to the dissolution of marriage case, parenting plan case or paternity case between the same parties, if one exists.

Department No. 3 shall administer Family Drug Court, and the Clerk shall assign all DN, Youth In Need Of Care cases, not selected by the Family Drug Court, among the four other departments only.

FAMILY COURT. If a Judge is currently handling a DR, DF, DN, or DJ case, and an additional DR, DF, DN or DJ case is filed involving direct family members, (i.e., parent or child), the Clerk shall assign the new DR, DF, DN or DJ case to the Court assigned to the previous DR, DF, DN or DJ case. Counsel are requested to alert the Clerk of any previous cases that fall into this category.

MOTION TO CONSOLIDATE. A motion to consolidate cases (civil and criminal) filed in different departments shall be filed in each case but will be heard before the judge presiding in the department having the lowest cause number and, if the cases are consolidated, the trial will also be conducted in that department.

Whenever there exists an active and open file related to a Protective Order or a Temporary Protective Order and subsequently the same parties are involved in a pending dissolution file (DR), the Protective Order case shall be closed and the contents transferred and combined into the pending dissolution file.

RULE 2

LAW AND MOTION. Law and Motion days are distributed among the five departments such that there generally will be four days of law and motion each week. Generally, each Department will have a law and motion day four (4) times during a six (6) week period.

Consult the Clerk of Court to determine Law and Motion on any given day.

When Law and Motion falls on a holiday, all matters shall be deemed continued to the next regular Law and Motion day. In the event a judge is unable to hold Law and Motion on his/her assigned day, he/she shall make arrangements with

another judge to preside in his/her place, or, if it is to be cancelled, provide advance notice, if possible, to the Clerk of Court of such cancellation, when possible.

Law and Motion days are generally limited to uncontested matters. Contested matters and those involving presentation of evidence will not be heard on Law and Motion days except by leave of Court.

Only the judge presiding will hear matters presented on each Law and Motion day and that judge shall hear all matters presented, whether filed in his/her department or another department; provided that any motion which is resisted, or any other matter which is contested, shall be heard by the judge of the department wherein such motion or matter is pending. All matters presented on Law and Motion day shall be heard in open court, in the courtroom of the judge presiding, provided that uncontested matters of a self-evident nature, not including default divorces, if counsel so desires, may be left with the Clerk for presentation to the presiding judge.

Each attorney shall designate in advance the matters to be presented by him/her on Law and Motion day. The matters so designated shall be listed by the Clerk on a Law and Motion calendar, which calendar shall be closed at 4:00 p.m. the day previous to each Law and Motion day. Immediately before the opening of Court on each Law and Motion day, the Clerk shall bring the Court file in each matter on the Law and Motion calendar to the courtroom of the presiding judge.

RULE 3

SUBSTITUTION OF JUDGES. Substitution of Judges is governed by Mont. Code Ann. §3-1-804 and those rules are herein supplemented because the Thirteenth Judicial District is a multi-judge district.

When a party moves to substitute a judge in any case, the Clerk of Court shall at once reassign said case in a random manner to another department, making a memorandum thereof for the file and notifying the judges involved and all parties to said cause, or their attorneys, personally or by U. S. Mail.

In a case in which a judge recuses him/herself, the reassignment of the case shall be made by the Clerk of Court in the same manner as motions for substitution.

When an outside judge has been called in, it shall be the duty of plaintiff's counsel, a reasonable time in advance of any proceedings to be taken therein, to notify the local judge who was originally assigned to the case and with his/her

assistance make arrangements for all personnel and facilities necessary to accommodate the needs of the case and the outside judge.

Nothing herein shall prohibit a judge having jurisdiction of a case from calling in an outside judge to take jurisdiction of the case, pursuant to Mont. Code Ann., §3-5-111.

RULE 4

(Repealed)

RULE 5

MOTIONS - EXTENSIONS - PRESENTATION. Motions shall be governed by Rule 2, Uniform District Court Rules, except motions made pursuant to Rules 56, 59 and 60 of the Montana Rules of Civil Procedure with the provision of said Rules. Prior to noticing a contested motion for argument or hearing, the moving party shall obtain a date and time for same from the Court. All motions shall be identified in the title of the pleading with the applicable rule number of the Montana Rules of Civil Procedure.

Upon representation to the Court by the moving party that opposing counsel was notified and does not object to the motion, the Court may sign the order.

Pursuant to Rule 6(b) of the Montana Rules of Civil Procedure, extension of time for filing briefs may be granted on oral application without notice to the adverse party. All requests for extension of time, whether written or oral, shall be accompanied by an appropriate proposed order.

Following the filing of a reply brief or the lapse of the time allowed either party for filing of a brief, the Clerk shall present such motion to the Court for decision.

Any motion for which a hearing is requested or other immediate action by the Court is sought, a courtesy copy of the motion or request should be provided directly to the Court in chambers.

RULE 6

TIME TO AMEND. When a motion made under Rule 12(b)(6), Montana Rules of Civil Procedure is granted or denied, the unsuccessful party shall have twenty (20) days within which to amend or answer unless a different time shall be prescribed in the order granting or denying the motion.

RULE 7

CASE MANAGEMENT. Pursuant to Rule 16, Montana Rules of Civil Procedure, except as hereinafter set forth, the Clerk will, at the time each case comes to issue, notify the department in which the case is filed of the fact that the case is at issue. That department shall be responsible to cause the case to be placed upon its pretrial calendar. If a case is not at issue within 100 days after the complaint is filed, then the Clerk will notify the department in which the case is filed. The following matters (cases) shall be excluded from the foregoing:

- | | | |
|-----|-----------------------------------|----------|
| (a) | All Delinquent actions | DJ |
| (b) | All Youth In Need Of Care actions | DN |
| (c) | All Criminal actions | DC |
| (d) | All Probate matters | DP, DG/C |
| (e) | All Adoptions | DA |
| (f) | All Insanity matters | DI |
| (g) | All Appeals from lower courts | DV |

In these matters, at any time after the case is at issue, either party may request that the department in which the case is filed place the same on a pretrial and trial calendar.

RULE 8

TRIALS. Each cause shall be tried before the judge of the department in which it is filed. Non-jury and jury trials will be held throughout the year as time is available.

Trial settings will be made by the Court upon request to the Court by either party, pursuant to Rule 7 of these Rules and Rule 16, Montana Rules of Civil Procedure.

Each judge shall summon a panel of jurors as needed to try the cases in his/her own department. No judge shall excuse any juror from service in a department other than his/her own.

RULE 9

DISMISSAL FOR FAILURE TO PROSECUTE. When no proceedings have been taken in any civil cause for a period of one year, the action will be dismissed on its merits and/or the file closed by the Court on its own motion after ten (10) days notice of such intended dismissal unless good cause to the contrary is shown.

Any party that intends to show cause that an action should not be dismissed or the file closed will give notice of his reasons for opposing the dismissal to any other party. Within ten days of such notice, any other party may file his objection and notice the matter for hearing. The Clerk shall give notice to the attorneys of record or the parties when an action is dismissed pursuant to this rule.

The Clerk shall notify the attorney of record ninety (90) days before the expiration of two (2) years from the filing of an estate matter that it has not been completed and that fact will be brought to the attention of the Court in ninety (90) days for such action as may be appropriate.

RULE 10

TRIAL BRIEFS. Unless otherwise ordered, at least two (2) days before the trial of any cause, civil or criminal, counsel shall present to the judge presiding and serve upon opposing counsel a trial brief, setting forth a statement of the theory of their cause and the issues involved, with a statement of the authorities upon which they rely as to both the law of the case and in support of the introduction of evidence proposed to be offered. The presiding judge may waive a trial brief upon request and for good cause.

RULE 11

VOIR DIRE - OPENING STATEMENTS - CLOSING ARGUMENTS. *Voir dire* shall not be conducted in a manner calculated to create prejudice or bias or to disqualify the entire panel by what may be revealed by one prospective juror. Sensitive matters may, upon request, be examined one juror at a time and out of the presence of the balance of the panel. *Voir dire* shall not be used to argue the merits of the case.

The use of written instructions anticipated to be given by the Court shall not be permitted, but this does not prohibit reasonable inquiry concerning aspects of the law which are applicable to the issues. ***Voir dire* examination** shall be limited to **30 minutes** for each party, unless for good cause shown, additional time is secured from the Court.

Opening statements shall be limited to **one-half hour** and **closing arguments** (including rebuttal) shall be limited to **45 minutes**; for good cause, additional time may be requested.

RULE 12

ORDERS, JUDGMENTS AND DECREES. Except in circumstances where the Clerk of District Court enters judgment by default as provided in Rule 55(b)(1) M.R.Civ. P., it shall be the duty of counsel obtaining any order, judgment or decree to present the same, accompanied by the court file, in written form for the signature of the Judge at the time of applying for the order, judgment or decree. Except in those instances where prior arrangements have been made with the Court or in matters of a self-evident nature concerning which the Court will have no questions, no requests for the issuance of an order will be considered by the Court unless the request is made by counsel in person.

If service of an executed order is to be made by the Court, a party presenting an unopposed or routine order shall furnish stamped envelopes addressed to the parties upon whom the documents will be served.

When any order is made by the Court, it must immediately thereafter be presented to the Clerk by counsel. A copy of any order, the original of which is being taken out for service, shall be presented to the Clerk immediately upon the signing thereof. All orders, decrees and judgments shall be immediately filed following signature by the Court.

RULE 13

COURT FILES. The Clerk is the custodian of the files of this Court. The Clerk may allow papers to be taken from his/her office in accordance with the rules of Court and appropriate statutes provided that no will, bond, deposition, exhibit or undertaking shall be taken from the Clerk's office under any circumstances, and no judgment before it is recorded, except by order of the court in writing. Nothing shall

be removed from the files in criminal actions before trial without a written order from the Judge.

No file shall be taken from the office of the Clerk of Court in any county without the consent of the Clerk and without the receipt therefore acknowledged in writing by the party taking the same provided, however, that no record or paper belonging to a file shall be taken from the custody of the Clerk for a period of twenty-four (24) consecutive hours of a working day after its initial filing except by permission of one of the Judges of the Court.

The Clerk of Court shall be responsible for the safekeeping and return of all files, but shall allow a reasonable use of same.

RULE 14

(Repealed)

RULE 15

(Repealed)

RULE 16

ABSENCE OR DISABILITY OF JUDGE. The work in the district shall be interchangeable between the Judges thereof during the absence or disability of any of them or upon the request of any Judge. During the absence of any Judge, the Judges present and presiding, or any of them, may enter orders and make disposition, temporary or final, of any case or matter pending before the absent Judge. However, when any order is made for a hearing to be had thereafter, the Judge present and presiding shall make the order returnable before the Judge to whom it is assigned. Thereafter, it shall be the duty of counsel to consult with the assigned Judge to either confirm or reset the hearing date fixed.

RULE 17

STIPULATIONS AND AGREEMENTS. Stipulations and Agreements between the parties or their attorneys shall be made on the record and/or reduced to writing.

RULE 18

EXAMINATION OF WITNESSES. On the examination of witnesses, only one attorney for each party will be permitted to examine or cross-examine the same witnesses, except by permission of the Court first asked and obtained; however, any attorney may make objections to the testimony of a witness.

RULE 19

DECORUM. On the trial of any cause or in the presentation of any matter before the Court, only attorneys and parties engaged therein 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 be entertained unless the attorney making the same first rises in his place and addresses the Court.

RULE 20

JUDGMENT ON WRITTEN INSTRUMENT. In all cases in which a judgment is entered upon a written instrument, the Clerk shall, at the time of entering judgment, note in ink over his official signature across the face of the instrument the fact of the entry of judgment and its date and attach his seal thereto, and file the said instrument in his office, which instrument shall not be removed except by order of Court. Then a proper entry of the same and of the order shall be made in the register of actions under the title of the case in which it was filed.

RULE 21

DISCOVERY. Discovery shall not be routinely filed and shall only be filed upon certification of counsel that same is necessary and appropriate to a pending motion or upon order of the Court.

In abuse and neglect cases brought by the Montana Department of Public Health and Human Services, counsel for the Department, at the time of the filing of a petition for termination of parental rights, shall photocopy and provide to counsel for the parents and to the guardian *ad Litem*, copies of all documents sought to be admitted into evidence at the termination trial by the Department, including, but not

limited to, all reports generated by third parties gathered by the Department in the course of its investigation and treatment of the family involved. Failure to provide documentation shall be grounds for rejection of documents into evidence at the time of the termination trial. Counsel for the Department, at the time of the filing of a petition for termination of parental rights, shall also provide to counsel for the parents any exculpatory documentation, including, but not limited to, documents supportive of a parent's ability to parent and documents evidencing completion of treatment plan tasks.

RULE 22

INTERROGATORIES. The form of interrogatories and answers thereto shall conform to the requirements of Rule 33, Montana Rules of Civil Procedure.

The Court will, except in extraordinary circumstances, sustain a motion to quash all interrogatories if it appears that numerous frivolous interrogatories are asked therein. (Comment: This rule is intended to require the interrogator to custom prepare his interrogatories to the case at hand.)

RULE 23

TRANSCRIPT. In the case of an appeal, a party must make a written request to the court reporter for a transcript of the proceedings and make satisfactory arrangements to pay the estimated fees therefore. The request must be filed in the court file and served upon the opposing party. Except for good cause shown, no extension of the time allowed by statute in which to prepare a transcript will be granted.

RULE 24

EVIDENCE AS TO CHARACTER. Not more than two witnesses will be allowed to testify as to character in any cause, civil or criminal, without leave of the Court being first asked and obtained.

RULE 25

GUILTY PLEA. Before the judge will accept any plea of guilty, the attorney for the defendant shall file with the Court a fully executed Acknowledgment of Waiver of Rights by plea of guilty, in the form and with content consistent with the one on

file with the Clerk in the general order file, copies of which shall be available from the Clerk. Copies of the executed document shall be served upon the persons designated by said form and at the time provided.

RULE 26

CRIMINAL CASES.

A. In a criminal case, if a not-guilty plea is entered at the time of the arraignment, the case will be set for Omnibus hearing at a later date. The State or the defendant may make any motion permitted under the Montana Rules of Criminal Procedure at any time after arraignment and said motion shall be noticed for hearing by the moving party. Dispositive motions shall be made within sixty (60) days of arraignment.

B. The Court hereby urges that full discovery, exploration and plea discussions be carried out between counsel prior to the Omnibus hearing.

C. It is contemplated that most cases will be on a course for trial or be ready for a guilty plea at the time of the Omnibus hearing. If a defendant is going to plead guilty, he shall do so as soon as possible and in all events prior to trial.

D. Unresolved cases will come on for trial after the Omnibus hearing.

E. On the form, the State and defense may check off the items called to the attention of the Court and note for their file copy the action taken. Such annotations will become a motion by the defense and by the prosecution for the relief requested and a shorthand record of the action taken. If a sufficient record has been made in the Omnibus hearing, the Court will summarily hear, consider and decide motions checked on the Omnibus form. However, the Court, upon request or upon its own direction, may permit the defendant or the State to state in writing motions and grounds therefore and to support said motions with appropriate supporting documents. If witnesses are to be called, the Court will set a date certain for a hearing upon the motion.

F. In all cases in which the Court has discretion to consider a motion or allow the exercise of a defense at a later date than that designated in any statute, no party shall be deprived of the right to make such motion to designate such defense by waiting to present the same at the time of the Omnibus hearing, as contemplated by this rule.

RULE 27

EVALUATIONS, THERAPY, COUNSELING AND DISPUTE RESOLUTION IN DR CASES. The Judge to whom a domestic relations case with visitation and/or child custody issues is assigned shall consider, at the time of the scheduling conference or at any subsequent time, the advisability of requiring the parties to participate at their own cost in such evaluation, counseling, therapy, course of education and/or dispute resolution as may appear necessary and appropriate in the circumstances relative to the parenting and/or dissolution issues. Any party may also request the Court to order the same at any time.

RULE 28

(Repealed)

RULE 29

SETTLEMENT CONFERENCES AND ALTERNATIVE DISPUTE RESOLUTION. The Judge to whom a case is assigned shall consider, at the time of the scheduling conference or at any subsequent conference, the advisability of requiring the parties to participate in a settlement conference or other alternative dispute resolution process including, but not limited to, mediation. Any party may also request the Court to order a settlement conference or other alternative dispute resolution process.

The Chairman of the Yellowstone County Bar Association Settlement Masters Committee shall maintain a list of settlement masters, comprised of attorneys duly licensed and admitted to practice law, who have engaged in the practice for a minimum of five (5) years, and have indicated their availability to act as settlement masters in cases pending before the Court. The parties may select any qualified person to act as a settlement master and shall not be limited to the list of settlement masters maintained by the Chairman of the Yellowstone County Bar Association Settlement Masters Committee.

If a settlement master or mediator is appointed by the Court or selected by the parties his/her fees shall be paid equally by the parties unless otherwise agreed. In the event that any party objects to a settlement conference by a settlement master for

any reason, including inability to pay the costs associated with mediation, the presiding Judge may, in his discretion, request another District Court Judge to preside over a settlement conference or mediation.

Unless otherwise ordered or agreed to by the parties in writing, the following guidelines shall apply to settlement conferences before a settlement master and to mediations before a mediator:

(1) Counsel who will actually try the case shall attend the settlement conference. All parties shall attend in person. Corporations named as a party and involved insurance companies shall have a representative present who has authority to settle the claim without the necessity of seeking or obtaining authority from some other person or entity; provided, however, that if, in the judgment of the settlement master, the magnitude of the case does not require such representative to be present in person, he shall have authority to proceed with an experienced representative present who shall have access by telephone to the person with final authority.

(2) A statement from each party or counsel shall be submitted directly to the settlement master or mediator no later than three (3) business days prior to the conference. The statement may not exceed five (5) pages in length and shall contain:

- (i) The background of the case;
- (ii) Factual and legal issues, including damages;
- (iii) Points and authorities of law;
- (iv) A description of the strongest and weakest points in their case, both legal and factual, and that of their opponents;
- (v) The history of settlement negotiations, including a recitation of any specific offers and demands; and
- (vi) The settlement statement shall not be filed or exchanged with other parties and will be returned to the party providing the statement at the close of the settlement conference. (Provided, however, that a report of the success or failure of the settlement conference may be made to the Yellowstone County Bar for statistical purposes.)

(3) All communications made in connection with the settlement conference or mediation are confidential and will not be disclosed to anyone. Statements or communications of any kind occurring during the settlement conference may not be used by any party with regard to any aspect of the litigation. The parties will not subpoena or otherwise require the settlement master to testify in any future proceedings. No person present at or participating in a settlement conference or mediation shall be subject to examination concerning any statements made or alleged to have been made by that person or by any other participant or person attending, including statements of the settlement master or mediator. The settlement master or mediator may, for the sole purpose of establishing the fact of settlement, disclose that settlement was in fact agreed.

RULE 30

DR AND DF MATTERS – TERMINATION AS COUNSEL OF RECORD. In the event no action occurs within 12 months of entry of a Final Decree or Order in a DR or DF cause, unless counsel of record provides notice to the Court otherwise, said counsel of record shall no longer be considered as counsel of record in the cause and his/her designation as such shall be terminated.

These rules are hereby adopted and shall apply to and be in force in Yellowstone County until further order of the Court.

DATED this 5th day of September, 2007.

BY THE COURT:

/s/ _____
SUSAN P. WATTERS
Chief Judge

Hon. Ingrid Gustafson, Dept. No. 1
Hon. Russell C. Fagg, Dept. No. 2
Hon. Gregory R. Todd, Dept. No. 4
Hon. G. Todd Baugh, Dept. No. 5

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