

**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** - For the convenient classification and division of business, the District Court of the Thirteenth Judicial District is divided into eight departments assigned to individual judges and their successors as follows:

- Department 1: The Honorable Jessica Fehr
- Department 2: The Honorable Donald Harris
- Department 3: The Honorable Michael G. Moses
- Department 4: The Honorable Gregory R. Todd
- Department 5: The Honorable Rod Souza
- Department 6: The Honorable Mary Jane Knisely
- Department 7: The Honorable Colette B. Davies
- Department 8: The Honorable Ashley Harada

**DIVISION OF BUSINESS**

- a. No department assignments shall be made in the following cases:  
Abstracts of Judgment, Transcripts of Judgment, Warrants for Dstraint, Certificates of Amount Due and Abstracts of Administrative Orders.
- b. Subject to the exceptions contained in sections (c) through (g), the Clerk of Court shall assign all cases of every nature in a random manner in equal numbers among the judicial departments.
- c. If a criminal defendant (DC) or a delinquent youth (DJ) has a second or subsequent case filed against him/her, the Clerk shall assign the new case to the department currently or previously assigned to that person's

case. If a criminal defendant (DC) previously had a delinquent youth (DJ) case filed against him/her, the Clerk shall assign the criminal (DC) case to the department that previously handled the delinquent youth (DJ) case.

- d. Post-conviction relief (DV) cases shall be assigned to the department which was assigned to the underlying criminal (DC) case.
- e. Protective Order matters shall be assigned to the department assigned to the dissolution of marriage or parenting plan (DR) case, paternity (DF) case, youth in need of care (DN), or criminal (DC) case between the same parties, if one exists. If a family (DR/DF/DN) case and a criminal (DC) case are both pending between the same parties, the Protective Order shall be assigned to the department assigned to the DR/DF/DN case.
- f. Family Court: If a department was previously assigned or is currently assigned to an adoption (DA), guardianship and/or conservatorship (DG/C), probate (DP), dissolution, parenting plan, protective order (DR), paternity (DF), youth in need of care (DN), or delinquent youth (DJ) case, and an additional DA, DG/C, DR, DF, DN, or DJ case is filed involving one or more direct family members, (i.e. parent, step-parent, grandparent, child, or sibling), the Clerk shall assign the new DA, DG/C, DR, DF, DN or DJ case to the department assigned to the previous DA, DG/C, DP, DR, DF, DN or DJ case. Counsel are requested to alert the Clerk of any previous cases that fall into this category.
- g. Youth in need of care (DN): Department 4 shall administer Family Drug Court. Department 5 shall administer ICWA Court. Cases not assigned to Departments 4 or 5 shall be assigned to the remaining six departments. Cases shall be assigned to the remaining six departments in an equitable manner that ensures consistency as to attorneys representing the state, attorneys representing parents, guardians ad litem, and social workers. The judges will provide direction to the Clerk of Court regarding assignment of DN cases and will periodically review assignments to ensure equitable distribution of cases.
- h. Motions 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. The judges may consult with each other regarding any decision on a motion to consolidate.

## **RULE 2**

**LAW AND MOTION.** Law and Motion days are distributed among the departments such that there will generally be four days of law and motion each week.

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

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 where such motion or matter is pending. All matters presented on Law and Motion day shall be heard in open court.

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. two business days prior to each Law and Motion day. On infrequent occasion exception to this cut-off time may be made on a case-by-case basis.

**Local Rule 2** was amended and effective on October 30, 2017. **Rule 2** states the “calendar shall be closed at 4:00 pm two business days prior to each Law and Motion day.”

<b>Calendar Closes at 4:00 pm</b>	<b>Court Day</b>
<b>Wednesday</b>	<b>Monday</b>
<b>Thursday</b>	<b>Tuesday</b>
<b>Friday</b>	<b>Wednesday</b>
<b>Monday</b>	<b>Thursday</b>
<b>Tuesday</b>	<b>Friday</b>

Additionally, one more day should be added if a holiday falls on a weekday. For example, if Monday is a holiday then the calendar would close at 4:00 pm the previous Wednesday for a Tuesday court day.

### **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, 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 in these rules 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**

**PLEADINGS/BRIEFS.** Pleadings/briefs in all cases, except initial pleadings and except where otherwise limited in any statute or rule, shall be limited to 20 pages, not including attachments. Additional pages may be filed only with leave of the court upon a showing of good cause.

## **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 those 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 set forth below, the Clerk will, at the time each case comes to issue, notify the department in which the case is filed of the fact 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 this rule:

- |     |                                   |          |
|-----|-----------------------------------|----------|
| (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 twenty (20) 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. See Rule 4 above for length limitations. 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 **30 minutes** and **closing arguments** (including rebuttal) shall be limited to **45 minutes**; unless for good cause, additional time is secured from the Court.

## **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 the Court with copies of the unopposed or routine order to conform together with 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 of the order. 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 without the consent of the Clerk and without receipt 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**

**ELECTRONIC FILING.** The Thirteenth Judicial District has implemented an electronic filing system for all case types capable of being electronically filed. Cases that are generally capable of being electronically filed include, but are not necessarily limited to, DC, DN, DJ, DR, DV, DP, DD and DI cases. All lawyers admitted to practice in Montana, or those appearing *pro hac vice*, who shall appear in cases filed in the Thirteenth Judicial District shall become registered users of the electronic filing system and begin using the electronic filing system.

The types of cases that shall be included in mandatory electronic filing in the Thirteenth Judicial District and the effective date of mandatory electronic filing in each type of case are as follows:

<b>Effective Date for Mandatory Electronic Filing:</b>	<b>Type of Case:</b>
<b>July 1, 2019</b>	<b>DJ, DN, DC, DD and DI</b>
<b>To Be Determined</b>	<b>DR, DV, DF, and DP</b>

The Montana Supreme Court has adopted rules governing access to and use of the electronic filing system. See *In Re Temporary Electronic Filing Rules*, AF14-0745, filed October 3, 2017 (hereinafter “Electronic Filing Rules”). These rules are incorporated herein as the rules governing electronic filing in the Thirteenth Judicial District.

Consistent with Electronic Filing Rule 2(b), use of the electronic filing system for all lawyers admitted to practice in Montana, or those appearing *pro hac vice*, is mandatory in all cases, subject to Electronic Filing Rule 6(a), and the effective dates set forth above. Mandatory use of the electronic filing system shall apply to all cases, irrespective of filing date, after the effective dates set forth above.

Service of any notice, order, judgment or other document issued by a Judge or Standing Master of the Thirteenth Judicial District shall be accomplished by the Yellowstone County Clerk of Court consistent with Electronic Filing Rule 6.

Upon application to the Chief Judge of the Thirteenth Judicial District, waivers for use of the system may be granted for compelling or extenuating circumstances.

While use of the electronic filing system is not currently mandatory for self-represented litigants, self-represented litigants are strongly encouraged to become registered users of the system.

Instructions on becoming a registered user and accessing the electronic filing system are available at <https://courts.mt.gov/courts/efile>.

## **RULE 15**

**STANDING MASTERS.** The Thirteenth Judicial District has two Standing Masters. The appointed Standing Masters are Yvette Lafrentz and Molly Rose Fehringer. The Standing Masters perform their duties in accordance with Mont. Code Ann. §§ 3-5-124-126 and SB-15-1, *Charter Order In Re District Standing Master Establishment and Procedure*, entered August 26, 2015.

## **RULE 16**

**ABSENCE OR DISABILITY OF JUDGE.** The work in the district shall be interchangeable between the Judges 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, 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 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 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/her official signature across the face of the instrument the fact of the entry of judgment and its date and attach his/her seal to the instrument, and file the instrument, 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 filing is necessary and appropriate to a pending motion or upon order of the Court.

In child protection (abuse and neglect) cases brought by the Montana Department of Public Health and Human Services, counsel for the Department shall maintain an "open client file" discovery policy which includes dissemination of treatment plans to all parties involved in the case. Dissemination of discovery shall be made without motion or request to all attorneys for the parents and the child(ren)'s attorney(s) and/or guardian(s) *ad Litem* in all cases, and CASA volunteers when appointed. It is expected all documents to be produced hereunder shall be produced within 14 days of a party creating or receiving a document unless good cause is shown as to why such cannot occur. Except as it relates to each attorney's own client, it is recognized that the information disseminated in discovery should be treated as confidential, private, and entitled to protection from disclosure. Counsel for the Department shall provide a list of items that shall be expected to be disseminated in discovery. Discovery may be redacted only to protect the identity of reporters, or as ordered by the Court, upon application by a party. Discovery of confidential criminal justice information or other confidential records sought by a party shall be discussed by counsel with the Court on or before any hearing, or upon motion made to the Court.

Recognizing important privacy requirements, in child protection cases, the party reviewing discovery and his/her counsel receiving and reviewing discovery agree:

- a) No party, counsel or CASA shall publicly disseminate discovery received.
- b) No party, counsel, or CASA shall use discovery received other than for purposes of abuse/ neglect litigation in which the discovery was disseminated.
- c) Staff of counsel of record shall have access to the discovery. Except for the dissemination of discovery relating directly to each attorney's own client or a child as to that parent, discovery relating to other persons involved in the case shall be permitted to be shown to the client but not

duplicated or electronically transmitted to the client or otherwise made available to the client.

- d) A copy of discovery may be provided by counsel, to any trial witness or expert witness, or any consulting expert, who reasonably has need for it. However, prior to provision, the witness, or expert witness, or consulting expert shall acknowledge his/ her agreement to be bound by this Rule.

If not previously done so, counsel for the Department, at the time of the filing of a petition for permanent legal custody, shall provide to counsel for the parents and the guardian *ad Litem*, and appointed CASA 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. 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. Within a reasonable time thereafter, but at least 15 days prior to hearing, counsel for the other parties shall provide counsel for all parties with copies of documents that the party may seek to introduce into evidence.

All parties shall have a duty to supplement dissemination of the above documents and information as it becomes available. Failure to provide and/or supplement the above documents and information in a timely manner may result in rejection of the documents or information at hearing or trial or other appropriate sanction as permitted under Rule 37 M.R.Civ.P.

Discovery in the possession of the Department that should be regularly disseminated to counsel shall include, but not be limited to, the following:

- Family Functioning Assessments, when available
- Safety plans
- Arrest reports from law enforcement, when applicable
- Chemical dependency evaluations
- Drug and alcohol testing reports

- Drug treatment discharge summaries
- Psychological testing and evaluation reports
- Therapy notes
- Visitation/parenting time notes and reports including emailed reports about visits
- Certificates of completion of any programming

## **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 or transcriptionist for a transcript of the proceedings and make satisfactory arrangements to pay the estimated fees to obtain the transcript. 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 the motion shall be noticed for hearing by the moving party. Dispositive motions shall be made within sixty (60) days of arraignment.

B. The Court urges 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, s/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 submit written motions and supporting briefs with appropriate supporting documents for consideration by the Court. 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 parenting plan 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 Area 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 Area 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 Area Bar Association 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, 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 commencing November 12, 2019 until further order of the Court.

**DATED** this \_\_\_\_\_ day of November, 2019.

BY THE COURT:

/s/ ROD SOUZA  
ROD SOUZA  
Chief Judge

Hon. Jessica Fehr, Dept. No. 1  
Hon. Donald Harris, Dept. No. 2  
Hon. Michael G. Moses, Dept. No. 3  
Hon. Gregory R. Todd, Dept. No. 4  
Hon. Rod Souza, Dept. No. 5  
Hon. Mary Jane Knisely, Dept. No. 6  
Hon. Colette B. Davies, Dept. No. 7  
Hon. Ashley Harada, Dept. No. 8

# Electronic Filing Rule

CLERK OF THE  
DISTRICT COURT  
TERRY HALPIN  
2019 JUN 26 PM 4 33  
FILED  
BY \_\_\_\_\_  
DEPUTY 

**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT  
YELLOWSTONE COUNTY**

<b>IN RE MONTANA THIRTEENTH  JUDICIAL DISTRICT RULES OF  PRACTICE</b>	<b>ORDER IMPLEMENTING ELECTRONIC  FILING SYSTEM</b>
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Effective as set forth below, the Thirteenth Judicial District will be implementing an electronic filing system for all case types capable of being electronically filed. Cases that are generally capable of being electronically filed include, but are not necessarily limited to, DC, DN, DJ, DR, DV, DP, DD and DI cases. All lawyers admitted to practice in Montana, or those appearing *pro hac vice*, who shall appear in cases filed in the Thirteenth Judicial District shall become registered users of the electronic filing system and begin using the electronic filing system.

The types of cases that shall be included in mandatory electronic filing in the Thirteenth Judicial District and the effective date of mandatory electronic filing in each type of case are as follows:

<b>Effective Date for Mandatory Electronic Filing:</b>	<b>Type of Case:</b>
<b>July 1, 2019</b>	<b>DJ, DN, DC, DD and DI</b>
<b>To Be Determined</b>	<b>DR</b>
<b>To Be Determined</b>	<b>DV and DP</b>

The Montana Supreme Court has adopted rules governing access to and use of the electronic filing system. See *In Re Temporary Electronic Filing Rules*, AF14-0745, filed October 3, 2017 (hereinafter “Electronic Filing Rules”). A copy of those rules is attached hereto, and they are incorporated herein as the rules governing electronic filing in the Thirteenth Judicial District.

Consistent with Electronic Filing Rule 2(b), use of the electronic filing system for all lawyers admitted to practice in Montana, or those appearing *pro hac vice*, is mandatory in all cases, subject to Electronic Filing Rule 6(a), and the effective dates set forth above. Mandatory use of the electronic filing system shall apply to all cases, irrespective of filing date, after the effective dates set forth above.

Service of any notice, order, judgment or other document issued by a Judge or Standing Master of the Thirteenth Judicial District shall be accomplished by the Yellowstone County Clerk of Court consistent with Electronic Filing Rule 6.

Upon application to the Chief Judge of the Thirteenth Judicial District, waivers for use of the system may be granted for compelling or extenuating circumstances.

While use of the electronic filing system is not currently mandatory for self-represented litigants, self-represented litigants are strongly encouraged to become registered users of the system.

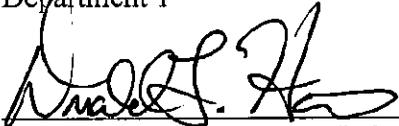
Instructions on becoming a registered user and accessing the electronic filing system are available at <https://courts.mt.gov/courts/efile>.

This Order shall be incorporated into the Thirteenth Judicial District Local Rules upon issuance.

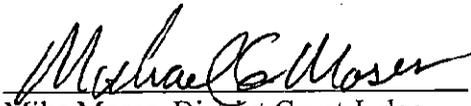
DATED this <sup>26<sup>th</sup></sup> day of June, 2019.



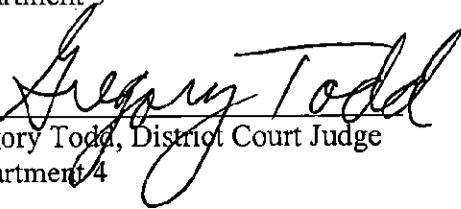
Jessica T. Fehr, District Court Judge  
Department 1



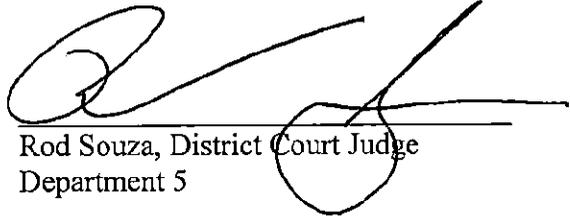
Don Harris, District Court Judge  
Department 2



Mike Moses, District Court Judge  
Department 3



Gregory Todd, District Court Judge  
Department 4



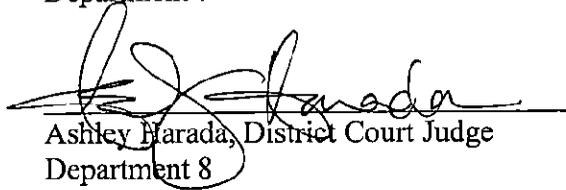
Rod Souza, District Court Judge  
Department 5



Mary Jane Knisely, District Court Judge  
Department 6



Colette Davies, District Court Judge  
Department 7



Ashley Harada, District Court Judge  
Department 8

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 14-0745

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IN RE TEMPORARY ELECTRONIC FILING  
RULES

O R D E R

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On November 19, 2014, the Supreme Court adopted Temporary Electronic Filing Rules. Subsections (4) and (5) of Rule 12 contain provisions regarding electronic filing of briefs on appeal to this Court. We have determined that certain amendments to those subsections of Rule 12 are necessary.

Accordingly, IT IS ORDERED that, effective immediately, Rule 12(4) and (5) of the Temporary Electronic Filing Rules are amended as follows (new language is underlined):

4. When filing briefs, electronically file the original. For the electronically filed brief, the color requirements for the cover under Rule 11(6)(a), M. R. App. P., shall not apply. Once the electronically filed brief is checked for deficiencies and approved, the clerk will notify the e-filer to submit seven paper copies of the electronically filed brief. The seven paper copies of the Appellant's Opening brief must comply with Rule 12(1)(i), M. R. App. P., including copies of the orders and judgments from which the appeal is taken. Upon notification, paper copies must be submitted promptly within seven days or within such specific time as directed by the Court. For the paper copies, the color requirements for the cover under Rule 11(6)(a), M. R. App. P., shall apply.
5. When filing an Appendix, electronically file the original. The Appendix shall include a table of contents and a separate title page for each document, labeled "Appendix A" or "Appendix 1" and so forth. The Court encourages the electronic bookmarking of each document to its corresponding reference in the table of contents to make the appendix readily searchable. Other than those

documents required to be filed under Rule 12(1)(i), M. R. App. P., paper copies of appendix documents need not be filed.

The complete text of the Temporary Electronic Filing Rules, as herein amended, is attached to this Order.

The Clerk is directed to provide copies of this Order to the Montana State Law Library, the State Bar of Montana, the Appellate Defender's Office, the Attorney General's Office, and to each member of the Supreme Court Commission on Technology.

Dated this 3rd day of October, 2017.

/S/ MIKE McGRATH  
/S/ BETH BAKER  
/S/ MICHAEL E WHEAT  
/S/ JAMES JEREMIAH SHEA  
/S/ LAURIE McKINNON  
/S/ DIRK M. SANDEFUR  
/S/ JIM RICE

## **Temporary Electronic Filing Rules**

### **Electronic Filing**

#### **(1) DEFINITIONS:**

- (a) "Clerk of court" means the official custodian of the court record for the case in question, which may be the clerk of the Supreme Court, clerk of district court, or the appointed clerk in a justice court, municipal court, city court, water court, or workers compensation court.
- (b) "Document" means a pleading, form, notice, motion, order, affidavit, paper exhibit, brief, judgment, writ of execution, or other filing. For purposes of this rule, a document includes the transmittal information submitted with the filing.
- (c) "Electronic filing system" means a web-based system established by the Office of the Court Administrator for the purpose of filing documents with or by a court, integrating them into the court's case management system, and electronically serving notice to the parties who have registered with the electronic filing system. "Electronic filing" does not include alternative methods of filing, such as electronic mail, facsimile, floppy disks, or other electronic methods.
- (d) "Electronic filing system administrator" means an individual appointed by the Supreme Court Administrator to receive information and take action as necessary to administer the electronic filing system.
- (e) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document, that can be executed or adopted by the user with the intent to sign the document.
- (f) "Initiating document" means a summons and complaint, information, petition, notice of appeal, application, citation, criminal complaint, or any other document filed to commence a court case.
- (g) "Lodged" means placing a document in a court file without officially filing it.
- (h) "Traditional methods" means those methods of filing and serving documents, other than electronic filing, provided under statutes and local rules.
- (i) "Transmittal page" means a document generated by the electronic filing system containing the case management information necessary to transmit and file a document.
- (j) "User" means an individual who has registered to use the electronic filing system under section 3.

#### **(2) SCOPE:**

- (a) The Supreme Court Administrator shall implement an electronic filing system for Montana courts.
- (b) Use of the electronic filing system is voluntary. Courts choosing to participate in the electronic filing system shall make formal application to the Office of the Court Administrator. The application shall be made in writing by the Chief Judge

and, if applicable, the elected clerk of court. Parties or their attorneys may choose to participate in the electronic filing system unless the court has designated a certain case type for mandatory electronic filing. Parties or attorneys who choose not to participate shall file, serve, and receive documents by traditional methods.

- (c) Any action that may be brought in court may be brought using electronic filing, subject to the ability of the electronic filing system to accept the documents. This section does not guarantee anyone the right to file electronically.
- (d) The procedures in these rules shall be interpreted in a manner consistent with existing court rules.
- (e) An exception will be permitted for certain governmental agencies to file documents and transfer data by a Supreme Court-approved alternative method of transferring the document or data from the agency's electronic system to the court's electronic case management system. For example, interfaces have been created to allow electronic filing of Montana Highway Patrol citations.

### **(3) REGISTRATION REQUIREMENTS:**

- (a) The following individuals may register to use the electronic filing system:
  - 1. Licensed Montana attorneys and designated staff.
  - 2. Attorneys appearing pro hac vice.
  - 3. Self-represented parties to an action.
  - 4. Court employees.
  - 5. Other individuals as appointed or ordered by the court.
- (b) Users of the electronic filing system shall be individuals. However, the electronic filing system may provide a method for law firms, organizations, corporations, agencies or other groups to register with the system for the sole purpose of receiving electronic service notification.
- (c) Users shall register through the electronic filing system website by executing a user agreement governing the terms of use of the electronic filing system. To register, users shall have the capability to produce, file, and receive electronic documents meeting the technical requirements of the electronic filing system. By registering, users agree to electronically file all documents in a case to the extent the electronic filing system can accept them and agree to electronic notification on any case electronically filed.
- (d) Users will access the electronic filing system using a confidential, secure identifier. The secure identifier shall be used only by the user to whom it is assigned. This user may authorize agents or employees to use the electronic filing system on the user's behalf. Each such authorized user shall use a unique, secure identifier. Upon learning that the confidentiality of the secure identifier has been inadvertently or improperly disclosed, the user shall immediately notify the electronic filing system administrator.
- (e) Users are responsible for keeping the registration information profile current, accurate and complete in the electronic filing system.

- (f) The same secure identifier shall be used for all cases on which the user is an attorney or a party. The electronic filing system administrator may reset secure identifiers as needed for administrative and security purposes.
- (g) The electronic filing system may provide a method for filing documents by individuals who are not parties to the case, such as witnesses seeking protective orders, intervenors, and amicus curiae. It may also provide a method for submitting reports by individuals who are not parties to the case, such as presentence investigators and social workers.

**(4) TIME AND EFFECT OF ELECTRONIC FILING:**

- (a) The electronic filing system is an agent of the court for purposes of electronic filing, receipt, notification of filings and retrieval of electronic documents.
- (b) When a document is submitted by a user to the electronic filing system, the electronic filing system shall transmit it to the appropriate court where the case is filed. The electronic filing system shall issue a confirmation that submission to the electronic filing system is complete.
- (c) Filing of documents with the electronic filing system shall be accepted on a 24 hour basis, from 12:00 a.m. to 11:59 p.m. Mountain Time. Documents electronically submitted and approved by the clerk shall receive the filing date the document was initially submitted if the filing date is a business day for the court. If the filing occurs on a weekend or holiday the next court business day will be the filing date. The electronic filing system shall note the date and time the document is submitted. The calculation of time under other statutes and rules is neither expanded nor contracted by this section.
- (d) The clerk of court shall review the document to determine if the document should be accepted for filing. If the clerk accepts the document, the document shall be considered filed with the court on the date the original submission to the electronic filing system was complete, as specified in section (4)(c) above. Upon acceptance, the electronic filing system shall issue a confirmation with the file-stamped date. If the clerk rejects the document, the document shall not become part of the court record and the filer shall receive notification of the rejection.
- (e) The electronic filing system shall receive electronic filings 24 hours per day except when undergoing maintenance or repair.

**(5) COMMENCEMENT OF ACTION:**

- (a) If the clerk of court accepts an initiating document for filing, the clerk of court shall assign a case number and electronically place the clerk's filing stamp and case number on each document. The electronic filing system shall send a notice to the filer that the filing has been accepted and is available through the electronic filing system website.

- (b) Initiating documents shall be served by traditional methods unless the responding party has consented to accept electronic notice or service by some other method as allowed by statute or court rule.

**(6) FILING AND SERVICE OF SUBSEQUENT DOCUMENTS:**

**(a) DOCUMENTS THAT MAY BE FILED ELECTRONICALLY:**

1. A court may permit electronic filing of a document in any action or proceeding unless court rules or other legal authority expressly prohibit electronic filing.
2. In a proceeding that by statute, court order or court rule requires the filing of an original document, e.g., a ballot or will that was created in a paper form, an electronic filer may file an electronic copy of a document provided that the original document is then filed with the court within 10 calendar days. The original document shall be maintained in its original format by the clerk of court.
3. The court may permit electronic filing of an application for waiver or partial waiver of court fees and costs in any proceeding in which the court accepts electronic filings.
4. The court may electronically file any notice, order, minute entry, judgment, or other document prepared by the court.
5. Proposed orders may be filed and submitted electronically through the electronic filing system.
6. Effect of document filed electronically:
  - (a) A document that the court or a party files electronically under these rules has the same legal effect as a document in paper form.
  - (b) The calculation of time under other statutes and rules is neither expanded nor contracted by this section.
  - (c) Once accepted by the clerk, electronically filed documents are immediately viewable by all parties on the case. If a user intends to file ex parte matters, consideration should be given to submitting the documents outside the electronic filing system.
7. The electronic filing system shall not be used for the electronic exchange of discovery materials and other communications between the parties that are not intended to be filed with the court.
8. If a document is intended or ordered to be lodged in a case, it shall be traditionally submitted to the clerk of court, since electronic filing is limited to those documents which are officially filed with the case.

**(b) ELECTRONIC NOTICE OF SERVICE:**

1. When a document may be served by mail, express mail, overnight delivery, or fax transmission, electronic notification of service of the document is permitted when authorized by these rules.
2. A party agrees to accept electronic notification of service by:

- (a) Serving a notice on all parties that the party accepts electronic service and filing the notice with the court. The notice shall include the electronic service address at which the party agrees to accept service; or
    - (b) Electronically filing any document with the court using the electronic filing system. The act of electronic filing is evidence that the party agrees to accept notification of service at the electronic service address the party specified when registering as a user of the electronic filing system.
  3. A court that permits electronic filing in a case shall maintain and make available electronically to the parties an electronic service list that contains the parties' current electronic service addresses, as provided by the parties that have filed electronically in the case.
  4. Parties are responsible for service on all other parties in the case. A party may serve documents electronically by electronic mail, by an agent, or through the electronic filing system.
  5. A registered user whose electronic service address changes while the action or proceeding is pending shall update his/her electronic service address in the electronic filing system.
  6. An electronic service address is presumed valid for a party if the party files electronic documents with the court from that address and has not filed notice that the address is no longer valid.
  7. Electronic service of a document is complete at the time the electronic notification of the filing of the document is sent, together with a hyperlink to the submitted document.
- (c) PROOF OF SERVICE:**
1. The Certificate of electronic service shall state:
    - (a) The electronic signature of the person making service, including a filed-on-behalf-of statement if the person making the service is filing on behalf of the attorney of record;
    - (b) The date of service;
    - (c) The name and address of the person served unless the address is legally protected; and
    - (d) The manner by which the document was served.
  2. Proof of electronic service may be in electronic form and may be filed electronically with the court.
  3. The court may electronically serve any notice, order, judgment, or other document issued by the court in the same manner that parties may serve documents by electronic service.

**(7) PAYMENT OF FEES:**

- (a) Users shall make payment of filing fees due to the clerk of court through the electronic filing system unless otherwise ordered by the court or other

arrangements are made with the clerk of court. The electronic filing system shall establish one or more methods for electronic payment.

- (b) Users may submit a request for waiver of fees, using a form provided by the electronic filing system for that purpose.

**(8) FORMAT AND CONTENT OF DOCUMENTS:**

- (a) To the extent practicable, the user shall format all electronically filed documents in accordance with statutes and local rules governing formatting of paper documents, including type size, word and page limits.
- (b) Users shall provide information required to file the document in the court case management system.
- (c) The electronic filing system administrator shall publish a Technical Operations Guide describing the specific technical requirements regarding the format and content of documents filed in the electronic filing system.

**(9) OFFICIAL RECORD:**

- (a) Electronically filed documents have the same force and effect as documents filed by traditional methods.
- (b) For documents that have been electronically filed, the electronic version constitutes the official record. No paper copy of an electronically filed document shall be sent to the court, except as provided in (12) below or unless the court specifically requires a copy through court policy.
- (c) The clerk of court may maintain the official court record in electronic format or in a combination of electronic and non-electronic formats. Documents filed by traditional methods in an electronic case file shall be electronically scanned and made part of the official record. The clerk of court may discard the paper copy immediately, unless statutorily required to maintain the paper copy. If a document submitted by traditional methods is not of sufficient quality to be legible when electronically scanned into the electronic document management system, the clerk shall maintain the document in paper format.
- (d) Any official court record containing electronically filed documents shall meet the operational standards for electronic records.
- (e) The clerk of court shall make the public portions of the electronic record available through the clerk's office.
- (f) Certified or conformed copies of an electronic record shall be obtainable from the clerk of court's office by traditional methods.
- (g) In an electronic case file, the court may require the submitting party to produce the original paper document if validity of the signature or document is challenged.
- (h) Electronic placement of the clerk's filing stamp and case number constitutes the official court record. A conformed copy may be printed from the court case management system by the clerk of court or from the electronic filing system by a user who is authorized to access the case.

**(10) SIGNING PLEADINGS, MOTIONS AND OTHER PAPERS:**

**(a) SIGNATURES ON ELECTRONIC FILINGS:**

1. A registered user's log-in and password serve as the user's signature on all documents electronically filed with the Court.
2. Except as provided by (10)(b), where a hand signature would otherwise appear, each document filed electronically by a registered user may be signed in the format "/s/ Chris E. Attorney."
3. A registered user shall not knowingly permit or cause the user's password to be used by anyone else. If a registered user has reason to suspect that the security of the user's log-in and password has been compromised, the E-Filing System Administrator must be contacted immediately.
4. Only a judge, registered user, clerk of court, court reporter, or deputy clerk of court may use the "/s/" signature form, and, except as provided by (10)(b)(1)(a) only when signing the document as the filer.

**(b) JOINTLY FILED DOCUMENTS; MULTIPLE SIGNATURES:**

1. Documents requiring signatures of more than one party may be filed in one of the following ways:
  - (a) Where all signers are registered users and where all consent to the filing, by using the "/s/" electronic signature as to all parties;
  - (b) Where all signers use hand signatures, by scanning the document and filing it electronically without the "/s/" signature by any party;
  - (c) By scanning one or more identical documents with hand signatures and attaching each document as an exhibit to a document bearing the registered user's "/s/" electronic signature; or
  - (d) By using any other method prescribed by the Court.
2. In no event may one signature page be signed in the "/s/" electronic form by one party and by hand signature by another party.

**(11) CONFIDENTIAL INFORMATION:**

- (a) The confidentiality of an electronic record, or an electronic or paper copy thereof, is the same as for the equivalent paper record. The electronic filing system may permit access to confidential information only to the extent provided by law. No person in possession of a confidential electronic record, or an electronic or paper copy thereof, may release the information to any other person except as provided by law.
- (b) If a document is deemed confidential by statute, local rules or court order, it shall be identified as confidential by the submitting party when it is filed. The electronic filing system may require users to enter certain information, such as social security numbers, in confidential fields. The clerk of court is not required to review documents to determine if confidential information is contained within them.

**(12) ELECTRONICALLY FILING DOCUMENTS IN A CASE ON APPEAL:**

**(a) IN THE SUPREME COURT, INCLUDING EXTRAORDINARY WRITS, SUPERVISORY CONTROL AND ORIGINAL PROCEEDINGS:**

1. The clerk of the originating court may electronically file the originating court record or provide a hyperlink to the court record with a certification that the electronic court record is accurate and complete.
2. Court reporters may electronically file transcripts.
3. When filing Motions, Petitions for Original Proceedings, and Petitions for Extraordinary Writs, electronically file the original only. The Clerk of the Supreme Court may direct a party to submit additional paper copies of the motion, petition, response, or any appendices or exhibits, when paper copies would aid the Court's review of the matter.
4. When filing briefs, electronically file the original. For the electronically filed brief, the color requirements for the cover under Rule 11(6)(a), M. R. App. P., shall not apply. Once the electronically filed brief is checked for deficiencies and approved, the clerk will notify the e-filer to submit seven paper copies of the electronically filed brief. The seven paper copies of the Appellant's Opening brief must comply with Rule 12(1)(i), M. R. App. P., including copies of the orders and judgments from which the appeal is taken. Upon notification, paper copies must be submitted within seven days or within such specific time as directed by the Court. For the paper copies, the color requirements for the cover under Rule 11(6)(a), M. R. App. P., shall apply.
5. When filing an Appendix, electronically file the original. The Appendix shall include a table of contents and a separate title page for each document, labeled "Appendix A" or "Appendix 1" and so forth. The Court encourages the electronic bookmarking of each document to its corresponding reference in the table of contents to make the appendix readily searchable. Other than those documents required to be filed under Rule 12(1)(i), M. R. App. P., paper copies of appendix documents need not be filed.

**(b) IN A DISTRICT COURT:**

1. Except for electronic recordings, the record on appeal may be filed electronically and may be filed by providing a hyperlink to the court record with a certification that the electronic court record is accurate and complete. If no written transcript exists for the court's proceedings that have been recorded electronically, the electronic recording shall be filed by traditional methods. Any bonds, undertakings on appeal and statutory filing fees to be transferred shall be done by traditional methods.
2. After the case is transferred all further filings shall be filed into the record on appeal in the District Court and may be electronically filed unless otherwise directed by local rule.

**(13) ELECTRONIC FILING SYSTEM TECHNICAL FAILURES:**

- (a) A user whose filing is made untimely as a result of a technical failure may seek appropriate relief from the court as follows:
  1. If the failure was caused by the court's electronic filing system, the court shall grant appropriate relief upon satisfactory proof of the cause.
  2. If the failure was not caused by the court's electronic filing system, the court may grant appropriate relief upon satisfactory proof of the cause. Parties are responsible for timely filing of electronic documents to the same extent as with the filing of paper documents, with the same consequences for missed deadlines. The calculation of time under other statutes and rules is neither expanded nor contracted by this section.
- (b) This subsection shall be liberally applied to avoid prejudice to any person using the electronic filing system in good faith.

CLERK OF THE  
DISTRICT COURT  
KRISTINE BOELTER  
2015 AUG 28 PM 4 15

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY  
FILED  
BY *AB*

IN RE THE ESTABLISHMENT OF A  
DISTRICT STANDING MASTER  
FOR ALL DEPARTMENTS OF THE  
DISTRICT COURT

Cause No.: *SB-15-1*

*AB*  
*JA*

**CHARTER ORDER IN RE  
DISTRICT STANDING MASTER  
ESTABLISHMENT & PROCEDURE**

The judges of the Thirteenth Judicial District Court hereby establish a District Standing Master (hereafter "Master") for Departments 1 through 6 of the District. Pursuant to Mont. Code Ann. §§ 3-5-124 to 3-5-126 and Mont.R.Civ.P. 53, the terms of this Order shall constitute and define the jurisdictional charter, structure, and general procedure for proceedings before the Master.

**1. Purpose Of Establishment Of Master.**

The Montana Supreme Court, by and through the Hon. Chief Justice and the Office of Supreme Court Administrator, has authorized a full-time Master position to jointly serve all six Departments of the Thirteenth Judicial District Court. The district court workload study revealed the Thirteenth Judicial District needs five more district court judges. If additional district court judges are approved in the 2017 legislative session, those judges would not take office until 2018 or 2019. A Master for Departments 1 through 6 is hereby established to relieve workload and improve service to litigants in all types of cases by referring selected matters to the Master at the

*796861*

discretion of the six district court judges.

**2. Enabling Authority.**

Upon appointment of a Master, the district court may refer civil matters to the Master for disposition subject to district court review. Mont. Code Ann. §§ 3-5-124 to 3-5-126 (2013); M.R.Civ.P. 53. Consent of the parties for referral is not required. Mont. Code Ann. § 3-5-126(3). The district court retains broad discretion to specify or limit the scope of the Master's authority by standing order or order of special referral. Mont. Code Ann. § 3-5-124(2); M.R.Civ.P. 53(c)(1).

Mont. Code Ann. §§ 3-5-113 and 3-5-114 specify the qualifications for *special* masters and judges pro tempore. In contrast, neither Title 3, Chapter 5, Part 1 of the Montana Code Annotated nor M.R.Civ.P. 53 specify the qualifications or procedure for establishing and appointing a Master under Mont. Code Ann. § 3-5-124. In mandating qualifications for the Master, the district court has inherent and implied power and authority to adopt "any suitable process or mode of proceeding . . . which may appear most conformable to the spirit of this code." Mont. Code Ann. § 3-1-113. Accordingly, the Court hereby adopts the criteria of Mont. Code Ann. § 3-5-114 as the qualifications for the Master and the provisions of this Order as the procedure for establishing and appointing the Master.

**3. General Structure – Scope Of Authority.**

The presiding judges of the Thirteenth Judicial District may appoint a qualified individual to serve as the Master in accordance with the terms of this Order. Mont. Code Ann. § 3-5-124. Upon appointment, the Master shall serve under this Order and in compliance with Mont. Code Ann. §§ 3-5-124 to 3-5-126 and M.R.Civ.P. 53.

The Master shall, upon order of referral, be responsible for the administration and disposition of cases referred. Pursuant to Mont. Code Ann. §§ 3-5-124 to 3-5-126 and M.R.Civ.P.

53(c)(2), the Court hereby charges, delegates, vests, and confers the following specific and general powers, authority, and duties upon the Master under this Order:

- (1) to assume jurisdiction over and adjudicate all procedural and substantive aspects of proceedings referred for disposition pursuant to this Standing Order;
- (2) to schedule, compel attendance at, and conduct all evidentiary hearings, bench trials, oral arguments, or other proceedings required, necessary, or proper within the scope of this Order;
- (3) to administer oaths and issue subpoenas on behalf of the court in the manner otherwise provided by law;
- (4) to compel and take evidence and rule on its admissibility as required, necessary, or proper;
- (5) to issue mesne or preliminary orders, including but not limited to scheduling and discovery orders pursuant to M.R.Civ.P. 16 and 26-37, in the same manner as otherwise provided by law for district courts;
- (6) to control and regulate all proceedings before the Master; and
- (7) to perform any other lawful acts or measures necessary or proper within the scope of this Standing Order in the same manner as the district court.

The Master shall perform his/her duties subject to and in accordance with the terms of this Order, state statute, prevailing case law, and all substantive and procedural law, rules, and regulations otherwise applicable to proceedings before the court, including but not limited to the Montana Rules of Civil Procedure, Montana Rules of Evidence, Montana Uniform District Court Rules, and Local Rules of the Thirteenth Judicial District. The referring court may, by way of the order of referral, more particularly specify or limit the scope of the Master's authority, function, or duty in a particular case. Mont. Code Ann. § 3-5-124(2)(a); M.R.Civ.P. 53(c)(1). The referring department shall retain and exercise supervisory control over the Master on cases referred when extraordinary circumstances and the interests of justice require supervision and ordinary district court review under Mont. Code Ann. § 3-5-126(2) is not an adequate remedy. In the interests of

justice and in the sole discretion of the court, the referring court may by order rescind a case referral and reassume primary administration of the case.

**4. General Procedure.**

(A) Referral And Initial Meeting. A judge of the Thirteenth Judicial District, in his or her sole discretion, may by order refer cases within the judge's jurisdiction to the Master for proceedings and disposition pursuant to this Order. Once the case is referred, the Master shall set appropriate conferences, hearings, and/or trials at his/her discretion.

(B) When Hearing Not Required. When a hearing is not otherwise required by law, the Master may file and serve an appropriate order and judgment upon the matters submitted under the referral. Mont. Code Ann. § 3-5-126(1).

(C) When Hearing Required. When a hearing is required by law or in the Master's discretion, the Master shall notice and conduct a hearing in accordance with Mont. Code Ann. § 3-5-126 and this Charter Order.

(D) Record, Filing Procedure, And Clerk Of Court Duty.

The Master shall record all contested proceedings either by means of a certified court reporter or audio or video recording suitable to facilitate production of a verbatim transcription of proceedings for district court and appellate review. Mont. Code Ann. §§ 3-5-124(2)(c). The Master shall file the evidence, a recording of all contested proceedings, and original exhibits with the Clerk of District Court. Mont. Code Ann. § 3-5-126(1). The Clerk of District Court shall attend all contested proceedings before the Master and act as the clerk of proceedings before the Master in the same manner as proceedings before the district court. Mont. Code Ann. § 3-5-501. In cases referred to the Master, the parties and Clerk of Court shall file all pleadings, motions, briefs, and other filings in the ordinary course in the court file for the subject cause.

(E) Form Of Decision. The Master shall file and serve written findings of fact, conclusions of law, and a dispositive order for all contested proceedings tried upon the facts. Mont. Code Ann. § 3-5-126(1); M.R.Civ.P. 52(a). The Master shall file and serve a dispositive written decision and order for all contested proceedings not tried upon the facts.

(F) Filing Of "Master's Report" And Objections Procedure.

As distinct from non-dispositive scheduling, mesne, or other preliminary orders and rulings, an adjudicatory or dispositive order of the Master on a contested proceeding shall constitute the "master's report" for purposes of Mont. Code Ann. §§ 3-5-125(1) and 3-5-126(3), thereby triggering the district court review deadline. Mont. Code Ann. § 3-5-126(2). Objections to the master's report must comply with Uniform District Court Rule 2, Local Rule 5, and Mont. Code Ann. § 3-5-126(2). Failure to strictly adhere to substantive and procedural rules regarding objections to the master's report shall subject the party's objections to adverse summary ruling.

(G) Effect/Enforceability Of Report As Court Order. Upon filing and except as otherwise expressly stayed by written order of the Master or the court, the master's report shall be immediately effective and enforceable as an order of the court subject to subsequent reversal, remand, revision, or supersedence by subsequent written order of the district court upon review of a timely-filed objection. The filing of objections or district court review does not automatically stay or nullify the effect or enforceability of the Master's order. Upon expiration of the objections deadline, the master's report shall by operation of law become a final dispositive judgment. If proper and timely objection is made, the district court shall conduct a hearing to review the master's report. Mont. Code Ann. § 3-5-126(2).

(H) Standard Of District Court Review. Upon review of a judgment (master's report) of the Master, the district court, after a hearing, "may adopt the [Master's] findings and conclusions or

order and may modify, reject in whole or in part, receive further evidence, or recommit the findings and conclusions or order with instructions” to the Master. Mont. Code Ann. § 3-5-126(2). The court thus has broad discretion to affirm, reverse, modify, or remand a judgment of the Master. Although the court has discretion to take supplemental evidence, an aggrieved party has no vested right to present supplemental evidence upon judicial review of a judgment of the Master.

Except to the extent that it may elect to take supplemental evidence when warranted in the interests of justice, the standard of district court review of the findings of fact of the Master (master’s report) is whether the findings of fact are clearly erroneous, giving due deference to the broad discretion of the Master to assess the relative credibility of the witnesses and the weight of the evidence. *Patton v. Patton*, 2015 MT 7, ¶ 24, 378 Mont. 22, 340 P.3d 1242; *Maloney v. Home & Investment Center, Inc.*, 2000 MT 34, ¶ 28, 298 Mont. 213, 994 P.2d 1124 (standard of review of judgments of master is same as for lower court judgments); *In re Marriage of Swanner-Renner*, 2009 MT 186, ¶ 13, 351 Mont. 62, 209 P.3d 238 (clear error standard requires due deference to the broad discretion of lower tribunal to assess the relative witness credibility of witnesses and weight of the evidence); M.R.Civ.P. 52(a). The standard of review for a Master’s conclusions of law is whether the conclusions are correct. *Patton*, ¶ 43.

A party challenging a judgment of the Master has the burden of showing on review that:

- (1) the Master’s findings of fact are clearly erroneous;
- (2) the Master’s conclusions of law are incorrect;
- (3) the interests of justice otherwise warrant the taking of supplemental evidence upon review.

*Patton*, ¶¶ 25, 42-43.

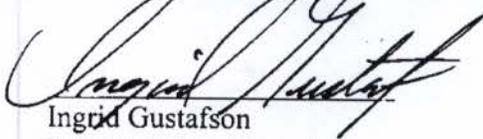
#### **7. Decorum, Orders, And Contempt.**

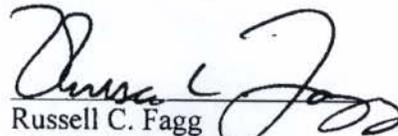
All parties and counsel shall formally treat and address the Master with the same formality,

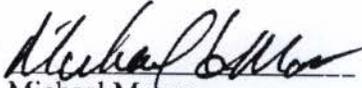
decorum, and respect required and customary in proceedings before a presiding district judge and in accordance with Local Rule 19. All parties and counsel shall obey and comply with orders of the Master in the same manner as orders of the court. Failure to comply with the orders of the Master will subject a party to contempt by the Master or the district court.

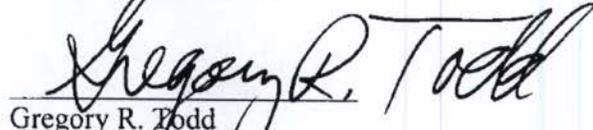
**SO ORDERED** this 26<sup>th</sup> day of August, 2015.

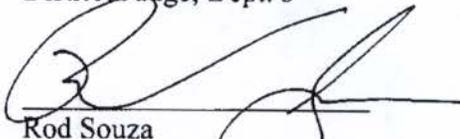
MONTANA THIRTEENTH JUDICIAL DISTRICT COURT

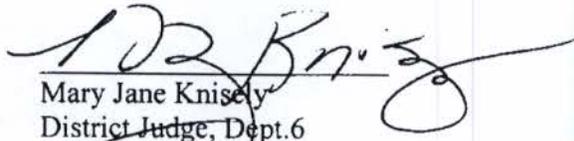
  
Ingrid Gustafson  
District Judge, Dept. 1

  
Russell C. Fagg  
District Judge, Dept. 2

  
Michael Moses  
District Judge, Dept. 3

  
Gregory R. Todd  
District Judge, Dept. 4

  
Rod Souza  
District Judge, Dept. 5

  
Mary Jane Knisely  
District Judge, Dept. 6

CLERK OF THE  
DISTRICT COURT  
KRISTIF LEE BOELTER  
2016 MAR 7 PM 2 22

FILED  
BY \_\_\_\_\_  
DEPUTY



**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT,  
YELLOWSTONE COUNTY**

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IN RE THE REFERRAL OF	)	
INVOLUNTARY COMMITMENT CASES	)	Cause No.: <u>SB 16-1</u>
TO THE STANDING MASTER TO	)	
CONDUCT THE INITIAL HEARINGS	)	<b>STANDING ORDER OF REFERENCE</b>

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The Thirteenth Judicial District Court Judges established the position of District Standing Master with our *Charter Order in re District Standing Master Establishment & Procedure* on August 28, 2015 (Cause No. SB 2015-0001). This position was established for the purpose of relieving the workload of the six departments and improving service to litigants in the Thirteenth Judicial District.

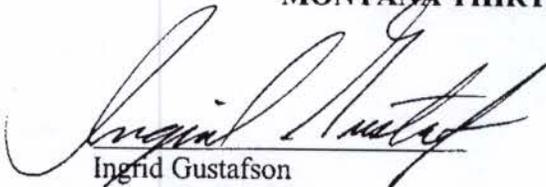
IT IS HEREBY ORDERED:

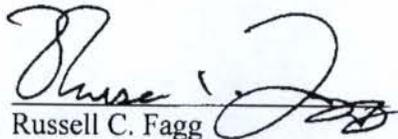
1. The Standing Master shall be responsible for the administration of all involuntary commitment cases through the Initial Hearing stage on the *Petition for Commitment*. (See Mont. Code Ann. 53-21-122). These duties include, but are not limited to:
  - A. Reviewing the petition and determining if there is probable cause for filing the petition;
  - B. Appointing the Montana Public Defender's Office to represent the Respondent pursuant to Mont. Code Ann. § 53-21-116 and § 53-21-122(2);
  - C. Advising the Respondent of his/her constitutional rights, his/her rights under Title 53, Chapter 21, Part 1 of the Montana Code Annotated, and the substantive effect of the petition;
  - D. Determining at the initial hearing if there is an objection to the finding of probable cause for filing the petition.

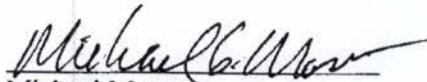
2. If the parties to a proceeding under Title 53, Chapter 21, Part 1 of the Montana Code Annotated stipulate to the Respondent waiving the hearing/trial provided for under Mont. Code Ann. § 53-21-126, the Standing Master will forward *Findings of Fact, Conclusions of Law and Recommendation* to the assigned District Judge for review.
3. If the Standing Master is unable to complete these assigned duties due to sickness, vacation or other reason, the assigned Judge or next available Judge will perform these duties.

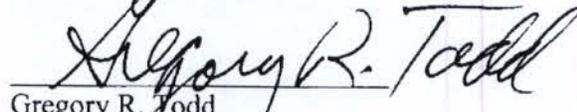
SO ORDERED this 7<sup>th</sup> day of March, 2016.

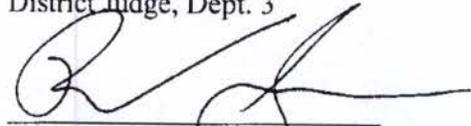
**MONTANA THIRTEENTH JUDICIAL DISTRICT COURT**

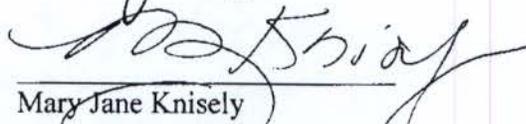
  
Ingrid Gustafson  
District Judge, Dept. 1

  
Russell C. Fagg  
District Judge, Dept. 2

  
Michael Moses  
District Judge, Dept. 3

  
Gregory R. Todd  
District Judge, Dept. 4

  
Rod Souza  
District Judge, Dept. 5

  
Mary Jane Knisely  
District Judge, Dept. 6

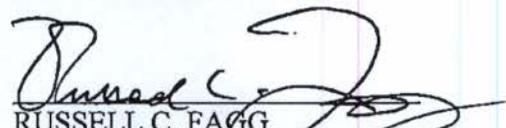


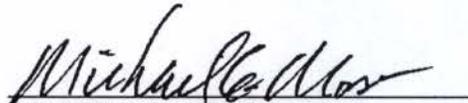
- b. Determining whether the Defendant is under any disability that would prevent him/her from being able to proceed, (*See* Mont. Code Ann. §46-12-201(3));
- c. Advising the Defendant of charges and possible penalties;
- d. Entering Defendant's plea;
- e. Setting bond conditions;
- f. Issuing warrants.

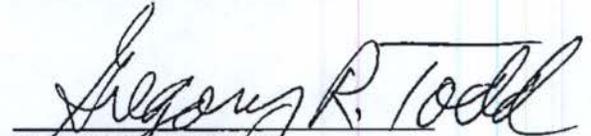
SO ORDERED this 9<sup>th</sup> day of January, 2017.

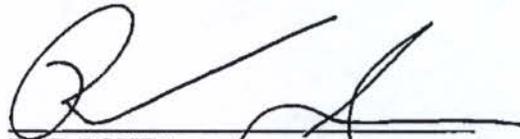
MONTANA THIRTEENTH JUDICIAL DISTRICT COURT

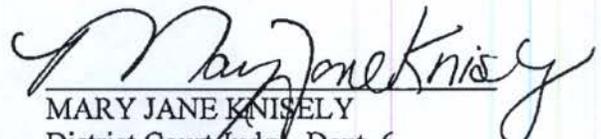
  
INGRID GUSTAFSON  
District Court Judge, Dept. 1

  
RUSSELL C. FAGG  
District Court Judge, Dept. 2

  
MICHAEL MOSES  
District Court Judge, Dept. 3

  
GREGORY R. TODD  
District Court Judge, Dept. 4

  
ROD SOUZA  
District Court Judge, Dept. 5

  
MARY JANE KNISELEY  
District Court Judge, Dept. 6