

**LOCAL RULES OF PRACTICE OF THE  
JUSTICE COURT OF YELLOWSTONE  
COUNTY, STATE OF MONTANA  
A JUSTICE COURT OF RECORD  
[Effective November 6, 2015]**

**PREFACE**

The following Rules of Practice supplement the Justice and City Court Civil Rules of Civil Procedure, the Uniform Justice and City Court Rules and any applicable statutes as provided in the Montana Code Annotated (MCA). Any conflict shall be controlled by the Justice and City Court Civil Rules, Uniform Justice and City Court Rules or applicable statutes.

**RULE 1**

**DEPARTMENTS**

The Yellowstone County Justice Court is divided into two departments. The departments assigned to individual judges and their successors are as follows:

Department 1 – Judge David Carter

Department 2 – Judge Pedro Hernandez

**RULE 2**

**DIVISION OF BUSINESS**

All cases shall be assigned using Full Court to a department randomly in equal numbers between the two departments. Except for consolidation and disqualification, no case shall be reassigned to another department at the request of a party.

**RULE 3**

**CONSOLIDATION**

(1) Traffic and criminal violations filed against the same defendant arising out of the same stop, arrest, or transaction and assigned by Full Court to different departments or in the same department with different case numbers, shall be consolidated. The consolidated case shall be heard and tried before the judge presiding in the department having the earliest docket number assigned with criminal (CR) cases having priority.

(2) A motion to consolidate cases (civil or criminal), assigned to different departments, or assigned to the same department, shall be filed in each case. The motion shall be heard by the judge presiding in the department having the earliest docket number assigned. If consolidated, the cases shall be tried before the judge presiding in the department having the earliest docket assigned.

(3) In civil actions the court shall follow Rule 42, of the Montana Rules of Civil Procedure in consolidating actions involving a common question of law or fact.

## **RULE 4**

### **INITIAL APPEARANCES AND ARRAIGNMENTS**

(1) Initial appearances and arraignments are distributed between the two departments as follows:

**Monday**

9:00 AM Department 1  
3:00 PM Department 1

**Tuesday**

9:00 AM Department 1  
3:00 PM Department 1

**Wednesday**

9:00 AM Department 2  
3:00 PM Department 2

**Thursday**

9:00 AM Department 2  
3:00 PM Department 2

**Friday**

9:00 AM Department 1  
3:00 PM Department 1

(2) Only the judge presiding on the day of the initial appearance or arraignment shall accept pleas regardless of the assigned department.

(3) All not guilty pleas shall be set for an omnibus hearing and trial in the department in which the case is assigned.

(4) The judge presiding on the day of the initial appearance or arraignment upon acceptance of a guilty or nolo contendere plea shall impose sentence. When the judge presiding on the day of the initial appearance or arraignment is a judge pro tempore all petitions for revocation of a suspended or deferred sentences imposed shall be directed to the judge of the assigned department.

## **Rule 5**

### **LAW AND MOTION DAY**

(1) Each department will have a weekly Law and Motion day. Law and Motion days are limited to uncontested matters and changes of plea. Matters involving presentation of evidence will not be heard on Law and Motion day, except by leave of the court. The Law and Motion days are as follows:

**Tuesday**

9:30 AM to 10:30 AM Department 2

**Thursday**

9:30 AM to 10:30 AM Department 1

(2) Attorneys shall inform the clerk's office in advance of the matters to be presented on Law and Motion day. The matters so designated shall be listed by the clerk on a Law and Motion calendar. The calendar shall be closed at 4:00 PM the day previous to each Law and Motion day.

**(3) Motions to amend, plea agreements and other documents requiring the court's approval shall be filed with the clerk's office prior to the closing of the calendar.**

**Rule 6**  
**ENTRY OF PLEAS**

(1) A defendant or defense counsel licensed to practice law in Montana must appear in open court to enter a plea of not guilty.

(2) Within 10 days of entering the not guilty plea, the attorney shall cause to be filed with the court the defendant's executed "Acknowledgement of Rights and Penalties" and receipt of the "Order Setting Conditions of Bail, Omnibus Hearing and Trial".

(3) A defendant shall appear in open court to enter a plea of guilty or nolo contendere. With prior approval by the court, an attorney may appear for the defendant to enter a guilty or nolo contendere plea. No written plea of guilty or nolo contendere shall be accepted. A defendant may physically appear by two-way electronic audio-video communication.

(4) At any time after arraignment upon notice to the prosecutor, at the omnibus hearing, or at the pre-trial hearing, a defendant may file a notice with the court of defendant's intent to change a plea to guilty or nolo contendere. The notice shall state a date and time certain, within 20 days of the notice, the defendant will appear to enter the change of plea. Failure to file the notice may result in the case not being placed on the court's calendar. The notice does not vacate any previously set hearing or trial.

**Rule 7**  
**REQUIRED APPEARANCES**

Upon a defendant's voluntary default of physical appearance as ordered, and in the absence of a specific request for a jury trial and good cause shown, the right to a jury trial is considered waived by the defendant.

**Rule 8**  
**MOTIONS**

(1) Pre-trial motions. Except for good cause shown, all pretrial motions must be made in writing as provided for under §46-13-101, MCA and Rule 6, U.J.C.C.R., at or before the omnibus hearing. Failure to raise defenses or objections or to make required requests prior to trial constitutes a waiver of the defense, objection, or request, except a motion for lack of jurisdiction or failure to state an offense is nonwaivable.

(2) Motion for new trial – Amendment of Judgment. Rule 59, M.R.Civ.P. shall apply to all motions for a new trial or amendment of judgments unless otherwise provided by law.

(3) Motion for relief from judgment or order. Rule 60, M.R.Civ.P. shall apply to all motions for relief from judgment or order, except a motion for relief from judgment must be made within 30 days after entry of judgment as provided for under Rule 22, J.C.C.R. Civ.P.

(4) Conflict. In the event of conflict the Montana Rules of Civil Procedure shall control.

**(5) Motions for continuances are governed by Rule 18, U.J.C.C.R, and §46-13-202, MCA. In a criminal matter, a motion for continuance by the defendant shall contain a waiver of speedy trial.**

## **Rule 9**

### **OMNIBUS HEARING**

(1) Defendants shall physically appear for the omnibus hearing.

(2) An attorney may appear at the omnibus hearing for a defendant upon the filing with the court of a written acknowledgement by the defendant containing the following: 1) that the defendant was advised by the attorney of the charges, penalties and defenses; 2) that the defendant has the right to appear at the omnibus hearing; 3) that the defendant has the right to view the evidence, including witness statements, police reports, expert reports and lab reports; 3) that the attorney is authorized to act on the defendant's behalf; 4) that defendant has notice of all scheduled court dates requiring the defendant's physical presence; and 5) that the defendant understands the consequences of defendant's failure to physically appear for a scheduled court date.

(3) The omnibus memorandum shall address plea offers and confirm or demand a jury trial. If an attorney appeared for his or her client, the attorney shall deliver a copy of the omnibus memorandum to the client.

(4) Upon failure to address the jury trial in the memorandum the action will proceed to trial without a jury.

(5) On or before the date set for the omnibus hearing, the state and the defendant, or defendant's counsel, may waive a formal omnibus hearing upon filing with the an omnibus memorandum executed by the defendant or defendant's counsel stipulating to its entry by the court.

## **Rule 10**

### **TRIALS AND HEARINGS**

(1) Except as provided by statute or good cause, each cause shall be tried before the judge of the department to which it is assigned. Non-jury and jury trials will be held throughout the year as time is available.

(2) The court may hold a scheduling hearing or pretrial hearing as necessary to ensure proper management of the case.

(3) Criminal matters shall be tried within 6 months of the defendant's arraignment or as provided by law.

(4) Civil matters may be set for trial by the clerk upon the filing of the answer.

(5) All orders setting trial or hearing shall be signed by the judge or clerk. The clerk shall serve a copy of the order setting trial or hearing upon all the parties and their counsel by first class or electronic mail.

## **Rule 11**

### **TRIALS IN ABSENTIA**

If a defendant fails to appear in person at the time set for trial, and upon a finding that the defendant had knowledge of the trial date and is voluntarily absent, the court shall proceed with the trial in absentia or as provided under Section 46-16-122, MCA.

## **Rule 12**

### **WITHDRAWAL OF ATTORNEY**

(1) Rule 14 of the Uniform Justice and City Court Rules and Rule 10 of the Uniform District Court Rules shall govern the withdrawal of an attorney.

(2) No withdrawal of an attorney (civil or criminal) is effective without the attorney timely filing with the court a copy of the notice required under Rule 10 of the Uniform District Court Rules. The attorney shall inform the court of the client's address and any other information to assist the court in contacting the client. The notice to the attorney's client shall direct the client to appoint another attorney or appear in person and shall inform the client of all scheduled court dates.

(3) Public Defender. When a public defender has been assigned to represent a defendant the assignment is effective until final judgment, subject to the representation of the defendant in any postconviction action or proceedings under Section 46-8-104, MCA.

## **Rule 13**

### **SUBSTITUTION OF JUDGES**

(1) Disqualification or substitution of a judge is governed by Title 3, Chapter 1, Part 8, MCA.

(2) When the judge pro tempore has accepted jurisdiction, the clerk shall mail a copy of the acceptance to the parties and their attorneys. Thereafter, all proceedings, motions, hearings, and trials shall be directed to the judge pro tempore assuming jurisdiction and not to the original judge assigned.

## **Rule 14**

### **ABSENCE OR DISABILITY OF JUDGE**

The work in the justice court shall be interchangeable between the judges during the absence or disability of a judge or at the request of a judge. During the absence of a judge, the judge presiding, including a judge pro tempore presiding, may enter orders and make disposition, temporary or final, of any case or matter pending before the absent judge.

## **Rule 15**

### **COURT RECORD**

The court's proceedings shall be recorded by electronic recording. A party may at the party's expense record a trial or hearing stenographically. A party or person may request a copy of the electronic recording. The requesting party or person shall be liable for the costs of producing a copy of the electronic recording.

**Rule 16**  
**APPEALS**

The Montana Uniform Municipal Court Rules of Appeal to the District Court, codified in Title 25, chapter 30, shall apply to all appeals to the district court. Appeals are limited in the following cases:

(1) In civil causes for a monetary judgment:

(a) That the minimum amount in controversy shall exceed \$1,000.00 before the district court has jurisdiction to hear the appeal. There is no appeal from a judgment by default, except as provided for under Rule 4(f), Montana Uniform Municipal Court Rules of Appeal to the District Court.

(b) Upon failure to timely file the required undertaking within 10 days after filing of the notice of appeal the appeal shall be dismissed by the court.

(2) In criminal causes:

(a) That the minimum amount in controversy, fine or restitution shall exceed \$300.00 before the district court has jurisdiction to hear the appeal, except if the judgment includes incarceration, no minimum fine may be required for appeal.

(b) Subject to the provisions of sections 46-12-204(3) and 46-17-203(2)(b), MCA, a plea of guilty or nolo contendere waives the right of appeal to the district court.

(3) A notice of appeal limited by the requirements of subsections (1) or (2) shall be dismissed by the court.

**Rule 17**

**FILING OF PAPERS**

(1) The office of the justice court clerk shall be deemed always open for the purpose of filing by facsimile or other electronic means any pleading, or other paper, of issuing and returning process and final process, and of making and all interlocutory motions, orders and rules.

(2) Rule 5 (e), M.R.Civ.P. shall govern the filing in justice court all filings by facsimile or other electronic means.

(3) §25-3-501, MCA shall govern service of a telephonic or telegraphic copy.

(4) The definition of “a day” is defined under §1-1-301(1), MCA.

**Rule 18**

**APPLICABILITY OF UNIFORM DISTRICT COURT RULES  
AND  
MONTANA RULES OF CIVIL PROCEDURE**

(1) The Montana Justice and City Court Rules of Civil Procedure govern procedures in this court.

(2) The Montana Rules of Civil Procedure (M.R.Civ.P.) are not applicable to this court unless referenced by the Justice and City Court Rules of Civil Procedure or these local rules.

(3) In the absence of any rule noted above governing a procedure, the Montana Uniform District Court Rules shall apply.

## Rule 19

### FILING AND MISCELLANEOUS FEES

- (1) The clerk of the justice court shall collect the following fees:
  - a. All appearance fees as provided by statute;
  - b. For preparing copies of papers on file in the clerk's office, \$1 a page for the first 10 pages of each file, for each request, and 50 cents for each additional page;
  - c. For each certificate, with seal, \$3; and
  - d. For each electronic recording of a trial, hearing, or proceeding, \$25.
- (2) All fees collected shall be deposited in the county general fund.

## RULE 20

### SMALL CLAIMS DIVISION

The small claims procedures provided in Title 25, Chapter 35, MCA, apply to all actions in the small claims division. The Montana Justice and City Court Rules of Civil Procedure and the Montana Uniform Rules for the Justice and City Courts are not applicable to the small claims division. In addition, the following local rules applying to the small claims division:

- (1) Computation of Time. The time in which to act upon a small claims procedure is computed by excluding the first day and including the last unless the last day is a holiday, and then it is also excluded. See Section 1-1-306, MCA
- (2) Performance of an action. An action required by the small claims procedure to be performed within a particular time, which day falls upon a holiday or a Saturday, such act may be performed upon the next judicial day.
- (3) Appearance of Plaintiff. The small claims plaintiff shall appear on the appearance date set by the small claims court.
  - a. Failure of the plaintiff to appear, and the defendant has not been served as provided for under Section 25-35-603, MCA, shall be deemed a waiver of the plaintiff's right for a new appearance date and the action shall be dismissed **without prejudice**.
  - b. Upon appearance and application of Plaintiff a new appearance date may be set if the defendant is not served as provided for under Section 25-35-603, MCA.
  - c. Upon failure of the plaintiff to appear and the defendant served as provided for under Section 25-35-603, MCA, the action shall be dismissed **with prejudice**.
  - d. Upon failure to serve a defendant within one year after commencement of the action, the small claims complaint shall be dismissed **without prejudice**.

**(4) The clerk of the justice court shall give a copy of this rule to the plaintiff upon commencement of the small claims action. A copy of this rule shall be served upon the defendant together with the small claims complaint and notice.**

**RULE 21  
BAIL**

- (1) All commercial bonds shall contain the following information:
  - a. Printed name of the underwriting surety company,
  - b. Address and telephone number of the underwriting surety company,
  - c. Printed name of the qualified agent issuing the bond, and
  - d. Address and telephone number of the qualified agent issuing the bond.
- (2) The qualified agent on behalf of the surety company upon posting the bond represents to the court the surety company has received the premium and sufficient security for the bond posted. No commercial bond shall be revoked or withdrawn by the surety company for non-payment of the premium or insufficiency of security.
- (3) Upon arresting a defendant for violation of the conditions of release, the qualified agent shall upon surrender of the defendant to the court, peace officer or detention center facility deliver an authorization to hold.
- (4) No commercial bond shall be revoked for violation of the conditions of release by the surety company without order of the court.
- (5) No bail shall be substituted without reasonable notice given to all parties and their attorney. Notice shall not be less than 5 days, or a shorter period set by the court.
- (6) Upon receiving a notice of bond forfeiture the surety company or its qualified agent on behalf of the surety company shall file within 90 days a response to the forfeiture.
- (7) Upon surrender of the defendant within 90 days of the notice of bond forfeiture, the court shall order the bail exonerated.
- (8) A default judgment will be entered against the surety company for the monetary amount of the bond upon failure to file a response, or surrender the defendant, within 90 days of the notice of bond forfeiture.
- (9) The judgment is to be paid within ten (10) days. The surety company shall not execute any new bonds until the judgment is paid. The Montana State Auditor, as the ex officio commissioner of insurance, shall be notified of the judgment.