

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT RULES

Rule 1 Application of Rules.

These rules apply to all cases filed in the Eighteenth Judicial District.

These rules supplement the Montana Rules of Civil Procedure and the Montana Uniform District Court Rules. All prior rules issued by the Eighteenth Judicial District Court are rescinded and these rules apply.

If an order setting a requirement or restriction imposed by the court in a particular case conflicts with these rules, the court's order supersedes these rules.

The Montana Uniform Municipal Court Rules of Appeal to District Court apply to appeals from the Bozeman Municipal Court to the District Court.

Unless otherwise specified in these rules or in a statute, each of these rules applies to both civil and criminal cases.

Rule 2 Departments of the District Court.

The District Court of the Eighteenth Judicial District of the State of Montana is divided into three departments:

Department No. 1 - presided over by Judge Holly Brown

Department No. 2 - presided over by Judge Mike Salvagni

Department No. 3 - presided over by Judge John C. Brown

Rule 3 Chief Judge and Meetings.

There is a chief judge. The position of chief judge is assumed for a calendar year by each presiding judge in the year set forth below and continuing in the same order thereafter:

Department No. 1 - 2011

Department No. 2 - 2009

Department No. 3 - 2010

The duties of the chief judge shall be to provide for the efficient management of the district court business, in cooperation with the other judges of the district. The judges shall meet at a regular time and place designated by the chief judge and at such other times as they shall agree.

All three judges shall serve simultaneously as Youth Court Judges. The Chief Judge shall serve as Chief Youth Court Judge.

Rule 4 Designation of Cases.

All matters filed in each docket shall be allocated among the three departments in random selection. Depending upon the department in which the case is filed, the case designation shall end with the letter "A", "B" or "C". Cases assigned to Department No. 1 are designated by last letter "A"; cases assigned to Department No. 2 are designated by last letter "B"; and cases assigned to Department No. 3 are designated by last letter "C".

If jurisdiction over the case passes to another judge the case remains assigned to the original department but the case number will end with an "X" (i.e., DV-05- 59AX). Pursuant to Section 3-1-308, MCA, the first district judge substituted or disqualified shall call in all subsequent judges by first attempting to call in another judge of the Eighteenth Judicial District prior to calling in a judge from another district.

Rule 5 Division of Business.

A. The general business of the departments will be scheduled as follows:

Department No. 1:

Criminal law and motion: Tuesdays at 8:30 a.m.

Uncontested civil and probate matters: As scheduled by the Court.

DN cases: 2nd Friday of the month and as scheduled by the Court.

Criminal trial months: February, May, August, and November.

Criminal omnibus hearings: 3rd Tuesday of the month at 1:30 p.m.

Department No. 2:

Criminal law and motion: Mondays at 1:30 p.m.

Uncontested civil and probate matters: As scheduled by the Court

DN cases: 1st Friday of the month and as scheduled by the Court.

Criminal trials months: January, April, July, and October.

Criminal omnibus hearings: 2nd Monday of the month at 9:00 a.m.

Department No. 3:

Criminal law and motion: Wednesdays at 8:30 a.m.

Uncontested civil and probate matters: As scheduled by the Court.

DN cases: 3rd Friday of the month and as scheduled by the Court.

Criminal trial months: March, June, September, and December

Criminal omnibus hearings: 4th Wednesday of the month at 1:30 p.m.

B. If a criminal omnibus hearing day falls on a holiday or conflicts with the Court calendar, the judge may schedule it for another day, which will not conflict with the other departments.

C. If a defendant in custody needs to be seen by a judge earlier than the regularly scheduled criminal law and motion day for the judge having jurisdiction, the County Attorney, Defense Attorney or Pretrial Services may arrange to have the defendant seen at another time in that or in another department, as approved by the court.

D. A judge may set civil trials and hearings on civil and criminal motions at such times as the judge's calendar permits. The judge may take into consideration potential scheduling conflicts for the parties in the cases.

Rule 6 Pleadings/Briefs. The following rules apply to civil and criminal cases.

A. Length

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.

B. Form of Briefs

Refer to Rule 1, Montana Uniform District Court Rules.

C. Case Citations

Every specific reference to a statement from a cited case shall contain a pinpoint citation.

Pursuant to the various orders of the Montana Supreme Court (See eg. Order issued on February 25, 2010) the Montana Supreme Court cases issued before 1998 shall have the Montana Reports and Pacific Reporter citations and be in the following form:

Primary cite:

Roe v. Doe, 284 Mont. 301, 989 P.2d 472 (1997).

Primary cite with pinpoint cite:

Roe v. Doe, 284 Mont. 301, 305, 989 P.2d 472, 475 (1997).

Primary cite alone:

Roe, 284 Mont. at 305, 989 P.2d at 475.

For citations to Montana Supreme Court cases issued after 1998, the *Matter of Opinion Forms and Citation Standards* 54 St. Rep. 1357 (1997) and Montana Supreme Court Order AF-07-0664 (Jan. 22, 2009) shall apply. The citations shall be in the following form:

Primary cite:

Doe v. Roe, 1998 MT 12, 286 Mont. 175, 989 P.2d 1312.

Primary cite with pinpoint cite and one paragraph reference:

Doe v. Roe, 1998 MT 12, ¶ 44, 286 Mont. 175, 989 P.2d 1312.

Primary city with pinpoint cite and more than paragraph reference:

Doe v. Roe, 1998 MT 12, ¶¶ 44-45, 286 Mont. 175, 989 P.2d 1312.

Pinpoint cite:

Doe, ¶ 44.

Doe, ¶¶ 44-45.

The 1997 Order may be found at: http://courts.mt.gov/library/cit_ord.pdf and the 2009 Order may be found at: <http://www.montanacourts.org/newrules.asp>.

D. Motions

Uncontested motions shall state in the caption and in the motion that opposing attorney/party does not contest the motion. It is not sufficient that the motion states that opposing attorney/party could not be contacted. Uncontested motions shall include a proposed order with copies for all parties.

If an uncontested motion does not state that it is uncontested, it will be treated as a contested motion and be placed on the motions calendar.

Contested motions are subject to Rule 2, Montana Uniform District Court Rules.

E. Motions to Continue or for Extensions

Motions to continue and for extensions shall be in writing and shall state the position of opposing parties regarding the motion. It is not sufficient that the motion states that the opposing party could not be contacted. If a motion to continue or for extension does not state the position of the

opposing party, the motion shall be subject to Rule 2, Montana Uniform District Court Rules. The Court will not rule on the motion until the response time has expired.

F. Filing Deadlines.

Filing and scheduling order deadlines will be strictly adhered to unless a written motion for an extension has been received and approved by the Court.

G. Reminders to the Court.

If a Judge has any matter under advisement for more than 120 days, the attorney or self-represented litigant may send a letter to the Judge, with copies to all parties, describing the matter under advisement and stating the date that it was submitted to the Court.

Rule 7 Specific Trial/Hearing Conduct. The following rules apply to civil and criminal cases.

- A. If a party is represented by more than one attorney, only one of the attorneys may question a specific witness.
- B. If a party is represented by more than one attorney, and one of those attorneys object to a line of questioning, then only that objecting attorney may cross-examine the witness.
- C. Attorneys must request permission of the court to approach witnesses.
- D. If an exhibit is presented during trial/hearing, the attorney/party shall have the exhibit properly marked by the clerk. If the exhibit is a document the attorney/party shall provide copies of the document to the judge and to opposing attorney/party.
- E. Plaintiff/Petitioner's exhibits shall be marked with numbers. Defendant/Respondent's exhibits shall be marked with letters.
- F. Attorneys/parties shall not keep the Court waiting, but shall appear at the scheduled time ready to proceed.

Rule 8 Proposed Findings of Fact and Conclusions of Law.

Rule 52(a), M.R.Civ.P., requires district courts to "find the facts specially and state separately its conclusions of law thereon" in matters not involving a jury. "Rule 52(a) requires findings of fact which are a recordation of the essential and determining

facts upon which the district court rested its conclusions of law and without which the district court's judgment would lack support." *In re Banka*, 2009 MT 33, ¶ 10, 349 Mont. 193, 201 P.3d 830 (citing *In re Marriage of Barron*, 177 Mont. 161, 164, 580 P.2d 936, 938 (1978)).

The Montana Supreme Court has also urged district courts to resolve factual issues in criminal cases by written order, in order to avoid any decisions that may prove insufficient for appellate review. *State v. Stoumbaugh*, 2007 MT 105, ¶ 31, 337 Mont. 147, 157 P.3d 1137; *State v. Gittens*, 2008 MT 55, ¶ 27, n. 2, 341 Mont. 450, 178 P.3d 91 (citing *Stoumbaugh*).

Proposed Findings of Fact and Conclusions of Law with sufficient detail shall be filed with the Clerk of the District Court as provided in this Rule or Rule 8, Montana Uniform District Court Rules. The Proposed Findings of Fact and Conclusions of Law shall be clearly delineated as "Proposed." Copies of the Proposed Findings of Fact and Conclusions of Law shall be provided to the judge in accordance with the procedure set forth by the judge in the final Pretrial Order or as otherwise required by the judge. If no other procedure is specified, the proposed Findings of Fact and Conclusions of Law shall be filed in accordance with Rule 8, Uniform District Court Rules. The sanctions allowed in Rule 8, Montana Uniform District Court Rules may apply to a violation of this Rule.

Rule 9 Court Security - Potentially Violent Situations; Duty of Party.

In both civil and criminal cases, where the attorney/party believes that a potentially violent situation may arise, that attorney/party shall notify the judicial assistant of the assigned judge sufficiently in advance so that appropriate security measures can be taken.

Rule 10 Final Pretrial Conferences.

In both civil and criminal cases, at least one of the attorneys who will conduct the trial for a party and any self-represented party shall personally attend the final pretrial conference. A substitute attorney may be allowed to represent a party at a final pretrial conference only after written approval of the Court upon a showing of good cause after written motion. The motion shall state the knowledge that the substitute attorney has about the case.

Rule 11 Motions for Protective Order or Order Compelling Discovery - Good Faith.

A motion for a protective order filed under Rule 26(c), M.R.Civ.P., or a motion for an order compelling discovery filed under Rule 37, M.R.Civ.P., shall be accompanied by a certification that the movant has in good faith conferred or attempted to confer with

other affected parties in an effort to resolve the dispute or to secure the disclosure or discovery without court action. Failure to include the certification or failure to make a good faith effort to confer may result in sanctions as allowed by Rules 26(c) and 37, M.R.Civ.P.

Rule 12 Time Allowed for Hearings and Trials.

The Court will assign a time limit for all hearings and trials. In a motion requesting a hearing, the attorneys and self-represented litigants shall advise the Court of the number of witnesses and the estimated length of time required for the hearing. The attorneys and self-represented litigants shall be realistic with the time estimated and requested for hearings and trials. Hearings and trials will be limited to the time set by the Court.

Rule 13 Filing of Certificate of Service.

Rule 5(a), M.R.Civ.P., requires the following documents to be served:

1. Every order required by its terms to be served;
2. Every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants;
3. Every paper relating to discovery required to be served upon a party unless the court otherwise orders;
4. Every written motion other than one which may be heard ex parte;
5. Every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper.

Rule 5(d), M.R.Civ.P. requires that "all papers after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service."

Rule 5(f), M.R.Civ.P, provides: "Proof of service shall be made by an affidavit of the party or the party's attorney making service, or by the certificate of the party's resident attorney making service or by an acknowledgment in writing from the party or attorney served, and such affidavit, certificate or acknowledgment shall be filed within 10 days after service. Failure to make proof of service does not affect the validity of the service."

If a party fails to file a certificate of service or proof of service for those documents specified in Rule 5(a), M.R.Civ.P., the Court will not consider the document.

Rule 14 Notice to Self-Represented Party Who Opposes a Summary Judgment

Any represented party moving for summary judgment against a party proceeding pro se shall serve and file as a separate document, together with papers in support of the motion, a "Notice to Self-Represented Party Regarding Summary Judgment Motion" in the form indicated below:

Notice to Self-Represented Party Regarding Summary Judgment Motion

An opposing party has moved for summary judgment against you pursuant to Rule 56 of the Montana Rules of Civil Procedure. This means that the opposing party has asked the court to decide this case without a trial, based on written materials, including affidavits, submitted in support of the motion. If you do not respond to this motion by filing sworn affidavits and other papers as required by Rule 56(e) of the Montana Rules of Civil Procedure or by testifying at a hearing, JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT A TRIAL. An affidavit is a sworn statement of fact based on personal knowledge that would be admissible in evidence at trial.

In short, Rule 56 provides that you may NOT oppose summary judgment simply by relying on the allegations in your complaint or answer. Rather, you must submit evidence, such as witness statements or documents, countering the facts asserted by the opposing party and raising material issues of fact for trial. Any witness statements must be in the form of affidavits or testimony at a hearing. You may submit your own affidavit, or the affidavits of others. You may submit affidavits that were prepared specifically in response to the opposing party's motion for summary judgment.

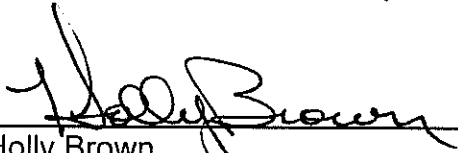
If you do not respond to the motion for summary judgment on time with affidavits, documentary evidence or testimony at a hearing, contradicting the material facts asserted by the opposing party, the court may accept the opposing party's factual assertions as true. Judgment may then be entered in opposing party's favor without a trial.

Rule 15 Mediation

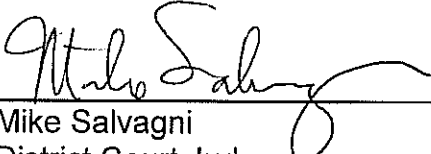
- A. When the Court orders mediation, each party shall have a person with ultimate settlement authority attend the mediation **in person** and participate in the mediation in good faith. If the person who has ultimate settlement authority is a party, then the party shall **personally** appear at the mediation.

- B. During the mediation session only the party and the party's attorney or the party appearing pro se and a person with ultimate settlement authority, who is not a party, may attend the mediation session. No member of a party's family or any other person may attend mediation unless all parties agree to the attendance of another person.

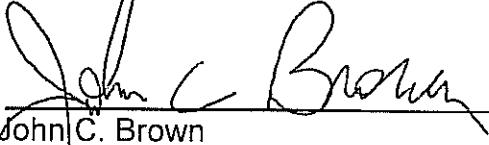
Effective: July 1, 2010.



Holly Brown
District Court Judge
Department No. 1



Mike Salvagni
District Court Judge
Department No. 2



John C. Brown
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