

RULES OF PRACTICE
of the
SIXTH JUDICIAL DISTRICT
of the
STATE OF MONTANA

In and for the Counties of Park and Sweet Grass

2022

TABLE OF RULES

Rule

1. Assignment of Cases
2. Law and Motion
3. Service of Process and Papers
4. Filings
5. Motions, Briefs and Hearings
6. Orders, Judgments or Decrees
7. Scheduling Conferences, Orders and Discovery Rules
8. Preliminary Pre-trial Conferences
9. Communications With the Court
10. Court Records
11. Alternative Dispute Resolution
12. Hearings and Trials
13. Postponement of Trials
14. Voir Dire
15. Attorneys
16. Exhibits
17. Evidence of Character
18. Stipulations
19. Offers of Proof
20. Trial Position Statement and Proposed Findings of Fact and Conclusions of Law
21. Marital Dissolution or Parenting Actions
22. Child Support Guidelines Requirements
23. Certification of Self Help Temporary Restraining Orders
24. Criminal Actions
25. Appointment of Counsel for Indigent Defendants
26. Removal to Small Claims Court
27. Weapons
28. Probate Fees
19. Six-Person Juries
30. Estates to be Closed Within Two (2) Years, Clerk's Duties
31. Witnesses
32. Priority Ranking of Payment of Fines and Fees
33. Dismissal of Action for Laches

These rules supplement the Montana Rules of Civil Procedure ("M.R.Civ.P."), the Uniform District Court Rules ("U.D.C.R."), and applicable statutory and case law.

Rule 1. ASSIGNMENT OF CASES

The District Court of the Sixth Judicial District has assumed full jurisdiction of all cases on file with the Sixth Judicial District in Park and Sweet Grass Counties as of January 1, 2022, except for those cases which the Court elects to transfer to other District Court Judges where grounds for recusal or judicial disqualification exist or those in which the presiding Court is substituted by one of the parties thereto within the time allowed by law. In addition, the Court may assign existing cases to other District Court Judges in those cases where such assignment is required in the interest of judicial economy.

Rule 2. LAW AND MOTION

A. Monday/Tuesday. Mondays are law and motion days in Park County. The second, third, and fourth Tuesdays of each month are law and motion days in Sweet Grass County. Court shall convene on law and motion day at 9:00 a.m. in Livingston. Court shall convene in Big Timber at 9:30 a.m. on the second and fourth Tuesdays, and at 1:30 p.m. on the third Tuesday. When law and motion days fall on an official holiday, the law and motion calendar in Park County shall be held on the following working day.

B. Uncontested Matters. All uncontested matters, judgments by default, probate proceedings, and other matters pertaining to questions of law not involving contested questions of fact shall be heard on law and motion days. Contested matters involving questions of fact will not be heard on law and motion day without written approval of the Court but will be set as to day and time by order of Court as provided in Rule 3.

C. Open Court. All matters presented to the Court shall be heard in open court, except for adoption hearings (§42-5-105, M.C.A.), hearings and trials under the Uniform Parentage Act (§§ 40-6-111 and 40-6-120 M.C.A.), and those other matters required to be closed by law or allowed to be closed in the interests of justice.

D. Calendar Preparation. Matters to be set on the law and motion calendar shall be listed by the Clerk on a calendar in the following order: 9:00 a.m.-- criminal matters; and 10:30 a.m. adoption, probate and miscellaneous civil matters. The law and motion calendar is available on the Park County Clerk of Court's website. Matters to be heard in Sweet Grass County may be set by the Clerk of Court.

E. Contested Matters. Any matter set for the law and motion calendar which proves to be contested is subject to postponement and shall be set on the contested calendar.

F. Document Presentation. No matter may be placed on the law and motion calendar until the motion or other documentation and all relevant supporting documents have been filed with the Clerk.

G. Ex Parte Matters. *Ex parte* motions are not favored. Emergency matters requiring the Court's attention must be e-filed in cases eligible for e-filing, or may be mailed or delivered to the court with a request for the Court's immediate attention. Absent extraordinary circumstances, prior to the issuance of an *ex parte* order, the party seeking such order must file a written certification with the court declaring that the opposing party has been contacted and given reasonable notice of: 1) the time and place of the filing of the *ex parte* motion; 2) the substance of the order sought; and 3) whether the opposing party opposes the motion. No *ex parte* parenting matters will be considered without demonstrating clear and convincing evidence of imminent physical or mental harm. Any *ex parte* motion must be accompanied by a proposed order setting a time and date for further hearing.

Rule 3. SERVICE OF PROCESS AND PAPERS

Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof exists as prescribed in Rule 4 or 5, M. R. Civ.P. or other applicable statute, shall be filed with the Clerk of Court promptly and, in any event, before any action is to be taken thereon by the Court or the parties. Proper service does not include placing copies in counsel's box in the Clerk of Court's office unless prior written permission is obtained from counsel. All documents and proposed orders must be provided to opposing counsel and/or other parties in the same manner as submitted to the Clerk of District Court.

Rule 4. FILINGS

A. Civil Rules Applicable. Any pleading filed in a civil action which does not conform to Rule 10 or Rule 11 of the M.R.Civ.P. may be stricken by the Court on its own initiative and upon such terms as the Court deems just.

B. Filing Fees. All pleadings, motions, and briefs shall be filed with the Clerk of Court. The Clerk of Court shall not accept or file any document required to be accompanied by a filing fee, unless the fee is paid or the Court has approved a fee waiver in writing. Judgment fees may be collected at the outset of a case, but shall be paid prior to or upon submission of a proposed Judgment or Decree.

C. Proposed Pleadings. Upon the filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or any other pleading requiring leave of Court of Court to file, the movant shall file with the motion a proposed Order. If leave to file is granted, the movant may then file the pleading or amendment.

D. Discovery. Pursuant to Rule 4, UDCR, no discovery documents shall be filed with the Clerk of Court without prior leave of the Court. Upon receipt of a deposition, the Clerk of Court shall mark it received and lodge it in the court file.

E. Jury Demands. When a demand for a jury trial is incorporated in a pleading, parties shall so indicate in the title as well as the body of the pleading.

F. Orders. When any written order or judgment is made by the Court, it must immediately thereafter be presented to the Clerk for filing.

G. Brief Deadlines. All briefs required by rule, statute, or Court order to be filed by a date certain shall be filed by 5:00 p.m. by the date certain. Except where approval from the Court is obtained prior to the date certain, and notice thereof is provided to each party by the party seeking an extension of time, filing beyond the date certain may result in the Court's disregarding the brief and citing the delinquent party's attorney for contempt.

H. Length of Briefs. No brief shall exceed 20 pages in length, exclusive of indices and appendices, without prior leave of the Court.

I. E-mail Address. Counsel shall include an e-mail address for themselves or their firm on all filings.

J. Filings. Upon e-filing being implemented in any county, the preferred filing method for filing is via e-filing. Instructions for e-filing are available at courts.mt.gov under E-filing. In the following cases: Adoption; Guardianship / Conservatorship / Treatment Court/ Search Warrant/ Investigative Subpoenas; Probates; and Fugitive Warrants, the preferred filing method for documents submitted to the Court is via US mail or in person. The filing method for documents in counties not currently e-filing is via hard copy filed in person or sent by mail. When necessary, documents in any county may be submitted for filing by email or fax filing. Email filings should be submitted to parkdcc@mt.gov for Park County or clerkofcourt.sweetgrass@mt.gov for Sweet Grass County. If documents are emailed, the originals need not be sent to the Clerk of Court. Fax filings should be submitted to 406-222-4128 for Park County and 406-932-5433 for Sweet Grass County.

The following guidelines must be followed for email or fax documents:

- i. All documents must be properly signed and dated.
- ii. Email documents must be in PDF format and submitted as an attachment to email.
- iii. The Clerk of Court shall print, date stamp, and file the email or fax.
- iv. As dictated by statute, the Clerk of Court may charge the filing fee for filing a pleading by fax or email. § 25-1-201(1)(r), M.C.A.
- v. The use of fax or email transmission shall not change or delay the required payment of fees. It shall be the obligation of the person filing the fax or email document to pay any required fees in the manner and within the required time. No complaint, petition, answer or judgment will be filed without payment of the requisite filing fee or the approval of a waiver of fees.

Rule 5. MOTIONS, BRIEFS, AND HEARINGS

A. Motion Procedure. All motions filed shall be ruled on pursuant to Rule 2, UDCR. All procedural motions shall be accompanied by a proposed Order in Word format.

B. Oral Arguments. Oral Arguments on motions under Rule 56(c)(2)(A), M.R.Civ.P. are waived unless a party requests a hearing within 14 days after the time for filing a reply brief has expired. Oral argument will be set only by Court order and at the Court's discretion. Oral arguments on all other motions must be requested by a party, or the court shall rule on written documents alone.

i) If a motion is not ruled upon within thirty (30) days of the date the motion and all supporting and opposing briefs are fully submitted for ruling, counsel may request that the Court review the motion. If a matter is fully briefed, counsel may file a "Notice of Issue" to bring the matter to the Court's attention.

ii) Counsel shall include with all motions a proposed Order for the Court's signature in Word format if e-filed. All proposed Orders in cases which are not e-filed shall be e-mailed as attachments in Word format to the Court Administrator.

C. Discovery Motions. The Court will deny any motion pursuant to Rules 26 through 37 of the M.R.Civ.P., unless counsel shall have conferred concerning all disputed issues before the motion is filed. If counsel for the moving party seeks to arrange such a conference, and opposing counsel willfully refuses or fails to confer, the Court may order the payment of reasonable expenses, including attorney's fees, pursuant to M.R.Civ.P. 37(a)(4). Counsel for the moving party shall include in the motion a statement of compliance with this rule.

D. Continuances. Scheduled hearings on motions pending may be continued by the Court, on its own initiative, or upon the written motion of any party, with prior notice to all parties. All e-filed motions must be accompanied by an appropriate order for the Court's approval in Word format. All proposed Orders in cases not e-filed shall be e-mailed as attachments in Word format to the Court Administrator. All motions to re-set a hearing or trial must include information regarding available dates, to avoid multiple re-settings.

E. Petitions to challenge license revocation or suspension pursuant to §61-8-403, M.C.A. When a petition to challenge a driver's license suspension or revocation is filed and, as a part of the petition, a request is made by petitioner, pursuant to §61-8-403(3), M.C.A., to return his or her driver's license pending the hearing, the request will indicate whether the petitioner has had any prior alcohol or drug-related driving convictions and when they occurred.

Rule 6. ORDERS, JUDGMENTS, OR DECREES

A. The party requesting any Civil order, judgment, or decree must present the same through e-filing or in written form for the signature of the Court at the time of applying for the Order, Judgment, or Decree. When directed by the Court to prepare an order after hearing, the moving party shall prepare the order, unless another party is designated by the Court. All proposed Orders, Judgments and Decrees in cases not e-filed shall be filed and e-mailed as attachments in Word format to the Court Administrator.

B. Any order in an e-filed case shall be presented to the Court for signature by e-filing in Word format. All proposed Orders in cases not e-filed shall be e-mailed as attachments in Word format to the Court Administrator.

C. **No Personal Appearance by Party Required:** No personal appearance by the parties shall be required in the following cases and under the circumstances specified:

1. Quiet Title Actions- Where facts are uncontroverted and an affidavit of the salient facts has been filed with the Court and the opponents are in default.
2. Informal Probate of Estates- Where proper documentation has been supplied and there is no objection from any interested party.
3. Dissolutions- a) Where both parties file a waiver of hearing; b) there are notarized written agreements on all issues; and c) a completed Vital Statistics form, judgment fee and proposed order accompanies documents.
4. Entry of Default- Where a default judgment is requested against a party, the Court may require the party to appear and prove up the default judgment.

Rule 7. SCHEDULING CONFERENCES, ORDERS AND DISCOVERY RULES

A. When a case is at issue and all parties have been served and have answered, the Court Administrator will issue a scheduling order or shall schedule and conduct a Case Scheduling Conference. After such conference the Court will issue a Case Scheduling Order. If a Case Scheduling Conference is not scheduled within thirty (30) days after answers to the complaint are filed, either party may request that the Court Administrator schedule the conference. The parties may stipulate to a waiver of discovery and request an immediate preliminary pre-trial conference.

B. **Pursuant to Rule 16(b), M.R.Civ.P.**, the following matters are exempt from the scheduling procedure required by this Rule:

- (1) Youth Court cases

- (2) URESA actions
- (3) Abstracts of Judgment and Transcripts of Judgment
- (4) Adoptions
- (5) Incompetency hearings
- (6) Probate Cases
- (7) Small Claims appeals
- (8) Administrative appeals
- (9) Name Change Cases
- (10) Seizures and Forfeitures
- (11) Habeas Corpus and Post-conviction Relief
- (12) Criminal Cases (included to eliminate possibility of confusion)
- (13) Any other case for which good cause is shown and the Court so orders.

C. **Pre-Discovery Disclosures.** Pursuant to Rule 26, M.R.Civ.P., the following discovery rules shall be followed in every cause not exempted above, except Domestic Relations Cases and those cases wherein good cause is shown by motion and affidavit:

(1) Except with leave of Court, a party may not seek discovery from any source before making an appropriate Pre-Discovery Disclosure and may not seek discovery from another party before serving that party with an appropriate disclosure. A party may serve written discovery requests upon a party simultaneously with service of the required disclosure statement upon that party. Every party shall serve an appropriate disclosure not later than thirty (30) days after entry of the Case Scheduling Order. The disclosure shall contain the following information:

(a) the factual basis of every claim or defense advanced by the disclosing party. In the event of multiple claims or defenses, the factual basis for each claim or defense;

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

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

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

(e) a computation of any damages claimed; and

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

judgment.

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

(3) **Signing of Disclosure.** Every mandatory disclosure or supplement made by a party represented by counsel shall be signed by at least one attorney of record. A party who is not represented by counsel shall sign the disclosure. The signature of counsel or the party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the disclosure is complete as of the time it was made.

D. Discovery Conference. In the event of a discovery dispute, the parties shall meet and confer to attempt to resolve the dispute. If the parties do not resolve the dispute after a meet and confer, whether or not a Motion is filed, either party may contact the Court Administrator to arrange an informal discovery conference with the Court. When the Order setting the informal discovery conference is entered, briefing on any filed Motion is held in abeyance. Any party may provide to the court, in advance of the informal discovery conference, documents and/or legal authority that may assist the Court in understanding the dispute. If the informal discovery conference does not resolve the discovery dispute, the discovery motion may be filed, stating with specificity the matters upon which the motion is based.

Rule 8. PRELIMINARY PRE-TRIAL CONFERENCES

The Court will conduct preliminary pre-trial conferences by Court Order. Dates for addition of parties, identification of expert witnesses, motions, hearings and settlement conferences shall be set forth in the Case Scheduling Order or Order Scheduling Trial issued by the Court. If a date and time for preliminary pre-trial conference is not included in such Orders, it may be scheduled in a separate order.

At any time after the discovery period has run, according to the Case Scheduling Order, any party may move for, or request, a trial date from the Court Administrator. The order setting trial shall include a witness and exhibit list submission deadline, a jury instruction and objection to jury instruction deadline, (if applicable), a final pre-trial conference date, and a trial date.

Rule 9. COMMUNICATIONS WITH THE COURT

A. Communications. All communications with the Court shall go through the District Court Administrator or the Clerk of Court to ensure that no *ex parte* communications take place and to ensure judicial economy. The Court will not receive letters or other communication from counsel or parties which do not indicate on their face that copies have been

sent to opposing counsel.

B. Ex Parte Communications. There will be no *ex parte* discussion with the Court of substantive issues involved in pending or anticipated cases without the presence of or notice to all opposing counsel, or without prior approval or stipulation by such counsel. A violation of this rule may result in the imposition of sanctions against the offending attorney or party.

C. Reminders to the Court. In the event the Court has under advisement any matter (including but not limited to a motion or decision in a bench trial) for a period of more than thirty (30) days, each party affected thereby is encouraged to send to the Court a reminder letter or "Notice of Issue" particularly describing the matter under advisement and stating the date the matter was taken under advisement.

Rule 10. COURT RECORDS

A. File Checkout. The Clerk of Court shall not permit any files or documents to be removed from the Clerk of Court's office, except by Court Personnel.

Rule 11. ALTERNATIVE DISPUTE RESOLUTION

A. Settlement Conference or Mediation Required. In each civil case subject to a Scheduling Order pursuant to Local Rule 7, a master-supervised Settlement Conference or Mediation is required, unless a stipulation executed by all counsel of record and any unrepresented party is filed with and approved by the Court waiving a Settlement Conference or Mediation. The Settlement Conference or Mediation shall be addressed in the Scheduling Order prepared and issued in accordance with Local Rule 7. The purposes of such conferences are to: (1) facilitate (but not coerce) settlement; (2) lessen congestion of the trial calendar; and (3) reduce the cost of litigation by providing a means to resolve contested cases prior to final trial preparation.

The Clerk of District Court shall maintain a list of Court-approved Settlement Masters and Mediators.

B. Report of the Settlement Master or Mediator. Within five (5) days of the completion of the Settlement Conference or Mediation, the Settlement Master or Mediator shall submit a report indicating that the conference was held and describing the issues that were settled, if any. The report shall be filed with the Clerk of Court or e-filed in applicable cases, with copies to all counsel of record, and any parties not represented by counsel. In the event that the case is not fully settled, the form shall also state the following information obtained from counsel for the parties and any unrepresented party:

- (1) the length of time anticipated to be necessary for trial;
- (2) dates counsel or key witnesses are legitimately unavailable for trial;
- (3) any special requests or needs regarding trial scheduling; and
- (4) whether there is still a reasonable prospect for settlement.

If not already done, cases will be set for trial upon motion of any party after submission of the Settlement Master's report.

C. Proceedings Confidential. No person present at a Settlement Conference or Mediation, including the Settlement Master or Mediator, shall be subject to examination concerning statements made by any person at the Settlement Conference or Mediation. The parties will not subpoena or otherwise require the Settlement Master or Mediator to testify regarding the Settlement Conference or Mediation or the Settlement Master's or Mediator's opinions regarding the case. The only exceptions to this requirement of confidentiality are those set forth in § 26-1-813(4)-(5), M.C.A.

Rule 12. HEARINGS AND TRIALS

A. Time. In any hearing, contested or uncontested, or in any show cause hearing, injunction hearing or trial of any case, the Court may direct the parties to state the amount of time their case will take to present. The Court may then impose time limits on the presentation by each party, and retains the discretion to allot a lesser time than that requested by each party. In the event time limits are imposed, the Court has full authority and discretion to enforce those limits.

B. Trial Settings. Non-jury trials shall be scheduled by the Court throughout the year as time is available. Jury trials may be held throughout the year, except during the last half of December.

C. Jury Instructions. Proposed instructions to the jury in a civil action shall be presented to the Court, or e-filed in Word format in applicable cases, and served upon each adverse party as stated in the jury trial preparation order. The original and one copy of each instruction proposed must be furnished to the Court. The Court's working copy of each instruction shall indicate the party on whose behalf it is requested, be numbered consecutively, and, on an attached page, contain reference to the source thereof, and a citation of authority, if any, supporting the statement of law therein. The Court may receive additional proposed instructions relating to questions arising during the trial at any time prior to completion of settlement of jury instructions. Proposed verdict forms must be submitted by each party at the same time and in the same manner as the jury instructions. If proposed jury instructions and verdict forms are not e-filed, the Court requests that each party submit proposed jury instructions and verdict forms to the Court Administrator via e-mail attachment in Word format.

Rule 13. POSTPONEMENT OF TRIALS

A. Absence of Witness or Evidence. Pursuant to §25-4-501 M.C.A., a motion to postpone or continue a trial on the grounds of absence of a witness or evidence shall be made upon affidavit showing: (1) the nature and materiality of the expected testimony or evidence; (2) that diligent effort was timely made to secure the witness or the evidence; and (3) that

reasonable grounds exist for the production of the witness or evidence if postponement or continuance is granted. If the testimony or the evidence would be admissible upon the trial and the adverse party stipulates that it shall be considered as actually given on the trial, there shall be no postponement or continuance unless, in the opinion of the Court, a trial without the witness or evidence would work an injustice on the moving party.

B. Late Continuances. If any action set for a jury trial is continued or dismissed after a jury has been summoned and potential jurors have appeared, the Court will order the moving party to reimburse the Clerk of Court for any expenditures incurred by the Clerk of Court. This may include jury and/or witness fees.

Rule 14. VOIR DIRE

A. Length. The length and conduct of voir dire examination shall not exceed one (1) hour per side without prior leave of the Court.

B. Questioning. Only one attorney for each party shall be allowed to question the prospective jurors on voir dire.

C. Purpose. The only proper purpose of voir dire is to select a panel which will fairly and impartially hear the evidence presented and render a just verdict, and to determine the grounds for any challenge for cause. Accordingly, the Court in exercising its discretion may discourage counsel from:

- (1) Asking questions of an individual juror that are susceptible of being asked collectively;
- (2) Asking questions covered by and answered in the juror questionnaire, except to explore some answer in greater depth;
- (3) Repeating questions asked and answered;
- (4) Using voir dire for the purpose of attempting to instruct the jury on the law;
- (5) Using voir dire for the purpose of arguing the case; or
- (6) Asking a juror what his verdict might be under any hypothetical situation based upon expected evidence or otherwise.

Rule 15. ATTORNEYS

A. Attorneys of Record. Unless appearing specially on behalf of one of the attorneys of record, no attorney, unless the attorney's name appears on the pleadings in the case, may participate in any proceedings in the case until the attorney's name has been entered of record.

B. Withdrawal by Attorney. Except as provided in Rule 15.E. herein, no attorney may withdraw from any case except by consent of the client or by leave of the Court after notice has been served on the parties and opposing counsel. Counsel must provide the appropriate,

court-approved Order to the Court to withdraw, which form is available from the Court Administrator. The Order must provide, for an unresolved case, that opposing counsel provide a Rule 10 Notice. This provision is subject to §§ 37-61-403 through 37-61-405, M.C.A., and Rule 10, U.D.C.R.

C. Addressing Witnesses and Attorneys. Attorneys will not be permitted to address a witness on the stand in any manner except to propound a question to which an answer is desired. Attorneys will not be permitted to address each other during a trial or hearing except by permission of the Court.

D. Attorney Fees. In all civil cases in which attorney's fees are awarded, the party awarded attorney fees shall file and serve upon opposing counsel an affidavit itemizing the claim. The opposing party may file an objection as to the reasonableness of the fees claimed within 14 days. If an objection is filed, the Court is obligated to hold a hearing regarding the reasonableness of the fees claimed.

E. Release of Counsel of Record on Notice. When a final disposition has been made of any case and the time for appeal has expired, counsel of record may be relieved of their duties as counsel of record provided they file a Notice of Termination with the Clerk of Court and serve the same on opposing counsel and their client. Thereafter, if any further proceedings are filed therein, notice must be served on the adverse party as provided in Rule 5, M.R.Civ.P.

Rule 16. EXHIBITS

The Clerk is required to keep a list of all exhibits offered and the ruling of the Court thereon. No exhibit admitted into evidence shall be removed from the custody of the Clerk of Court without the Clerk's prior approval. Exhibits and any discovery documents filed with the Court shall be disposed of as provided in Rule 12 U.D.C.R. upon final disposition of each case. Counsel are encouraged to pre-label their proposed exhibits and, during a non-jury trial, will present the court with a notebook with all exhibits individually tabbed.

Rule 17. EVIDENCE OF CHARACTER

No more than three (3) witnesses will be permitted to testify as to the character of a person absent an order of the Court authorizing additional witnesses.

Rule 18. STIPULATIONS

No agreement or stipulation between the parties or their attorneys with respect to the proceedings in any cause will be considered for any purpose by the Court unless it is submitted in writing, subscribed by the party against whom it is sought to be enforced, or by his attorney. If parties wish to have a stipulation confirmed by the Court, then they must accompany the stipulation by a proposed Order.

Rule 19. OFFERS OF PROOF

Offers of proof may be in writing or may be entered in the Court Reporter's record outside the presence and hearing of the jury, as may be decided by the Court.

Rule 20. TRIAL POSITION STATEMENT AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

At least 10 days prior to trial, or by the deadline stated in the Order Scheduling Trial, in a civil case, each party shall submit a Trial Position Statement which briefly outlines the issues to be addressed at trial, a list of witnesses with a one or two sentence description of the subject matter on which each witness will testify and a list of exhibits. In any other matter, counsel may submit a Trial Position Statement at least 10 days prior to hearing.

Proposed Findings of Fact and Conclusions of Law shall be submitted within 15 days after trial unless otherwise ordered by the Court in a format suitable for signature by the Court, together with a copy for the Court. The Court requests that the parties submit proposed Findings of Fact and Conclusions of Law in Word format by e-filing where applicable, or via e-mail attachment in Word format to the Court Administrator.

Rule 21. MARITAL DISSOLUTION OR PARENTING ACTIONS

A. Temporary Economic Restraining Order. In any marital dissolution, legal separation, or parenting action filed by *pro se* litigants, the Petitioner shall be provided two copies of the Temporary Economic Restraining Order. One copy shall be served upon the Respondent with the Petition.

B. Parenting Classes. In disputed parenting cases, the Court may order the parents to participate in a Court approved parenting class, either in person or through an on-line or home study course. In such cases, when the class is complete, the parents must file a certificate of completion with the Court.

C. Temporary Child Support/ Temporary Parenting. Counsel for the parties shall, within 30 days of Respondent's first appearance, submit verified financial affidavits to the Court and to opposing party. The parties shall confer within 30 days to set a temporary amount of child support and temporary parenting schedule. In the event of a dispute as to either the appropriate temporary custodial parent or the appropriate amount of payments, either party may file a motion with the Court requesting a hearing on the matters in dispute. The Court may award attorney's fees at its discretion in or after such hearing.

D. Parenting Mediation and Evaluations. Mediation of temporary and final parenting plans is preferred and strongly encouraged. Upon request of either party *or sua sponte*, the Court may order that the matter be referred to appropriate professional persons at the

cost of one or both parties for investigation, report, and recommendation regarding parenting time of each child and parent. The report shall be returned to the Court, the parties, and their attorneys as soon as reasonably possible thereafter.

E. Parental Change of Residence. The provisions of §40-4-217, M.C.A. shall be followed with regard to parental changes of residence. If parenting time is disputed after the notice of intent to re-locate is filed, the Court may order the parties to mediate parenting time.

F. Parenting Guidelines. The general rules below will apply in all parenting cases, except by order of the Court.

A powerful cause of stress, suffering, and maladjustment in children of divorce is not simply the divorce itself, but continuing conflict between the parents before, during and after the divorce. To minimize conflict over the children, the parents should agree on a parenting arrangement that is most conducive to the children having frequent and meaningful contact with both parents with as little conflict as possible. When parents' maturity, personality and communication skills are adequate, the ideal arrangement is reasonable parenting time upon reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed parenting agreement made by the parents to fit their particular needs and, more importantly, the needs of the children. If the parents are unable to agree, however, the following guidelines will help the parents in knowing what the presiding judge in the Sixth Judicial District believes are generally reasonable, unless special circumstances are alleged which require a different arrangement. In the event parenting time becomes an issue in court, the judge reserves the right to set whatever schedule best meets the needs of the children in that case.

I. GENERAL RULES

Parents should always avoid speaking negatively about the other and should firmly discourage such conduct by relatives or friends. In fact, the parents should speak in positive terms about the other parent in the presence of the children. Each parent should encourage the children to respect the other. Children should never be used by one parent to spy on the other. The basic rules of conduct and discipline established by the residential parent should be the base-line standard for both parents and any step-parents, and consistently enforced by all, so that the children do not receive mixed signals.

When a parent is granted parenting time, the parent is expected, by the child(ren), the other parent, and by the Court, to exercise that parenting time.

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. Usually the children will visit with the paternal relatives during times the children are with their father and with the maternal relatives during times they are with their mother.

1.1 Parental Communication. Parents should always keep each other advised of their home and work addresses and telephone numbers. As far as possible, all communication concerning the children shall be conducted between the parents themselves in person, or by telephone at their residences and not at their places of employment.

1.2 Grade Reports and Medical Information. The residential parent shall provide the non-residential parent with grade reports and notices from school as they are received and both parents shall have the right to communicate concerning the child directly with the school and with the children's doctors and other professionals outside the presence of the other parent. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. The residential parent shall notify the non-residential parent of all school or other events (like Church or Scouts) involving parental participation. If the child is taking medications, the residential parent shall provide a sufficient amount and appropriate instructions for its use during the non-residential parent's parenting time.

1.3 Children's Clothing for Parenting Time. The residential parent shall send an appropriate supply of children's clothing with them, which shall be returned clean (when reasonably possible), with the children, by the non-residential parent. The non-residential parent shall advise, as far in advance as possible, of any special activities so that the appropriate clothing may be sent.

1.4 Withholding Support or Parenting Time. Neither parenting time nor child support is to be withheld because of either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and parenting time, neither of which is dependent upon the other. In other words, no support does not mean no parenting time and no parenting time does not mean no support. If there is a violation of either a parenting or support order, the exclusive remedy is to apply to the court for appropriate sanctions.

1.5 Adjustments in the Parenting Time Schedule. Although there may be a specific court-ordered parenting time schedule, the parties are expected to fairly modify parenting time when family necessities, illnesses or commitments reasonably so require. The requesting parent shall act in good faith and give as much notice as circumstances permit.

1.6 Residential Parent's Vacation. Unless otherwise specified in a court order or agreed by the parties, the residential parent is entitled to a vacation with the children for a reasonable period of time, usually equal to the vacation time the non-residential parent takes with the children. The residential parent should plan a vacation during the time when the non-residential is not exercising extended parenting time, if possible.

1.7 Insurance Forms. The parent who has medical insurance coverage on the children shall supply, as applicable, insurance forms and a list of insurer- approved or HMO-qualified health care providers in the area where the other parent is residing. A parent who,

except in an emergency, takes the children to a doctor, dentist or other provider not so approved or qualified should pay the additional cost thus created. However, when there is a change in insurance which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parties to what is more important: allowing the child to remain with the original provider or the economic consequences of changing. When there is an obligation to pay medical expenses, the parent responsible therefor shall be promptly furnished with the bill by the other. The parents shall cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements directly with the health care provider and shall inform the other parent of such arrangements. Insurance refunds should be promptly turned over to the parent who paid the bill for which the refund was paid.

1.8 Child Support Abatement. Unless a court order otherwise provides, support shall not abate during any parenting time.

1.9 Parenting Time a Shared Experience. Because it is intended that parenting time be a shared experience between siblings and, unless these Guidelines, a court order, or circumstances, such as age, illness, or the particular event, suggest otherwise, all of the children shall participate in any particular parenting time.

1.10 Telephone Communication. Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. The residential parent may call the children at reasonable hours during those periods the children are with the non-residential parent. The children may, of course, call either parent at reasonable hours during those periods the children are with the other parent. If the call initiated by the children is long distance, it shall be at the cost of the parent called. During long vacations the parent with whom the child is on vacation is only required to make the child available for telephone calls every five days. At all other times the parent the child is with shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned. Parents should agree on a specified time for calls to the children so that the children will be made available.

1.11 Mail Contact. Parents have an unrestricted right to send cards, letters and packages to their children. The children also have the same right with their parents. Neither parent should interfere with this right.

1.12 Privacy of Residence. A parent may not enter the residence of the other except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, the children shall be picked up and returned to the front entrance of the appropriate residence, unless the court has ordered a different transfer point. The parent dropping the children off should not leave until the children are safely inside. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is their own, and the children's time with that parent is equally private.

Rule 22. CHILD SUPPORT

A. Child Support Guidelines and Financial Affidavits. In any case in which the Court is requested to enter an order establishing or modifying child support, the parents' Montana Child Support Guidelines Financial Affidavits shall be submitted to and filed with the Court prior to entry of any child support order as required by §40-4-204, M.C.A.

B. Notice to Child Support Enforcement. The party commencing an action for dissolution of marriage, legal separation, child support, invalidation of marriage, or modification of child support, at the time the proceeding is begun, shall include in the Petition a statement regarding whether any of the children involved are, at that time, recipients of, or applicants for, public assistance. Upon filing of a Complaint or Petition which indicates the children involved are, at that time recipients of, or applicants for, public assistance, the party or counsel for that party shall immediately notify the Child Support Enforcement Bureau in writing of the pending action and file proof of such notice with the Clerk of Court.

Rule 23. CERTIFICATION OF SELF-HELP TEMPORARY RESTRAINING ORDERS

A. When any action for declaration of invalidity of marriage, legal separation, dissolution of marriage, or child custody action is filed in the District Court between parties who are also parties to a self-help temporary order of protection proceeding in a court of limited jurisdiction, counsel for the petitioner or the party who is the petitioner in the lower court proceeding shall promptly notify said lower court of the District Court action and move the lower court to suspend all further proceedings therein and certify the pleadings and any orders of that court to the Clerk of the District Court. Upon certification of such pleadings and any orders therein to the Clerk of District Court, the District Court shall assume exclusive jurisdiction thereof and any orders issued by the court of limited jurisdiction shall continue in full force and effect as the order of the District Court until dissolved or modified by the District Court.

B. Counsel or the party shall notify the appropriate lower court and appropriate law enforcement agencies of any modification or dissolution of lower court orders certified to this Court and subsequently modified or dissolved by this Court.

Rule 24. CRIMINAL ACTIONS

When an Information is filed, the Court will appoint a Public Defender for the defendant. A substitution of counsel should be completed and filed if the Defendant contracts with private counsel. The Court will issue a Discovery Order and Order setting Omnibus Hearing at the time of arraignment.

A. Omnibus Hearing. At arraignment, the Court will issue a Discovery Order and Order Setting Informal Omnibus Hearing, and shall direct that an omnibus hearing form be completed and filed. The purpose for this is to expedite procedures leading up to the trial of the Defendant. The presence of the Defendant at the informal Omnibus hearing shall not be required. The prosecutor and defense counsel must be prepared at the omnibus hearing to address any pre-trial matter appropriate to the case, including but not limited to the matters set forth in §46-13-110(a) through (l), M.C.A. Either party may request that a formal omnibus hearing be held before the Court, and a formal Omnibus hearing will be held. Once completed and signed by counsel, the Court will sign the Omnibus form and it will be filed.

B. Trial Setting. The Court will set trial as soon as it is possible to do so within the parameters set forth in Rule 12 A above, or as soon after the omnibus hearing as the Court may do so. The Order setting trial shall include deadlines for expert witness disclosure, motions, a date and time for jury trial verification, and jury instructions. Any motion not ruled on at least two weeks before trial should be brought to the Court's attention.

C. Jury Trial Verification. In the Order setting jury trial, the Court will set a time and date for a jury trial verification hearing. The Defendant must personally appear at the jury trial verification hearing. If the Defendant does not personally appear at the jury trial verification hearing, the jury trial will be vacated and the Defendant may be held in contempt or a warrant may be issued for the Defendant's arrest. If a Defendant does not personally appear for more than one jury trial verification hearing, he or she may forgo their right to a jury trial.

D. Pre-Sentence Investigation. All Pre-Sentence Investigations shall be completed, and the reports based thereon delivered to the Court and to the parties, prior to the Court setting the time and date for sentencing.

E. Bail. Whenever bail has been set by and furnished to a Justice of the Peace or City Judge and the cause in which the bail was furnished is transferred to the District Court, the following procedure must be followed:

At the time the papers transferring the case to the District Court are filed with the Clerk of the Court, the bail must also be delivered to the Clerk. The amount and nature of the bail furnished must be endorsed upon the order whereby the Justice or City Judge transfers the cause to the District Court.

(1) If the bail is satisfied by a cash bond, the Justice or City Judge must deposit a proper check, warrant, or draft for the full amount of the bail with a notation of the party or person who actually posted the cash bond.

(2) If the bail furnished was a bail bond or other bond as permitted by § 46-9-401, M.C.A., the Justice or the City Judge must deliver the actual documents furnished as bond to the Clerk of the District Court.

(3) All bonds presented to the District Court for approval shall recite that they are payable to the District Court.

(4) Whenever bail has been set by and furnished to a Justice of the Peace in an action wherein the District Court has original trial jurisdiction and the County Attorney elects to proceed in District Court by filing a motion for leave to file an information direct, the following procedure must be complied with:

(a) The Justice of the Peace must forthwith endorse upon the original request and the duplicate copy the proper information regarding the nature of the bond, and must forthwith transfer the bond to the District Court as provided in (1) or (2) above. The original bond transmittal must be filed with the Clerk of the District Court, and the Justice of the Peace shall receive a copy.

Real Estate Bond. No real estate bond will be considered by the Court and may not be filed unless it complies with all requirements of §46-9-403, M.C.A.

F. Bench Warrants. In any criminal case where a defendant has appeared voluntarily or there is a stipulation with the County Attorney's office for a defendant to appear, and there is an outstanding bench warrant, defense counsel or the County Attorney's office shall notify the Court, in writing, to quash the warrant.

Rule 25: APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS

A. When an Information is filed, the Court will appoint a Public Defender for the defendant. A substitution of counsel should be completed and filed if the defendant contracts private counsel.

B. In the event of a Defendant's conviction or plea of guilty, the officer who prepares the pre-sentence report shall include in his recommendation to the Court, pursuant to §46-8-113, M.C.A., whether the defendant has the present or future ability to pay costs of his or her defense counsel.

C. The sentencing Court will evaluate the ability of the Defendant to pay the costs of defense counsel in light of the above recommendation. If the Defendant is ordered to pay such costs, all payments shall be made to the Clerk of the District Court, who shall reimburse the payments as provided in § 46-18-251(2)(e) M.C.A.

D. In the event of non-payment of costs, the County Attorney may move the Court to issue an order to show cause as provided in § 46-8-115, M.C.A.

Rule 26. REMOVAL TO SMALL CLAIMS COURT

All actions for recovery of money or specific personal property where the amount in controversy is not in excess of Seven Thousand Dollars (\$7,000.00) shall be subject to removal to small claims court in the discretion of the Court pursuant to § 3-10-1004, M.C.A..

Rule 27. WEAPONS

Pursuant to the Standing Order issued by this Court on March 8, 2021, only on-duty law enforcement officers or court security personnel shall be entitled to possess or carry firearms, knives, or other weapons in the Park or Sweet Grass County Courthouses. Anyone wishing to enter the courtroom may be required to submit to a search of his or her person or belongings by security personnel.

Rule 28. PROBATE FEES

Attorney fees in informal probate matters will not be fixed by the Court, unless there is a disagreement between the attorney and the personal representative. Should there be a disagreement, either party may present the matter to the Court after giving proper notice and a hearing shall be conducted thereon.

Rule 29. SIX-PERSON JURIES

Pursuant to § 3-15-106, M.C.A., in all civil actions where the relief sought in the Complaint is under the sum of Ten Thousand Dollars (\$10,000.00), the trial jury shall consist of six persons. The Court shall encourage the parties to stipulate to six-person juries in other civil cases where appropriate.

Rule 30. ESTATES TO BE CLOSED WITHIN TWO (2) YEARS, CLERK'S DUTIES

In estate matters the Clerk shall notify the attorney of record immediately following receipt of the § 72-3-1015 M.C.A. Notice from the Supreme Court Administrator that, within ninety (90) days, in the absence of good cause shown to the Court, the matter shall be called to the attention of the Court so that the Court may order the personal representative and his attorney to appear and show cause why the estate has not been closed. The Clerk of the District Court shall mail to the attorney of record the following notice:

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK/SWEET GRASS COUNTY

IN THE MATTER OF)	
THE ESTATE OF)	Probate No. _____
_____)	
Deceased.)	NOTICE
_____)	

This Estate has been brought to the attention of this Court by the Montana Supreme Court which monitors whether estates have been closed within two years of being filed. Accordingly, in keeping with Local Court Rule 30, the Personal Representative will have a period of ninety days from the date of this Notice to either close the Estate or, in the alternative, to file a Status Report stating why the Estate is not yet in a position to be closed.

If this Estate is not closed within ninety days from the date of this Notice, and no Status Report has been filed stating adequate reasons for why the Estate is not yet in a position to be closed, then this file will be brought to the attention of the presiding judge and the Court will schedule a show cause hearing.

DATED this _____ day of _____, 20 ____.

Clerk of Court

By _____
Deputy Clerk

Rule 31. WITNESSES

A. Subpoena Duces Tecum. A subpoena duces tecum may be issued for only such material as is relevant and material. All subpoenas shall be issued in accordance with Rule 45, M.R.Civ.P.

B. Examination Limited. On the examination of witnesses, only one attorney upon each side will be permitted to examine or cross-examine the same witness, except by permission of the Court first asked and obtained.

C. Discharge of a Witness. A party having a witness subpoenaed in a civil cause may discharge the witness by motion made in open court. If an adverse party desires such witness to remain, the adverse party must procure the witness's further attendance by subpoena or order of the Court, and shall thereafter be responsible to the witness for the fees.

Rule 32. PRIORITY RANKING OF PAYMENT OF FINES AND FEES

Unless otherwise specifically order by the Court in a judgment regarding punishments imposed on a convicted criminal defendant, the Clerk of Court shall establish separate accounts for all categories of payment ordered by the Court and distribute payments received from the defendant to these accounts in the following priority order:

- A. If Restitution ordered:
- 1) Restitution- 50%
 - a. To the victim until the victim's unreimbursed pecuniary loss is satisfied;
 - b. To the crime victims compensation and assistance program in

- the Department of Justice;
 - c. To any other government agency that has compensated the victim for the victim's pecuniary loss; and
 - d. To any insurance company that has compensated the victim for the victim's pecuniary loss
- 2) Surcharges, fees and fines 50%
- B. If no Restitution ordered:
- 1) Payment of charges imposed pursuant to §46-18-236
 - 2) Payment of supervisory fees imposed pursuant to §46-23-1031
 - 3) Payment of costs imposed pursuant to §46-18-232 or §46-18-233;
 - 4) Payment of fines imposed pursuant to §46-18-231 or §46-18-233; and
 - 5) any other payments ordered by the Court.

Rule 33. DISMISSAL OF ACTION FOR LACHES

The Clerk of Court will bring to the attention of the Court on a quarterly basis those actions which the pleadings show to have been at issue for more than three (3) years. Periodically, the Court will review the status of civil cases and request status reports. Parties are to comply with such request within 20 days in writing. In the event parties do not comply, the Court may dismiss the matter or issue further appropriate orders.