

**RULES OF PRACTICE**

**21<sup>ST</sup> JUDICIAL DISTRICT**

**RAVALLI COUNTY**

Adopted October 17, 2014

These Local Rules supplement the Uniform District Court Rules ("UDCR") in Title 25, Chapter 9, MCA, the Montana Rules of Civil Procedure, as well as other applicable Montana law, and are promulgated under UDCR 15.

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**Rule 01. ASSIGNMENT OF CASES**

- A. **Jurisdiction.** The District Court of the Twenty-first Judicial District has assumed full jurisdiction of all cases on file with the Fourth Judicial District in Ravalli County as of January 4, 1993, except for those cases which the Court elects to transfer to outside Courts where grounds for judicial disqualification exist or those in which the presiding Court is disqualified by one of the parties thereto within the time allowed by law. In addition the Court may assign existing cases to outside Courts in those cases where such assignment is required in the interest of judicial economy.
- B. **Departments.** The District Court of the Twenty-first Judicial District is divided into two departments: Department No. 1 presided over by Judge Jeffrey H. Langton; Department No. 2 presided over by Judge James A. Haynes. Pursuant to Uniform District Court Rule 14, the Honorable Jeffrey H. Langton is hereby designated Chief District Judge of the Twenty-first Judicial District, and shall hold this position in all odd-numbered years, commencing with calendar year 2003. The Honorable James A. Haynes shall hold the position of Chief District Judge in all even-numbered years, commencing in calendar year 2004.
- C. **Youth Court.** Pursuant to § 41-5-201 M.C.A., both district court judges are designated to act as youth court judges in the Twenty-first Judicial District, from year to year.
- D. **Allocation of cases.** All matters filed in District Court shall be allocated between the two departments in random numerical rotation. The Clerk of District Court shall designate the assigned department on the first page of each filed document. Trials and hearings in contested matters shall be before the judge of the department in which the action is filed. Cases which are linked by common proof and/or parties may be reassigned between departments, upon concurrence of both judges.
- E. **Absence or Disability of a Judge.** Work in the Twenty-first Judicial District shall be interchangeable between the Judges thereof during the absence or disability of either of them or upon the request of either Judge. During the absence of either Judge, with the consent of the parties, the Judge present and presiding may make an order in, or any disposition, temporary or final, of any case or matter pending before the absent Judge. However, when any order is made for a hearing to be had thereafter, the Judge present and presiding shall make the order returnable before the Judge to whom it is assigned.
- F. **Presiding Judge.** A judge of the district court of any judicial district may make an order as the presiding judge or conduct the district court as otherwise provided by law.

Rule 02. LAW AND MOTION

- A. **Wednesday.** Wednesday of each week is law and motion day for Department No. 1. Court shall convene on law and motion day at 9:00 a.m. for criminal matters, at 1:30 p.m. for adoptions and uncontested civil matters, and at 2:30 p.m. for youth court and child abuse and neglect cases. When law and motion day falls on an official holiday the law and motion calendar shall be automatically continued to the next law and motion day absent a Court order setting it for a different date. **Any matter expected to take longer than 15 minutes should be scheduled for a separate hearing by contacting the Court Administrator.**
- B. **Thursday.** Thursday of each week is law and motion day for Department No. 2. Court shall convene on law and motion day at 9:00 a.m. for criminal matters, at 1:30 p.m. for adoptions and uncontested civil matters, and at 2:30 p.m. for youth court and child abuse and neglect cases. When law and motion day falls on an official holiday the law and motion calendar shall be automatically continued to the next law and motion day absent a Court order setting it for a different date. **Any matter expected to take longer than 15 minutes should be scheduled for a separate hearing by contacting the Court Administrator.**
- C. **Uncontested Matters.** All uncontested matters, judgments by default, probate proceedings, uncontested *ex parte* matters, and other matters pertaining to questions of law not involving contested questions of fact shall be heard on law and motion day. Contested matters involving questions of fact will not be heard on law and motion day without express approval of the presiding Court, but will be set as to day and time by order of Court as provided in Rule 4 hereof.
- D. **Open Court.** All matters presented to the Court shall be heard in open court, except for adoption hearings (Section 42-6-101, MCA), hearings and trials under the Uniform Parentage Act (Sections 40-6-111 and 40-6-120, MCA), child abuse and neglect cases (Section 41-3-205, MCA), *ex parte* matters, and those other matters required to be closed to the general public by law or allowed to be closed where the interests of individual privacy clearly exceed the merits of public disclosure.
- E. **Calendar Preparation.** The law and motion calendar for Department No. 1 is prepared at 9:00 a.m. each Tuesday. The law and motion calendar for Department No. 2 is prepared at 9:00 a.m. each Wednesday. Counsel may ensure that a hearing will be set on the law and motion calendar by filing, in writing, in advance of the preparation day, a motion and proposed order to the Clerk of Court. A telephone call is insufficient.

The matters filed shall be listed by the Clerk on a weekly Law and Motion calendar in the following order: 9:00 a.m.: Criminal matters; 1:30 p.m.: Adoption, Probate and miscellaneous Civil matters; 2:30 p.m.: Youth Court matters and Abuse and Neglect cases. Prior to opening of court on each law and motion day, the Clerk shall bring the Court file in each matter on the Law and Motion calendar to the chambers of the presiding Judge. The weekly calendar shall be posted for public information on the morning of each law and motion day prior to opening of Court.

- F. **Contested Matters.** Any matter set for the Law and Motion calendar which proves to be contested is subject to postponement to be set on the contested calendar. If a hearing is set on the law and motion calendar and counsel has reason to believe the hearing is contested and more than 15 minutes will be required to conduct said hearing, they shall notify the Court Administrator immediately and the hearing will be reset as soon thereafter as possible.
- G. **Document Preparation.** No matter may be set for law and motion day until the motion or other documentation and all relevant supporting documents have been filed with the Clerk. A proposed order, decree, or judgment shall be presented to the Court at or before the time the matter is to be heard.
- H. **Minute Entries.** The Clerk of District Court shall cause minute entries on all law and motion matters to be prepared, filed and served on counsel within two (2) business days of the date any case is heard.

**Rule 03. EX PARTE COMMUNICATION.**

This local rule supplements Uniform District Court Rule 3. *Ex Parte* matters are not favored. Emergency, non-testimonial or self-evident documents may be mailed to or left with the Clerk of District Court. Any such request which requires further action must be presented in open Court, unless a statutory exception applies.

On verified application by the prosecutor setting forth facts or circumstances constituting a criminal defendant's risk of flight or threat to the safety of any persons, the Court may *ex parte* issue a warrant for the arrest of a defendant.

The Court will not act on letters or other communications from parties who are represented by counsel. Nor will the Court act on letters or other communications from counsel or parties which do not indicate on their face that copies have been sent to opposing counsel/parties.

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 imposition of sanctions against the offending attorney or party.

**Rule 04. MOTIONS, BRIEFS, AND HEARINGS**

- A. **Motion Procedure.** All motions filed in the Twenty-first Judicial District shall be disposed of pursuant to Rule 2 of the Uniform District Court Rules except for uncontested motions or matters which do not allow for a standard briefing schedule. Each motion shall state in the body thereof that opposing counsel have been contacted and whether the motion is contested or not. When all briefs have been filed, or the time for filing of briefs has expired, either party may file a "Notice of Issue" with the Court indicating the status of the matter and whether the party wishes to make oral argument or have the motion deemed submitted.

**Where an uncontested motion is presented to the Court, an Order for the Judge's signature shall accompany it. All Orders (contested or not) shall accompany the motion as a separate document.**

- B. **Oral Arguments.** Counsel may apply for oral argument consistent with UDCR 2. Counsel shall state their reason(s) in support of requesting oral argument. Except for Montana Rule of Civil Procedure 56(c)(2), oral argument is at the Court’s discretion.
  - (1) Counsel shall include a proposed order granting oral argument. In the event the Court determines that oral argument would be beneficial and grants oral argument, the moving party has the duty to schedule such argument with the District Court Administrator. The Court will thereupon notify all counsel by order of the date and time of the hearing.
  - (2) If the Court determines *sua sponte* that oral argument on a motion would be beneficial to a determination of the motion, it shall so order.
- C. **Scheduling of Contested Motions.** Time settings for hearing on contested motions will be obtained exclusively from the District Court Administrator.
- 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 notice to all adverse parties. All such motions to continue must be submitted in writing, noting that opposing counsel has been notified of the request and whether they agree to or oppose the continuance. The motion must be accompanied by an appropriate, separate formal order for the Court’s approval.

**Rule 05. ORDERS, JUDGMENTS, OR DECREES**

- A. **Separate Document.** It shall be the duty of counsel obtaining any unopposed civil order, judgment, or decree, to present the same in written form to the Clerk of Court for the signature of the Court at the time of applying for the order, judgment, or decree. **All Orders (contested or not) shall accompany the motion as a separate document.**
- B. **Number of Copies.** Two (2) copies of any order to show cause, temporary restraining order, arrest warrant, orders of apprehension, or like orders shall be presented to the Court for signature, both shall be signed by the Court as original orders. One shall be retained as part of the court files, and the other used for the purpose of making service.

**Rule 06. SERVICE OF PROCESS AND PAPERS**

Title 25, Chapter 3, Montana Code Annotated and Rules 3-6 of the Montana Rules of Civil Procedure shall be followed.

**Rule 07. SCHEDULING ORDERS**

- A. **Time of Issuance.** The Court shall routinely require counsel to submit a proposed discovery and scheduling order, however, in accordance with Rule 16, M.R.Civ.P, a party or their counsel may request a pre-trial conference.

B. **Exemptions.** The following matters are exempt from the routine scheduling procedure required by this rule:

- (1) Youth Court cases
- (2) Condemnation cases
- (3) Abstracts of Judgment
- (4) Transcripts of Judgment
- (5) Adoptions
- (6) Mental Commitments
- (7) Probates
- (8) Criminal cases (an omnibus hearing occurs, §46-13-110, MCA)
- (9) Small Claims appeals
- (10) Administrative appeals
- (11) Seizures and Forfeitures
- (12) Habeas Corpus and Post Conviction Relief
- (13) Name Changes
- (14) Paternity cases
- (15) Other special proceedings not subject to standard scheduling

Discovery in the above matters shall proceed according to orders issued in each case.

**Rule 08. PRE-TRIAL CONFERENCES**

A date certain for preliminary and final pre-trial conferences with the Court shall be set in a trial preparation order following receipt of the settlement master report described in Rule 11 hereof.

**Rule 09. "AT ISSUE" REMINDER TO THE COURT**

**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 ninety (90) days, each party affected thereby is encouraged to send to the Court a Notice of Issue particularly describing the matter under advisement and stating the date the matter was taken under advisement, with copy to all parties.

**Rule 10. COURT RECORDS**

- A. **File Checkout Privilege.** The Clerk of Court shall not permit any non-confidential case files or documents to be removed from her office without prior order of the court, except that civil files and probate files may be withdrawn for a period not to exceed ten (10) calendar days only by licensed attorneys in good standing or licensed title examiners residing in Ravalli County. Criminal files and water right decree files may be withdrawn for a period not to exceed one (1) day by licensed attorneys in good standing. The Clerk must obtain a receipt from any person removing any file or court record. All such files shall be promptly returned upon request of the Court. The Court reserves the right to suspend check-out privileges for any individual or firm that, in the judgment of the Court, abuses its privileges.

- B. **Files Which May Not Be Checked Out.** The records and files in dependent/neglect cases, adoption actions and other sealed files shall not be withdrawn, examined, or inspected by the general public, except upon order of the Court.
- C. **Wills and Judgments.** No will admitted to probate, bond, or undertaking shall be taken from the Clerk's office under any circumstances, and no judgment shall be taken before it is filed by the Clerk of Court.
- D. **File Access by the Court and Court Staff.** Any other provision of this rule notwithstanding, the District Judge and each member of his staff shall have immediate access to all District court files at all times including weekends and non-business hours and for this purpose the Court shall be provided with as many keys to any rooms and file cabinets containing all such files by the Clerk of District Court as the Judge may require.

**Rule 11. FILINGS**

- A. **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 to file, the movant shall file with the motion a copy of the proposed pleading or amendment and lodge the original with the Clerk of Court. If leave to file is granted, the Clerk shall file the original forthwith.
- B. **Discovery.** Pursuant to Uniform District Court Rule 4, no discovery documents shall be filed with the Clerk of Court without prior leave of the Court. Upon receipt of a deposition, the Clerk shall mark it received and place it in the court records. The Court encourages the use of condensed form depositions to save filing space and promote ease of handling.
- C. **Jury Demands.** When a demand for a jury trial is incorporated in a pleading, counsel are to so indicate in the title as well as the body of the pleading. The Clerk of Court shall note any such demand and/or waiver of such demand on the case file jacket.
- D. **Striking Pleadings.** Any papers filed which do not conform to Rule 10 or Rule 11 of the Montana Rules of Civil Procedure, or Rule 1, Uniform District Court Rules may be stricken by the Court, on its own initiative, upon such terms as to the Court may appear just.
- E. **Orders.** When any written order or judgment is executed by the Judge, it must immediately thereafter be presented to the Clerk for filing, accompanied by the required filing fee and any other necessary documentation. **All Orders (contested or not) shall accompany the motion as a separate document.**  
Note: 3<sup>rd</sup> time stated: (Rules 3A and 4A).
- F. **Brief Deadlines.** All briefs required by rule, regulation, or by 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.

- G. **Length of Briefs.** No individual brief shall exceed twenty (20) pages in length, exclusive of indexes and appendices, without prior leave of the Court.
- H. **Citations in Briefs.** Briefs containing citations of authority must contain official reporter citations. (Citations to Westlaw or Lexis are improper.)

**Rule 12. SETTLEMENT CONFERENCES**

- A. **Settlement Conference Required.** In each civil case, subject to a scheduling order pursuant to Local Rule 6, there will be a master-supervised settlement conference, the holding of which will be required before a case may be set for trial. The settlement conference shall be addressed in the scheduling order prepared and issued in accordance with Rule 6 of the Local Rules. 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 District Court Administrator shall maintain a list of Court-approved Settlement Masters for use in cases where the parties are unable to agree upon a Settlement Master.

- B. **Master-Supervised Settlement Conference.** The master-supervised Settlement Conference may be held at any time upon stipulation of the parties or order of the Court. Unless otherwise agreed, the conference shall be held after the close of discovery and rulings on pretrial motions. The Court shall issue a separate order confirming the appointment of the Settlement Master providing for their compensation and procedures to be followed at the Settlement Conference. Counsel who will try the case and all parties shall attend in person. Out-of-area corporations or insurance companies will have a representative with full settlement authority present in person or via speaker phone, unless personal attendance is ordered by the Court upon a showing of good cause. All participants must have requisite settlement authority.
- C. **Report of the Settlement Master.** Within five (5) days of the completion of the master-supervised Settlement Conference, the Settlement Master shall submit, on a form provided by the Court, a report indicating that the conference was held and describing the issues that were settled, if any. The report shall be filed with copies to the Court, 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 total 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;
  - (4) whether there is still a reasonable prospect for settlement.

Cases will be set for trial upon submission of the Settlement Master's report.

- D. **Proceedings Confidential.** No person present at a Settlement Conference, including the Settlement Master, shall be subject to examination concerning statements made by any person at the Settlement Conference. The parties will not subpoena or otherwise require the Settlement Master to testify regarding the Settlement Conference or the Settlement Master's opinions regarding the case.
- E. **Trial Preparation Order.** The Court shall issue a Non-Jury or a Jury Trial Preparation Order in cases not settled by the date of filing of the Settlement Master Report. Said Order shall set the matter for pretrial conferences and trial and provide for filing of jury instructions, and the pretrial order or proposed findings of fact and conclusions of law as the case may require.

**Rule 13. TRIALS**

- A. **Trial Settings.** Non-jury and jury trials shall be scheduled by the District Court Administrator throughout the year as time is available.
- B. **Jury Instructions.** Proposed instructions to the jury in a civil or criminal action shall be presented to the Court and served upon each adverse party in accordance with the jury trial preparation order issued. Proposed forms of verdict must be submitted by each party at the same time and in the same manner as the jury instructions. The Court requests that, where possible, CD containing the proposed jury instructions and verdict form (formatted in either WordPerfect or Word) accompany the instructions.

On or before the date of the preliminary pretrial conference counsel shall submit:

- 1) One "clean" set of joint jury instructions for the Court.
- 2) Two (2) "working" copies of joint jury instructions (opposing attorney/Judge)
- 3) One "clean" set of proposed instructions not agreed upon
- 4) Two (2) "working" sets of proposed instructions not agreed upon (opposing attorney/Judge)
- 5) A CD containing the jury instructions.

Brief written objections to the opposing party's supplemental proposed instructions containing citations to appropriate authority and legal arguments shall be submitted at or before the final pretrial conference on the morning of trial. Oral arguments regarding contested instructions shall be heard during final settlement of the instructions.

**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. **Conducted by One Attorney Per Party.** Only one attorney for each party shall be allowed to question the prospective jurors on *voir dire*.

- C. **Scope of Questioning.** 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 great 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.
  - (7) Unnecessary invasions of a juror's right of privacy.
  - (8) Any other improper purpose.

**Rule 15. ATTORNEYS**

**Attorneys of Record.** Unless appearing in a limited scope consistent with Montana Rules of Professional Conduct 1.2, and unless the attorney's firm appears on the pleadings in the case, no attorney may participate in any proceedings in the case until the attorney's firm name has been entered of record as counsel of record. Attorneys shall comply with Uniform District Court Rule 10 and §§37-61-403 through -405 for substitution or other change in representation.

**Rule 16. EXHIBITS**

- A. **Custody.** 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 Uniform District Court Rule 12 upon final disposition of each case.
- B. **Labeling.** Counsel shall pre-label their proposed exhibits with standard exhibit labels pursuant to the trial preparation order issued by the Court.
- C. **Mounted Exhibits.** Counsel shall mount exhibits in such a fashion that they may be dismounted for folding, rolling, storage and/or shipping if necessary.
- D. **Oversize Exhibits.** Letter size copies of oversize exhibits are encouraged for use by the bench and jury, and for substitution for oversize exhibits after trial.

**E. Electronic Courtroom.** To facilitate greater efficiency and enhance the juries' ability to view exhibits contemporaneously, the Court has implemented an electronic trial system in Courtroom No. 2. The Court may require parties to use the electronic courtroom for a trial, particularly where a large number of documentary exhibits will be presented, or where audiovisual exhibits or demonstrations are to be shown. Counsel may also request trial in the electronic courtroom. Counsel shall contact the Court Administrator for a demonstration to familiarize themselves with the electronic courtroom's operation well in advance of trial.

**Rule 17. EVIDENCE OF CHARACTER**

In any trial, civil or criminal, 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**

In any case, civil or criminal, 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 made in open Court on the record or entered on the minutes, or unless it is submitted in writing, subscribed by the party against whom it is sought to be enforced, or by his attorney. It shall be the duty of the party relying upon any such minute entry to see that it is duly made. No stipulation shall be binding on the parties unless it is confirmed by order of the Court.

**Rule 19. OFFERS OF PROOF**

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

**Rule 20. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The original set of Proposed Findings of Fact and Conclusions of Law, titled as "Proposed," shall be submitted for filing to the Clerk of Court. A certificate of service shall accompany the findings indicating the party submitting the findings mailed copies to the other parties. The Proposed Findings shall also be submitted to the Court. This may be by e-mailing to the Court Administrator, or copying to a CD, formatted in either WordPerfect or Word, and labeled with the case name, case number, and party submitting the findings.

**Rule 21. SURETY**

- A. Montana has enacted the general principle of suretyship in Title 28, CH. 11, Part 4, Mont. Code Ann.
- B. Consistent with §37-61-408, no member of the bar nor his office associates or employees may become responsible for the performance by the other person of some act in favor of a third person or pledge property as a security for the performance.

- C. In lieu of surety in any case, there may be deposited with the Clerk of Court lawful money or negotiable bonds or notes of the United States. The depositor shall execute a suitable bond, and if negotiable bonds or notes of the United States are deposited, shall also execute an agreement authorizing the Clerk to collect and sell the bonds or notes in the event of default. Such deposits shall be held by the Clerk of Court until released by order of the Court.

**Rule 22. DECORUM**

- A. **Opening of Court.** When the Court first convenes in the morning and after any recess, the Court Clerk or Bailiff shall announce the opening of Court, and all persons in attendance in the courtroom shall rise until the Court has taken the bench.
- B. **Court Reporter.** Unless such presence is waived by the parties and the Court, a court reporter shall be on duty in the courtroom at all times the Court is in the courtroom except for juvenile detention hearings which shall be tape recorded in the absence of a court reporter.
- C. **Dress.** All counsel and pro se litigants appearing before the Court shall be dressed in appropriate business attire. Parties and witnesses shall be dressed in clean, appropriate clothing.
- D. **Seating at Counsel Table.** Only counsel of record (their office associates and employees) and the named party or parties may be seated at counsel table during hearings or trial.

**Rule 23. MARITAL DISSOLUTION ACTIONS**

- A. **Temporary Child Support.** Whenever a marital dispute or custody action arises that results in a separation of parents and children, child support liability shall commence immediately.
- B. **Custody Evaluations.** 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 evaluation, investigation, report, and recommendation regarding parenting arrangements for each child.
- C. **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 a notification to the Child Support Enforcement Division for a determination whether any of the children involved are at that time recipients of or applicants for public assistance.
- D. **Simplified Process.** Upon request of both parties or *sua sponte*, the Court may order a simplified domestic relations process, including to reduce the time, cost and adversarial nature of proceedings. The Court will set an initial conference within 30 days of ordering a simplified marital relations process. The purpose of the initial conference is to orient the parties to the Court's case management process and to plan the timing of future activity in the case. No motions will be

heard. Any issues agreed upon may be memorialized by written stipulation. Alternate dispute resolution, temporary child support, custody evaluations, studies, appraisals, information exchange and case scheduling may be discussed.

- E. **Pro Se Dissolutions/Parenting.** In dissolution or parenting cases where both of the parties are not represented by attorneys (*pro se*), the form documents for a decree of dissolution, or approval of an interim or final parenting plan shall be submitted to the Clerk of Court's office for appropriate completion review by the Court's administrative staff prior to the case being scheduled on the Court's calendar.

**Rule 24. ORDERS OF PROTECTION**

Parties shall comply with Title 40, Chapter 15, Part 301 regarding jurisdiction, venue, appeal and registration of orders of protection issued under §§ 40-15-201 and -202, MCA.

**Rule 25. CHILD SUPPORT GUIDELINES AND MEDICAL SUPPORT REQUIREMENTS**

- A. **Worksheets.** Counsel and pro se litigants shall follow the provisions of Montana Law regarding child support and medical support cases, specifically Section 40-4-204, 40-4-210 and 40-5-101, et. seq., utilizing child support guideline worksheets.
- B. **Handling Fee.** Effective October 1, 1997, and thereafter the Clerk of Court shall collect a handling fee of \$2.00 per child support and separate maintenance payment which must be paid by the payor in addition to the required payment. Said fees shall be directed into the Ravalli County District Court Operations Fund.
- C. **Temporary Child Support.** When the court is faced with pro se litigants who do not have the resources nor the ability to apply the full Montana Child Support Guidelines, or in default or temporary support situations, when the income of the obligor parent must be estimated, based on the obligee parent's knowledge of past employment, or in a separation, to provide support during the pendency of any proceeding in which child support will be one of the issues to be decided by the court, and absent a showing of good cause, a straight percentage, based on the number of minor children for whom support is being sought may be applied to the gross income of the obligor to arrive at a child support order. This order shall stand without modification absent a substantial change of circumstances. However, the order may specifically allow for a redetermination under the full Montana child support guidelines thereafter. Child support shall be redetermined under the Montana child support guidelines at the trial of the matter. Such redeterminations are available through the district court or through the administrative process.

The percentages to be applied to an obligor's gross income are as follows:

- 17% for one child;
- 25% for two children;
- 29% for three children;
- 31% for four children;
- 34% for five or more children.

## **Rule 26. PARENTING AND VISITATION GUIDELINES**

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 visitation upon reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed visitation 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 Twenty-First Judicial District believes are generally reasonable, unless special circumstances require a different arrangement. (See Paragraph 1.17 below.) Unless these guidelines are incorporated in a court order, they are not compulsory rules, only a general direction for parents. In the event visitation becomes an issue in court, the judge reserves the right to set whatever visitation schedule best meets the needs of the children in that case.

### **1. 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 custodial 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.

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. In Montana grandparents have a legal right to reasonable visitation with their grandchildren, if it is in their best interests. 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.

In cases where both parents resided in the same community at the time of separation, and then one parent left the area, thus changing the visitation pattern, the court will consider imposing the travel costs for the children necessary to facilitate future visits on the parent who moved. The court will also consider other factors, however, such as the economic circumstances of the parents and the reasons prompting the move.

- 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 custodial parent shall provide the noncustodial parent with grade reports and notices from school as they are received and shall permit the noncustodial parent to communicate concerning the child directly with the school and with the children's doctors and other professionals outside the presence of the custodial parent. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. The custodial parent shall notify the noncustodial parent of all school or other events (like Church or Scouts) involving parental participation. If the child is taking medications, the custodial parent shall provide a sufficient amount and appropriate instructions.
- 1.3 **Visitation Clothing.** The custodial 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 noncustodial parent. The noncustodial 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 Visitation.** Neither visitation 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 visitation, neither of which is dependent upon the other. In other words, no support does not mean no visitation and no visitation does not mean no support. If there is a violation of either a visitation or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.
- 1.5 **Adjustments in This Visitation Schedule.** Although this is a specific schedule, the parties are expected to fairly modify visitation 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 **Custodial Parent's Vacation.** Unless otherwise specified in a court order or agreed by the parties, the custodial parent is entitled to a vacation with the children for a reasonable period of time, usually equal to the vacation time the noncustodial parent takes with the children. The custodial parent should plan a vacation during the time when the noncustodial is not exercising extended visitation.
- 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 visitation period.
- 1.9 **Missed Visitation.** When a scheduled visitation cannot occur due to events beyond either parents' control, such as illness of the parent exercising visitation or the child, a mutually agreeable substituted visitation date shall be arranged, as quickly as possible. Each parent shall timely advise the other when a particular visitation cannot be exercised. Missed visitation should not be unreasonably accumulated.
- 1.10 **Visitation a Shared Experience.** Because it is intended that visitation 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 visitation.
- 1.11 **Telephone Communication.** Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. The custodial parent may call the children at reasonable hours during those periods the children are on visitation. The children may, of course, call either parent, though at reasonable hours, frequencies and at the cost of the parent called if it is a long distance call. During long vacations the parent with whom the child is on vacation is only required to make the child available to 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.
- 1.12 **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.
- 1.13 **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. 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.
- 1.14 **Children Under Age Five.** Infants (children under eighteen months of age) and toddlers (eighteen months to three years) have a great need for continuous contact with the primary caretaker who provides a sense of security, nurturing and predictability. Generally overnight visits for infants and toddlers are not recommended unless the noncustodial parent is very closely attached to the child and is able to provide primary care. Older preschool age children (three to five) are able to tolerate limited separations from the primary caretaker. The following

guidelines for children under age five are designed to take into account the child's developmental milestones as a basis for visitation. Since children mature at different rates these may need to be adjusted to fit the child's unique circumstances. These guidelines may not apply to those instances where the parents are truly sharing equally all the caretaking responsibilities for the child and the child is equally attached to both parents. Yet in the majority of situations where the custodial parent has been the primary caretaker and the noncustodial parent has maintained a continuous relationship with the child but has not shared equally in child caretaking the following guidelines should generally apply:

- A. **Infants - Birth to Six Months.** Alternate parenting plans:
- (1) Three two-hour visits per week, with one weekend day for six hours; or
  - (2) Three two-hour visits per week, with one overnight on a weekend for no longer than a twelve hour period, if the child is not breast feeding and the noncustodial parent is capable of providing primary care.
- B. **Infants - Six to Eighteen Months.** Alternate parenting plans:
- (1) Three, three-hour visits per week with one weekend day for six hours; or
  - (2) Same as (1), but with one overnight not to exceed twelve hours, if the child is not breast feeding and the noncustodial parent is capable of providing primary care; or
  - (3) Child spends time in alternate homes, but spends significantly more time at one of them and no more than two twelve-hour overnights per week at the other. This arrangement should be considered only for mature, adaptable children and very cooperative parents.
- C. **Toddlers - Eighteen to Thirty-Six Months:** Alternate parenting plans:
- (1) The noncustodial parent has the child up to three times per week for a few hours on each visit, on a predictable schedule; or
  - (2) Same as (1) but with one overnight per week; or
  - (3) Child spends time in alternate homes, but with more time in one than the other with two or three overnights spaced regularly throughout the week. This requires an adaptable child and cooperative parents.
- D. **Preschoolers - Three to Five Years Old.** Alternate parenting plans:
- (1) One overnight visit (i.e. Saturday morning to Sunday evening) on alternate weekends and one midweek visit with the child returning to the custodial parent's home at least one-half hour before bedtime; or
  - (2) Two or three nights at one home, spaced throughout the week, the remaining time at the other home. In addition, for preschoolers, a vacation of no longer than two weeks with the noncustodial parent.

- E. **Children in Day Care.** In families where a child has been in day care prior to the parental separation, the child may be able to tolerate flexible visits earlier because the child is more accustomed to separations from both parents. The noncustodial parent who exercises visitation of a child under age five should not during the visits place the child with a baby-sitter or day care provider. If the noncustodial parent cannot be with the child personally, the child should be returned to the custodial parent. Visiting for short periods with relatives may be appropriate, if the relatives are not merely serving as baby-sitters.
- 1.15 **Visitation with Adolescents.** Within reason the parents should honestly and fairly consider their teenager's wishes on visitation. Neither parent should attempt to pressure their teenager to make a visitation decision adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent, without intervention by the other parent.
- 1.16 **Day Care Providers.** When parents reside in the same community, they should use the same day care provider. To the extent possible the parents should rely on each other to care for the children when the other parent is unavailable.
- 1.17 **Special Circumstances.**
  - A. **Child Abuse.** When child abuse has been established and a continuing danger is shown to exist, all visitation should cease or only be allowed under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases.
  - B. **Spouse Abuse.** Witnessing spouse abuse has long-term, emotionally detrimental effects on children. Furthermore, a person who loses control and acts impulsively with a spouse, may be capable of doing so with children as well. Depending on the nature of the spouse abuse and when it occurred, the court may require an abusive spouse to successfully complete appropriate counseling before being permitted unsupervised visitation.
  - C. **Substance Abuse.** Visitation should not occur when a noncustodial parent is abusing drugs/alcohol.
  - D. **Long Interruption of Contact.** In those situations where the noncustodial parent has not had an ongoing relationship for an extended period, visitation should begin with brief visits and a very gradual transition to the visitation in these guidelines.
  - E. **Kidnapping/Threats.** Noncustodial parents who have kidnapped or hidden the children or threatened to do so should have no visitation or only supervised visits.
  - F. **Breast Feeding Child.** Forcibly weaning a child, whether breast feeding or bottle feeding, during the upheaval of parental separation is not appropriate for the physical health or emotional well-being of the child. Until weaning has occurred without forcing, a nursing infant should have visits of only a few hours each. A parent should not use breast feeding beyond the normal weaning age as a means to deprive the other parent of visitation.

- G. **A Parent's New Relationship.** Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parent's separation and divorce.
- H. **Religious Holidays and Native American Ceremonies.** Parents should respect their children's needs to be raised in their faith and in keeping with their cultural heritage and cooperate with each other on visitation to achieve these goals. These goals should not be used to deprive the noncustodial parent of visitation.
- I. **Other.** The court will limit or deny visitation to noncustodial parents who show neglectful, impulsive, immoral, criminal, assaultive or risk-taking behavior with or in the presence of the children.
2. **VISITATION OF CHILDREN OVER AGE FIVE WHEN THERE IS SOLE CUSTODY OR PRIMARY PHYSICAL CUSTODY AND PARENTS RESIDE NO MORE THAN 200 MILES APART**
- 2.1 **Weekends.** Alternate weekends from Friday at 5:30 P.M. to Sunday at 7 P.M.; the starting and ending times may change to fit the parents' schedules. Or an equivalent period of time if the visiting parent is not available on weekends and the child does not miss school. In addition, if time and distance allow, one or two midweek visits of two to three hours. All transportation for the midweek visits are the responsibility of the visiting parent.
- 2.2 **Mother's Day - Father's Day.** The alternate weekends will be shifted, exchanged or arranged so that the children are with their mother each Mother's Day weekend and with their father each Father's Day weekend. Conflicts between these special weekends and regular visitation shall be resolved pursuant to Paragraph 1.9.
- 2.3 **Extended Visitation.** One-half of the school summer vacation. At the option of the noncustodial parent, the time may be consecutive or it may be split into two blocks of time. If the child goes to summer school and it is impossible for the noncustodial parent to schedule this visitation time other than during summer school, that parent may elect to take the time when the child is in summer school and transport the child to the summer school session at the child's school or an equivalent summer school session in the noncustodial parent's community.
- 2.4 **Winter (Christmas) Vacation.** One-half the school winter vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school. If the parents cannot agree on the division of this period, the noncustodial parent shall have the first half in even-number years. If the parents live in the same community, in those years when Christmas does not fall in a parent's week, that parent shall have from noon to 9 P.M. on Christmas Day. For toddlers and preschool age children, when the parents live in the same community, the parents should alternate each year Christmas Eve and Christmas Day so that the children spend equal time with each parent during this holiday period.
- 2.5 **Holidays.** Parents shall alternate the following holiday weekends: Easter, Memorial Day, the 4th of July, Labor Day and Thanksgiving. Thanksgiving will

begin on Wednesday evening and end on Sunday evening; Memorial Day and Labor Day Weekends will begin on Friday and end on Monday evening; Easter weekend will begin on Thursday evening and end on Sunday evening; while the 4th of July, when it does not fall on a weekend, shall include the weekend closest to the 4th. Holiday weekends begin at 5:30 P.M. and end at 7 P.M. on the appropriate days.

- 2.6. **Children's Birthdays.** Like the holidays, a child's birthday shall be alternated annually between the parents. If the birthday falls on a weekend, it shall extend to the full weekend, and any resulting conflict with regular visitation shall be resolved pursuant to Paragraph 1.9. If the birthday falls on a weekday, it shall be celebrated from 3 P.M. to 9 P.M. (or so much of that period as the noncustodial parent elects to use).
- 2.7. **Parents' Birthdays.** The children should spend the day with the parent who is celebrating their birthday, unless it interferes with a noncustodial parent's extended visitation during vacation.
- 2.8. **Conflicts Between Regular and Holiday Weekends.** When there is a conflict between a holiday weekend and the regular weekend visitation, the holiday takes precedence. Thus, if the noncustodial parent misses a regular weekend because it is the custodial parent's holiday, the regular alternating visitation schedule will resume following the holiday. If the noncustodial parent receives two consecutive weekends because of a holiday, regular alternating visitation will resume the following weekend with the custodial parent. The parents should agree to make up missed weekends due to holiday conflicts.
- 2.9. **Visitation Before and During Vacations.** There will be no visitation the weekend(s) before the beginning of the noncustodial parent's summer vacation visitation period(s), regardless of whose weekend it may be. Similarly, that parent's alternating weekend visitation(s) shall resume the second weekend after each period of summer vacation that year. Weekend visitation "missed" during the summer vacation period will not be "made up." During any extended summer visitation of more than three consecutive weeks, it will be the noncustodial parent's duty to arrange, for a time mutually convenient, a 48-hour continuous period of visitation for the custodial parent unless impracticable because of distance.
- 2.10. **Notice of Canceled Visitation.** Whenever possible, the noncustodial parent shall give a minimum of three days notice of intent not to exercise all or part of the scheduled visitation. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the reason therefor, shall be given. Custodial parents shall give the same type of notice when events beyond their control make the cancellation or modification of scheduled visitation necessary. If the custodial parent cancels or modifies a visit because the child has a schedule conflict, the noncustodial parent should be given the opportunity to take the child to the scheduled event or appointment.
- 2.11. **Pick Up and Return of Children.** When the parents live in the same community, the responsibility of picking up and returning the children should be shared. Usually the noncustodial parent will pick up and the custodial parent will

return the children to that parent's residence. The person picking up or returning the children during times of visitation has an obligation to be punctual: to arrive at the agreed time - not substantially earlier or later. Repeated, unjustified, violations of this provision may subject the offender to court sanctions.

- 2.12. **Additional Visitation.** Visitation should be liberal and flexible. For many parents these guidelines should be considered as only a minimum direction for interaction with the children. These guidelines are not meant to foreclose the parents from agreeing to such additional visitation as they find reasonable at any given time.

**3. VISITATION OF CHILDREN OVER AGE FIVE WHEN SOLE CUSTODY OR PRIMARY PHYSICAL CUSTODY AND PARENTS RESIDE MORE THAN 200 MILES APART**

- 3.1 **Extended Visitation.** All but three weeks of the school summer vacation period and, on an alternating basis, the school Winter (Christmas) vacation and Spring Break.
- 3.2 **Priority of Summer Visitation.** Summer visitation with the noncustodial parent takes precedence over summer activities (such as Little League) when the visitation cannot be reasonably scheduled around such events. Even so, the conscientious noncustodial parent will often be able to enroll the child in a similar activity.
- 3.3 **Notice.** At least 60 days notice should be given of the date for commencing extended visitation, so that the most efficient means of transportation may be obtained and the parties and the children may arrange their schedules. Failure to give the precise number of days notice does not entitle the custodial parent the right to deny visitation.
- 3.4 **Additional Visitation.** Where distance and finances permit, additional visitation, such as for holiday weekends or special events, are encouraged. When the noncustodial parent is in the area where the child resides, or the child is in the area where the noncustodial parent resides, liberal visitation shall be allowed and because the noncustodial parent does not get regular visitation, the child can miss some school during the visits so long as it does not substantially impair the child's scholastic progress.

**4. PARENTAL CHANGE OF RESIDENCE**

- 4.1 The provisions of Section 40-4-217, M.C.A. shall be followed with regard to parental changes of residence.
- 4.2 A move involving relocation of the child(ren) which is opposed by the other parent shall be evaluated under the best interests of the child criteria. In addition, the Court shall consider the following:
- A) The parent's good faith in moving;
  - B) The child's attachment to each parent;

- C) The possibility of devising a visitation schedule that will allow meaningful contact with the non-custodial parent;
- D) The quality of life in the proposed new home; and
- E) The negative impact of continued hostility between the parents if the Court disapproves the relocation.
- F) Availability of health insurance for the children in either location.

**Rule 27. CRIMINAL AND DELINQUENCY ACTIONS**

**A. Preliminary Procedures in Felony Cases**

- (1) In all felony criminal prosecutions initiated by complaint in Justice Court, the Justice Court shall set an initial appearance no later than the regular Law and Motion day (Wednesday for Judge Langton and Thursday for Judge Haynes) of the third week after the week of the filing of the complaint unless District Court will not be in session on that date in which event the initial appearance shall be scheduled to coincide with the next regular Law and Motion day. The Justice Court shall advise the Defendant and counsel to be personally present on said date.
- (2) If the County Attorney thereafter elects to file a motion for leave to file an information in District Court said motion shall be filed not less than one week before the initial appearance date and the County Attorney shall immediately notify the Justice Court by sending a copy to that Court. The Justice Court shall thereupon transmit a bail transmittal memorandum, the Conditions of Release Order, any bail bond, and the application for court appointed counsel to the Clerk of District Court for filing and the Justice Court shall send a copy of that information to the County Attorney at the same time.
- (3) The County Attorney shall be responsible to calendar the case for initial appearance in District Court on Law and Motion Day.

**B. Arraignment.** An Acknowledgment of Rights form shall be presented to the Court by defense counsel at the time of arraignment.

A Plea of Guilty and Waiver of Rights form shall be presented to the Court by defense counsel at the time of a guilty plea.

These forms are available from the District Court Administrator.

No Plea Agreement shall be considered unless it is in writing and filed with the Court.

**C. Omnibus Hearing.**

- (1) When a plea of NOT GUILTY is entered, the Court shall set an omnibus hearing to be held within a reasonable time thereafter (not less than thirty [30] days before trial). The purpose of the hearing is to expedite procedures leading up to the trial of the Defendant. The presence of the Defendant shall not be required. The prosecutor and defense counsel must

be prepared at the hearing to address any pre-trial matter appropriate to the case, including but not limited to the matters set forth in Section 46-13-110(a) through (m), MCA. At the conclusion of the hearing a Court-approved memorandum of the matters discovered and/or settled shall be signed by the Court and counsel and filed with the Clerk of Court.

- (2) In order to conserve time in Court, the prosecution and the defense counsel shall make a reasonable effort to meet privately and stipulate to a Court-approved omnibus form which shall be submitted for final approval by the Court on or prior to the date of the omnibus hearing. Upon approval of the omnibus form, the hearing shall be vacated and settlement conference date set by the Court.

- D. **Face-to-Face Settlement Conference.** A settlement conference shall be set in all criminal and delinquency cases prior to setting the case for trial. The conference shall be attended by all counsel of record and the defendant (or youth and parents). The parties and counsel shall there attempt, in good faith, to resolve the case without a trial. A summary case status report shall be promptly filed thereafter with the Clerk of Court indicating whether or not the case has been resolved (subject to Court approval).
- E. **Pre-Trial Conference.** A preliminary pre-trial conference will be set in unresolved cases at which time counsel for the parties shall meet with the Court to resolve any motions not previously resolved. The exchange of proposed jury instructions, verdict forms, exhibit and witness lists will be handled at this conference. Counsel shall submit these items to the Court by following the specifications within the Trial Preparation Order issued in the case.
- F. **Pre-Sentence Investigation.** All pre-sentence investigations shall be completed and the reports based thereon delivered to the Court and to the parties, no later than one (1) business day before sentencing.
- G. **Bail.** Whenever cash bail is delivered to the Clerk of Court, the cash must, as soon as possible, be deposited in a trust account with the Ravalli County Treasurer where checks, warrants, or drafts can be drawn on the account for the transfer of such funds.
  - (1) No real estate bail pursuant to Section 46-9-403, MCA, shall be accepted by the Clerk of the District Court unless it is accompanied by the sworn schedule specified in that statute and a current title report by a land title insurance company and unless:
    - (a) It is accompanied by a fair market appraisal by a certified appraiser of the real estate certifying that the unencumbered equity not exempt owned by the accused or sureties is worth at least double the amount of the bail, and
    - (b) It has been approved by the County Attorney.
    - (c) Proof of the recordation of a certified copy of the sworn schedule shall be filed with the Clerk of Court forthwith.

- (2) 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:
- (a) 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.
  - (b) If the bail furnished was cash bail, 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. Upon receipt of the check, warrant, or draft, the Clerk of Court must issue a trust fund receipt and deliver it to the Justice of the Peace or City Judge.
  - (c) If the bail furnished was a bail bond or other bail as permitted by Section 46-9-401, MCA, the Justice or the City Judge must deliver the actual documents furnished as bail to the Clerk of the District Court.
  - (d) All bonds presented to the District Court for approval shall recite that they are payable to the District Court.
- (3) 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 County Attorney must, contemporaneously with the filing of the motion in District Court, file a written request with the Justice of the Peace asking that the bail be transferred to the District Court.
  - (b) The County Attorney must deliver to the Justice of the Peace the original and a duplicate copy of such request.
  - (c) The Justice of the Peace must forthwith endorse upon the original request and the duplicate copy the proper information regarding the nature of the bail, and must forthwith transfer the bail to the District Court as provided in (1) or (2) above. The duplicate copy of the request must be filed with the Clerk of the District Court, and the Justice of the Peace shall retain the original for his files.

H. **Restitution.** Pursuant to M.C.A. 46-18-250, a Ravalli County Restitution Fund is hereby established. The Twenty-first Judicial District Youth Court Probation Office and the Ravalli County Clerk of District Court are hereby ordered to deposit to the Ravalli County Restitution Fund all unclaimed restitution payments made on behalf of victims whose location is unknown despite reasonable efforts to locate the victim.

Disbursements from the Ravalli County Restitution Fund shall be made by the Clerk of District Court in the following order of priority:

- (1) To victims whose restitution payments were deposited in the fund whose location thereafter becomes known.
- (2) To victims awarded restitution in situations in which, due to circumstances beyond their offenders' control, the offenders are unable to obtain the resources to pay any restitution or to pay restitution in a timely fashion and the victim has a need for more prompt payment are as determined by the Court on a case by case basis.

Offenders shall continue to be fully credited for restitution payments made on behalf of victims whose location is unknown and they shall not be excused from payments on such grounds. If a victim has been paid full restitution from the fund but the offender still owes an unpaid restitution obligation, any subsequent payments by or on behalf of the offender shall be deposited to the fund until the obligation is fully satisfied.

**Rule 28. 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" pursuant to Section 3-10-1004, MCA.

**Rule 29. COURT SECURITY**

- A. **Weapons.** No unauthorized person entering the Judicial Wing of the Ravalli County Courthouse may be in possession of firearms (concealed or otherwise), ammunition, knives, chemical spray devices, explosives, explosive devices, or other dangerous weapons. All persons are subject to search of their person and belongings by security personnel to detect the presence of weapons. No concealed weapon permits apply within the county courthouse. All armed out-of-county law enforcement agents shall check in with the Ravalli County Sheriff's office before entering the courtroom.
- B. **Food and Drink.** No person may possess or consume food or beverages in the courtroom except by prior leave of Court. Water will be supplied to counsel, litigants, jurors and court staff by the Clerk of Court.
- C. **Contact by Prisoners or Detainees.** Absent specific permission from the Court, no person other than detention center staff, court security or counsel of record may have physical contact with or communicate with in-custody prisoners or pre-trial detainees at any time said persons are in the Courtroom or being transported to or from the Courtroom. Consultation between in-custody persons and attorneys should occur outside the Courtroom before or after Court sessions.
- D. **Responsibility of Parties.** In any case where a party believes or reasonably should believe a potentially violent physical situation may arise, that party, through counsel or *pro se*, shall notify court staff and the court security officer sufficiently in advance so that appropriate security measures can be taken.

**Rule 30. POSTPONEMENT OF TRIALS OR HEARINGS**

A. **Absence of Witness or Evidence.** Pursuant to Section 25-4-501, MCA, a motion to postpone 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. **Expense Penalty.** Any litigant and/or legal counsel responsible for late postponement of a trial or contested hearing previously set on a day other than regular law and motion day may be assessed a penalty equal to any court expenses or expenses of the adverse party (including attorney fees) thereby needlessly incurred.

**Rule 31. PROBATE FEES**

Attorney fees in informal probate matters will not be routinely 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 32. SUBSTITUTION OF JUDGE**

All motions for the substitution of a judge shall be accompanied by the required filing fee at the time of filing, pursuant to Sections 3-1-804 and 25-1-201, MCA, otherwise the motion shall be stricken.

**Rule 33. SIX-PERSON JURIES**

Pursuant to Section 3-15-106, MCA, 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.

**Rule 34. WITNESSES**

- A. **Subpoena Duces Tecum.** A subpoena duces tecum may be issued in compliance with Rule 45, M.R.Civ.P. and for only such information as is relevant and material.
- B. **Sheriff / County Attorney.** A subpoena duces tecum relating to records of the Ravalli County Sheriff or Ravalli County Attorney shall not be presented to the

Court for approval unless it has been discussed with the affected public official to determine if they have objections.

- C. **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.
- D. **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 witness fees and costs.

**Rule 35. JUDGMENT ON WRITTEN INSTRUMENT**

In all cases in which a judgment is entered upon a written instrument, the instrument must be presented to the Clerk at the time judgment is granted by the Court, and the Clerk shall note in ink across the face of the instrument the fact of the entry of judgment and its date. The Clerk shall sign the entry, attach the official seal, and file the instrument. The instrument shall not be removed except by order of the court in writing setting forth the facts of such removal.

**Rule 36. MEDIA**

- A. **Cameras and Recordings.** Only members of bonafide press organizations recognized by the Court will be allowed to operate cameras or electronic recording devices during court proceedings. Said members of the press shall be prepared to identify themselves and their media organization to the uniformed security officer(s) prior to entering the courtroom. Exception as provided herein, no cameras or electronic recording devices or personnel shall be allowed in the courtroom absent the express permission of the Judge.
- B. **Operation of Cameras.** All cameras or electronic recording devices allowed into the courtroom shall be in place and ready to function well prior to the scheduled court proceeding being covered. Equipment and personnel shall remain in the courtroom until such time as a recess in proceedings is called by the Court. All camera or electronic recording devices shall be operated as quietly and inconspicuously as possible. Media personnel shall respect the dignity and decorum of the Court and conduct themselves and their business accordingly. Those that are disruptive or cause distraction from the proceedings at hand shall be promptly removed from the courtroom. No additional lighting shall be used without the express prior approval of the Court.
- C. **Microphone Placement.** No microphones or other types of broadcasting or taping equipment shall be placed on or near the Judge's bench without advance request to and approval of the Court.
- D. **Disobedience of Guidelines.** Any person disregarding the guidelines as set forth herein may be asked to leave or be escorted from the courtroom and will be denied readmittance and may possibly be held in contempt of Court if a warning is ignored.

**Rule 37. JURY SUMMONING PROCEDURE**

- A. **Jury Lists.** The Clerk of District Court, as the County Jury Commissioner, shall require annually that an alphabetized computer database of potential jurors and their addresses be filed by July 1 of each year with an attached certificate signed by the Ravalli County Clerk and Recorder and the Ravalli County Commissioners which shall contain a description of the computerized random selection method employed to complete the list.

Said certificates and the lists shall be kept in the office of Clerk of Court and be made available for public inspection during normal business hours. The Clerk shall thereupon enter the database into her computer and produce a randomized database and a certificate describing the process used to do so which shall thereupon be presented to the Court for its approval and preserved for public inspection.

- B. **Exemptions.** All questions of juror exemptions or alleged incompetencies from jury duty shall be granted exclusively by the Court in all cases upon a satisfactory showing of undue hardship or other legal grounds.
- C. **Procedure.** In all cases set for jury trial, the following procedures shall be followed except for cases awaiting trial as of the date of adoption of this Rule which will be dealt with on a case by case basis.

1. In cases to be set for jury trial the Court will issue a written Order to the Clerk of District Court specifying the date(s) of trial, the summoning method to be used and the number of potential jurors to be summoned.
2. The trial will be set at least three (3) consecutive weeks after the date set for pre-trial conference and the following schedule shall apply:
  - a) The Court shall issue an Order to the Clerk's Office immediately after the preliminary pre-trial conference to summon a jury.
  - b) The Clerk of District Court shall follow their set procedure and mail out written summons for jury service. After the procedural deadline has passed, the Clerk of District Court shall send an Additional Juror Summons and a praecipe to the Ravalli County Sheriff for personal service upon non-responding potential jurors.
  - c) The parties shall have two (2) business days thereafter to file any motion and affidavits to discharge the jury panel as allowed by section §46-16-112, M.C.A. in criminal cases. If the motion and affidavit is filed and presents substantial grounds, the Court shall conduct an immediate hearing thereon as permitted by the Court's schedule.

**Rule 38. CONSOLIDATION OF ABUSE/NEGLECT CASES**

- A. **Filing Standards.** Each case shall be opened by the Clerk of District Court consistent with the Montana Judicial Branch District Court Uniform Caseload Filing Standards.
- B. **Time of Consolidation.** All child abuse and neglect (DN) cases involving the children of one or more common parent, step-parent or guardian shall be consolidated automatically before the show cause hearing, under the case number for the youngest affected child. This is not a permanent consolidation under the same case number, but rather a temporary consolidation for ease of case management and administrative purposes. Each case shall retain a separate file and case number. Objections to consolidation, if any, must be raised at the show cause hearing. If an objection is raised and the Court determines that complete integration is inappropriate because of confidentiality or other issues, then as an alternative, the cases may be consolidated and grouped according to common parents, etc. For example, in a case involving one mother but two fathers, the separate cases for the children may be consolidated into two groups, one for each father, each of which will include all the children of that father.
- C. **Caption on Consolidated Cases.** In issuing Orders to Show Cause, Subpoenas, or Summons, the Clerk of District Court shall issue one such document as necessary for each consolidated case, rather than one document for each child. The Clerk of the District Court shall list the consolidated case number first for the show cause hearing or other hearing and said document will pertain to all of the cases involving the children in the consolidated case. The purpose of this rule is to avoid having to serve multiple Orders to Show Cause or subpoenas upon a parent or witness who is being summoned to attend and/or testify at a consolidated hearing. The consolidated caption shall refer to all of the children in the consolidated matter together with their respective cause numbers, listed from youngest to oldest. The original return of service for Orders to Show Cause, Summons, and Subpoenas shall be filed in the file of the youngest child, with copies of each filed in each child's separate case file. If service by publication is required, one Order and one Summons for Publication shall be issued for a consolidated case.
- D. **Notice of Hearing.** Appropriate notice of any consolidated hearing involving a child to a parent, step-parent or guardian will be deemed legally sufficient notice of any hearing involving other children of that parent, step-parent or guardian occurring at the same time and place, unless manifestly unjust. The purpose of this rule is to avoid the raising of notice issues in cases with multiple children, when the notice problem is merely technical and not substantive.
- E. **Orders Approving Permanency Plans.** Orders approving permanency plans shall comply with this rule, but shall individually identify and be made applicable to each youth of a consolidated case. The intent of a local rule is to satisfy the requirements of Montana law; however, the Department will still need to address the requirement of Federal law in any proposed order it submits.

- F. **Appointed Counsel.** Unless motion is made and granted otherwise, when the Court appoints counsel for a parent, child, or guardian ad litem [GAL], the appointment shall apply to all DN cases involving the same parent, child, or GAL of a sibling.
- G. **Guardian ad Litem.** Unless motion is made and granted otherwise, one guardian ad litem [GAL] shall be appointed for each consolidated case, and the GAL shall represent all of the children in that consolidated case. The GAL shall submit one report, with duplicate reports filed in all related consolidated case files.
- H. **Confidentiality.** The parties shall abide by all confidentiality statutes, especially regarding information they receive pertaining to children who are not their biological children, or for whom they are neither step-parents nor guardians. See, e.g., §41-3-205 MCA.
- I. **Court Authority.** The Court reserves the right to exercise its separate consolidation authority "to order a joint hearing or trial of any or all the matters in issue in the actions . . ." or to "order all the actions consolidated ..." or to make "such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Rule 42(a), M.R.Civ.P. The Court also reserves the right to exercise its separate authority to join parties in a case pursuant to Rule 19(a), M.R.Civ.P.
- J. **Filing of Duplicates.** The Clerk of District Court shall accept and file duplicate originals of all pleadings, petitions, motions, and reports in DN cases designated for consolidation. The Court shall enter only one set of Findings and/or Order at the conclusion of a hearing, but duplicate originals, each signed by the Judge in jurisdiction, shall be executed and a duplicate original filed in the respective files of each of the affected youths.
- K. **Conclusion of Case.** Once a consolidated DN case is fully adjudicated or otherwise concluded, each case file shall be separated into its case number consistent with when originally opened, and then the case shall be CLOSED.
- L. **Reopening of Case.** If any closed DN case is later REOPENED, the above rules for opening a case shall be applied and followed.
- M. **Dissemination of Documents.** Dissemination of documents or information from a DN file, whether active or not, shall be subject to applicable confidentiality laws and the Court's authority under Title 41 to protect the best interests of any child in a DN case. Prior to dissemination of any documents or information from a child's DN file, the Court reserves the right to require redaction of any material relating to witnesses, health care or other confidential matters that would violate a child's best interest if it were released. However, in making any determination regarding dissemination from any open file (or file that is likely to be reopened), the court will balance the discovery and other rights of the parties against the child's best interest on a case-by-case basis.

**Rule 39. INTERACTIVE VIDEO CONFERENCING**

Interactive video conferencing capability is available for court related purposes. Benefits include time saving, decreased travel and transportation costs, minimizing judicial delay, and decreased court security. The Court, upon its own motion or upon motion of the parties, may conduct proceedings in civil actions by video-conference. Court related purposes include, but are not limited to, case management, depositions and discovery, pretrial conferences, settlement conferences, continuing legal education, court administration, and public information.

Video conferencing is also available for juvenile, adult criminal, and mental illness proceedings consistent with Titles 41, 46 and 53 of the Montana Codes Annotated.

Any video conferencing under this rule must conform to the following minimum requirements:

1. All participants must be able to see, hear, and communicate with each other simultaneously;
2. All participants must be able to see, hear, and otherwise observe any physical evidence or exhibits presented during the proceeding, either by video, facsimile, or other method;
3. Video quality must be adequate to allow participants to observe each other's demeanor and nonverbal communications; and
4. The location from which the trial judge is presiding shall be accessible to the public to the same extent as such proceeding would if not conducted by video conference. The court shall accommodate any request by interested parties to observe the entire proceeding.
5. A record of any proceedings conducted by video conference shall be made by the court reporter.

Scheduling of and any applicable fee payment for all video conferencing must occur through the Court Administrator, at least 10 days before the scheduled use.

**Rule 40. FAX AND E-MAIL FILINGS**

Documents may be submitted for filing by email or facsimile. Documents submitted by email must be emailed to: ptrautwein@rc.mt.gov. Those submitted by facsimile must be faxed to (406) 375-6721.

The following guidelines must be followed:

1. All documents must be properly signed and dated.
2. Emailed documents must be in a pdf format and submitted as an attachment to an email.
3. By "document" the Court means any combination of a motion/brief/affidavit, etc. along with attachments/appendices/exhibits. This applies to both civil and criminal cases.