



FILED

July 17 2015

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Case Number: DA 15-0427

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MONTANA SUPREME COURT
APPELLATE FILING GUIDE
Updated October 1, 2011

The following appellate Filing Guide and Brief Checklist is provided to assist you in preparing your legal filings through the appellate process. Refer to this information to avoid unnecessary delays with your appeal. If you have any questions, please contact this office.

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
ORIGINAL PROCEEDINGS * <u>Petitions For Writ</u> - Submitted with \$100 filing fee or motion to proceed without payment of filing fee. * <u>No Automatic Response to Petition For Writ</u> Response required only if ordered by the Court. No Reply to a Response allowed. Rule 14 (7)(a)	14 & 5	Original plus 9	White	4,000 words using proportional typeface or 12 pages using monospace typeface

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
<p>NOTICE OF APPEAL - Must be filed within <u>30</u> days from the date of the entry of judgment of order in civil cases; within <u>60</u> days in criminal cases and cases involving governmental entities;</p> <p>* a filing fee of \$100 is due in civil cases at the time of filing the Notice of Appeal, or alternatively, a motion to proceed with payment of the filing fee. No filing fee is required to file a notice of appeal in criminal proceedings.</p> <p>NOTICE OF CROSS-APPEAL - Must be filed within <u>15</u> days after the date on which the first notice of appeal was filed or within the time otherwise provided for under Rule 4, Section (5)(a)(iv), whichever expires last.</p> <p>*If applicable, the filing fee of \$100 is due at the time of filing the Notice of Cross-Appeal, or alternatively, a motion to proceed with payment of the filing fee.</p>	<p>4, 5, and 10(1)(b)</p> <p>*NOTE* All notices of appeal or cross-appeal must comply with Rule 4, (4)(a-f).</p> <p>Fees: 3-2-403 M.C.A.</p> <p>4, 5, and 10(1)(b)</p>	<p>Original only. (Allowed to be filed by facsimile)</p> <p>Original only. (Allowed to be filed by facsimile)</p>	<p>N/A</p> <p>N/A</p>	<p>N/A</p> <p>N/A</p>

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
APPELLATE DISPUTE RESOLUTION - required for appeals in domestic relations, workers compensation and money judgment cases. The Clerk of the Supreme Court will appoint from a list, the next mediator within reasonable proximity to the parties, <u>15</u> days after the filing of the notice of appeal IF the parties have not filed a stipulated notice of selection of mediator. Parties may substitute a mediator only if within 10 days of the Clerk's appointment, they file a written stipulated agreement signed by all parties and served upon the mediator appointed by the Clerk.	7	N/A	N/A	N/A
RECORD ON APPEAL – It is the duty of the appellant and/or cross-appellant to present a sufficient record to the Supreme Court. The following constitutes the complete District Court record: * <u>District Court file</u> - Containing all original papers, and/or administrative record, with a certified copy of the docket entries and any challenged jury instructions; * <u>Transcripts</u> - It is the duty of the appellant to order any transcript deemed necessary	8 & 9	1 original paper transcript in reduced format plus a digital copy on Read Only Digital Video Disk (DVD-R) and signed certificate of service	N/A	N/A

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
<p>for the appeal on the same date the notice of appeal is filed - Rule 8, section (3) The person responsible for preparing the transcript shall also include a certificate of service of the transcript on all applicable parties- Rule 8, section (4)(a)</p> <p>* <u>Exhibits</u> - Document exhibits will be transmitted with the District Court file to the Clerk of the Supreme Court, however, physical exhibits shall not be transmitted. It shall be the responsibility of the interested party to arrange for transmission of any exhibits too large for mailing. The parties are also responsible for returning them upon completion of the appeal.</p>				
<p>TRANSMITTAL OF THE RECORD - The record shall be transmitted by the Clerk of the District Court within <u>40</u> days from the filing of the notice of appeal (Pursuant to Rule 7(3), the record can be held at the District Court, by stipulation of the parties, for <u>75</u> days)</p> <p>* During the first <u>40</u> days, extensions to transmit the record in appeals not involving involuntary mental commitments and</p>	<p>9 7(3) 9(3), 9(4)</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
<p>proceedings regarding abused or neglected children, can be granted in District Court up to <u>90</u> days following the filing of the notice of appeal;</p> <p>* After <u>90</u> days and in all cases involving involuntary mental commitments and proceedings regarding abused or neglected children, extensions must be filed at the Supreme Court.</p>				
<p>NOTICES OF FILING - The Clerk of the Supreme Court will issue notices of filing when:</p> <p>* Appeal Notice is filed</p> <p>* District Court record is filed; the transcript is filed; * the exhibits are filed; * original proceeding is filed; *remittitur is issued.</p> <p><u>ALL OTHER CALENDARING IS THE RESPONSIBILITY OF THE PARTIES.</u></p>	<p>9(6) 21</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>
<p>CASES REQUIRING CONFIDENTIALITY OF NAMES OF PARTIES and REDACTION OF CONFIDENTIAL PERSONAL INFORMATION-</p>	<p>10(6) 10(7)</p>		<p>N/A</p>	<p>N/A</p>

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
<p><u>*Use of Initials</u> Certain cases require the names of parties be kept confidential in briefs, motions, and other pleadings filed in the Supreme Court. A party filing a brief or pleading should use initials in place of a full name within the text of the document. Rule 10(6)</p> <p><u>*Redaction of confidential personal information</u> Confidential personal information includes: <i>social security numbers; complete financial account and taxpayer ID numbers; full birth dates of any person, and information that is not accessible to the public pursuant to state or federal law.</i> Confidential personal information shall be redacted from documents filed with the Clerk of the Supreme Court by the filing party. However, the original document, without redaction, shall be filed with the Clerk and remain under seal unless the Court orders it unsealed or grants a motion to allow access to it. Rule 10 7(a)&(b)</p> <p>*Exemptions -- from redaction requirements. Rule 10 7(c)</p> <p>*Appendices-- Redaction of</p>	10(7)	1 unredacted original filed under seal		

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<p>confidential personal information is NOT required for appendices. Rule 7(g)</p> <p>*Waiver – A person waives the protection of Rule 10(7) as to the person’s own information by filing it without redaction and not under seal. Rule 10(7)(h)</p>				
<p><u>BRIEFING</u></p> <p><i>*For all briefs, please refer to the checklist for brief requirements found on page 16.</i></p>				
<p>DISC COPY OF BRIEFS - Under Rule 12 and Rule 14, one digital copy of the brief or petition on a Read Only Digital Video Disc (DVD-R), and prepared in a Portable Document Format (PDF). The digital disc copy should not include attachments or appendix.</p> <p>Note: This rule does not apply to handwritten or typewriter-produced briefs and failure to include the disc will not result in refusal to file the brief.</p>	12(11)	1 Read Only Digital Video Disk (DVD-R)	N/A	N/A
OPENING BRIEF IN CASES INVOLVING A CERTIFIED QUESTION	11(4), 11(6),& 13(2)	Original plus 9	Yellow	10,000 words using proportional typeface or 30 pages using monospace typeface

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
APPELLANT'S BRIEF - Due within <u>30</u> days of the filing of the complete District Court record. <u>NO NOTICE OF FILING OF BRIEF WILL BE SENT BY THE CLERK.</u> *Refer to the enclosed checklist for briefs requirements..	11(4), 11(6), 12, and 13(2)	Original plus 9 *For briefs containing confidential information, Original and 7 copies unredacted, plus 2 redacted.	Blue	10,000 words using proportional typeface or 30 pages using monospace typeface
APPELLEE'S BRIEF - Due within <u>30</u> days from the date of the certificate of service of appellant's brief. <u>NO NOTICE OF FILING OF BRIEF WILL BE SENT BY THE CLERK.</u> *Refer to the enclosed checklist for brief requirements.	11(4), 11(6), 12, and 13(2)	Original plus 9 *For briefs containing confidential information, Original and 7 copies unredacted Plus 2 redacted.	Salmon / Peach	10,000 words using proportional typeface or 30 pages using monospace typeface
REPLY BRIEF - Due within <u>14</u> days from the date of the certificate of service of appellee's brief. <u>NO NOTICE OF FILING OF BRIEF WILL BE SENT BY THE CLERK.</u> *Refer to the enclosed checklist for brief requirements.	11(4), 11(6), 12, and 13(2)	Original plus 9 *For briefs containing confidential information, Original and 7 copies unredacted Plus 2 redacted.	Gray	5,000 words using proportional typeface or 14 pages using monospace typeface

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
<u>OPENING BRIEF IN CASES INVOLVING CROSS-APPEAL</u> - Due within <u>30</u> days from the filing of the complete District Court record; *Refer to the enclosed checklist for brief requirements.	11(4), 11(6), 12, and 13(2)	Original plus 9 *For briefs containing confidential information, Original and 7 copies unredacted Plus 2 redacted	Blue	10,000 words using proportional typeface or 30 pages using monospace typeface
COMBINED APPELLEE AND CROSS-APPELLANT'S BRIEF - <u>One</u> combined response and cross-appeal brief, due within <u>30</u> days from the date of the certificate of service of appellant's brief; *Refer to the enclosed checklist for brief requirements.	11(4), 11(6), 12, and 13(2)	Original plus 9 *For briefs containing confidential information, Original and 7 copies unredacted Plus 2 redacted	Salmon / Peach	10,000 words using proportional typeface or 30 pages using monospace typeface
COMBINED APPELLANT'S REPLY AND ANSWER TO CROSS-APPEAL BRIEF - <u>One</u> combined reply and response brief, due within <u>30</u> days from the date of the certificate of service of cross-appellant's brief; *Refer to the enclosed checklist for brief requirements. *Appendices-- Redaction of confidential personal information is NOT required for appendices.	11(4), 11(6), 12, and 13(2)	Original plus 9 *For briefs containing confidential information, Original and 7 copies unredacted Plus 2 redacted.	Gray	5,000 words using proportional typeface or 14 pages using monospace typeface

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
CROSS-APPELLANT'S REPLY BRIEF - Due within <u>14</u> days from the date of the certificate of service of appellant's reply brief. *Refer to the enclosed checklist for brief requirements.	11(4), 11(6), 12, and 13(2)	Original plus 9 *For briefs containing confidential information, Original and 7 copies unredacted Plus 2 redacted.	Gray	5,000 words using proportional typeface or 14 pages using monospace typeface
AMICUS BRIEF - Allowed only upon invitation or leave from the Supreme Court. *Refer to the enclosed checklist for brief requirements. *Appendices-- Redaction of confidential personal information is NOT required for appendices.	11(4), 11(6), 12(7), and 13(2)	Original plus 9 *For briefs containing confidential information, Original and 7 copies unredacted Plus 2 redacted.	Green	5,000 words using proportional typeface or 14 pages using monospace typeface
INTERVENOR BRIEF *Refer to the enclosed checklist for brief requirements. *Appendices-- Redaction of confidential personal information is NOT required for appendices.	11(4), 11(6), 12), and 13(2)	Original plus 9 *For briefs containing confidential information, Original and 7 copies unredacted Plus 2 redacted.	Green	10,000 words using proportional typeface or 30 pages using monospace typeface

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
APPENDIX Shall include a table of contents and plain paper tabs (NO plastic-coated tabs). *Appendices-- Redaction of confidential personal information is NOT required for appendices.	12(5)	Original plus 7 if separately bound	White	N/A
CERTIFICATE OF SERVICE - All papers must contain a signed certificate of service that includes the date and manner of service and the names of the persons served or the papers will be returned without filing.	10(2), 10(4)	N/A	N/A	N/A
CONSTITUTIONAL QUESTIONS - In cases where the state is <u>not</u> a party, it is the duty of the party who is filing the question to give written notice to: * the Clerk of the Supreme Court; * the Attorney General; * opposing parties.	27	N/A	N/A	N/A
COMPUTATION OF TIME - All time limits set forth for filing documents or performing any act are actual time limits. <i>No additional time may be added to any such time requirement for mailing or transmitting any document</i> and all weekends and holidays are included in the times specified; provided, however, that if the last day of the time limit falls upon a weekend or holiday, the time limit is	3	N/A	N/A	N/A

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
<p>extended to the next business day. Documents must be filed on or before the last day of the time specified. In computing any period of time, the day of the act, event, or default from which the designated period of time begins to run shall not be included, but the last day of the period shall be included. All documents must be filed in the office of the clerk of the supreme court between 8:00 a.m. and 5:00 p.m. on business days.</p>				
<p>FACSIMILE FILINGS – Motions for extension of time and notices of appeal and cross-appeal may be filed by facsimile between 8:00 a.m. and 5:00 p.m. on business days. A facsimile shall not be timely filed unless it is actually received by the clerk of the supreme court within the time fixed for filing of the document. <i>Any document filed by facsimile shall contain a statement of the date and time of the facsimile filing in the certificate of proof of service prescribed in section (4) of this rule.</i> NOTE: If a filing fee is required with a notice of appeal or cross appeal which has been sent by fax, the fee must be received by the Clerk of Supreme Court within 5 business days of the facsimile filing; otherwise the filing will be treated as void.</p>	10(1)(b); and 4(2)	N/A	N/A	N/A

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
MOTIONS - Generally (Excluding Motions for Extension of Time)	16	Original plus 7	N/A	1,250 words using proportional typeface or 5 pages using monospace typeface
MOTION FOR EXTENSION OF TIME - Original of proposed order must also be provided, with enough copies of the order and addressed, stamped, envelopes for service to parties of record, unless the party is receiving e-mail notification: Note: Motions for extension of time to file brief in cases regarding abused and neglected children and motions for second or subsequent extensions, must include an affidavit and comply with Rule 26(2).	26	Original only of motion (and affidavit if required). Plus original proposed order with copies and envelopes for service unless receiving notification through e-mail.	N/A	1,250 words using proportional typeface or 5 pages using monospace typeface
APPELLANT'S MOTION TO DISMISS - Except for an <u>Anders</u> motion, the motion must be signed by the appellant personally, as well as by appellant's counsel. An appeal may be dismissed pursuant to stipulation signed by counsel or parties not represented by counsel.	16(4), 16(5)	Original only	N/A	1,250 words using proportional typeface or 5 pages using monospace typeface
APPELLEE'S MOTION TO DISMISS - The motion will be held for response in the Clerk's office for <u>11</u> days from the date of service on the motion.	16	Original plus 7	N/A	1,250 words using proportional typeface or 5 pages

Pursuant to the Montana Code Annotated, 2011 Edition, Volume 4, Title 25, Chapter 21, Page 731, Montana Rules of Appellate Procedure	Rule	Number Copies	Color of Cover	Word / Page Limitation
APPELLANT'S RESPONSE TO APPELLEE'S MOTION TO DISMISS <u>NOTE: A Reply to the response to motion is not allowed.</u> Rule 16(3)	16(2), 16(3)	Original plus 7	N/A	1,250 words using proportional typeface or 5 pages using monospace typeface
PETITION FOR REHEARING - Must be filed within <u>15</u> days of the filing of the Opinion or disposition order.	20	Original plus 7	N/A	2,500 words using proportional typeface or 10 pages using monospace typeface
OBJECTION TO PETITION FOR REHEARING - Must be filed within <u>15</u> days from the filing date of the petition for rehearing. NOTE: Reply briefs to the objections will not be accepted for filing.	20	Original plus 7	N/A	2,500 words using proportional typeface or 10 pages using monospace typeface
REMITTITUR - Issued after expiration of time for filing petition for rehearing; or upon denial of petition for rehearing by the Court. <u>NOTICES WILL BE SENT TO COUNSEL.</u>	21	N/A	N/A	N/A
COURT FEES: Notice of Appeal (Civil) - \$100 Notice of Cross-Appeal (Civil)- \$100 Original Proceedings/Writs - \$100 Certificates -Good Standing - \$5 Photocopies - \$.15 / page Note: For an indigent party to proceed without paying the filing fee, a motion and affidavit is required—at the time of filing—for submission to be approved by the Court pursuant to rule 5.	3-2-403 MCA 5	N/A	N/A	N/A

BRIEF CHECK LIST

BRIEFS ARE REVIEWED EACH DAY. IF THE RULES ON THE FOLLOWING CHECKLIST ARE NOT MET, THE BRIEFS MAY BE RETURNED FOR NON-COMPLIANCE. PLEASE USE THE FOLLOWING CHECKLIST TO ENSURE THAT YOUR BRIEF IS PROPERLY PREPARED.

Pursuant to Title 25, Chapter 21, Montana Rules of Appellate Procedure - Effective 10-1-07	Rule No.	Appellant Brief	Appellee Brief	Reply Brief	First Brief in Cert. Quest. Cases
BRIEFS REQUIRING THE USE OF INITIALS AND/OR BRIEFS CONTAINING PERSONAL CONFIDENTIAL INFORMATION	10(6) 10(7) 13(2)				
SIZE (8 1/2 x 11)	11(3)				
FIRST PAGE (color and content)	11(6)	Blue	Salmon/Peach	Gray	Yellow
TYPE SIZE	11(4)(a)1 1(4)(b)				
DOUBLE SPACE AND DUPLEX	11(3)(b)				
MARGIN SIZE (margins on left and right side are not less than 1 inch)	11(3)(a)				
LENGTH	11(4)				
BOUND ON LEFT	11(3)(b)				
PAGES NUMBERED	11(3)(b)				
STATEMENT OF CASE AND STATEMENT OF FACTS	12(1)(c) 12(1)(d)				
SUMMARY OF ARGUMENT	12(1)(f)				
REFERENCES TO RECORD	12(9)				
SIGNED ORIGINAL	13(2)				
CERTIFICATE OF COMPLIANCE *See page 16 for examples	11(4)(d)				
SIGNED CERTIFICATE OF SERVICE	10(4)				
ELECTRONIC DISC COPY	12(11)				
JUDGMENT, ORDER, RELEVANT DOCUMENTS ARE ATTACHED	12(1)(h)		N/A	N/A	N/A

RULE 11(4)(a)(b); TYPEFACE AND TEXT STYLE

Either a proportionately spaced typeface of 14 points or more, or a mono-spaced typeface of no more than 10.5 characters per inch may be used in a brief, appendix, petition, motion or other paper. A proportionately spaced typeface has characters with different widths. A monospaced typeface has characters with the same advanced width. The brief's covers and the components of the brief excluded from the word count computation are exempt from the 14 point typeface requirement. Text shall be in roman, non-script typeface. Cases names, headings and signals may be underlined or in italics or in bold.

EXAMPLE OF MONOSPACED TYPEFACE AND TEXT STYLE:

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(4)(b) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a mono-spaced Courier text typeface of 12 points; is double spaced; Microsoft Word 2007, is not more than 30 (14 for reply) pages, excluding certificate of service and certificate of compliance.

Dated this 1st day of October, 2011.

Signed, Attorney for Appellant/Appellee

EXAMPLE OF PROPORTIONAL SPACED TYPEFACE AND TEXT STYLE:

CERTIFICATE OF COMPLIANCE

Pursuant to Rule **16(3)** of the Montana Rules of Appellate Procedure, I certify that this Motion is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word 2003, is not more than 1,250 words, excluding certificate of service and certificate of compliance.

Dated this 1st day of October, 2011.

Signed, Attorney for Appellant/Appellee