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05/02/2019

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: AF 06-0652

MONTANA ELEVENTH JUDICIAL DISTRICT
District Court Judge Amy Eddy
Flathead County Justice Center
920 South Main, Suite 310
Kalispell, Montana 59901
(406) 758-5906

FILED

MAY 02 2019

Bowen Greenwood
Clerk of Supreme Court
State of Montana

Hon. Chief Justice Mike McGrath
Montana Supreme Court
P.O. Box 203001
Helena, MT 59620-3001

Re: Uniform District Court Rules—Proposed New Rule

Dear Chief Justice McGrath,

The members of the Uniform District Court Rules Commission have been meeting periodically over the past year to revise and amend the existing Uniform District Court Rules. We met in person in Helena on February 22, 2019, and then circulated the final revisions and amendments which passed through the Commission with unanimous approval on April 25, 2019.

I am now submitting the proposed revisions and amendments to the Montana Supreme Court for its consideration. It is my understanding that if the Court determines the revisions and amendments are meritorious, the Court will solicit public comment and have a public hearing.

Stylistic and grammatical changes were made throughout the Rules. Rule 6 was subsumed into the reorganization of Rule 2, necessitating the renumbering of Rules 6-15. Changes were made to Rule 3 to limit its application to actual *ex parte* matters.

There is the substantive addition of Rule 16: Simplified Procedure for Civil Cases. The purpose of Rule 16 is to protect the right to trial by jury in civil actions; to provide maximum access to the district courts and opportunity for citizens to participate in the civil justice system in civil actions; to enhance the provision of the just, speedy, and inexpensive determination of civil actions; to facilitate limited discovery and decrease expenses; and to provide opportunities for counsel to train in civil trial practice.

Sincerely,


Amy Eddy, Chair
Uniform District Court Rules Commission

cc: Uniform District Court Rules Commission (Judge Amy Eddy, Sean Goicoechea, Elizabeth Halverson, Professor Larry Howell, Jim Molloy, Brooke Murphy, and Judge Greg Pinski)

Montana Uniform District Court Rules

2019 Proposed Amendments

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RULE 1 - FORM OF PAPERS PRESENTED FOR FILING

(a) **Papers Defined.** The word "papers" as used in this Rule includes all documents and copies except exhibits and records on appeal from lower courts.

(b) **Pagination, Printing, Etc.** All papers shall be:

- (1) Typewritten, printed or equivalent;
- (2) Clear and permanent;
- (3) Equally legible to printing;
- (4) Of type not smaller than pica;
- (5) Only on standard quality opaque, unglazed, recycled paper, 8 1/2" x 11" in size. [Additional language deleted to match M. R. App. P. 11 revisions.]

(6) Printed one side only, except copies of briefs may be printed on both sides. The original brief shall be printed on one side.

(7) Lines unnumbered or numbered consecutively from the top;

(8) Spaced one and one-half or double;

(9) Page numbered consecutively at the bottom; and

(10) Bound firmly at the top. Matters such as property descriptions or direct quotes may be single spaced.

Extraneous documents not in the above format and not readily conformable may be filed in their original form and length.

(c) **Format.** The first page of all papers shall conform to the following:

(1) Commencing at line 1 at the left margin, single spaced, shall be the name of the attorney or party responsible for the pleadings, together with the telephone number and complete mailing address for service of papers.

(2) Lines 1 through 7 of the right one-half of the page shall be left blank for the use of the clerk.

(3) One or below line 8, the title of the court.

(4) Commencing at line 9 or below on the left, the title of the case.

(5) On the right and opposite the title of the case, the case number and identification of the document being filed.

(6) Nonconforming papers may not be filed without leave of the court.

(d) **Changes, Conformance of Copies.** Additions, deletions or interlineations shall be initialed by the clerk or Judge at the time of filing. All copies served shall conform to the original as filed.

RULE 2 - MOTIONS

(a) Prerequisites to Filing a Motion. The text of the motion must state that other parties have been contacted and state whether any party objects to the motion. Parties that have not yet appeared in the action or whose default has been entered need not be contacted. When a motion is unopposed, the word "unopposed" must appear in the title of the motion.

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(b) Filing Briefs in Support of Motions. The moving party shall file with the court a supporting brief upon filing a motion. The brief may be accompanied by appropriate supporting documents. Except as provided in M.R. Civ. P. 56(c), within fourteen days after service of the movant's brief, the opposing party shall file an answer brief which also may be accompanied by appropriate supporting documents. Within fourteen days after service of the opposing party's answer brief, the movant may file a reply brief or other appropriate responsive documents.

(c) Failure to File Briefs. Failure to file briefs may subject the motion to summary ruling. The moving party's failure to file a brief shall be deemed an admission that the motion is without merit. Failure to file an answer brief by the opposing party within the time allowed shall be deemed an admission that the motion is well taken. Reply briefs by movant are optional, and failure to file will not subject a motion to summary ruling.

(d) Oral Argument. The court may order oral argument *sua sponte* or upon application of a party for good cause shown.

(e) When Motion Deemed Submitted. Unless oral argument is ordered, or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of any of the applicable time limits set forth above. If oral argument is ordered, the motion will be deemed submitted at the close of argument unless the court orders additional briefs, in which case the motion will be deemed submitted as of the date

designated as the time for filing the final brief.

(f) Subject to subsection (e), above, the moving party shall file a notice with the Court within five days after the filing of a reply brief, or if no reply brief is filed, within five days after the filing of all response briefs, advising the Court that the matter is fully submitted and ready for decision. A copy of the notice shall be sent to the presiding Judge's chambers.

(g) In the event of conflict, the Montana Rules of Civil Procedure shall control. Time computation shall be governed by Rule 6, M. R. Civ. P.

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(a) The moving party shall file a supporting brief upon filing a motion. The brief may be accompanied by appropriate supporting documents. Except as provided in M.R. Civ. P. 56(e), within fourteen days after service of the movant's brief, the opposing party shall file an answer brief which also may be accompanied by appropriate supporting documents. Within fourteen days after service of the opposing party's answer brief, the movant may file a reply brief or other appropriate responsive documents.

(b) **Failure to File Briefs.** Failure to file briefs may subject the motion to summary ruling. The moving party's failure to file a brief shall be deemed an admission that the motion is without merit. Failure to file an answer brief by the opposing party within the time allowed shall be deemed an admission that the motion is well taken. Reply briefs by movant are optional, and failure to file will not subject a motion to summary ruling.

(c) **Oral Argument.** The court may order oral argument sua sponte or upon application of a party.

(d) **When Motion Deemed Submitted.** Unless oral argument is ordered, or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of any of the applicable time limits set forth above without supporting briefs having been filed. If oral argument is ordered, the motion will be deemed submitted at the close of argument unless the court orders additional briefs, in which case the motion will be deemed submitted as of the date designated as the time for filing the final brief.

(e) In the event of conflict, the Montana Rules of Civil Procedure shall control. Time computation shall be governed by Rule 6, M. R. Civ. P.

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RULE 3 - EX PARTE MATTERS

(a) Extensions of time to further plead, file briefs, combine a hearing on a motion and other permissible ex parte matters may be granted by order of the court upon written application.

(b) Prior to the issuance of an ex parte order, the party seeking such order must file a written certification with the court declaring that the opposing party has been contacted and given reasonable notice of:

(1) the time and place of the ex parte conference or meeting;

(2) the substance of the order sought;

(3) whether the opposing party opposes the motion.

(c) All requests for extension of time or continuance or other ex parte matters shall be accompanied by an appropriate form or order, with sufficient copies for the clerk to mail to all opposing parties.

(d) Except as otherwise provided by these Rules or statute, no document, including briefs, proposed orders and proposed judgments, may be presented to the court at any time unless it is first filed with the court and served on all parties.

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RULE 4 - FILING OF DISCOVERY

(a) Depositions upon oral or written examinations, interrogatories and answers thereto, requests for production of documents and responses thereto, and requests for admissions and responses thereto shall not be routinely filed without leave of court. When any motion is filed making reference to discovery, the party filing the motion shall submit with the motion relevant unfiled documents.

(b) The pre-trial order shall identify all those portions of depositions, interrogatories, requests for admissions and answers and responses thereto that the parties intend to introduce into evidence.

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RULE 5 - PRE-TRIAL ORDER AND PRE-TRIAL CONFERENCE

(a) **Pre-trial.** Unless otherwise ordered by the court, a pre-trial conference shall be held in all contested civil cases.

(b) Not later than seven days prior to the pre-trial conference, Plaintiff shall convene a conference of all parties for the purpose of preparing a pre-trial order. The proposed pre-trial order shall be presented for signature at the pre-trial

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conference. In the event of a dispute as to the contents of the order, such dispute shall be presented to the judge for resolution at the pre-trial conference.

(c) **Pre-trial Order.** The pre-trial order shall be substantially in the following form: (see next page)

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RULE 6 - BRIEFS

All briefs presented to the court at any time will be filed with the court and must forthwith be served on all opposing parties.

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RULE 67 - JURY INSTRUCTIONS AND VERDICT FORMS

(a) Submission. All proposed jury instructions and verdict forms must be delivered to the court in duplicate and a copy served upon all opposing parties at the time fixed in the pre-trial order. Thereafter additional instructions may be allowed to prevent manifest injustice.

(b) Citation of authorities. Each proposed instruction shall contain at the bottom the source thereof and a citation of authorities, if any, supporting the statement of law therein.

(c) Form. Each instruction shall be on 8 1/2" x 11" paper and shall, after the citations of authorities, indicate the party on whose behalf it is requested and be numbered consecutively. One copy of the instructions filed with the court shall not be firmly bound together.

(d) Request for special findings by jury. Whenever a party desires special findings by a jury he/she shall file with the court and serve a copy upon all opposing parties, in writing, the issues or questions of fact upon which such findings are requested, in proper form for submission to the jury.

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RULE 78 - FINDINGS AND CONCLUSIONS

Unless ordered otherwise, in all matters where the court must enter findings of fact and conclusions of law pursuant to Rule 52, M. R. Civ. P., all parties shall file with the court, and serve upon all opposing parties, at least seven days prior to the scheduled trial or hearing, proposed findings of fact and conclusions of law. Failure to file proposed findings of fact and conclusions of law in a timely manner shall be cause for appropriate sanction including removal of the case from the trial calendar, dismissal or granting of a judgment, precluding the offending party from presentation of evidence or objecting to evidence submitted by the other party, or such other action as the court deems appropriate. Post-trial amended and supplemental findings of fact and conclusions of law may be submitted in appropriate circumstances and only upon order of the court.

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RULE 89 - JUROR QUESTIONNAIRE

All jurors are requested to complete a questionnaire, the form of which is on file with the clerk in his/her general order file and which contains basic vital statistics and other pertinent information. The completed forms will only be available to the parties, the attorneys for the parties, judges and court employees. Others requesting the completed forms must file a Request for Privacy Information with the court. The jury questionnaire will be destroyed by the clerk's office within a reasonable length of time after the conclusion of the jury term.

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RULE 940 - DEATH OR REMOVAL OF ATTORNEY

(a) Whenever an attorney representing a party to an action, or in another civil proceeding of any kind is removed, withdraws or ceases to act as such, said attorney must inform the court and all other parties of the full name and address of his/her client and any other information which the court may find appropriate to assist in contacting said party.

(b) Except as allowed or modified by the limited scope of representation rules, when the attorney representing a party to an action or proceeding dies, is removed, withdraws, or ceases to act as such, that party, before any further proceedings are had against him/her must be given notice by any opposing party:

- (1) That such party must appoint another attorney or appear in person, and
- (2) The date of the trial or of the next hearing or action required in the case, and
- (3) That if he/she fails to appoint an attorney or appear in person by a date certain, which may not be less than twenty-one days from the date of the notice, the action or other proceeding will proceed and may result in a judgment or

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other order being entered against him/her, by default or otherwise.

(c) Such notice may be by personal service or by certified mail to said party's last known address.

(d) If said party does not appoint another attorney or appear in person within twenty-one days of the service or mailing of said notice, the action may proceed to judgment. However, copies of all papers and documents required to be served by these Rules and the Rules of Civil Procedure shall be mailed to said party at his/her last known address.

(e) In addition to the foregoing requirements of Rule 9-40 and before any change or substitution of attorney is effective, whether such change or substitution is occasioned by the death of the attorney or by his/her removal, withdrawal, ceasing to act, suspension or disbarment, the requirements of sections 37-61-403, 37-61-404 and 37-61-405, MCA, shall have been fully satisfied.

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RULE 104 - JUDGMENTS AND DECREES

Whenever a judgment or decree is signed by the presiding judge it shall be delivered to the clerk and immediately filed in the records of the court and the fee required by law shall be forthwith paid to the clerk. Failure of parties to observe this Rule shall be deemed a contempt of court.

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RULE 112 - EXHIBITS

(a) Every exhibit placed on file or offered in evidence shall be held in the custody of the clerk. Unless there is good reason why the original of an exhibit should be retained, upon application, the court may order a copy filed in its place. Public records offered in evidence may be withdrawn at the conclusion of the hearing on order of the court.

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(b) Exhibits may be withdrawn by the party offering them thirty days after a judgment has become final. Forty-five days after a judgment has become final, the clerk may apply to the court for an order to dispose of exhibits and shall notify the parties of said application. Twenty-one days after mailing of said notice the court may enter its order authorizing the clerk to dispose of exhibits.

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RULE 123 - REGULATION OF ATTORNEYS NOT ADMITTED TO PRACTICE IN MONTANA

An attorney seeking to be admitted to practice before the court on a particular case, who is not admitted to the Bar of Montana, and who is authorized to practice law in the highest courts of another state, must at the time of his/her first appearance in a district court in Montana, or within fourteen days thereafter, and before any further proceedings are had in the matter, join with, of record, an attorney who is admitted to practice in Montana and who is a resident of Montana.

In order to hold secure the just, speedy and inexpensive determination of every action, such local counsel must be furnished with all factual, evidentiary and legal information necessary to act on behalf of the party and must also be vested with full and complete authority to act on behalf of and bind the party in all matters connected with the litigation.

A failure of local counsel to take any action required by the Rules of Civil Procedure or these Rules by lack of authority shall, for the purpose of imposing sanctions, be treated as a refusal to act.

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RULE 134 - CHIEF DISTRICT JUDGE

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(a) In a multijudge district court of Montana, a chief district judge shall be selected at the beginning of each calendar year, and the position shall rotate among the judges of the district annually, unless the judges of the district agree otherwise. The rotation shall commence with the most senior district judge.

(b) The duties of the chief district judge shall be to provide for the efficient management of the district court business, in cooperation with the other judges of the district.

RULE 145 - LOCAL RULES ALLOWED

Nothing in these Rules shall be construed as limiting the power of the district courts from promulgating rules that do not conflict with these Rules

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RULE 156 - ATTORNEY'S COPIED OR ELECTRONICALLY-GENERATED SIGNATURE AND ELECTRONIC SERVICE

(a) An attorney's copied or electronically-generated signature shall be deemed original for all court-filed documents.

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(b) Pursuant to Mont. R. Civ. P. 5(b)(E), some or all of the parties may stipulate to provide service of all papers required to be served under Mont. R. Civ. P. 5(a)(1) by electronic means, including papers provided in response to written discovery requests. All parties that choose to accept service by electronic means shall sign a stipulation to be filed with the Court. Any party that chooses not to stipulate to service by electronic means must be served by one of the other methods identified in Mont. R. Civ. P. 5(b).

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RULE 16- SIMPLIFIED PROCEDURE FOR CIVIL ACTIONS

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(a) The purpose of this rule is to protect the right to trial by jury in civil actions; to provide maximum access to the district courts and opportunity for citizens to participate in the civil justice system in civil actions; to enhance the provision of just, speedy, and inexpensive determination of civil actions; to facilitate limited discovery and decrease expenses; and to provide opportunities for counsel to train in civil trial practice.

(b) This rule applies to all civil actions in which a jury trial has been requested. Attorneys are required to educate and consult with their clients about this Simplified Procedure and be prepared to elect or decline the Simplified Procedure process at the initial scheduling conference.

(c) Simplified Procedure means that the action shall be subject to the following requirements and limitations unless otherwise ordered by the court:

(1) Trial Setting. Following issuance of the scheduling order, the court shall set the case for trial on a date certain within six (6) months or as soon as the court's schedule allows. A maximum of three (3) trial days shall be allowed absent leave of court. The parties are not required to attend a settlement conference.

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(2) Initial Disclosures. Each party shall produce initial disclosures 14 days from the date of the scheduling order. The disclosing party shall sign all disclosures under oath. The initial disclosures must contain the following information:

(i) The name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

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(ii) A copy—or a description by category and location of such items that cannot be copied—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

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(iii) A computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

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(iv) Any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

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(3) Lay Witness Statements. Each party shall serve written disclosure statements identifying the name, address, telephone number, and a detailed statement of the expected testimony for each witness (not the party) the party intends to call at trial. For adverse witnesses, written disclosure of the expected subject matters of the witness's testimony, rather than a detailed statement of the expected testimony, shall be sufficient. Subject to the court's Scheduling Order, it is expected Lay Witness Statements will be filed within 2 months of the court's Scheduling Order.

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(4) Expert Witness Reports. Expert testimony shall be disclosed through detailed written reports which may be drafted by counsel but shall be signed by the expert, and shall include the subject areas, bases, list of material relied upon, and specific opinions intended to be offered at trial. Such written expert reports shall be sufficiently detailed that expert depositions are not permitted

absent leave of court. Subject to the court's Scheduling Order, it is expected Expert Witness Reports will be filed within 3 months of the court's Scheduling Order.

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(5) Discovery. Interrogatories shall be limited to 25 including subparts. Requests for production shall be limited to 25 including subparts. Depositions shall be limited to three (3) per party. Subject to the court's Scheduling Order, it is expected discovery will be closed within 4 months of the court's Scheduling Order.

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(6) Discovery Disputes. Discovery disputes shall be resolved through telephonic or in-person hearings with the court. Written discovery motions are not permitted without leave of court.

(7) Pretrial Motions. Motions made pursuant to Rules 12 or 56, Mont.R.Civ.P., shall not be filed absent leave of court. Motions *in limine* shall be filed consistent with the court's scheduling order.

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(d) Changed Circumstances. In a case governed by this Rule, any time prior to trial, upon a specific showing of substantially changed circumstances sufficient to render the application of Simplified Procedure under this Rule unfair and a showing of good cause for the timing of the motion to terminate, the court shall terminate application of this Rule and enter such orders as are appropriate under the circumstances.

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Amended July 19, 2011
Effective October 1, 2011
Amended November 29, 2011
Effective March 1, 2012
Amended September 16, 2014
Amended April 13, 2016

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