PRESENT RULE:	RECOMMENDED RULE:
RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS **(a) Service — When Required.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.	**Rule 5. Serving and Filing Pleadings and Other Papers** **(a) Service: When Required.** **(1)** ***In General.*** Unless these rules provide otherwise, each of the following papers must be served on every party: **(A)** an order stating that service is required; **(B)** a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants; **(C)** a discovery paper required to be served on a party, unless the court orders otherwise; **(D)** a written motion, except one that may be heard ex parte; and **(E)** a written notice, appearance, demand, or offer of judgment, or any similar paper. **(2)** ***If a Party Fails to Appear.*** No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party in the manner provided for service under Rule 4. **(3)** ***Seizing Property.*** If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or

	possession of the property when it was seized.
(b) Service — How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to the attorney or the party or by mailing it to the attorney or the party at the attorney's or the party's last known address or, if no address is known, by leaving it with the clerk of the court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at the attorney's or the party's office with a clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at that person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.	**(b) Service: How Made.** **(1)** ***Serving an Attorney.*** If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party. **(2)** ***Service in General.*** A paper is served under this rule by: **(A)** handing it to the person; **(B)** leaving it: **(i)** at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or **(ii)** if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there; **(C)** mailing it to the person's last known address -- in which event service is complete upon mailing; **(D)** leaving it with the court clerk if the person has no known address; **(E)** sending it by electronic means if the person consented in writing – in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served; or

	(F) delivering it by any other means that the person consented to in writing -- in which event service is complete when the person making service delivers it to the party or agency designated to make delivery.
(c) Service — Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.	**(c) Serving Numerous Defendants.** **(1)** ***In General.*** If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that: **(A)** defendants' pleadings and replies to them need not be served on other defendants; **(B)** any crossclaim, counterclaim, avoidance or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and **(C)** filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties. **(2)** ***Notifying Parties.*** A copy of every such order must be served on the parties as the court directs.
(d) Filing; Certificate of Service. All papers after the complaint required to be served upon a party, together with a certificate of service, shall be filed with the court within a reasonable time after service, except that depositions upon oral examinations, depositions upon written questions, interrogatories, requests for documents, requests for admissions, and answers and responses shall not be routinely filed. However, when any motion is filed relating to discovery, the parties filing the	**(d) Filing.** **(1)** ***Required Filings; Certificate of Service.*** Any paper after the complaint that is required to be served -- together with a certificate of service -- must be filed within a reasonable time after service. But the following discovery requests and responses must not be filed until they are used in the proceeding, ordered by the court in the Rule 16 conference, or the court orders

motion shall at the same time attach to the motion all of the documents relevant to the motion if the documents have not been previously filed. If for any reason a party believes that any of the foregoing named documents should be filed, the party may make an ex parte request that the document be filed, stating the reasons for filing. Proof of service of a notice to take a deposition shall continue to be filed.

(e) Filing With the Court Defined. The filing of papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. Papers may be filed by facsimile or other electronic means, provided the original document must be filed with the clerk within five business days of the receipt of the facsimile copy or the filing will be treated as void.

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

filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, requests for admission, expert disclosure reports, and interrogatory answers.

(2) ***How Filing Is Made — In General.*** A paper is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) ***Electronic Filing, Signing, or Verification.***

(A) A court may, by local rule, allow papers to be filed, signed or verified by electronic means (other than facsimile) that are consistent with any technical standards established by the court or local rule. A paper filed by electronic means in compliance with a local rule is a written paper for purposes of these rules.

(B) Papers may be filed by facsimile provided the original document is filed with the clerk within 5 business days of the receipt of the facsimile copy or the filing will be treated as void.

(4) ***Acceptance by the Clerk.*** The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

COMMITTEE NOTES

The language of Rule 5 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

Rule 5(a)(1)(E) removes the term "designation of record" because it is already addressed in the Appellate Rules.

Rule 5(b)(2)(E) has been added to conform to the Federal Rules. It is added in recognition of the practice of service by admission.

Rule 5(d)(1) requires that deposition notices be filed, unlike the Federal counterpart Rule 5(d)(1).

Rule 5(d)(3)(A), which allows for electronic filing other than by facsimile, is purely anticipatory. It follows the Federal Rules, but it is the Committee's intent that this Rule not become operative until further order of the Montana Supreme Court allowing electronic filing (other than by facsimile) either on a state-wide district court basis or in selected districts as experiments.

RULE 5.1

PRESENT RULE:	RECOMMENDED RULE:
None – the equivalent is located at Rule 24(d), which is reproduced below. **Rule 24(d). Cases involving constitutional questions where the state is not a party.** When the constitutionality of any act of the Montana legislature is drawn in question in any action, suit or proceeding to which neither the state nor any agency or any officer or employee thereof, as such officer or employee, is a party, the party raising the constitutionality of the act shall notify the Montana attorney general and the court of the constitutional issue. The notice shall be in writing, shall specify the section of the code or chapter of the session law to be construed and shall be given contemporaneously with the filing of the pleading or other document in which the constitutional issue is raised. The attorney general may within 20 days thereafter intervene as provided in Rule 24(c) on behalf of the state.	**Rule 5.1 Constitutional Challenge to a Statute – Notice and Intervention.** **(a) Notice by a Party.** A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a state statute must promptly: **(1)** file a notice of constitutional question stating the question and identifying the paper that raises it, and to serve the notice and paper on the state Attorney General either by certified or registered mail or by sending it to an electronic address designated by the attorney general for this purpose. **(b) Intervention; Final Decision on the Merits.** Unless the court sets a later time, the attorney general may intervene within 60 days after the notice is filed or after the court certifies the challenge, whichever is earlier. Before the time to intervene expires, the court may reject the constitutional challenge, but may not enter a final judgment holding the state unconstitutional. **(c) No Forfeiture.** A party's failure to file and serve the notice, or the court's failure to certify, does not forfeit a constitutional claim or defense that is otherwise timely asserted.

COMMITTEE NOTES

Rule 5.1, which replaces previous Rule 24(d), has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

The Committee decided it was more appropriate to place this rule at 5.1, consistent with the Federal Rules.

RULE 5.2

PRESENT MONTANA RULE:	PROPOSED STATE
None. **PRESENT *FEDERAL* RULE IS AS FOLLOWS:** **Rule 5.2. Privacy Protection For Filings Made with the Court** **(a) Redacted Filings.** Unless the court orders otherwise, in an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only: (1) the last four digits of the social-security number and taxpayer-identification number; (2) the year of the individual's birth; (3) the minor's initials; and (4) the last four digits of the financial-account number.	**Rule 5.2 Privacy Protection for Filings Made With the Court** **(a) Redacted Filings.** **(1)** Unless the court orders or the law requires otherwise, in any filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing must include only: **(A)** the last four digits of the social- security number and taxpayer-identification number; **(B)** the year of the individual's birth; **(C)** the minor's initials; and **(D)** the last four digits of the financial account number. **(2)** Use of initials for parties in certain proceedings. In addition to the requirements of 5.2(a)(1), in any proceeding regarding abused or neglected children under Title 41, Chapter 3, or in any proceeding under Title 40, Chapter 6, part 1 (Uniform Parentage Act); Title 41, Chapter 5 (Youth Court Act); Title 42

	(Adoption); Title 52, Chapter 3, part 8 (Montana Elder and Persons With Developmental Disabilities Abuse Prevention Act); Title 53, Chapter 20 (Developmental Disabilities); Chapter 21 (Mentally Ill); or Chapter 24 (Alcoholism and Drug Dependence); or Title 72, Chapter 5, part 3 (Guardians of Incapacitated Persons), only the initials of the child(ren), parent(s), or individual party(ies), as the case may be, may be used in all filings. References to the names of these individuals within documents included in exhibits or attachments must be redacted by the party who files the document.
(b) Exemptions from the Redaction Requirement. The redaction requirement does not apply to the following: (1) a financial-account number that identifies the property allegedly subject to forfeiture in a forfeiture proceeding; (2) the record of an administrative or agency proceeding; (3) the official record of a state-court proceeding; (4) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed; (5) a filing covered by Rule 5.2(c) or (d); and (6) a pro se filing in an action brought under 28 U.S.C. §§ 2241, 2254, or 2255.	**(b) Exemptions from the Redaction Requirement.** The redaction requirement does not apply to the following: **(1)** a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding; **(2)** the record of an administrative or agency proceeding; **(3)** the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed; and **(4)** a filing covered by Rule 5.2 (c).

(c) Limitations on Remote Access to Electronic Files; Social-Security Appeals and Immigration Cases. Unless the court orders otherwise, in an action for benefits under the Social Security Act, and in an action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention, access to an electronic file is authorized as follows: (1) the parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record; (2) any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to: (A) the docket maintained by the court; and (B) an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record.	(c) **Filings Made Under Seal.** The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

(d) Filings Made Under Seal. The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.	**(d) Protective Orders.** For good cause, the court may by order in a case: **(1)** require redaction of additional information; **(2)** limit or prohibit a nonparty's remote electronic access to a document filed with the court; or **(3)** provide other guidance regarding privacy and access consistent with The Rules for Privacy and Public Access to Court Records in Montana.
(e) Protective Orders. For good cause, the court may by order in a case: (1) require redaction of additional information; or (2) limit or prohibit a nonparty's remote electronic access to a document filed with the court.	**(e) Option for Additional Unredacted Filing Under Seal.** A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.
(f) Option for Additional Unredacted Filing Under Seal. A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.	**(f) Option for Filing a Reference List.** A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

(g) Option for Filing a Reference List. A filing that contains redacted information may be filed together with a reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information. **(h) Waiver of Protection of Identifiers.** A person waives the protection of Rule 5.2(a) as to the person's own information by filing it without redaction and not under seal.	**(g) Non-conforming Documents.** **(1)** Waiver. A person waives the protection of Rule 5.2 (a) as to the person's own information by filing it without redaction and not under seal. **(2)** Sanctions. If a party fails to comply with this rule, the court on motion of another party or its own motion, may order the pleading or other document to be reformed. If the order is not obeyed, the court may order the document stricken.

COMMITTEE NOTES

Rule 5.2 is similar to the Federal Rule 5.2, and is consistent with the Rules for Privacy and Public Access to Court Records in Montana. The rule is designed to be a reference point for attorneys and parties seeking guidance on how to handle personal and private information that is included in documents filed with the courts.

Rule 5.2 requires protection of "an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number" unless the court orders or the law requires otherwise. The rule also mimics Rule 10(6), M.R.App.P., and requires initials to be used for the child(ren), parent(s), or individual party(ies) in certain cases.

Rule 5.2 provides instruction on how to redact protected information. For example, only the year of an individual's birth may be included in a document filed with the court, not the entire birth date. For a social security or financial account number, only the last four digits may be included.

Under certain circumstances, a non-redacted document may be included in the court file without the protected information contained in it being made public. Rule 5.2(c) allows the court to order a filing to be made under seal without redaction while

Rule 5.2(e) allows a party who makes a redacted filing to also submit a non-redacted document under seal. This is often necessary in family law cases where including information such as social security numbers in key documents is required by federal and state statutes.

Rule 5.2(f) provides an alternate method for protecting personal information. A party may submit a reference list under seal that includes a unique identifier to match each item of protected information involved in the case. The party then may use the unique identifier in its filed documents instead of redacting these documents.

The Montana Supreme Court has adopted Rules 13(2) and 10(7), M.R.App.P., for confidentiality in filings.

RULE 6

PRESENT RULE:	RECOMMENDED RULE:
RULE 6. TIME **(a) Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the district court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.	**Rule 6. Computing and Extending Time; Time for Motion Papers** **(a) Computing Time.** The following rules apply in computing any time period specified in these rules, or court order, or in any statute that does not specify a method of computing time. **(1)** ***Period Stated in Days or a Longer Unit.*** When the period is stated in days or a longer unit of time: **(A)** exclude the day of the event that triggers the period; **(B)** count every day, including intermediate Saturdays, Sundays, and legal holidays; and **(C)** include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday. **(2)** ***Period Stated in Hours.*** When the period is stated in hours: **(A)** begin counting immediately on the occurrence of the event that triggers the period; **(B)** count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

	(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday. **(3)** ***Inaccessibility of the Clerk's Office.*** Unless the court orders otherwise, if the clerk's office is inaccessible: **(A)** on the last day for filing under Rule 6(a)(1) then the time for filing is extended to the first accessible day that is not a Saturday, Sunday, or legal holiday; or **(B)** during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday. **(4)** ***"Last Day" Defined.*** Unless a different time is set by a statute or court order, the last day ends: **(A)** for electronic filing, at midnight in the court's time zone; and **(B)** for filing by other means, when the clerk's office is scheduled to close. **(5)** ***"Next Day" Defined.*** The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

	(6) "***Legal Holiday" Defined.*** "Legal holiday" means: **(A)** the day set aside by statute for observing New Year's Day, Martin Luther King Jr. Day, Lincoln's and Washington's Birthdays, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, Christmas Day, or state general election day; **(B)** any day declared a holiday by the President of the United States or by the Governor of this state; and **(C)** for periods that are measured after an event, any other day declared a holiday by the state.
(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d), (e) and (g), and 60(b), except to the extent and under the conditions stated in them.	**(b) Extending Time.** **(1)** ***In General.*** When an act may or must be done within a specified time, the court may, for good cause, extend the time: **(A)** with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or **(B)** on motion made after the time has expired if the party failed to act because of excusable neglect. **(2)** ***Exceptions.*** The court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d), and (e), and 60(b).

(c) Unaffected by Expiration of Term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.	**(c) Motions, Notices of Hearing, and Affidavits.** **(1)** ***In General.*** A written motion and notice of the hearing must be served at least 14 days before the time specified for any hearing, with the following exceptions: **(A)** when the motion may be heard ex parte; **(B)** when these rules set a different time; or **(C)** when a court order – which a party may, for good cause, apply for ex parte – sets a different time.
(d) For Motions — Affidavits. A written motion, other than one which may be heard ex parte, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the hearing, unless the court permits them to be served at some other time.	**(2)** ***Supporting Affidavit.*** Any affidavit supporting a motion must be served with the motion. Except as Rule 59(c) provides otherwise, any opposing affidavit must be served at least 7 days before the hearing, unless the court permits service at another time.
(e) Additional Time After Service by Mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, 3 days shall be added to the prescribed period.	**(d) Additional Time After Certain Kinds of Service.** When a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C), (D) or (E), or (F), 3 days are added after the period would otherwise expire under Rule 6(a).

COMMITTEE NOTES

The December 1, 2009 Federal Rule 6 has been adopted almost verbatim (several parts are deleted which apply strictly to the Federal Rule). The Federal rationale for changing the time calculation provisions of Rule 6 is set forth in the following Federal Commission Comment, and has been adopted:

> **Subdivision (a).** Subdivision (a) has been amended to simplify and clarify the provisions that describe how deadlines are computed. Subdivision (a) governs the computation of any time period found in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time. In accordance with Rule 83(a)(1), a local rule may not direct that a deadline be computed in a manner inconsistent with subdivision (a).
>
> The time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus carry forward the approach taken in *Violette v. P.A. Days, Inc.*, 427 F.3d 1015, 1016 (6th Cir. 2005) (holding that Civil Rule 6(a) "does not apply to situations where the court has established a specific calendar day as a deadline"), and reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir. 1990) (holding that Bankruptcy Rule 9006(a) governs treatment of date-certain deadline set by court order). If, for example, the date for filing is "no later than November 1, 2007," subdivision (a) does not govern. But if a filing is required to be made "within 10 days" or "within 72 hours," subdivision (a) describes how that deadline is computed.
>
> Subdivision (a) does not apply when computing a time period set by a statute if the statute specifies a method of computing time. . . .
>
> **Subdivision (a)(1).** New subdivision (a)(1) addresses the computation of time periods that are stated in days. It also applies to time periods that are stated in weeks, months, or years. *See, e.g.*, Rule 60(c)(1). Subdivision (a)(1)(b)'s directive to "count every day" is relevant only if the period is stated in days (not weeks, months or years).

Under former Rule 6(a), a period of 11 days or more was computed differently than a period of less than 11 days. Intermediate Saturdays, Sundays, and legal holidays were included in computing the longer periods, but excluded in computing the shorter periods. Former Rule 6(a) thus made computing deadlines unnecessarily complicated and led to counterintuitive results. For example, a 10-day period and a 14-day period that started on the same day usually ended on the same day – and the 10-day period not infrequently ended later than the 14-day period. *See Miltimore Sales, Inc. v. Int'l Rectifier, Inc.*, 412 F.3d 685, 686 (6th Cir. 2005).

Under new subdivision (a)(1), all deadlines stated in days (no matter the length) are computed in the same way. The day of the event that triggers the deadline is not counted. All other days – including intermediate Saturdays, Sundays, and legal holidays – are counted, with only one exception: If the period ends on a Saturday, Sunday, or legal holiday, then the deadline falls on the next day that is not a Saturday, Sunday, or legal holiday. An illustration is provided below in the discussion of subdivision (a)(5). Subdivision (a)(3) addresses filing deadlines that expire on a day when the clerk's office is inaccessible.

Where subdivision (a) formerly referred to the "act, event, or default" that triggers the deadline, new subdivision (a) refers simply to the "event" that triggers the deadline; this change in terminology is adopted for brevity and simplicity, and is not intended to change meaning.

Periods previously expressed as less than 11 days will be shortened as a practical matter by the decision to count intermediate Saturdays, Sundays, and legal holidays in computing all periods. Many of those periods have been lengthened to compensate for the change. *See, e.g.*, Rule 14(a)(1).

Most of the 10-day periods were adjusted to meet the change in computation method by setting 14 days as the new period. A 14-day period corresponds to the most frequent result of a 10-day period under the former computation method – two Saturdays and two Sundays were excluded, giving 14 days in all. A 14-day period has an additional advantage. The final day falls on the same day of the week as the event that triggered the period – the

14th day after a Monday, for example, is a Monday. This advantage of using week-long periods led to adopting 7-day periods to replace some of the periods set at less than 10 days, and 21-day periods to replace 20-day periods. Thirty-day and longer periods, however, were generally retained without change.

Subdivision (a)(2). New subdivision (a)(2) addresses the computation of time periods that are stated in hours. No such deadline currently appears in the Federal Rules of Civil Procedure. But some statutes contain deadlines stated in hours, as do some court orders issued in expedited proceedings.

Under subdivision (a)(2), a deadline stated in hours starts to run immediately on the occurrence of the event that triggers the deadline. The deadline generally ends when the time expires. If, however, the time period expires at a specific time (say, 2:17 p.m.) on a Saturday, Sunday, or legal holiday, then the deadline is extended to the same time (2:17 p.m.) on the next day that is not a Saturday, Sunday, or legal holiday. Periods stated in hours are not to be "rounded up" to the next whole hour. Subdivision (a)(3) addresses situations when the clerk's office is inaccessible during the last hour before a filing deadline expires.

Subdivision (a)(2)(B) directs that every hour be counted. Thus, for example, a 72-hour period that commences at 10:23 a.m. on Friday, November 2, 2007, will run until 9:23 a.m. on Monday, November 5; the discrepancy in start and end times in this example results from the intervening shift from daylight saving time to standard time.

Subdivision (a)(3). When determining the last day of a filing period stated in days or a longer unit of time, a day on which the clerk's office is not accessible because of the weather or another reason is treated like a Saturday, Sunday, or legal holiday. When determining the end of a filing period stated in hours, if the clerk's office is inaccessible during the last hour of the filing period computed under subdivision (a)(2) then the period is extended to the same time on the next day that is not a weekend, holiday, or day when the clerk's office is inaccessible.

Subdivision (a)(3)'s extensions apply "[u]nless the court orders otherwise." In some circumstances, the court might not wish a period of inaccessibility to trigger a full 24-hour extension; in those instances, the court can specify a briefer extension.

The text of the rule no longer refers to "weather or other conditions" as the reason for the inaccessibility of the clerk's office. The reference to "weather" was deleted from the text to underscore that inaccessibility can occur for reasons unrelated to weather, such as an outage of the electronic filing system. Weather can still be a reason for inaccessibility of the clerk's office. The rule does not attempt to define inaccessibility. Rather, the concept will continue to develop through case law, *see, e.g.*, William G. Phelps, *When Is Office of Clerk of Court Inaccessible Due to Weather or Other Conditions for Purpose of Computing Time Period for Filing Papers Under Rule 6(a) of Federal Rules of Civil Procedure*, 135 A.L.R. Fed. 259 (1996) (collecting cases). In addition, many local provisions address inaccessibility for purposes of electronic filing, *see, e.g.*, D. Kan. Rule 5.4.11 ("A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.").

Subdivision (a)(4). New Subdivision (a)(4) defines the end of the last day of a period for purposes of subdivision (a)(1). Subdivision (a)(4) does not apply in computing periods stated in hours under subdivision (a)(2), and does not apply if a different time is set by a statute, local rule, or order in the case. . . .

Subdivision (a)(5). New subdivision (a)(5) defines the "next" day for purposes of subdivisions (a)(1)(C) and (a)(2)(C). The Federal Rules of Civil Procedure contain both forward-looking time periods and backward-looking time periods. A forward-looking time period requires something to be done within a period of time *after* an event. *See, e.g.*, Rule 59(b) (motion for new trial "must be filed no later than 28 days after entry of the judgment"). A backward-looking time period requires something to be done within a period of time *before* an event. *See, e.g.*, Rule 26(f) (parties must hold Rule 26(f) conference "as soon as practicable and in any event at least 21 days before a scheduling conference is held or a scheduling order is due under Rule 16(b)"). In determining what is the "next" day

for purposes of subdivisions (a)(1)(C) and (a)(2)(C), one should continue counting in the same direction – that is, forward when computing a forward-looking period and backward when computing a backward-looking period. If, for example, a filing is due within 30 days *after* an event, and the thirtieth day falls on Saturday, September 1, 2007, then the filing is due on Tuesday, September 4, 2007 (Monday, September 3, is Labor Day). But if a filing is due 21 days *before* an event, and the twenty-first day falls on Saturday, September 1, then the filing is due on Friday, August 31. If the clerk's office is inaccessible on August 31, then subdivision (a)(3) extends the filing deadline forward to the next accessible day that is not a Saturday, Sunday, or legal holiday – no later than Tuesday, September 4.

Subdivision (a)(6). New subdivision (a)(6) defines "legal holiday" for purposes of the Federal Rules of Civil Procedure, including the time-computation provisions of subdivision (a). Subdivision (a)(6) continues to include within the definition of "legal holiday" days that are declared a holiday by the President or Congress.

For forward-counted periods – *i.e.*, periods that are measured after an event – subdivision (a)(6)(C) includes certain state holidays within the definition of legal holidays. However, state legal holidays are not recognized in computing backward-counted periods. For both forward- and backward-counted periods, the rule thus protects those who may be unsure of the effect of state holidays. For forward-counted deadlines, treating state holidays the same as federal holidays extends the deadline. Thus, someone who thought that the federal courts might be closed on a state holiday would be safeguarded against an inadvertent late filing. In contrast, for backward-counted deadlines, not giving state holidays the treatment of federal holidays allows filing on the state holiday itself rather than the day before. Take, for example, Monday, April 21, 2008 (Patriot's Day, a legal holiday in the relevant state). If a filing is due 14 days after an event, and the fourteenth day is April 21, then the filing is due on Tuesday, April 22 because Monday, April 21 counts as a legal holiday. But if a filing is due 14 days before an event, and the fourteenth day is April 21, the filing is due on Monday, April 21; the fact that April 21 is a state holiday does not make April 21 a legal holiday for purposes of

> computing this backward-counted deadline. But note that if the clerk's office is inaccessible on Monday, April 21, then subdivision (a)(3) extends the April 21 filing deadline forward to the next accessible day that is not a Saturday, Sunday or legal holiday – no earlier than Tuesday, April 22.
>
> **Subdivisions (b), (c).** The times set in the former rule at 1 or 5 days have been revised to 7 or 14 days.

Montana has deviated from the Federal Rule in two minor respects. First, Rule 6(a) deleted the words "... in any local rule ...." and Rule 6(a)(4) deleted the words ",local rule,". For that reason, unlike the Federal Rules, the time calculation procedure provisions of Rule 6 may not be varied by local rules.

Rule 6(a)(4)(A) provides for electronic filing until midnight. The Committee expressly recognizes and endorses the existing practice of facsimile filing in Montana as provided in Rule 5(d)(3). However, until a system of electronic filing is adopted for the district courts, the balance of the language of Rule 6(a)(4)(A) should not be interpreted to allow electronic filing other than by facsimile. For that reason, the Committee expressly notes that e-mail and other electronic filing, except for facsimile filing, is not allowed by this Rule until the Montana Supreme Court indicates otherwise through the adoption of some type of electronic filing system for the district courts.

Rules 6(a)(4)(A) & 6(a)(4)(B) define the recognized legal holidays.

Rule 6(c) has been modified to conform Montana's Rule to Federal Rule 6(c). This provides that notice of a hearing, if any, must be served at least 14 days before the hearing. Montana substituted the word "any" for "the," modifying hearing, so there is no implication that a hearing is mandatory. This may need to be harmonized with Uniform District Court Rule 2, "Motions."

PRESENT CHAPTER TITLE AND RULE:	RECOMMENDED CHAPTER TITLE AND RULE:
III. PLEADINGS AND MOTIONS	**TITLE III. PLEADINGS AND MOTIONS**
RULE 7. PLEADINGS ALLOWED — FORM OF MOTIONS	**Rule 7. Pleadings Allowed; Form of Motions and Other Papers**
(a) Pleadings. There shall be a complaint and an answer; and there shall be a reply to a counterclaim denominated as such; and an answer to a cross-claim; a third-party complaint, if a person who was not an original party is summoned under Rule 14; and there shall be a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.	**(a) Pleadings.** Only these pleadings are allowed: **(1)** a complaint; **(2)** an answer to a complaint; **(3)** an answer to a counterclaim designated as a counterclaim; **(4)** an answer to a crossclaim; **(5)** a third-party complaint; **(6)** an answer to a third-party complaint; and **(7)** if the court orders one, a reply to an answer.
(b) Motions and Other Papers. (1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion. (2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.	**(b) Motions and Other Papers.** **(1)** ***In General.*** A request for a court order must be made by motion. The motion must: **(A)** be in writing unless made during a hearing or trial; **(B)** state with particularity the grounds for seeking the order; and **(C)** state the relief sought.

(3) All motions shall be signed in accordance with Rule 11. **(c) Demurrers, Pleas, etc., Abolished.** Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.	**(2) *Form.*** The rules governing captions and other matters of form in pleadings apply to motions and other papers.

COMMITTEE NOTES

The language of Rule 7 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

Previous Rule 7(c) is deleted because it has done its work. If a motion or pleading is described as a demurrer, plea, or exception for insufficiency, the court will treat the paper as if properly captioned.

RULE 7.1

PRESENT CHAPTER TITLE AND RULE:	RECOMMENDED CHAPTER TITLE AND RULE:
NONE.	**Rule 7.1 Disclosure Statement** **(a) Who Must File; Contents.** A nongovernmental corporate party must file 2 copies of a disclosure statement that: **(1)** identifies any parent corporation an any publicly held corporation owning 10% or more of its stock; or **(2)** states that there is no such corporation. **(b) Time to File; Supplemental Filing.** A party must: **(1)** file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court; and **(2)** promptly file a supplemental statement if any required information changes.

COMMITTEE NOTES

Rule 7.1 wholly adopts the relevant language of the Federal Rules of Civil Procedure. Montana did not previously have a current Rule 7.1.

RULE 8

PRESENT RULE:	RECOMMENDED RULE:
RULE 8. GENERAL RULES OF PLEADING	**Rule 8. General Rules of Pleading**
(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.	**(a) Claim for Relief.** A pleading which states a claim for relief must contain: **(1)** a short and plain statement of the claim showing that the pleader is entitled to relief; and **(2)** a demand for the relief sought, which may include relief in the alternative or different types of relief.
(b) Defenses — Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may make denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the pleader expressly admits; but, when the pleader does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.	**(b) Defenses; Admissions and Denials.** **(1)** ***In General.*** In responding to a pleading, a party must: **(A)** state in short and plain terms its defenses to each claim asserted against it; and **(B)** admit or deny the allegations asserted by an opposing party. **(2)** ***Denials – Responding to the Substance.*** A denial must fairly respond to the substance of the allegation. **(3)** ***General and Specific Denials.*** A party that intends in good faith to deny all the allegations of a pleading -- including the jurisdictional grounds -- may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.

	(4) ***Denying Part of an Allegation.*** A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest. (5) ***Lacking Knowledge or Information.*** A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial. (6) ***Effect of Failing to Deny.*** An allegation – other than one relating to the amount of damages – is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.
(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.	**(c) Affirmative Defenses.** (1) ***In General.*** In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense, including: · accord and satisfaction; · arbitration and award; · assumption of risk; · contributory negligence; · discharge in bankruptcy; · duress; · estoppel; · failure of consideration; · fraud; · illegality; · injury by fellow servant; · laches; · license; · payment; · release;

	· res judicata; · statute of frauds; · statute of limitations; and · waiver. (2) ***Mistaken Designation.*** If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the court must, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.
(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.	**(d) Pleading to Be Concise and Direct; Alternative Statements; Inconsistency.** (1) ***In General.*** Each allegation must be simple, concise, and direct. No technical form is required. (2) ***Alternative Statements of a Claim or Defense.*** A party may set out or defense alternatively or hypothetically, either in a single count or defense or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient. (3) ***Inconsistent Claims or Defenses.*** A party may state as many separate claims or defenses as it has, regardless of consistency.
(e) Pleading to Be Concise and Direct — Consistency. (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motion are required. (2) A party may set forth two or more statements of a claim or defense	**(e) Construing Pleadings.** Pleadings must be construed so as to do justice.

alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11. **(f) Construction of Pleadings.** All pleadings shall be so construed as to do substantial justice.	

COMMITTEE NOTES

The language of Rule 8 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

PRESENT RULE:	RECOMMENDED RULE:
RULE 9. PLEADING SPECIAL MATTERS	**Rule 9. Pleading Special Matters**
(a) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the party desiring to raise the issue shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.	**(a) Capacity or Authority to Sue; Legal Existence.** **(1)** ***In General.*** A pleading need not allege: **(A)** a party's capacity to sue or be sued; **(B)** a party's authority to sue or be sued in a representative capacity; or **(C)** the legal existence of an organized association of persons that is made a party. **(2)** ***Raising Those Issues.*** To raise any of those issues, a party must do so by a specific denial, which must state any supporting facts that are peculiarly within the party's knowledge.
(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.	**(b) Fraud or Mistake; Conditions of Mind.** In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.
(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity.	**(c) Conditions Precedent.** In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity.

(d) Official Document, Act, Ordinance or Statute. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law. In pleading any ordinance or regulation of any county, city, village, or other political subdivision of this state, or any special, local or private statute, or any right derived therefrom, or the laws of another jurisdiction, it is sufficient to refer to the ordinance, regulation, statute or law by its title and the date of its passage, or by the appropriate designation in the official or recognized compilation thereof.	**(d) Official Document or Act.** In pleading an official document or official act, it suffices to allege that the document was legally issued or the act legally done.
(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.	**(e) Judgment.** In pleading a judgment or decision of a domestic or foreign court, a judicial or quasi-judicial tribunal, or a board or officer, it suffices to plead the judgment or decision without showing jurisdiction to render it.
(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.	**(f) Time and Place.** An allegation of time or place is material when testing the sufficiency of a pleading.
(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.	**(g) Special Damages.** If an item of special damage is claimed, it must be specifically stated.

COMMITTEE NOTES

The language of Rule 9 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and conform them to the recent changes in the Federal Rules.

RULE 10

PRESENT RULE:	RECOMMENDED RULE:
RULE 10. FORM OF PLEADINGS	**Rule 10. Form of Pleadings**
(a) Caption — Names of Parties. Every pleading shall contain a caption setting forth the name, district and county of the court, the title of the action, the number of the action, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.	**(a) Caption; Names of Parties.** Every pleading must have a caption with the court's name, a title, a file number, and a Rule 7(a) designation. The title of the complaint must name all the parties; the title of other pleadings, after naming the first party on each side, may refer generally to other parties.
(b) Paragraphs — Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.	**(b) Paragraphs; Separate Statements.** A party must state its claims or defenses in numbered paragraphs, each limited as far as practicable to a single set of circumstances. A later pleading may refer by number to a paragraph in an earlier pleading. If doing so would promote clarity, each claim founded on a separate transaction or occurrence -- and each defense other than a denial -- must be stated in a separate count or defense.
(c) Adoption by Reference — Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.	**(c) Adoption by Reference; Exhibits.** A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purpose.

COMMITTEE NOTES

The language of Rule 10 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to

make style and terminology consistent throughout these rules and conform them to the recent changes in the Federal Rules.

PRESENT RULE:	RECOMMENDED RULE:
RULE 11. SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS — SANCTIONS	**Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions**
Every pleading, motion, or other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper,	**(a) Signature.** Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name -- or by a party personally if the party is unrepresented. The paper must state the signer's address and telephone number, if any. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention. **(b) Representations to the Court.** By presenting to the court a pleading, written motion, or other paper -- whether by signing, filing, submitting, or later advocating it -- an attorney or unrepresented party certifies to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: **(1)** it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; **(2)** the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

including a reasonable attorney's fee.	**(3)** the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and **(4)** the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or lack of information. **(c) Sanctions.** **(1)** ***In General.*** If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee. **(2)** ***Motion for Sanctions.*** A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including

	attorney's fees, incurred for the motion. **(3)** ***On the Court's Initiative.*** On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b). **(4)** ***Nature of a Sanction.*** A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation. **(5)** ***Limitations on Monetary Sanctions.*** The court must not impose a monetary sanction: **(A)** against a represented party for violating Rule 11(b)(2); or **(B)** on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned. **(6)** ***Requirements for an Order.*** An order imposing a sanction must describe the sanctioned conduct and explain the basis for the

	sanction. **(d) Inapplicability to Discovery.** This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37.

COMMITTEE NOTES

The language of Rule 11 has been amended as part of the general restyling of the Civil Rules to make them more easily understood. The changes have also been made to make style and terminology consistent throughout these rules and to conform to the recent changes in the Federal Rules.

Rule 11(a)(2) requires the signor of pleadings to include a telephone number consistent with the Revised Federal Rules and most local rules.

Rule 11(c)(2) is substantively changed to follow the Federal approach which provides that a sanctions motion must be served but not filed until 21 days after service. This gives the targeted party the chance to withdraw the offending document.