

**PRESENT MONTANA RULE:****RULE 45. SUBPOENA****(a) Form—issuance.****(1) Every subpoena shall**

(A) state the name of the court from which it is issued; and

(B) state the title of the action, the name of the court in which it is pending, and its civil action number; and

(C) command each person to whom it is directed to attend and give testimony or to produce and permit inspection, copying, testing or sampling of designated books, documents, electronically stored information, or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified; and

(D) set forth the text of subparagraphs (c) and (d) of this rule.

A command to produce evidence or to permit inspection, copying, testing or sampling may be joined with a command to appear at trial or hearing or at a deposition, or may be issued separately. A subpoena may specify the form or forms in which electronically stored information is to be produced.

**RECOMMENDED MONTANA RULE:****RULE 45. SUBPOENA****(a) In General.****(1) *Form and Contents.***

**(A) *Requirements – In General.***  
Every subpoena must:

**(i)** state the court from which it issued;

**(ii)** state the title of the action, the court in which it is pending, and its cause number;

**(iii)** command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises; and

**(iv)** set out the text of Rule 45(c) and (d).

**(B) *Command to Attend a Deposition — Notice of the Recording Method.*** A subpoena commanding attendance at a deposition must state the method for recording the testimony.

	<p>(C) <i>Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.</i> A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena may specify the form or forms in which electronically stored information is to be produced.</p> <p>(D) <i>Command to Produce; Included Obligations.</i> A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials.</p>
<p>(2) A subpoena shall issue from the court in which the action is pending.</p> <p>(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney as officer of the court may also issue and sign a subpoena on behalf of a court in which the action is pending.</p> <p>(4) A party or an attorney responsible for the issuance and service of a subpoena seeking health care information, as defined by 50-16-504(6), Montana Code Annotated, shall comply with the provisions of 50-16-535 and 50-16-536,</p>	<p>(2) <b><i>Issued from Which Court.</i></b> A subpoena must issue as follows:</p> <p>(A) for attendance at a hearing or trial, from the court for the district where the hearing or trial is to be held;</p> <p>(B) for attendance at a deposition, from the court for the district where the deposition is to be taken; and</p>

<p>Montana Code Annotated.</p>	<p>(C) for the production or inspection, if separate from a subpoena commanding a person's attendance, from the court for the district where the production or inspection is to be made.</p> <p>(3) <b><i>Issued by Whom.</i></b> The clerk must issue a subpoena, signed but otherwise in blank, to a party who requests it. That party must complete it before service. An attorney also may issue and sign a subpoena as an officer of:</p> <p>(A) a court in which the attorney is authorized to practice; or</p> <p>(B) a court for a district where a deposition is to be taken or production is to be made, if the attorney is authorized to practice in the court where the action is pending.</p> <p>(4) A party or an attorney responsible for the issuance and service of a subpoena seeking health care information, as defined by 50-16-504(6) and 50-16-803(3), Montana Code Annotated, shall comply with the provisions of 50-16-535, 50-16-536, 50-16-811, and 50-16-812, Montana Code Annotated.</p>
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<p><b>(b) Service.</b></p> <p>(1) A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by, delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. Prior notice of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by rule 5(b).</p>	<p><b>(b) Service.</b> A subpoena may be served by any person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by, delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law.</p> <p><b>(c) Notice of Service.</b></p> <p>(1) Notice shall be provided to all parties no less than 10 days before the commanded production of documents, electronically stored information and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b).</p>
<p>(2) Subject to the provisions of clause (ii) of subparagraph (c)(3)(A) of this rule, a subpoena</p> <p>(A) for attendance at a hearing or trial may be served at any place within the state and may require the person subpoenaed to appear at the hearing or trial irrespective of the person's place of residence, place of employment, or where such person regularly transacts business in person;</p> <p>(B) for the production of documentary evidence and/or the taking of a deposition may require a person to attend an examination or produce documentary evidence only at a place within the state; and</p> <p>(i) in the case of residents or entities located within the state, within 100 miles of where that person resides or is employed or transacts business in person, or, if on an entity, within 100 miles of</p>	<p>(2) Subject to the provisions of clause (ii) of subparagraph (d)(3)(A) of this rule, a subpoena</p> <p>(A) for attendance at a hearing or trial may be served at any place within the state and may require the person subpoenaed to appear at the hearing or trial irrespective of the person's place of residence, place of employment, or where such person regularly transacts business in person;</p> <p>(B) for the production of documentary evidence and/or the taking of a</p>

the principal location of that entity, or at such other convenient place as is fixed by order of court;

(ii) in the case of non-residents who have been served within the state, within 100 miles of where the non-resident is served, or at any other convenient place as is fixed by order of court.

(3) Proof of service when necessary shall be made by filing with the clerk of the court by which the subpoena is issued a statement of the date and manner of service and of the name of the persons served, certified by the person who made the service.

deposition may require a person to attend an examination or produce documentary evidence only at a place within the state; and

(i) in the case of residents or entities located within the state, within 100 miles of where that person resides or is employed or transacts business in person, or, if on an entity, within 100 miles of the principal location of that entity, or at such other convenient place as is fixed by order of court;

(ii) in the case of non-residents who have been served within the state, within 100 miles of where the non-resident is served, or at any other convenient place as is fixed by order of court.

(3) Proof of service when necessary shall be made by filing with the clerk of court by which the subpoena is issued a statement of the date and

	manner of service and of the names of the persons served, certified by the person who made the service.
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<p><b>(c) Protection of persons subject to or affected by subpoenas.</b></p> <p>(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.</p>	<p><b>(d) Protecting a Person Subject to a Subpoena.</b></p> <p><b>(1) <i>Avoiding Undue Burden or Expense; Sanctions.</i></b> A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.</p>
<p>(2) (A) A person commanded to produce and permit inspection, copying, testing, or sampling of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.</p> <p>(B) Subject to subparagraph (d)(2) of this rule, a person commanded to produce and permit inspection, copying, testing or sampling, or any person affected thereby, may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to producing of any or all of the designated materials or inspection of the premises, or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect, copy, test, or sample, the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the</p>	<p><b>(2) <i>Command to Produce Materials or Permit Inspection.</i></b></p> <p><b>(A) <i>Appearance Not Required.</i></b> A person commanded to produce designated documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.</p> <p><b>(B) <i>Objections.</i></b> A person commanded to produce designated materials or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the designated materials or to inspecting the premises --</p>

<p>person commanded to produce, and to any affected person who has served written objection, move at any time for an order to compel the production, inspection, copying, testing or sampling. Such an order to compel shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection, copying, testing or sampling commanded.</p>	<p>or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:</p> <ul style="list-style-type: none"> <li>(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.</li> <li>(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expenses resulting from compliance.</li> </ul>
<p>(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it</p> <ul style="list-style-type: none"> <li>(i) fails to allow reasonable time for compliance; or</li> <li>(ii) requires in the case of a deposition or production prior</li> </ul>	<p>(3) <b><i>Quashing or Modifying a Subpoena.</i></b></p> <p>(A) <i>When Required.</i> On timely motion, the issuing court must quash or modify a subpoena that:</p> <ul style="list-style-type: none"> <li>(i) fails to allow a</li> </ul>



<p>to hearing or trial, a person to travel beyond the 100 mile radius provided in subparagraph (b)(2) of this rule; or</p> <p>(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or</p> <p>(iv) subjects a person to undue burden.</p>	<p>reasonable time to comply;</p> <p>(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person – except that, subject to Rule 45(d)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;</p> <p>(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or</p> <p>(iv) subjects a person to undue burden.</p>
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<p>(B) If a subpoena</p> <ul style="list-style-type: none"> <li>(i) requires disclosure of a trade secret or other confidential research, development, or commercial information; or</li> <li>(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or</li> <li>(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial.</li> </ul> <p>the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.</p>	<p>(B) <i>When Permitted.</i> To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:</p> <ul style="list-style-type: none"> <li>(i) disclosing a trade secret or other confidential research, development, or commercial information;</li> <li>(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or</li> <li>(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.</li> </ul> <p>(C) <i>Specifying Conditions as an Alternative.</i> In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:</p> <ul style="list-style-type: none"> <li>(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and</li> <li>(ii) ensures that the subpoenaed person will be reasonably compensated.</li> </ul>
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**(d) Duties in responding to subpoena.**

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which the person ordinarily maintains it, or in a form or forms that are reasonably useable.

A person responding to a subpoena need not produce the same electronically stored information in more than one form.

A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identified as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(e) Duties in Responding to a Subpoena.**

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form of Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of

undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of the undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) *Claiming Privilege or Protection.***

**(A) *Information Withheld.*** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly assert the claim; and

**(ii)** describe the nature of the withheld documents, communications, or things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) *Information Produced.*** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and

	<p>the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.</p>
<p><b>(e) Contempt.</b></p> <p>Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits provided by clause (ii) of subparagraph (c)(3)(A) of this rule.</p>	<p><b>(f) Contempt.</b> The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(d)(3)(A)(ii).</p>

#### COMMITTEE NOTES

The language of Rule 45 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. These changes are intended to be stylistic only.

**PRESENT MONTANA RULE:**

**RULE 46. EXCEPTIONS UNNECESSARY**

Formal exceptions to rulings, orders, or findings of the court are unnecessary; but for all purposes it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take, or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

**RECOMMENDED RULE:**

**RULE 46. OBJECTING  
TO A RULING OR ORDER**

A formal exception to a ruling or order is unnecessary. When the ruling or order is requested or made, a party need only state the action that it wants the court to take or objects to, along with the grounds for the request or objection. Failing to object does not prejudice a party who had no opportunity to do so when the ruling or order was made.

**COMMITTEE NOTES**

The language of Rule 46 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. These changes are intended to be stylistic only.

<b><u>PRESENT MONTANA RULE:</u></b>	<b><u>RECOMMENDED RULE:</u></b>
<b><u>RULE 47. JURORS</u></b>	<b><u>RULE 47. JURORS</u></b>
<p><b>(a) Examination of Jurors.</b> The court shall permit the parties or their attorneys to conduct the examination of prospective jurors under its supervision. The court may supplement the examination by such further inquiry as it deems proper. Challenges for cause must be tried by the court. The juror challenged and any other person may be examined as a witness on the trial of the challenge.</p>	<p><b>(a) Examination of Jurors.</b></p> <p>(1) The court shall permit the parties or their attorneys to conduct the examination of prospective jurors under its supervision. The court may supplement the examination by such further inquiry as it deems proper.</p> <p>(2) Challenges for cause must be tried by the court. The juror challenged and any other person may be examined as a witness on the trial of the challenge.</p>
<p><b>(b) Manner of Selection and Order of Examination of Jurors.</b> From the entire jury panel, an initial panel of 20 jurors shall be called in the first instance, and before any voir dire examination of the jury shall be had. Examination of all jurors in the initial panel shall be completed by the plaintiff before examination by the defendant. If challenges for cause are allowed, an additional juror shall be called from the entire panel immediately upon the allowance of challenge, and the juror called to replace the juror excused for cause shall take the number of the juror who has been excused, to provide a full initial panel of 20 jurors, whose examination shall be completed before any peremptory challenges are made. When the voir dire examination has been completed, each side shall have four peremptory challenges, and they shall be exercised by the plaintiff first striking one, the defendant then striking one, and so on, until each side has exhausted or waived its right. In event one or more alternate jurors are called, the next jurors remaining in the initial panel, if any, shall be called by the clerk to be the alternate jurors. In event all jurors remaining of original initial panel of 20 jurors, including</p>	<p><b>(b) Manner of Selection and Order of Examination of Jurors.</b></p> <p>(1) <i>Order of Examination.</i> From the entire jury panel, an initial panel of 20 jurors shall be called in the first instance, and before any voir dire examination of the jury shall be had. Examination of all jurors in the initial panel shall be completed by the plaintiff before examination by the defendant. If challenges for cause are allowed, an additional juror shall be called from the entire panel immediately upon the allowance of challenge, and the juror called to replace the juror excused for cause shall take the number of the juror who has been excused, to provide a full initial panel of 20 jurors, whose examination shall be completed before any peremptory challenges are made.</p>

those substituted for those jurors excused for cause, have been subjected to peremptory challenge, then the clerk shall call additional jurors from the remainder of the jury panel to provide alternate jurors who will be subject to challenge as provided by law. In event there is more than one party defendant, and should it appear that each defendant is entitled to peremptory challenges, then the original panel shall be increased to provide four additional jurors for each defendant who is entitled to exercise peremptory challenges. The clerk shall keep a record of the order in which jurors are called, and in event the entire initial panel has not been exhausted by challenges, the court shall excuse sufficient of the last called jurors until a jury of 12 persons and the determined number of alternates shall remain to make up the trial jury.

**(2) *Peremptory Challenges.***

- (A)** When the voir dire examination has been completed, each side shall have four peremptory challenges, and they shall be exercised by the plaintiff first striking one, the defendant then striking one, and so on, until each side has exhausted or waived its right.
- (B)** In event one or more alternate jurors are called, the next jurors remaining in the initial panel, if any, shall be called by the clerk to be the alternate jurors.
- (C)** In event all jurors remaining of original initial panel of 20 jurors, including those substituted for those jurors excused for cause, have been subjected to peremptory challenge, then the clerk shall call additional jurors from the remainder of the jury panel to provide alternate jurors who will be subject to challenge as provided by law.
- (D)** In event there is more than one party defendant, and should it appear that each defendant is entitled to peremptory challenges, then the original panel shall be increased to provide four additional jurors for each defendant who is entitled to exercise peremptory challenges.



	<p>(E) The clerk shall keep a record of the order in which jurors are called, and in event the entire initial panel has not been exhausted by challenges, the court shall excuse sufficient of the last called jurors until a jury of 12 persons and the determined number of alternates shall remain to make up the trial jury.</p>
<p>(c) <b>Alternate Jurors.</b> The court may direct that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror shall not join the jury in its deliberation unless called upon the court to replace a member of the jury. The alternate juror's conduct during the period in which the jury is considering its verdict shall be regulated by instructions of the trial court. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the principal jurors. An alternate juror who does not replace a principal juror shall be discharged after the jury arrives at its verdict. If one or two alternate jurors are called each party is entitled to one peremptory challenges in addition to those otherwise allowed by subdivision (b) of this rule. The additional peremptory challenge may be used only against an alternative juror, and other peremptory challenges allowed by law shall not be used against the alternates.</p>	<p>(c) <b>Alternate Jurors.</b> The court may direct that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors.</p> <ol style="list-style-type: none"> <li>(1) Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties.</li> <li>(2) An alternate juror shall not join the jury in its deliberation unless called upon the court to replace a member of the jury.</li> <li>(3) The alternate juror's conduct during the period in which the jury is considering its verdict shall be regulated by instructions of the trial court.</li> <li>(4) Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities and privileges as the principal jurors.</li> </ol>

	<p>(5) An alternate juror who does not replace a principal juror shall be discharged after the jury arrives at its verdict.</p> <p>(6) If one or two alternate jurors are called each party is entitled to one peremptory challenge in addition to those otherwise allowed by subdivision (b) of this rule.</p> <p>(7) The additional peremptory challenge may be used only against an alternative juror, and other peremptory challenges allowed by law shall not be used against the alternates.</p>
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#### COMMITTEE NOTES

The language of Rule 47 is the same as previous Rule 47 but the format has changed. Rule 47 is provided in an outline format in order to render a consistent style throughout the rules. These changes are intended to be stylistic only.

**PRESENT MONTANA RULE:**

**RULE 48. JURIES -- VERDICT**

At least two-thirds in number of any jury may render a verdict or finding, and such verdict or finding so rendered shall have the same force and effect as if all such jury concurred therein. The parties may stipulate that the jury shall consist of less number than 12.

**RECOMMENDED RULE:**

**RULE 48. JURIES -- VERDICT**

At least two-thirds in number of any jury may render a verdict or finding, and such verdict or finding so rendered shall have the same force and effect as if all such jury concurred therein. The parties may stipulate that the jury shall consist of less number than 12.

**COMMITTEE NOTES**

Rule 48 is identical to previous Rule 48.

**PRESENT MONTANA RULE:**

**RULE 49. SPECIAL VERDICTS  
AND INTERROGATORIES**

(a) **Special Verdicts.** The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made under the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

**RECOMMENDED RULE:**

**RULE 49. SPECIAL VERDICTS AND  
INTERROGATORIES**

(a) **Special Verdict.**

(1) ***In General.*** The court may require a jury to return only a special verdict in the form of a special written finding on each issue of fact. The court may do so by:

(A) submitting written questions susceptible of a categorical or other brief answer;

(B) submitting written forms of the special findings that might properly be made under the pleadings and evidence; or

(C) using any other method that the court considers appropriate.

(2) ***Instructions.*** The court must give the instructions and explanations necessary to enable the jury to make its findings on each submitted issue.

(3) ***Issues Not Submitted.*** A party waives the right to a jury trial on any issue of fact raised by the pleadings or evidence but not submitted to the jury unless, before the jury retires, the party demands its submission to the jury. If the party does not

	<p>demand submission, the court may make a finding on the issue. If the court makes no finding, it is considered to have made a finding consistent with its judgment on the special verdict.</p>
<p><b>(b) General Verdict Accompanied by Answer to Interrogatories.</b> The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the court shall direct the entry of the appropriate judgment upon the verdict and answers. When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may direct the entry of judgment in accordance with the answers, notwithstanding the general verdict or may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other and one or more is likewise inconsistent with the general verdict, the court shall not direct the entry of judgment but may return the jury for further consideration of its answers and verdict or may order a new trial.</p>	<p><b>(b) General Verdict with Answers to Written Questions.</b></p> <p><b>(1) <i>In General.</i></b> The court may submit to the jury forms for a general verdict, together with written questions on one or more issues of fact that the jury must decide. The court must give the instructions and explanations necessary to enable the jury to render a general verdict and answer the questions in writing, and must direct the jury to do both.</p> <p><b>(2) <i>Verdict and Answers Consistent.</i></b> When the general verdict and the answers are consistent, the court must approve, for entry under Rule 58, an appropriate judgment on the verdict and answers.</p> <p><b>(3) <i>Answers Inconsistent with the Verdict.</i></b> When the answers are consistent with each other but one or more is inconsistent with the general verdict, the court may:</p> <p><b>(A)</b> approve, for entry under Rule 58, an appropriate judgment according to the answers, notwithstanding the general verdict;</p>

	<p>(B) direct the jury to further consider its answers and verdict; or</p> <p>(C) order a new trial.</p> <p>(4) <b><i>Answers Inconsistent with Each Other and the Verdict.</i></b>  When the answers are inconsistent with each other and one or more is also inconsistent with the general verdict, judgment must not be entered; instead, the court must direct the jury to further consider its answers and verdict, or must order a new trial.</p>
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#### COMMITTEE NOTES

The language of Rule 49 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. These changes are intended to be stylistic only.