Rule 50	
Present Montana Rule:	**Recommended Montana Rule:**
Rule 50. Judgment as a matter of law in actions tried by jury; alternative motion for new trial; conditional rulings	**Rule 50. Judgment as a Matter of Law in a Jury Trial; Related Motion for a New Trial; Conditional Ruling**
Rule 50(a). Judgment as a matter of law. (1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the court may determine the issue against that party and may grant a motion for judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue. (2) Motions for judgment as a matter of law may be made at any time before submission of the case to the jury. Such a motion shall specify the judgment sought and the law and the facts on which the moving party is entitled to the judgment.	**(a) Judgment as a Matter of Law.** **(1)** ***In General.*** If a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue, the court may: **(A)** resolve the issue against the party; and **(B)** grant a motion for judgment as a matter of law against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. **(2)** ***Motion.*** A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.

Rule 50(b). Renewal of motion for judgment after trial; alternative motion for new trial. Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than 10 days after service of notice of entry of judgment. A motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial. Motions provided by this subdivision shall be heard and determined within the times provided by Rule 59 for the hearing and determination of motions for new trial.	**(b) Renewing the Motion After Trial; Alternative Motion for a New Trial.** If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment — or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged — the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. If the court does not rule on a properly filed renewed motion for judgment as a matter of law or an alternative or joint request for a new trial within 60 days from its filing date, the motion is deemed denied. In ruling on the renewed motion, the court may: **(1)** allow judgment on the verdict, if the jury returned a verdict; **(2)** order a new trial; or **(3)** direct the entry of judgment as a matter of law.

Rule 50(c). Conditional rulings on grant of motion for judgment as a matter of law. (1) If the renewed motion for judgment as a matter of law is granted, the court shall also rule on the motion for a new trial, if any, by determining whether it should be granted if the judgment is thereafter vacated or reversed, and shall specify the grounds for granting or denying the motion for the new trial. If the motion for a new trial is thus conditionally granted, the order thereon does not affect the finality of the judgment. In case the motion for a new trial has been conditionally granted and the judgment is reversed on appeal, the new trial shall proceed unless the supreme court has otherwise ordered. In case the motion for a new trial has been conditionally denied, the respondent on appeal may assert error in that denial; and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the supreme court. (2) The party against whom judgment as a matter of law has been rendered may serve a motion for a new trial pursuant to Rule 59 not later than 10 days after service of notice of entry of the judgment.	**(c) Granting the Renewed Motion; Conditional Ruling on a Motion for a New Trial.** **(1)** ***In General.*** If the court grants a renewed motion for judgment as a matter of law, it must also conditionally rule on any motion for a new trial by determining whether a new trial should be granted if the judgment is later vacated or reversed. The court must state the grounds for conditionally granting or denying the motion for a new trial. ***(2) Effect of a Conditional Ruling.*** Conditionally granting the motion for a new trial does not affect the judgment's finality; if the judgment is reversed, the new trial must proceed unless the appellate court orders otherwise. If the motion for a new trial is conditionally denied, the appellee may assert error in that denial; if the judgment is reversed, the case must proceed as the appellate court orders.
See present Montana Rule 50(c)(2).	**(d) Time for a Losing Party's New-Trial Motion.** Any motion for a new trial under Rule 59 by a party against whom judgment as a matter of law is rendered must be filed no later than 10 days after the entry of the judgment.

Rule 50(d). Denial of motion for judgment as a matter of law. If the motion for judgment as a matter of law is denied, the party who prevailed on that motion may, as respondent, assert grounds entitling the party to a new trial in the event the supreme court concludes that the trial court erred in denying the motion for judgment. If the supreme court reverses the judgment, nothing in this rule precludes it from determining that the respondent is entitled to a new trial, or from directing the trial court to determine whether a new trial shall be granted.	(e) **Denying the Motion for Judgment as a Matter of Law; Reversal on Appeal.** If the court denies the motion for judgment as a matter of law, the prevailing party may, as appellee, assert grounds entitling it to a new trial should the appellate court conclude that the trial court erred in denying the motion. If the appellate court reverses the judgment, it may order a new trial, direct the trial court to determine whether a new trial should be granted, or direct the entry of judgment.

COMMITTEE NOTES

The language of Rule 50 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.

Rule 50(b) primarily adopts the relevant language of the Federal Rules, which allows the movant to file both a renewed motion for judgment as a matter of law and an alternative or joint request for a new trial. The language clarifies that a motion must be filed no later than 10 days after the entry of judgment or no later than 28 days after the jury was discharged, if the motion addresses a jury issue not decided by a verdict. Rule 50(b) includes an additional provision, however, that subjects a renewed motion for judgment as a matter of law or an alternative or joint request for a new trial to an automatic 60-day denial. The stylistic changes of this rule fully incorporate Montana's present 60-day time fuse designed to prevent delayed court action.

The 10-day period in Rule 52(b) for filing of a motion to amend or make additional findings is enlarged to 28 days in conformance with the Federal Rules change. The reason for this is explained in the following Federal Rules Committee Comment:

> Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit

additional time, the former 10-day periods are expanded to 28 days. Rule 6(b) continues to prohibit expansion of the 28-day period.

The Committee considered the question of whether the change from 10 to 28 days on these Rules would effect the "deemed denied" provisions in Montana's Rules. The Committee concluded there will be no effect – the 60-day "deemed denied" period would continue to run from the date the motion is filed, regardless of whether the motion is filed within 10 days or 28 days.

The Committee also considered the question of whether the extension from 10 days to 28 days would affect the right to appeal these orders or the finality of judgments for purposes of appeal. Rule 6(3), M. R. App. P., (**Orders appealable in civil cases**) provides, in subsection (b), that an appeal may be taken "from a 'deemed denied' motion that was made pursuant to M. R. Civ. P. 50(b), 52(b), 59, or 60(b)." Accordingly, merely extending the deadlines in these rules from 10 days to 28 days will not affect appeal rights.

Rule 50(e) recognizes the appellate court's ability to direct the entry of judgment. The Federal Committee noted that this change simply acknowledged and canonized the development of federal common law on this point.

Rule 51	
Present Montana Rule:	**Recommended Montana Rule:**
Rule 51. Instructions to jury -- objection. The court may, during the trial or at the close of the evidence, request each of the parties to submit proposed written instructions on the law of the case. No party may assign as error the failure to instruct on any point of law unless that party offers an instruction thereon. The court shall rule upon the proposed instructions and may prepare other written instructions to be given of its own motion and shall submit to the parties the instructions that will be given and provide opportunity to make objections. Objections made shall specify and state the particular grounds on which the instruction is objected to and it shall not be sufficient in stating the ground of such objection to state generally the instruction does not state the law or is against the law, but such ground of objection shall specify particularly wherein the instruction is insufficient or does not state the law, or what particular clause therein is objected to. All objections and rulings thereon shall be made out of the presence of the jury. No exceptions are necessary to the rulings of the court on the giving or the refusal of instructions. The court shall read to the jury the instructions given before the arguments of counsel are commenced.	**Rule 51. Instructions to the Jury; Objections; Preserving a Claim of Error** **(a) Requests.** **(1)** ***Before or at the Close of the Evidence.*** At the close of the evidence or at any earlier reasonable time that the court orders, a party may file and furnish to every other party written requests for the jury instructions it wants the court to give. **(2)** ***After the Close of the Evidence.*** After the close of the evidence, a party may: **(A)** file requests for instructions on issues that could not reasonably have been anticipated by an earlier time that the court set for requests; and **(B)** with the court's permission, file untimely requests for instructions on any issue. **(b) Instructions.** The court: **(1)** must inform the parties of its proposed instructions and proposed action on the requests before instructing the jury and before final jury arguments;

	Recommended Rule 51(b) Continued: **(2)** must give the parties an opportunity to object on the record and out of the jury's hearing before the instructions and arguments are delivered; and **(3)** may instruct the jury at any time before the jury is discharged. **(c) Objections.** **(1)** ***How to Make.*** A party who objects to an instruction or the failure to give an instruction must do so on the record, stating distinctly the matter objected to and the grounds for the objection. **(2)** ***When to Make.*** An objection is timely if: **(A)** a party objects at the opportunity provided under Rule 51(b)(2); or **(B)** a party was not informed of an instruction or action on a request before that opportunity to object, and the party objects promptly after learning that the instruction or request will be, or has been, given or refused. **(d) Assigning Error; Plain Error.** **(1)** ***Assigning Error.*** A party may assign as error: **(A)** an error in an instruction actually given, if that party properly objected; or **(B)** a failure to give an instruction, if that party properly requested

	Recommended Rule 51(d) Continued: it and — unless the court rejected the request in a definitive ruling on the record — also properly objected. (2) ***Plain Error.*** A court may consider a plain error in the instructions that has not been preserved as required by Rule 51(d)(1) if the error affects substantial rights.

COMMITTEE NOTES

The language of Rule 51 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 both substantive and stylistic.

Rule 51(a)(1) does not provide for the court to request jury instructions as in the previous rule, but allows the parties to submit proposed instructions as a matter of right. Rule 51(a)(2) further allows parties to request instructions on issues not reasonably anticipated prior to the close of evidence. Rule 51(b)(3) allows the court to instruct the jury at any time before jury discharge, in contrast to the more restrictive previous rule which requires that they are read to the jury prior to commencement of counsel's arguments. Rule 51(c)(2)(B) explicitly preserves the right to object if a party was not informed of an instruction or request. Rule 51 takes a more permissive stance toward jury instructions, while affording more protection against their improper application.

Rule 51(d) establishes clear guidelines for the assignment of error. The previous version of the rule is without a similar compliment.

Rule 52	
Present Montana Rule:	**Recommended Montana Rule:**
Rule 52. Findings by the court; judgment on partial findings	**Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings**
Rule 52(a). Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule.	**(a) Findings and Conclusions.** **(1)** ***In General.*** In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58. **(2)** ***For an Interlocutory Injunction.*** In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action. **(3)** ***For a Motion.*** The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion. **(4)** ***Effect of a Master's Findings.*** A master's findings, to the extent adopted by the court, must be considered the court's findings.

Present Rule 52(a) Continued:	Recommended Rule 52(a) Continued:
However, any order of the court granting a motion under Rules 12 or 56 which is appealable to an appellate court shall specify the grounds therefor with sufficient particularity as to apprise the parties and the appellate court of the rationale underlying the ruling and this may be done in the body of the order or in an attached opinion. The court may require any party to submit proposed findings of fact and conclusions of law for the court's consideration and the court may adopt any such proposed findings or conclusions so long as they are supported by the evidence and law of the case.	(5) ***Questioning the Evidentiary Support.*** A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings. (6) ***Setting Aside the Findings.*** Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.
Rule 52(b). Amendment. Upon motion of a party made not later than 10 days after notice of entry of judgment the court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may be made with a motion for a new trial pursuant to Rule 59. When findings of fact are made in actions tried by the court without a jury, the question of the sufficiency of the evidence to support the findings may thereafter be raised whether or not the party raising the question has made in the district court an objection to such findings or has made a motion to amend them or a motion for judgment.	**(b) Amended or Additional Findings.** On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings — or make additional findings — and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

Rule 52(c). Judgment on partial findings. If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.	(c) **Judgment on Partial Finding.** If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).
Rule 52(d). Time for determining motions. Motions provided under subdivision (b) of this rule shall be determined within the time provided by Rule 59 in the cases of motions for new trial and amendment of judgment and if the court shall fail to rule on the motion within the 60 day period, the motion shall be deemed denied.	(d) **Time for determining motions.** Motions provided under subdivision (b) of this rule must be determined within the time provided by Rule 59 in the cases of motions for new trial and amendment of judgment and if the court fails to rule on the motion within the 60 day period, the motion must be deemed denied.

COMMITTEE NOTES

The language of Rule 52 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.

Previous Rule 52(a) states that findings are unnecessary on decisions of motions "except as provided in subdivision (c) of this rule." Rule 52(a)(3), in adopting the present federal language, reads that findings are unnecessary "unless these rules provide otherwise." The Federal Committee noted that they made this change to the 2007 update to incorporate provisions in other rules, including Rule 54(d)(2)(C), which requires Rule 52 findings.

Rule 52(b) subjects motions, by reference to the requirements in Rule 59, to a 60-day automatic denial, incorporating the same provisions of previous Rule 52(d). The stylistic changes of this rule fully incorporate Montana's previous 60-day time fuse designed to prevent delayed action by the court.

The 10-day period in Rule 52(b) for filing of a motion to amend or make additional findings is enlarged to 28 days in conformance with the Federal Rules change. The reason for this is explained in the following Federal Rules Committee Comment:

> Former Rules 50, 52, and 59 adopted 10-day periods for their respective post-judgment motions. Rule 6(b) prohibits expansion of those periods. Experience has proved that in many cases it is not possible to prepare a satisfactory post-judgment motion in 10 days, even under the former rule that excluded intermediate Saturdays, Sundays, and legal holidays. These time periods are particularly sensitive because Appellate Rule 4 integrates the time to appeal with a timely motion under these rules. Rather than introduce the prospect of uncertainty in appeal time by amending Rule 6(b) to permit additional time, the former 10-day periods are expanded to 28 days. Rule 6(b) continues to prohibit expansion of the 28-day period.

The Committee considered the question of whether the change from 10 to 28 days on these Rules would effect the "deemed denied" provisions in Montana's Rules. The Committee concluded there will be no effect – the 60-day "deemed denied" period would continue to run from the date the motion is filed, regardless of whether the motion is filed within 10 days or 28 days.

The Committee also considered the question of whether the extension from 10 days to 28 days would affect the right to appeal these orders or the finality of judgments for purposes of appeal. Rule 6(3), M. R. App. P., (**Orders appealable in civil cases**) provides, in subsection (b), that an appeal may be taken "from a 'deemed denied' motion that was made pursuant to M. R. Civ. P. 50(b), 52(b), 59, or 60(b)." Accordingly, merely extending the deadlines in these rules from 10 days to 28 days will not affect appeal rights.

Rule 53	
Present Montana Rule:	**Recommended Montana Rule:**
Rule 53. Masters	**Rule 53. Masters**
Rule 53(a). Appointment and compensation. Each district court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district, and the court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, an examiner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain the master's report as security for the master's compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.	**(a) Appointment** **(1)** ***Scope.*** Unless a statute provides otherwise, a court may appoint a master only to: **(A)** perform duties consented to by the parties; **(B)** hold trial proceedings and make or recommend findings of fact on issues to be decided without a jury if appointment is warranted by: **(i)** some exceptional condition; or **(ii)** the need to perform an accounting or resolve a difficult computation of damages; or **(C)** address pretrial and post-trial matters that cannot be effectively and timely addressed by an available district judge. **(2)** ***Disqualification.*** A master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge under §3-1-803, M.C.A., unless the parties, with the court's approval, consent to the appointment after the master discloses any potential grounds for disqualification.

	Recommended Rule 53(a) Continued: (3) ***Possible Expense or Delay.*** In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay.
Rule 53(b). Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.	**(b) Order Appointing a Master.** (1) ***Notice.*** Before appointing a master, the court must give the parties notice and an opportunity to be heard. Any party may suggest candidates for appointment. (2) ***Contents.*** The appointing order must direct the master to proceed with all reasonable diligence and must state: **(A)** the master's duties, including any investigation or enforcement duties, and any limits on the master's authority under Rule 53(c); **(B)** the circumstances, if any, in which the master may communicate ex parte with the court or a party; **(C)** the nature of the materials to be preserved and filed as the record of the master's activities; **(D)** the time limits, method of filing the record, other procedures, and standards for reviewing the master's orders, findings, and recommendations; and

	Recommended Rule 53(b) Continued: **(E)** the basis, terms, and procedure for fixing the master's compensation under Rule 53(g).
	(3) ***Issuing***. The court may issue the order only after: **(A)** the master files an affidavit disclosing whether there is any ground for disqualification under §3-1-803, M.C.A.; and **(B)** if a ground is disclosed, the parties, with the court's approval, waive the disqualification. **(4)** ***Amending***. The order may be amended at any time after notice to the parties and an opportunity to be heard.

Rule 53(c). Powers. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Montana Rules of Evidence for a court sitting without a jury.	**(c) Master's Authority.** **(1)** ***In General.*** Unless the appointing order directs otherwise, a master may: **(A)** regulate all proceedings; **(B)** take all appropriate measures to perform the assigned duties fairly and efficiently; and **(C)** if conducting an evidentiary hearing, exercise the appointing court's power to compel, take, and record evidence. **(2)** ***Sanctions.*** The master may by order impose on a party any noncontempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty.

Rule 53(d). Proceedings. (1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the master may proceed ex parte, or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment. (2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, the witness may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45. (3) Statement of accounts. When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items	**(d) Master's Orders.** A master who issues an order must file it and promptly serve a copy on each party. The clerk must enter the order on the docket.

Present Rule 53(d) (continued): thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.	
Rule 53(e). Report. (1) Contents and filing. The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, the master shall set them forth in the report. The master shall file the report with the clerk of the court and serve on all parties notice of the filing. In an action to be tried without a jury, unless otherwise directed by the order of reference, the master shall file with the report a transcript of the proceedings and of the evidence and the original exhibits. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party. (2) In nonjury actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions. (3) In jury actions. In an action to be tried by a jury the master shall not be directed to report the evidence. The master's findings upon the issues submitted to the master are admissible as evidence of the matters found	**(e) Master's Reports.** A master must report to the court as required by the appointing order. The master must file the report and promptly serve a copy on each party, unless the court orders otherwise.

Present Rule 53(e) Continued: and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report. (4) Stipulations as to findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered. (5) Draft report. Before filing the master's report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.	

See present Montana Rule 53(e) above.	**(f)** Action on the Master's Order, Report, or Recommendations. **(1)** ***Opportunity for a Hearing; Action in General.*** In acting on a master's order, report, or recommendations, the court must give the parties notice and an opportunity to be heard; may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the master with instructions. **(2)** ***Time to Object or Move to Adopt or Modify.*** A party may file objections to — or a motion to adopt or modify — the master's order, report, or recommendations no later than 21 days after a copy is served, unless the court sets a different time. **(3)** ***Reviewing Factual Findings.*** The court must decide de novo all objections to findings of fact made or recommended by a master, unless the parties, with the court's approval, stipulate that: **(A)** the findings will be reviewed for clear error; or **(B)** the findings of a master appointed under Rule 53(a)(1)(A) or (C) will be final. **(4)** ***Reviewing Legal Conclusions.*** The court must decide de novo all objections to conclusions of law made or recommended by a master.

See present Montana Rule 53(e) above.	Recommended Rule 53(f) Continued: **(5)** ***Reviewing Procedural Matters.*** Unless the appointing order establishes a different standard of review, the court may set aside a master's ruling on a procedural matter only for an abuse of discretion.
See present Montana Rule 53(a) above.	**(g) Compensation.** **(1)** ***Fixing Compensation.*** Before or after judgment, the court must fix the master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard. **(2)** ***Payment.*** The compensation must be paid either: **(A)** by a party or parties; or **(B)** from a fund or subject matter of the action within the court's control. **(3)** ***Allocating Payment.*** The court must allocate payment among the parties after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a master. An interim allocation may be amended to reflect a decision on the merits.

COMMITTEE NOTES

The language of Rule 53 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 both substantive and stylistic. The language of Federal Rule 53 was amended as necessary to replace federal references and statutes with the appropriate state references and statutes. The time for filing objections or to modify a master's report in 53(f)(2) has been changed from 20 to 21 days to conform to the Federal Rule.

The references to 28 U.S.C.A. § 455 were replaced by its state counterpart, § 3-1-803, MCA, establishing criteria for the disqualification of a judge.

Federal Rule 53(h), which pertained to the appointment of a magistrate judge, was deleted as inapplicable to the Montana Rules.

Rule 53 abandons the language of the previous Rule 53(b), which states that "reference to a master shall be the exception and not the rule." Rule 53(a)(1) and (3), however, narrowly limits the instances in which a master may be appointed.

Rule 53(b)(1) requires that the court must give the parties notice and an opportunity to be heard before appointing a master. The previous Rule 53(a) does not explicitly provide for such notice or opportunity to be heard.

Rule 54	
Present Montana Chapter Title and Rule:	**Recommended Montana Chapter Title and Rule:**
VII. JUDGMENT **Rule 54. Judgments -- costs**	**VII. JUDGMENT** **Rule 54. Judgments; Costs**
Rule 54(a). Definition -- form. A judgment is the final determination of the rights of the parties in an action or proceeding and as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.	**(a) Definition; Form.** "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment should not include recitals of pleadings, a master's report, or a record of prior proceedings.
Rule 54(b). Judgment upon multiple claims or involving multiple parties. When multiple claims for relief or multiple parties are involved in an action, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.	**(b) Judgment on Multiple Claims or Involving Multiple Parties.** **(1)** When an action presents more than one claim for relief — whether as a claim, counterclaim, crossclaim, or third-party claim — or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

	Recommended Rule 54(b) Continued: **(2)** Any order or other decision granted pursuant to Rule 54(b)(1) must comply with the certification of judgment requirements of Montana Rule of Appellate Procedure 6(6).
Rule 54(c). Demand for judgment. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.	**(c) Demand for Judgment; Relief to Be Granted.** A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings. Every other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.

Rule 54(d). Costs. Except when express provision therefor is made either in a statute of the state of Montana or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the state of Montana, its officers, agencies, and political subdivisions shall be imposed only to the extent permitted by law.	**(d) Costs; Attorney's Fees.** **(1)** ***Costs Other than Attorneys' Fees.*** Unless a Montana statute, these rules, or a court order provides otherwise, costs — other than attorney's fees — should be allowed to the prevailing party. But costs against the State of Montana, its officers, its agencies, and its political subdivisions may be imposed only to the extent allowed by law. The clerk may tax costs on 14 days' notice. On motion served within the next 7 days, the court may review the clerk's action. **(2)** ***Attorneys' Fees.*** **(A)** *Claim to Be by Motion.* A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. **(B)** *Timing and Contents of the Motion.* Unless a statute or a court order provides otherwise, the motion must: **(i)** be filed no later than 14 days after the entry of judgment; **(ii)** specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

	Recommended Rule 54(d)(2)(B) Continued: **(iii)** state the amount sought or provide a fair estimate of it; and **(iv)** disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.
	(C) *Proceedings*. Subject to Rule 23(h), the court must, on a party's request, give an opportunity for adversary submissions on the motion in accordance with Rule 43(c). The court may decide issues of liability for fees before receiving submissions on the value of services. The court must find the facts and state its conclusions of law as provided in Rule 52(a). **(D)** *Special Procedures by Local Rule*. By local rule, the court may establish special procedures to resolve fee-related issues without extensive evidentiary hearings. Also, the court may refer issues concerning the value of services to a special master under Rule 53 without regard to the limitations of Rule 53(a)(1). **(E)** *Exceptions*. Subparagraphs (A)-(D) do not apply to claims for fees and expenses as sanctions for violating these rules or as sanctions under §37-61-421, M.C.A.

COMMITTEE NOTES

The language of Rule 54 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 both substantive and stylistic. The language of Federal Rule 54 was amended as necessary to replace federal references and statutes with the appropriate state references and statutes.

Rule 54(a) adopts a discretionary posture with regard to including recitals of pleadings, a master's report, or record of prior proceedings in a judgment, substituting "should not" for the "shall not" of the previous Rule 54(a). Rule 54(c) likewise replaces "shall" with "should grant relief to which each party is entitled."

Rule 54(b) incorporates the relevant federal language into 54(b)(1), but adds 54(b)(2) to harmonize with Montana Rule of Appellate Procedure 6(6).

Rule 54(d)(1) was revised to substitute "federal" with "Montana," "United States" with "State of Montana," and to add "political subdivisions" to the list of state entities with limited liability for costs. The clerk's authorization to tax costs after 14 days' notice, subject to the court's review upon motion from Federal Rule 54 was incorporated into the rule. The 14-day notice for giving notice to the clerk to tax costs and the 7-day notice of 54(d)(1) for giving notice of a motion to have the court review the clerk's action on taxing costs are based on the Federal Rule.

Rule 54(d)(2) incorporates the federal provisions for attorney's fees into the Montana Rules, edited to replace federal references with their state counterparts.

Rule 54(d)(2)(C) adopts the relevant language of the Federal Rules except that it omits reference to "Rule 78," which was without a state compliment.

Rule 54(d)(2)(C) may require an update or revision of Montana Rule 23(h).

Rule 54(d)(2)(D) adopts the federal language except that it does not include referral of a motion for attorneys fees to a magistrate judge.

Rule 55	
Present Montana Rule:	**Recommended Montana Rule:**
Rule 55. Default	**Rule 55. Default; Default Judgment**
Rule 55(a). Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.	**(a) Entering a Default.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.
Rule 55(b). Judgment. Judgment by default may be entered as follows: (1) By the clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person, and has been personally served. No judgment by default shall be entered by the clerk when service has been by publication.	**(b) Entering a Default Judgment.** **(1)** ***By the Clerk.*** If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk — on the plaintiff's request, with an affidavit showing the amount due — must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

Present Rule 55(b) Continued:	Recommended Rule 55(b) Continued:
(2) By the court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative, or guardian ad litem, who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the state of Montana.	**(2) By *the Court*.** In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals — preserving any Montana statutory right to a jury trial — when, to enter or effectuate judgment, it needs to: **(A)** conduct an accounting; **(B)** determine the amount of damages; **(C)** establish the truth of any allegation by evidence; or **(D)** investigate any other matter.

Rule 55(c). Default -- setting aside -- extension of time by court or stipulation of parties. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b). No default of any party shall be entered, and no default judgment shall be entered against any party, except upon application of the opposing party. Any stipulation for extension of time between the parties or their counsel, whether in writing or made verbally before the court, shall be effective to extend the time for serving and/or filing any appearance, motion, pleading or proceeding, according to the terms of such stipulation. In any case if a party in default shall serve and file an appearance, motion, pleading or proceeding prior to application to the clerk for default, then such defaulting party shall not thereafter be considered in default as to that particular appearance, motion, pleading, or proceeding.	(c) **Setting Aside a Default or a Default Judgment.** The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).
Rule 55(d). Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).	(d) **Judgment Against the State of Montana.** A default judgment may be entered against the State of Montana, its officers, its agencies, or its political subdivisions only if the claimant establishes a claim or right to relief by evidence that satisfies the court.

COMMITTEE NOTES

The language of Rule 55 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 both substantive and stylistic. The language of Federal Rule 55 was amended as necessary to replace federal references and statutes with the appropriate state references and statutes.

Rule 55(a) reflects the 2007 changes to the Federal Rules. The Federal Committee noted that:

> Former Rule 55(a) directed the clerk to enter a default when a party failed to plead or otherwise defend "as provided by these rules." The implication from the reference to defending "as provided by these rules" seemed to be that the clerk should enter a default even if a party did something showing an intent to defend, but that act was not specifically described by the rules. Courts in fact have rejected that implication. Acts that show an intent to defend have frequently prevented a default even though not connected to any particular rule. "[A]s provided by these rules" is deleted to reflect Rule 55(s)'s actual meaning.

Rule 55(b)(1) drops the explicit personal service requirement and prohibition on service by publication found in the Montana Rule. Rule 55(b)(2) drops "committee" and "guardian ad litem" from the list of infant or incompetent representatives in adherence to the federal language. Rule 55(c) does not include a substantial portion of the previous rule, and instead adheres to the federal language. The previous 3-day period of Rule 55(b)(2) is changed to 7 days to conform to the Federal Rule.

Previous Rule 55(d) does not have a federal counterpart, as it was deleted with the 2007 revision. The Federal Committee stated that the list was incomplete and unnecessary because Rule 55(a) applies Rule 55 to any party against whom a judgment for affirmative relief is requested, and because the second provision was a redundant reminder that Rule 54(c) limits the relief available by default judgment.

Rule 55(d) was incorporated, with state-specific revisions, to limit the availability of default judgment against the state. "[P]olitical subdivisions" were added to the list of protected state entities.

Rule 56	
Present Montana Rule:	**Recommended Montana Rule:**
Rule 56. Summary judgment	**Rule 56. Summary Judgment**
Rule 56(a). For claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.	**(a) By a Claiming Party.** A party claiming relief may move, with or without supporting affidavits, for summary judgment on all or part of the claim.
Rule 56(b). For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.	**(b) By a Defending Party.** A party against whom relief is sought may move, with or without supporting affidavits, for summary judgment on all or part of the claim.
Rule 56(c). Motion and proceedings thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.	**(c) Time for a Motion, Response, and Reply; Proceedings.** **(1)** These times apply unless the court orders otherwise: **(A)** a party may move for summary judgment at any time unless the court orders otherwise; **(B)** a party opposing the motion must file a response within 21 days after the motion is served or a responsive pleading is due, whichever is later; and **(C)** the movant may file a reply within 14 days after the response is served.

	Recommended Rule 56(c) Continued: **(2)** The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.
Rule 56(d). Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.	**(d) Case Not Fully Adjudicated on the Motion.** **(1)** Establishing Facts. If summary judgment is not rendered on the whole action, the court should, to the extent practicable, determine what material facts are not genuinely at issue. The court should so determine by examining the pleadings and evidence before it and by interrogating the attorneys. It should then issue an order specifying what facts — including items of damages or other relief — are not genuinely at issue. The facts so specified must be treated as established in the action. **(2)** Establishing Liability. An interlocutory summary judgment may be rendered on liability alone, even if there is a genuine issue on the amount of damages.

Rule 56(e). Form of affidavits -- further testimony -- defense required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.	**(e) Affidavits; Further Testimony.** **(1)** ***In General.*** A supporting or opposing affidavit must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. If a paper or part of a paper is referred to in an affidavit, a sworn or certified copy must be attached to or served with the affidavit. The court may permit an affidavit to be supplemented or opposed by depositions, answers to interrogatories, or additional affidavits. **(2)** ***Opposing Party's Obligation to Respond.*** When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must — by affidavits or as otherwise provided in this rule — set out specific facts showing a genuine issue for trial. If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.
Rule 56(f). When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.	**(f) When Affidavits Are Unavailable.** If a party opposing the motion shows by affidavit that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: **(1)** deny the motion; **(2)** order a continuance to enable affidavits to be obtained,

	Recommended Rule 56(f) Continued: depositions to be taken, or other discovery to be undertaken; or **(3)** issue any other just order.
Rule 56(g). Affidavits made in bad faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.	**(g) Affidavits Submitted in Bad Faith.** If satisfied that an affidavit under this rule is submitted in bad faith or solely for delay, the court must order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt.

COMMITTEE NOTES

Montana Rule 56 follows the Federal Rule 56 changes, with minor revisions. The Federal rationale for the December 1, 2009 amendment to Rule 56 is as follows and expresses that rationale:

> The timing provisions for summary judgment are outmoded. They are consolidated and substantially revised in new subdivision (c)(1). The new rule allows a party to move for summary judgment at any time, even as early as the commencement of the action. If the motion seems premature both subdivision (c)(1) and Rule 6(b) allow the court to extend the time to respond. The rule does set a presumptive deadline at 30 days after the close of all discovery.
>
> The presumptive timing rules are default provisions that may be altered by an order in the case or by local rule. Scheduling orders are likely to supersede the rule provisions in most cases, deferring summary-judgment motions until a stated time or establishing different deadlines. Scheduling orders tailored to the needs of the specific case, perhaps adjusted as it progresses, are likely to work better than default rules. A scheduling order may be adjusted to adopt the parties' agreement on timing, or may require that discovery and motions occur in stages–including separation of expert-witness discovery from other discovery.
>
> Local rules may prove useful when local docket conditions or

> practices are incompatible with the general Rule 56 timing provisions.
>
> If a motion for summary judgment is filed before a responsive pleadings is due from a party affected by the motion, the time for responding to the motion is 21 days after the responsive pleading is due.

Two minor changes from the Federal language have been adopted in Montana. First, Rule 56(c)(1) omits the following language: "...a different time is set by local rule or...." The rationale for this omission is that different Rules in the various judicial districts do not make sense regarding the summary judgment procedure. Also, language in Rule 56(c)(1)(A) allowing a party to move for summary judgment at any time "... until 30 days after the close of all discovery ...." is modified. The 30-day closure period is deleted because it is inconsistent with much of Montana's summary judgment practice.

Rule 56(a) and (b) adopts the federal language, substituting "relief" for "claim, counterclaim, or cross-claim or to obtain a declaratory judgment" where it is found in the present subsections of Montana Rule 56. The Federal Committee noted that it adopted "relief" because:

> The list was incomplete. Rule 56 applies to third-party claimants, intervenors, claimants in interpleader, and others. Rule 56 (a) and (b) carry forward the present meaning by referring to a party claiming relief and a party against whom relief is sought.

Rule 56 adopts the discretionary federal language in place of the mandatory state phrasing in four places in the rule. Rule 56(c) states that a judgment "should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact." This would replace the previous Rule 56(c), which states that a judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits" show no genuine issue.

Rule 56(d) states that a court "should" determine what material facts are not at issue and "should" then issue an order stating that determination. The previous Rule 56(d) makes those court functions mandatory with its use of "shall." Rule 56(e)(2) states that summary judgment "should" be entered against a party who fails to set out specific facts showing a genuine issue for trial. The previous Rule 56(e)(2) uses the mandatory "shall."

The Federal Committee explained their decision to change from "shall" to "should," stating:

> It is established that although there is no discretion to enter summary judgment when there is a genuine issue as to any material fact, there is discretion to deny summery judgment when it appears that there is no genuine issue as to any material fact. *Kennedy v. Silas Mason Co.*, 334 U.S. 249, 256-257 (1948). Many lower court decisions are

gathered in 10A Wright, Miller & Kane, Federal Practice & Procedure: Civil 3d, § 2728. "Should" in amended Rule 56(c) recognized that a court will seldom exercise the discretion to deny summary judgment when there is no genuine issue as to any material fact. Similarly sparing exercise of this discretion is appropriate under Rule 56(e)(2). Rule 56(d)(1), on the other hand, reflects the more open-ended discretion to decide whether it is practicable to determine what material facts are not genuinely as issue.

Rule 57	
Present Montana Rule:	**Recommended Montana Rule:**
Rule 57. Declaratory judgments. The procedure for obtaining a declaratory judgment pursuant to Title 27, chapter 8, Montana Code Annotated, shall be in accordance with these rules, and the right to trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39, subject to the provisions of section 27-8-302, Montana Code Annotated. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.	**Rule 57. Declaratory Judgments** These rules govern the procedure for obtaining a declaratory judgment under Title 27, Chapter 8, M.C.A. Rules 38 and 39, subject to the provisions of §27-8-302, M.C.A., govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action.

COMMITTEE NOTES

The language of Rule 57 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.

Rule 58	
Present Montana Rule:	**Recommended Montana Rule:**
Rule 58. Entry of judgment. Unless the court otherwise directs and subject to the provisions of Rule 54(b), judgment upon the verdict of a jury shall be entered forthwith by the clerk; but the court shall direct the appropriate judgment to be entered upon a special verdict or upon a general verdict accompanied by answers to interrogatories returned by a jury pursuant to Rule 49.	**Rule 58. Entering Judgment** **(a) Separate Document.** Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion: **(1)** for judgment under Rule 50(b); **(2)** to amend or make additional findings under Rule 52(b); **(3)** for attorney's fees under Rule 54;

Present Rule 58 Continued:	Recommended Rule 58(a) Continued:
When the court directs that a party recover only money or costs or that all relief be denied, the clerk shall enter judgment forthwith upon receipt by the clerk of the direction; but when the court directs entry of judgment for other relief, the judge shall promptly settle or approve the form of the judgment and direct that it be entered by the clerk. The entry of the judgment shall not be delayed for the taxing costs.	**(4)** for a new trial, or to alter or amend the judgment, under Rule 59; or **(5)** for relief under Rule 60. **(b) Entering Judgment.** **(1)** ***Without the Court's Direction.*** Subject to Rule 54(b) and unless the court orders otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter the judgment when: **(A)** the jury returns a general verdict; **(B)** the court awards only costs or a sum certain; or **(C)** the court denies all relief. **(2)** ***Court's Approval Required.*** Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when: **(A)** the jury returns a special verdict or a general verdict with answers to written questions; or **(B)** the court grants other relief not described in this subdivision (b). **(c) Time of Entry.** For purposes of these rules, judgment is entered at the following times:

	Recommended 58(c) Continued: **(1)** if a separate document is not required, when the judgment is entered in the civil docket; or **(2)** if a separate document is required, when the judgment is entered in the civil docket and the earlier of these events occurs: **(A)** it is set out in a separate document; or **(B)** 150 days have run from the entry in the civil docket. **(d) Request for Entry.** A party may request that judgment be set out in a separate document as required by Rule 58(a). **(e) Cost, Fee Awards and Sanctions.** A judgment, even though entered, is not considered final for purposes of appeal under Rule 4(1)(a), M. R. App. P., until any necessary determination of the amount of costs and attorneys' fees awarded, or sanctions imposed, is made. The district court is not deprived of jurisdiction to enter its order on a timely motion for attorneys' fees, costs or sanctions by the premature filing of a notice of appeal. A notice of appeal filed before the disposition of any such motions shall be treated as filed on the date of such entry.

COMMITTEE NOTES

The language of Rule 58 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 both substantive and stylistic. The language of Federal Rule 58 was amended as necessary to replace federal references and statutes with the appropriate state references and statutes.

Rule 58(a) incorporates the federal separate document requirement and exceptions into the Montana Rules. There is no similar requirement under the previous Montana Rule 58.

Rule 58(b)(2)(A) adds "or a general verdict with answers to written questions; or" to the language of the rule. It is directly adopted from the same Federal Rule.

Rule 58(d) incorporates the Request for Entry provision into the Montana Rules. There is no similar requirement under the previous Rule 58.

Rule 58(e) reflects the changes made to Rule 54(d) regarding motions for attorneys' fees and costs. It effectively adds motions made according to Rule 54(d)(2) (for attorneys' fees or costs) as well as motions for sanctions to the list of motions under Montana Rule of Appellate Procedure 4(5)(a)(iv), extending the time to appeal.

Rule 59	
Present Montana Rule:	**Recommended Montana Rule:**
Rule 59. New trials -- amendment of judgment	**Rule 59. New Trial; Altering or Amending a Judgment**
Rule 59(a). Grounds. A new trial may be granted to all or any of the parties and on all or part of the issues for any of the reasons provided by the statutes of the state of Montana. A motion for new trial shall state with particularity the grounds therefor, it not being sufficient merely to set forth the statutory grounds, but the motion may be amended, upon reasonable notice, up to and including the time of hearing the motion. On motion for a new trial in an action tried without a jury, the court may take additional testimony, amend the findings of fact and conclusions of law or make new findings and conclusions, set aside, vacate, modify or confirm any judgment that may have been entered or direct the entry of a new judgment.	**(a) In General.** **(1)** ***Grounds for New Trial.*** The court may, on motion, grant a new trial on all or some of the issues — and to any party — as follows: **(A)** after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in Montana state court; or **(B)** after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in Montana state court. **(2)** ***Further Action After a Nonjury Trial.*** After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.
Rule 59(b). Time for motion. A motion for a new trial shall be served not later than 10 days after service of notice of the entry of the judgment.	**(b) Time to File a Motion for a New Trial.** A motion for a new trial must be filed no later than 28 days after the entry of judgment.

Rule 59(c). Time for serving affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which periods may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.	(c) **Time to Serve Affidavits.** When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.
Rule 59(d). Time for ruling on motion. If the court shall fail to rule on a motion for new trial within 60 days from the time the motion is filed, the motion shall, at the expiration of said period, be deemed denied. The decision on the motion may be entered in the minutes of the court, or may be made in writing in chambers or in any county in the state where the judge may be, and be filed with the clerk of court in the county where the action is pending. Upon the hearing, reference may be had in all cases to the pleadings and the orders of the court on file, and reference may also be had to any depositions and documentary evidence offered on the trial, and to the proceedings on the trial and, when necessary, reference may be had to the notes of the court reporter.	(d) **New Trial on the Court's Initiative or for Reasons Not in the Motion.** No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.
Rule 59(e). On initiative of court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the court may grant a motion for a new trial, timely served, for a reason not stated in the motion.	(e) **Motion to Alter or Amend a Judgment.** A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Rule 59(f). Order granting new trial. Any order of the court granting a new trial, shall specify the grounds therefor with sufficient particularity as to apprise the parties and the appellate court of the rationale underlying the ruling, and this may be done in the body of the order, or in an attached opinion.	**(f) Motion Deemed Denied.** If the court does not rule on a motion for a new trial properly filed according to Rule 59(b), or a motion to alter or amend a judgment properly filed according to Rule 59(e), within 60 days from its filing date, the motion must be deemed denied.
Rule 59(g). Motion to alter or amend a judgment. A motion to alter or amend the judgment shall be served not later than 10 days after the service of the notice of the entry of the judgment, and may be combined with the motion for a new trial herein provided for. This motion shall be determined within the time provided hereinabove with respect to a motion for a new trial and if the court shall fail to rule on the motion within the 60 day period, the motion shall be deemed denied.	

COMMITTEE NOTES

The language of Rule 59 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 both substantive and stylistic. The language of Federal Rule 59 was amended as necessary to replace federal references and statutes with the appropriate state references and statutes.

The 10-day time periods under Rule 59(b), (d) and (e) were all changed to 28 days to conform to the Federal Rule changes. See explanation in the Committee Notes to Rules 50 and 52. Also, Rule 59(c) was changed to conform to the Federal Rules. The opposing party now has 14 days rather than 10 days, after being served, to file opposing affidavits. The language allowing an extension for up to 20 days either by the court for good cause or by the parties' stipulation has been deleted in conformance with the Federal deletions.

In keeping with the State Committee's intention to retain Montana's 60-day time fuse for court action upon certain matters, the pertinent language was added to Rule 59(f).

The previous Rule 59(d), with the exception of the 60-day timing requirement, was not

incorporated into the Rule 59. A decision on the motion would instead be entered according to the relevant provisions of Rule 58.

Rule 60	
Present Montana Rule:	**Recommended Montana Rule:**
Rule 60. Relief from judgment or order	**Rule 60. Relief from Judgment or Order**
Rule 60(a). Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record, and in pleadings, and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.	**(a) Corrections Based on Clerical Mistakes; Oversights and Omissions.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the Supreme Court and while it is pending, such a mistake may be corrected only with the Supreme Court's leave.

Rule 60(b). Mistakes -- inadvertence -- excusable neglect -- newly discovered evidence -- fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) when a defendant has been personally served, whether in lieu of publication or not, not more than 60 days after the judgment, order or proceeding was entered or taken, or, in a case where notice of entry of judgment is required by Rule 77(d), not more than 60 days after service of notice of entry of judgment. When from any cause the summons in an action has not been personally served on the defendant, the court may allow, on such terms as may be just, such defendant or a legal representative, at any time within 180 days after the rendition of any judgment in such action, to answer to the merits of the original action. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to	**(b) Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: **(1)** mistake, inadvertence, surprise, or excusable neglect; **(2)** newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); **(3)** fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; **(4)** the judgment is void; **(5)** the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or **(6)** any other reason that justifies relief.

Present Rule 60(b) Continued: entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as may be required by law, or to set aside a judgment for fraud upon the court.	
Rule 60(c). Time for determining motions. Motions provided by subdivision (b) of this rule shall be determined within the times provided by Rule 59 in the case of motions for new trials and amendment of judgment and if the court shall fail to rule on the motion within the 60 day period, the motion shall be deemed denied.	**(c) Timing and Effect of the Motion.** **(1)** Timing. A motion under Rule 60(b) must be made within a reasonable time — and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding. Motions provided by Rule 60(b) must be determined within the times provided by Rule 59 in the case of motions for new trials and amendment of judgment and if the court shall fail to rule on the motion within the 60 day period, the motion must be deemed denied. **(2)** Effect on Finality. The motion does not affect the judgment's finality or suspend its operation.
See present Montana Rule 60(b) above	**(d) Other Powers to Grant Relief. This rule does not limit a court's power to:** **(1)** entertain an independent action to relieve a party from a judgment, order, or proceeding; **(2)** grant relief to a defendant who was not personally notified of the action; or **(3)** set aside a judgment for fraud on the court.

	(e) Bills and Writs Abolished. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

COMMITTEE NOTES

The language of Rule 60 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. The language of Federal Rule 60 was amended as necessary to replace federal references and statutes with the appropriate state references and statutes.

Rule 60(c)(1) adopts the relevant federal language, but adds the language of present Montana Rule 60(c)(1).

Rule 61	
Present Montana Rule:	**Recommended Montana Rule:**
Rule 61. Harmless error. No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.	**Rule 61. Harmless Error** Unless justice requires otherwise, no error in admitting or excluding evidence — or any other error by the court or a party — is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

COMMITTEE NOTES

The language of Rule 61 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.