

March 23, 2011

VIA FEDERAL EXPRESS

Ed Smith
Clerk of the Montana Supreme Court
Room 323, Justice Building
215 North Sanders
Post Office Box 203003
Helena, Montana 59620-3003

FILED

MAR 25 2011

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

AF 07-0110

Re: Ambiguity in Montana Uniform District Court Rule 2(a)

Dear Clerk Smith:

We are writing to bring your attention to some ambiguity in the Montana Uniform District Court Rules ("UDCR") relating to UDCR 2(a). As written, UDCR 2(a) can be read to require that an opposing party's answer brief must be filed within 10 days of the filing of the moving party's brief.

UDCR 2(a) provides:

Upon filing a motion or within five days thereafter, the moving party shall file a brief. The brief may be accompanied by appropriate supporting documents. Within ten days thereafter the opposing party shall file an answer brief which also may be accompanied by appropriate supporting documents. Within ten days thereafter movant may file a reply brief or other appropriate responsive documents. [Emphasis added.]

We note that the reference to "thereafter" in the third sentence of UDCR 2(a) makes the rule somewhat ambiguous as to what triggers the 10-day deadline to file an answer brief. Is it the filing of the moving party's brief, or is it the service of the moving party's brief? This in turn makes the application of Montana Rule of Civil Procedure ("RCP") 6(e) to the deadline to file an answer brief ambiguous, as deadlines calculated from the filing of an event are not extended pursuant to RCP 6(e), whereas deadlines calculated from the service of an event are extended pursuant to RCP 6(e).

Ed Smith
Clerk of the Montana Supreme Court
March 23, 2011
Page 2

RCP 6(e) provides:

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, 3 days shall be added to the prescribed period. [Emphasis added.]

We believe it would be helpful to amend the UDCR to clarify this issue. Clarifying the definition of “thereafter” would help clear up the ambiguity in UDCR 2(a). In the meantime, any clarification you would provide us as to the meaning of “thereafter” in UDCR 2(a) would be greatly appreciated. Does the “thereafter” in UDCR 2(a) refer to the filing of the moving party’s brief? Or does “thereafter” refer to the service of the moving party’s brief?

CompuLaw is a software-based court rules publisher providing deadline information to many law firms practicing in Montana. These firms use our software to calendar deadlines based on the UDCR, RCP and Montana Rules of Appellate Procedure. Thus, this issue is important to us.

Thank you for your time in considering this issue.

Sincerely,



Christina C. Comer, Esq.
CompuLaw LLC
ccomer@compulaw.com