

IN THE SUPREME COURT OF THE STATE OF MONTANA

AF 07-0110

IN RE THE PROPOSED AMENDMENTS)	
TO THE MONTANA UNIFORM)	O R D E R
DISTRICT COURT RULES)		

On June 19, 2003, this Court ordered the Commission on Uniform District Court Rules to meet and address the question of trial court delay.

On June 1, 2005, the Commission, acting through its chairperson, Mr. John Grant, submitted proposed changes to the Uniform District Court Rules for the Court's consideration.

On May 22, 2007, this Court ordered that the Uniform District Court Rules Commission meet with the District Court Council to discuss the need for, and particulars of, any proposed changes to the Uniform District Court Rules.

On July 30, 2007, Mr. Grant advised the Court that the Uniform District Court Rules Commission and the District Court Council had met and that the Commission had unanimously voted to resubmit the proposed rule changes for the Court's consideration.

On November 13, 2007, the Court published the proposed rule changes and provided a ninety-day comment period.

As of February 13, 2008, the comment period had expired, and all written comments were on file with the Clerk of the Montana Supreme Court.

On Tuesday, March 11, 2008, the matter was set for public hearing before the Montana Supreme Court. At said hearing, the Court reviewed the objections and inquired as to whether any persons in attendance had any further comments or suggestions. There were no further comments.

Most all of the filed comments stated that, unless the District Courts were given further resources, including additional judges, the courts were not in a position to comply with the suggested time constraints set forth in proposed Rules 3, 11 and 12. It was also noted that those new rules are premature until such time as the District Court performance standards are completed and until the 2009 Legislative Session has had an opportunity to address any requests for additional resources for the District Courts.

Having reviewed the proposed amendments to the Uniform District Court Rules and the comments submitted thereto,

IT IS HEREBY ORDERED:

1. The proposed amendments to Rules 1, 2, 4 and 5 are hereby adopted.
2. Adoption of proposed new Rules 3, 11 and 12 is hereby rejected without prejudice to submission at a later date.
3. The Uniform District Court Rules, as amended hereby and attached to this Order, shall become effective on June 1, 2008.
4. The Court thanks the Commission on Uniform District Court Rules for its hard work and perseverance in addressing the difficult and contentious subject of delay.

DATED this 19th day of March, 2008.

/S/ KARLA M. GRAY
/S/ W. WILLIAM LEAPHART
/S/ JAMES C. NELSON
/S/ PATRICIA COTTER
/S/ JOHN WARNER
/S/ BRIAN MORRIS
/S/ JIM RICE

UNIFORM DISTRICT COURT RULES

Effective June 1, 2008

Rule 1. Form of papers presented for filing.

(a) Papers defined. The word “papers” as used in this rule includes all documents and copies except exhibits and records on appeal from lower courts.

(b) Pagination, printing, etc. All papers shall be:

(1) typewritten, printed, or equivalent;

(2) clear and permanent;

(3) equally legible to printing;

(4) of type not smaller than pica;

(5) only on standard quality opaque, unglazed, acid-free recycled paper, and be a minimum of 25% cotton fiber content, minimum 50% recycled content, of which 10% shall be post-consumer waste, 8½” X 11” in size.

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

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

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

(9) page numbered consecutively at the bottom; and

(10) bound firmly at the top.

Matters such as property descriptions or direct quotes may be single spaced.

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

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

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

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

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

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

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

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

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

Rule 2. Motions.

(a) 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 adverse 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.

(b) Failure to file briefs. Failure to file briefs may subject the motion to summary ruling. Failure to file a brief within five days by the moving party shall be deemed an admission that the motion is without merit. Failure to file an answer brief by the adverse party within ten days shall be deemed an admission that the motion is well taken. Reply briefs by movant are optional, and failure to file will not subject a motion to summary ruling.

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

(d) When motion deemed submitted. Unless oral argument is ordered or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of any of the applicable time limits set forth above without supporting briefs having been filed.

If oral argument is ordered, the motion will be deemed submitted at the close of argument unless the court orders additional briefs, in which case the motion will be deemed submitted as of the date designated as the time for filing the final brief.

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

Rule 3. Ex parte matters.

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

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

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

(2) the substance of the order sought;

(3) whether counsel opposes the motion.

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

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

Rule 4. Filing of discovery.

(a) Depositions upon oral or written examinations, interrogatories and answers thereto, requests for production of documents and responses thereto, requests for admissions and responses thereto, shall not be routinely filed. When any motion is filed making reference to discovery, the party filing the motion shall submit with the motion relevant unfiled documents.

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

Commission Comment:

Although not specifically prohibited by this rule, in line with not filing discovery it is also is not necessary to file a notice of taking of deposition, notice of serving discovery, notice of serving responses to discovery, or any other discovery-related notice.

Rule 5. Pre-trial order and pre-trial conference.

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

(b) Not later than five days prior to the pre-trial conference, plaintiff’s counsel shall convene a conference of all counsel for the purpose of preparing a pre-trial order. The proposed pre-trial order shall be presented for signature at the pre-trial conference. In the event of a dispute as to the contents of the order, such dispute shall be presented to the judge for resolution at the pre-trial conference.

(c) Pre-trial order. The pre-trial order shall be substantially in the following form:

(TITLE OF COURT AND CAUSE)

Pursuant to Rule 16 of the Montana Rules of Civil Procedure, a pre-trial conference was held in the above-entitled cause on the ____ day of _____, 20__, at ____ o’clock __.m.

_____ represented the plaintiff(s).

_____ represented the defendant(s).

_____ (other appearances) were also present.

AGREED FACTS

The following facts are admitted, agreed to be true, and require no proof:
(Here enumerate all agreed facts, including facts admitted in the pleadings.)

PLAINTIFF’S CONTENTIONS

Plaintiff’s contentions are as follows:

- 1.
- 2.

DEFENDANT’S CONTENTIONS

- 1.
2.

EXHIBITS

Attached to the pre-trial order are exhibit lists identifying by number and brief description each exhibit and stating any objections to the exhibits. Any exhibit offered at the trial to which no objection was made in the pre-trial order will be admitted into evidence.

WITNESSES

The following witnesses and no others will (may) be called to testify except on rebuttal:

Plaintiff

- 1.
2.

Defendant

- 1.
2.

ISSUES OF FACT

The following issues of fact, and no others, remain to be litigated upon the trial: (Here specify each issue.)

- 1.
2.

ISSUES OF LAW

The following issues of law, and no others, remain to be litigated upon the trial: (Here set forth a concise statement of each.)

- 1.
2.

DISCOVERY

The final pre-trial order shall refer to all those portions of depositions upon oral examination and interrogatories, requests for admissions, and answers and responses that the parties intend to introduce into evidence. Any objections to the use of the above documents shall be stated, and if not stated, shall be deemed waived. (Because this rule relates to filing and is designed to consolidate in one place all of the fruits of discovery and because there can be no surprise element involved, the court shall be liberal in permitting the amendment of the pre-trial order to include any material not originally listed.)

ADDITIONAL PRE-TRIAL DISCOVERY

(Here specify any additional discovery contemplated by either party and the time within which such discovery will be completed.)

STIPULATIONS

(Here include any stipulations in addition to the agreed facts set forth above.)

DETERMINATION OF LEGAL QUESTIONS IN ADVANCE OF TRIAL

It was agreed that the following legal issues should be determined by the court in advance of the trial.

(Here specify issues and make provision for filing briefs with respect to such issues.)

ADDITIONAL ISSUES

Additional issues to be determined and/or addressed include:

- order of proof where there is a counterclaim;
- attorney’s fees testimony and/or proof;
- time of filing and service of trial briefs and other issues.

JURY SELECTION AND PROCESS

Order and method of selection, stipulation that jury will be selected or drawn, numbering of panel, number of challenges, time to file instructions, length of time on voir dire.

TRIAL

It is estimated that the case will require ____ hours/days for trial.

The case will be tried before the court with (without) a jury.

IT IS HEREBY ORDERED that this pre-trial order shall supersede the pleadings and govern the course of the trial of this cause, unless modified to prevent manifest injustice.

IT IS HEREBY ORDERED that all pleadings herein shall be amended to conform to this pretrial order.

DATED this ____ day of _____ 20__.

District Judge

Approved as to form and content.

Attorney for Plaintiff

Attorney for Defendant

Rule 6. Briefs.

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

Rule 7. Jury instructions and verdict forms.

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

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

(c) Form. Each instruction shall be on 8½” X 11” paper and shall, after the citation of authorities, indicate the party on whose behalf it is requested and be numbered consecutively. One copy of the instructions filed with the court shall not be firmly bound together.

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

Rule 8. Findings and conclusions.

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

Rule 9. Juror questionnaire.

All jurors are requested to complete a questionnaire, the form of which is on file with the clerk in his general order file and which contains basic vital statistics and other pertinent information. The completed questionnaires will be available for examination or copying by counsel in the clerk's office in advance of trial and should be used so as to expedite the examination of jurors. The attorneys shall not unduly reiterate the information contained in the questionnaires during their voir dire examination.

Rule 10. Death or removal of attorney.

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

(b) When the attorney representing a party to an action or proceeding dies, is removed, withdraws, or ceases to act as such, that party, before any further proceedings are had against him must be given notice by any adverse party:

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

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

(d) If said party does not appoint another attorney or appear in person within twenty days of the service or mailing of said notice, the action may proceed to judgment. However, copies of

all papers and documents required to be served by these rules and the Rules of Civil Procedure shall be mailed to said party at his last known address.

(e) In addition to the foregoing requirements of Rule 10 and before any change of substitution of attorney is effective, whether such change or substitution is occasioned by the death of the attorney or by his removal, withdrawal, ceasing to act, suspension or disbarment, the requirements of sections 37-61-403, 37-61-404 and 37-61-405, MCA, shall have been fully satisfied.

Rule 11. Judgments and decrees.

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

Rule 12. Exhibits.

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

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

Rule 13. Regulation of attorneys not admitted to practice in Montana.

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

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

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

Rule 14. Chief district judge.

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

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

Rule 15. Local rules allowed.

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