

LOCAL RULES OF PRACTICE OF THE
DILLON CITY COURT, STATE OF MONTANA
[Enacted April 15, 2015]

PREFACE

The following Rules of Practice supplement the Justice and City Court Civil Rules and the Uniform Justice and City Court Rules. Any conflict shall be controlled by the Justice and City Court Civil Rules and the Uniform Justice and City Court Rules.

RULE 1
GENERAL PROVISIONS

- (1) The hours of the Court are Monday through Friday from 8:00 a.m. to 12:00 p.m. and 1:00 to 5:00 p.m. The Court will be closed on assigned holidays. Notice of the closure shall be posted on the City Court entrance.
- (2) Cell phones shall be allowed in the Courtroom only when the volume is turned off.

RULE 2
DECORUM

- (1) When the Court convenes all persons in attendance shall rise until the judge has taken the bench.
- (2) All persons, when Court is in session, must wear appropriate clothing.
- (3) All hats must be removed while Court is in session.

RULE 3
LAW AND MOTION DAY

- (1) The typical schedule for Law and Motion days (Open Court) are Tuesdays and Thursdays 9:00 a.m. to 4:00 p.m. Matters involving presentation of evidence will not be heard on Law and Motion days, except by leave of the Court.

RULE 4
ENTRY OF PLEAS

- (1) A defendant may appear in open court to enter a plea of not guilty.
- (2) An attorney may appear in open court or in writing to enter a not guilty plea for a defendant, unless the defendant's personal appearance is specifically ordered by the Court.
- (3) A defendant must appear in open court to enter a plea of guilty or nolo contendere. No plea of guilty or nolo contendere shall be accepted by filing a written plea of guilty or nolo contendere with

the court. A defendant may physically appear or by two-way electronic audio-video communication. State v Schneiderhan (1993 Mont), 261 Mont. 161, 862 P.2d 371.

- (4) Before the judge will accept any plea of guilty or nolo contendere, the defendant shall file with the Court a fully executed Acknowledgement of Waiver of Rights by plea of guilty or nolo contendere, containing the information required under Mont. Code Ann. § 46-12-210(1).
- (5) At any time after arraignment, upon notice to the prosecutor, at the omnibus hearing, or at the pre-trial hearing a defendant may file a notice with the court of defendant's intent to change a plea to guilty or nolo contendere. The defendant may physically appear or by two-way electronic audio-video communication to enter the change of plea.

RULE 5 REQUIRED APPEARANCES

- (1) Upon a defendant's default of physical appearance as ordered for a scheduled court date, except for good cause shown, the right to a jury trial is considered waived by the defendant. See Art II, §26 Montana Constitution.

RULE 6 MOTION FOR CONTINUANCE

- (1) Motions for continuances are governed by Rule 18, U.J.C.C.R, and Mont. Code Ann. § 46-13-202.
- (2) In criminal actions, if the motion for continuance is made more than 30 days before the trial date, the motion shall be supported by affidavit or brief. A motion for continuance by the defendant shall contain a waiver of speedy trial if the motion is filed within 30 days of the speedy trial date.
- (3) In civil actions, if the motion for continuance is made within 72 hours of the date scheduled for trial, the motion shall be supported by affidavit, brief, or by stipulation of the parties.
- (4) Motions to allow more time for discovery or for convenience of a party will not be granted if made within 30 days of the date set for trial, except for good cause shown.
- (5) Motion for continuance or re-setting of a trial because of the unavailability of a witness shall be made not less than 72 hours before the date set for trial, except for good cause shown.
- (6) No motions for continuance or re-setting of trial shall be granted on the date set for trial, except for good cause shown.

RULE 7 MOTIONS

- (1) Pre-trial motions. Except for good cause shown, all pretrial motions must be made in writing as provided for under Mont. Code Ann. § 46-13-101, and Rule 6, U.J.C.C.R., at or before the pretrial conference. Failure to raise defenses or objections or to make required requests prior to trial

constitutes a waiver of the defense, objection, or request, except a motion for lack of jurisdiction or failure to state an offense is non-waivable.

(2) Motion for relief from judgment or order. Rule 60, M.R. Civ. P. shall apply to all motions for relief from judgment or order. A motion for relief from judgment must be made within 30 days after entry of judgment as provided for under Rule 22, J.C.C.R. Civ.P.

(3) Conflict. In the event of conflict the Montana Rules of Civil Procedure shall control.

RULE 8 OMNIBUS HEARING

(1) Defendants shall physically appear for the omnibus hearing or an attorney may appear at the omnibus hearing for a defendant.

(2) A trial schedule will be established at the omnibus hearing.

(3) Omnibus hearings may be waived upon request of Defendant or Defendant's attorney in which case the Court will issue a Trial Schedule Order.

RULE 9 DISCOVERY PROCEDURE/WITNESS DISCLOSURES AND LISTS OF EXHIBITS

(1) Discovery documents, including witness disclosures and lists of exhibits, shall not be routinely filed. All discovery procedures must be adhered to in compliance with Title 46, Chapter 15, Mont. Code Ann.

(2) When any motion is filed making reference to discovery, the moving party shall submit with the motion relevant portions of unfiled documents.

RULE 10 PRETRIAL CONFERENCE

(1) At the pretrial conference the court shall address plea offers and confirm or demand a jury trial.

(2) Motions for continuances or re-setting of trial to allow more time for discovery or for convenience of a party shall be made at or before the pretrial conference. Motions for continuance or re-setting of trial to allow more time for discovery or for convenience of a party will not be granted subsequent to the pretrial hearing, except for good cause shown.

(3) The purpose of the pretrial conference is to confirm the calling of a jury, consider possible settlement options, and to address pretrial motions. Failure of the defendant to physically attend the final pretrial constitutes a waiver of a jury trial. Missoula v. Cox, DA 07-0688, 2008 MT 364.

RULE 11
TRIALS AND HEARINGS

- (1) Criminal matters shall be tried within 6 months of the defendant's arraignment. No cause shall be set for trial beyond 6 months of the defendant's arraignment without a waiver of speedy trial executed by the defendant and filed with the Court before the running of the 6 months.
- (2) Civil matters shall be set for trial by the clerk upon the filing of the answer.
- (3) Hearings on pre-trial motions shall be set not less than 72 hours before the date set for a trial, except for good cause shown.
- (4) All orders setting trial or hearing shall be signed by the judge. The clerk shall serve a copy of the order setting trial or hearing upon all the parties and their counsel by first class mail.

RULE 12
TRIALS IN ABSENTIA

- (1) If a defendant fails to appear in person at the time set for trial, and upon a finding that the defendant had knowledge of the trial date and is voluntarily absent, the court shall proceed with the trial in absentia or as provided under Mont. Code Ann. § 46-16-122.

RULE 13
WITHDRAWAL OF ATTORNEY

- (1) Rule 14 of the Uniform Justice and City Court Rules and Rule 10 of the Uniform District Court Rules shall govern the withdrawal of an attorney.
- (2) No withdrawal of an attorney (civil or criminal) is effective without the attorney timely filing with the court a copy of the notice required under Rule 10 of the Uniform District Court Rules. The attorney shall inform the court of the client's address and any other information to assist the court in contacting the client. The notice to the attorney's client shall direct the client to appoint another attorney or appear in person and shall inform the client of all scheduled court dates.
- (3) Public Defender. When a public defender has been assigned to represent a defendant the assignment is effective until final judgment, subject to the representation of the defendant in any post-conviction action or proceedings under Mont. Code Ann. § 46-8-104. A petition to revoke a suspended or deferred sentence is an "extraordinary circumstance" requiring the continuance of the assignment of counsel. Until the running of the suspended or deferred sentence, the public defender assignment remains effective.

RULE 14
SUBSTITUTION OF JUDGES

- (1) Disqualification and substitution of a judge is governed by Title 3, Chapter 1, Part 8, Mont. Code Ann.

(2) When an assigned judge recuses *sua sponte*, or is sick and unable to act, the assigned judge shall call in to act a judge pro tempore pursuant to Mont. Code Ann. §3-10-116.

(3) When the judge *pro tempore* has accepted jurisdiction, the clerk shall mail a copy of the acceptance to the parties and their attorneys. Thereafter, all proceedings, motions, hearings, and trials shall be directed to the judge pro tempore assuming jurisdiction and not to the original judge assigned.

RULE 15
APPEALS

(1) The Montana Uniform Municipal Court Rules of Appeal to the District Court, codified in Title 25, chapter 30, shall apply to all appeals to the district court.

RULE 16
FILING OF PAPERS

(1) The office of the city court clerk shall be deemed always open for the purpose of filing by facsimile or other electronic means any pleading, or other paper, of issuing and returning process and final process, and of making and all interlocutory motions, orders, and rules.

(2) Rule 5 (e), M.R.Civ.P. shall govern the filing in city court all filings by facsimile or other electronic means.

(3) Mont. Code Ann. § 25-3-501, shall govern service of a telephonic or telegraphic copy.

(4) The filings by facsimile or other electronic means will be treated void if the original document is not filed with the office of the city court clerk within 5 days of the filing by facsimile or other electronic means.

(5) The definition of “a day” is defined under Mont. Code Ann. §1-1-301(1).

RULE 17
APPLICABILITY OF UNIFORM DISTRICT COURT RULES
AND MONTANA RULES OF CIVIL PROCEDURE

(1) The provisions of the Montana Uniform District Court Rules are applicable to this court except when they are inconsistent with the provisions of the Montana Justice and City Court Rules of Civil Procedure and/or the Uniform Justice and City Court Rules.

(2) The Montana Rules of Civil Procedure (M.R.Civ.P.) are not applicable to this court except as provided by this rule. The Montana Justice and City Court Rules of Civil Procedure govern procedures in this court.

(3) Rule 41, M.R.Civ.P. shall apply to dismissal of actions in this court.

RULE 18
FILING AND MISCELLANEOUS FEES

(1) The clerk of the city court shall collect all appearance fees as provided by statute.

DATED this 23rd day of April, 2015.

/s/ Crystal M. Thompson, City Judge