



**Missoula County Justice Court of Record  
Local Rules – As Amended June 17, 2020**

**PART I – GENERAL**

**1. Scope.** These rules shall apply to Missoula County Justice Court of Record and shall not be construed to overrule any precedent of the Montana Supreme Court or the Fourth Judicial District. These rules shall not contravene Montana law as codified by the legislature. These rules are designed to supplement the Montana Uniform Rules for the Justice and City Courts (“MURJCC”), the Montana Justice and City Court Rules of Civil Procedure (“MJCCRCivP”), the Montana Rules of Civil Procedure (“MRCivP”) (where applicable) and Montana’s Criminal Procedure. Additionally, some of these rules merely restate other laws for the convenience of parties, especially ones who are not lawyers.

**2. Hours.** The Justice Court shall be open for business from 8 a.m. to 5 p.m. Monday through Friday. The office of the Justice Court shall be closed on all state holidays and one or both of the clerk’s offices may be closed for up to one hour for staff meetings set on an irregular basis.

**3. Legal advice.** The clerks of the Justice Court are forbidden to provide legal advice. They are able to provide procedural advice and limited assistance with small claims cases.

**4. Assignment of Cases.** The Justice Court is divided into two departments each having one Judge. The Court Administrator of Missoula County Justice Court shall be known as the Clerk of Justice Court. All cases shall be assigned to the departments on a random and even basis by the Clerk of Justice Court except by mutual agreement of the Judges. The work in Justice Court shall be interchangeable among the Judges thereof during the absence or disability of any Judge, or upon the request of the Judge. Any Judge acting on behalf of the Judge of the other Department will be presumed to have acted with the consent of that Judge. Such actions do not



result in the transfer of the case to the other Department unless both Judges sign a Relinquishment and Acceptance. Criminal defendants will have all cases assigned to the same Department, which will be the Department having jurisdiction of any open cases. *See* MURJCC, Rule 2.

**5. Motions.** These rules supplement and clarify MJCCRC Rule 9 and MURJCP Rule 6.

- a. Notification of Opposing Counsel.** Other than requests for telephonic initial appearances by unrepresented parties in criminal cases, any request for the Judge to take an action shall be by motion with a copy served upon the opposing party either via the e-filing system, by mail, in person, or through the opposing party's courthouse mailbox with the manner of service noted on the motion. *See* MURJCC Rule 10. All motions must certify whether the opposing counsel or party objects to the motion.
- b. Proposed Orders.** Routine or unopposed motions must be accompanied by a proposed order, with sufficient copies and addressed stamped envelopes for service of paper copies. Sufficient copies means an original for the court and one copy for each other party (plus a copy for the person filing if they wish a stamped-in copy for their records). No paper copies are required when using the state electronic filing system.

**6. Electronic Filing.** All electronic filings must comply with the Montana Supreme Court Temporary Electronic Filing Rules dated November 14, 2014, as amended October 3, 2017, and as may be further amended by the Montana Supreme Court. *See* <https://courts.mt.gov/courts/efile/rules>

**7. Rejected filings.** All filings must comply with the applicable rules of procedure and these Local Rules. The clerks of Justice Court shall reject all other filings, whether electronic or by paper, submitted by attorneys. Filings from persons representing themselves (pro se) shall be accepted if they meet statutory requirements.

**8. Withdrawal of Attorney.** 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. 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 postconviction action or proceedings under Section 46-8-104, MCA.

**9. Scheduling.** The Clerk of Justice Court shall ensure that the current and subsequent business days' court calendars shall be available on the court's website.

**10. Use of Audio/Visual Equipment in Courtrooms.** Each of the Justice Court of Record Courtrooms is equipped with ports at each counsel table for accessing the in-court display monitors. Parties are encouraged to contact the Clerk of Justice Court to arrange for a tutorial prior to any hearings where they intend to make use of the equipment. No party may bring in other display monitors or speakers without prior written approval of the Court.

**11. Form and Quality of Paper Filed.** All papers filed with the Clerk of Justice Court shall be single-sided. All motions shall include, as a separate document, a proposed order. This rule supplements MURJCC Rules 5 & 8.

**12. Fee Waivers.** Persons who believe they are unable to pay the costs and fees associated with filing or answering a case may apply to the Court for a waiver of those fees. See MCA § 25-10-404. A fee waiver application form is available upon request from the Clerk and can be printed from the Court's website. The Clerk shall accept, but not file, pleadings submitted without fee but with a request to waive the fee. The Clerk shall note the date accepted, and if the waiver is granted, file those pleadings retroactive to the date accepted.

## **PART II – CIVIL**

**13. Default Judgments.** In cases where a party has failed to answer or reply, the Clerk is authorized to enter default against that party. Default Judgments are addressed by the Court as follows:

- a. Sum-Certain.** If a party's Complaint or Counterclaim requested a specific sum or a sum which requires computation but otherwise was certain (such as pre-trial interest from a listed date at a listed rate), the Clerk may

issue a Default Judgment for the amount set forth in the Complaint or Counterclaim. Costs of suit, costs of service, and attorney's fees (as addressed in Local Rule 10) are excluded from the requirement for a sum-certain and may be established by affidavit. *See* MJCCRCivP Rule 21(A)(8)(a)(2).

- b. Non-Sum-Certain.** Judgment by default may not be different in kind from that requested in the Complaint or Counterclaim, nor may it be for a larger amount. *See* MJCCRCivP Rule 21(A)(8)(c). When the amount of the judgment is not set out as a specific sum certain in the Complaint or Counterclaim, no judgment may be issued by the Clerk. The Court instead adopts the procedures of MRCivP Rule 55(b)(2) regarding default judgments. The party requesting judgment shall apply to the Court for a default judgment, and the Clerk shall set the matter for a hearing. The Court will conduct the hearing it considers necessary and proper to establish the appropriate judgment amount. *See* MJCCRCivP Rule 21(A)(8)(b)(2). Requests for damages in landlord/tenant cases following an eviction will always be for a non-sum-certain.
- c. Waiver of Hearing Upon Sufficient Proof.** Parties seeking relief from the requirement of a hearing set forth in subsection b above shall submit a request to the Court, supported by affidavit and clear documentation. Clear documentation means an itemized listing of work performed accompanied by copies of invoices or quotes where applicable. Such requests shall be mailed to the non-moving party who shall have 10 business days (plus 3 days mailing) to respond. Even if unopposed, such requests to vacate a damages hearing will not be granted if the proof provided is insufficient for the Court.

**14. Attorney's Fees.** Justice Court exists to secure the just, speedy, and inexpensive determination of small civil actions. When statute or contract permit, prevailing parties may request those attorney's fees reasonably incurred. While *Chase v. Bearpaw Ranch Ass'n*, 2006 MT 67, ¶ 38, 331 Mont. 421, 133 P.3d 190, and similar cases lay out 7 factors to consider regarding the reasonableness of attorney's fees, 2 factors are most relevant given the limited jurisdiction of this Court. This Court generally

considers the character and importance of the litigation and the amount of money involved above all other factors.

- a. Default Judgments.** For default judgments, upon affidavit of counsel that the fees were incurred, the Court will generally award amounts up to \$200 in simple collection cases and up to \$500 in eviction cases. Higher amounts will generally not be awarded outside of a hearing where live, sworn testimony from the attorney who performed the work is provided. Attorneys should expect robust questioning.
- b. Judgments Other Than By Default.** The Court cannot provide specific guidance as to the reasonableness of attorney's fees due to the uncertainties of litigation. Nonetheless, the Court will note that it can only see the work performed in the courtroom and in the papers filed. If an affidavit of counsel does not clearly specify the work performed and justify the rate requested, the Court may set the matter for hearing or may, in its discretion, summarily reduce the requested amount. If the work seen by the Court does not support the rates or amounts requested, they will not be awarded.

**15. Interest Rates.**

- a. Usury.** Complaints or Counterclaims seeking pre- or post-judgment interest in excess of 15% (or 6 percentage points above Prime) shall provide an explanation of why the rate is not usurious. *See* MCA § 31-1-107. Regulated lenders shall include their NMLS or similar number.
- b. Complaints, Judgments, and Writs.** Requests for an interest rate other than "prime + 3" as specified in MCA § 25-9-205 shall specify the amount requested. Requests based on contract or agreement shall include a copy of the contract or agreement. Judgments and writs shall contain a numerical interest rate, which may be left blank on proposed orders.

**16. Declaratory Judgments.** As a Court of Record, this Court is authorized to issue declaratory judgments. *See* MCA § 27-8-201. However, as a court of peculiar and limited jurisdiction it cannot grant declaratory judgments regarding: title to real property; the rights or obligations of

estates; municipal ordinances; or that impact the rights of the State of Montana. Even where jurisdiction exists, this Court may decline to issue a declaratory judgment. *See* MCA § 27-8-206.

**17. Mediation.** In all civil cases except Petitions for Orders of Protection, there shall be a mediation prior to any contested hearing. Except for the possession hearing in landlord/tenant eviction cases, no trial date will be set until after the conclusion of mediation. Someone with settlement authority must attend on behalf of all parties. Through an agreement with the Missoula Community Dispute Resolution Center, mediations are provided at no cost to participants. Information about this service and the organization in general is available at their website <https://www.cdrcmissoula.org/> Pursuant to the spirit of MCA §40-4-301(2) any party may request a waiver of the mediation requirement if a party or a child of a party has been physically, sexually, or emotionally abused by the other party.

**18. Pre-trial conferences.** Someone with settlement authority must attend on behalf of all parties. Parties and attorneys who reside outside of Missoula County may request to appear via telephone for pretrial conferences. Such requests may be by email to the clerk. *See* MCA § 25-31-710.

**19. Temporary & Permanent Orders of Protection.** Orders of Protection may only be granted under specific circumstances set out in statute. Petitions should answer the following questions: “who, what, when, where.” Petitions may be prepared by a 3<sup>rd</sup> party (such as an attorney, advocate, or social worker) so long as the document is sworn to by the Petitioner.

- a. **“As Represented By” or “On Behalf of” Petitions.** Pursuant to MCA § 40-15-102(3), a parent, guardian ad litem, or other representative of a minor may file for an order of protection. While there is no specific requirement that the minor be present and testify at a hearing, the Court notes that the Rules of Evidence apply, and the Court is generally prohibited from considering hearsay evidence.
- b. **Service of documents.** Service of documents necessary for the case upon an unrepresented party (or a represented party’s attorney) is not a violation of the “no contact” provisions of an order of protection.

**20. Procedures in Landlord/Tenant Proceedings.** Landlords may file actions that seek both possession of real property and any subsequent damages. The request for possession is entitled to an expedited remedy, but any claim for damages shall be treated as a regular civil claim and subject to the Court's regular schedule.

- a. Complaint.** Complaints seeking possession of property must contain at a minimum:
  - i. The street address of the property at issue, including any apartment number; and
  - ii. The date of notices sent to the tenant specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date specified in the notice. *See* MCA § 70-24-422(1).
- b. Possession Hearing.** Upon answer of the Defendant, the Court will set the matter for a mediation and for a hearing on possession. Hearings on possession will be limited to one (1) hour absent a request from either party and a showing of good cause. The parties shall exchange witness and exhibit lists no later than the start of the mediation. If possession is granted to the landlord, the Court will issue a writ of assistance.
- c. Damages hearing.** The Court will generally not set further hearings following a possession hearing. If a party seeks a trial in regard to damages, it may make a request at any time within six (6) months following the possession hearing, and the clerk shall schedule the matter as other civil claims. As such, it is very important that tenants inform the Court and the opposing party of any changes in address.

**21. Limited Liability Companies as parties.** For the convenience of litigants, the Court notes that service upon LLCs and corporations is only valid upon "an officer, director, superintendent, managing or general agent, partner, or associate for the" entity or by "leaving the copy at the office or place of business of the" entity "with the person in charge of the office." MJCCRCivP Rule 4(D)(2)(b)(iv)(A). LLCs must generally be represented by an attorney. In implementing MCA § 25-31-601(3), this Court requires

that before a member of an LLC may serve as attorney for the entity all of the following must occur:

- a. The Complaint or Answer must contain a statement that the member has a majority interest in the LLC;
- b. The member provides the Court a copy of the Articles of Organization on file with the Montana Secretary of State's Office showing that the LLC is managed by members and that the member is not prohibited from serving as the LLC's attorney; and
- c. The member provides proof to the Court that they have a majority interest in the LLC.

### **PART III - CRIMINAL**

**22. Guidelines for Issuance of Warrant or Summons.** While the Court cannot set out the exact list of times when a warrant or summons are appropriate, there are certain factors that should be considered. These factors apply to new filings or petitions to revoke (sentences or release). Generally, warrants are appropriate where there is either a significant public safety risk and/or no valid contact information for the defendant. Generally, summonses are appropriate where there are not exigent circumstances and there is a reasonable chance that a summons will be answered. Requests for warrants should explain why a summons is not appropriate.

- a. **Factors supporting warrants:** Persons who have absconded from supervision (such as Pre-trial, Felony Probation/Parole, Drug/Alcohol testing, GPS, etc); persons whose cases were referred to the County Attorney's Office following a failure to appear at an Order to Show Cause (or similar) hearing; persons who have active warrants in other matters; persons where no good address is present in the Court's or law enforcement's or the County Attorney's Office's files; and persons who have violated no contact conditions of release.
- b. **Factors supporting summonses:** Persons facing revocation for financial matters; persons being brought to court for initial appearances or revocations on non-jailable offenses; and persons generally making supervision appointments.

**23. Omnibus Hearing.**

- a. Presence of Defendant.** Defendants shall physically appear for the omnibus hearing unless their presence has been waived, in writing, by the Court.
- b. Waiver of Defendant.** An attorney may appear at the omnibus hearing for a defendant upon the filing with the court of a written acknowledgement by the defendant containing the following: 1) that the defendant was advised by the attorney of the charges, penalties and defenses; 2) that the defendant has the right to appear at the omnibus hearing; 3) that the defendant has the right to view the evidence, including witness statements, police reports, expert reports and lab reports; 3) that the attorney is authorized to act on the defendant's behalf; 4) that defendant has notice of all scheduled court dates requiring the defendant's physical presence; and 5) that the defendant understands the consequences of defendant's failure to physically appear for a scheduled court date.

**24. Payment of Fines.** Pursuant to MCA § 46-18-234, financial obligations under a sentence are due at the time the sentence is imposed unless otherwise stated. Justice Court will always provide options to defendants. Defendants may pay their financial obligations (1) immediately, (2) in a lump sum by a set date in the future, (3) in monthly increments, or (4) by performing community service (for fines, but not surcharges). The court gives \$15 credit per hour for community service.

**25. Requests for Telephonic Appearance.** Persons not represented by an attorney who do not reside in Missoula County (or an immediately adjacent county) may request permission to appear telephonically by sending an email to the Clerk of Justice Court. Requests to make an initial appearance via telephone do not require notification or service upon the County Attorney's Office.

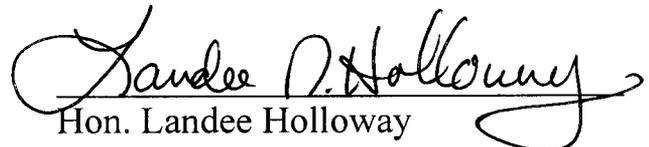
**26. Changes to Hearing Type.** If the prosecutor or defendant wishes to change the content of any hearing on the Court's Law & Motion calendar, no motion or prior notice to the Court is required. For instance, a

hearing previously scheduled for an omnibus may be used for a change of plea/sentencing without the need to inform the Court in advance.

- a. **Special Settings.** For hearings at special setting times, the Court appreciates as much advance warning as possible (a minimum of 24 hours) as those times are limited and can be used for other matters.
- b. **Jury Trials.** Requests to vacate a jury trial received less than 48 hours in advance of the trial are looked upon with great disfavor. Counsel are reminded of the significant disruption this causes to the residents of Missoula. If the request is granted, counsels of record will be provided the list of jurors and instructed to call and notify them that the trial has been vacated and to certify the same to the Court.



Hon. Alex Beal  
Justice of the Peace, Department 1



Hon. Landee Holloway  
Justice of the Peace, Department 2