Montana Rules of Evidence: Essential Accessory In Any Court

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Montana Rules of Evidence: Essential accessory in any court

By Cynthia Ford

Who knew you would find fashion advice here in Evidence Corner? I do have very clear (and staid) specific opinions about appropriate courtroom dress for both men and women, which I am happy to share anytime. However, I recognize that not everyone agrees with me on details such as number of piercings, length of skirt, type of shoes, or propriety of yoga pants. For women, though, you can always get away with a strand of pearls and/or pearl earrings. These accessories signal recognition of the formality of the courtroom. Further, pearls go with every color and style of outfit. The only other accouterment that is so universal is your book of rules. No matter what color your jacket, shoes or briefcase, the Rules of Evidence are a mandatory component of your courtroom appearance. No decent lawyer, male or female, should enter a courtroom without a copy of the applicable rules, including the Rules of Evidence. Rookie lawyers may think that bringing the rules makes them look like novices; veteran lawyers know it is the mark of experience. Sometimes a ruling depends on the exact language of a particular phrase, sometimes even the placement of a comma. No one can reliably remember; everyone should be actually looking at the text of the rule at issue.

The only variable in the prior sentence is in the phrase “applicable rules.” The key here, of course, is to be sure that you are using the set of Rules of Evidence that apply in the court in which you are appearing. In previous columns, I have covered the difference between the Montana Rules of Evidence that apply in Montana state district courts (our courts of general civil and criminal jurisdiction), and the Federal Rules of Evidence, which apply in the federal district courts. In my last two columns, I wrote about the rules of evidence for each of Montana’s seven tribal court systems. To complete this topic, I realized that I should address the other very active court system in Montana: the state courts of limited subject matter jurisdiction (usually identified as city courts, municipal courts, and justice of the peace courts).

There are 61 justice courts, 84 city courts and six municipal courts in Montana. The justice courts are mandated in the Montana Constitution (there was a big fight at the Convention, with Duke Crowley leading the unsuccessful charge to eliminate them); the city and municipal courts are the creation of the Montana Legislature. In terms of subject matter, these courts handle to conclusion misdemeanor criminal cases, protection orders, civil claims up to $12,000, and small claims court claims to $7,000.00. As the Supreme Court’s website observes: “The total caseload of these courts is nearly 10 times greater than that of the District Courts in Montana. Courts of limited jurisdiction are the courts in which most Montanans seeking justice will encounter the justice system.” The Supreme Court Administrator’s statistics support this assertion. In 2013, a total of 30,955 non-criminal cases were filed in Montana’s city, justice and municipal courts, combined. Of these, 26,436 were characterized as “civil”; 3,495 involved orders of protection; and 1,024 were characterized as “small claims” cases. By contrast, there were 18,899 “civil” cases filed in Montana’s district courts. On the criminal side, statewide the city/justice/municipal courts saw 154,059 traffic cases and 52,133 criminal violations; the district courts had 3,525 investigative subpoena/search warrant cases and 9147 adult criminal cases. The overall case count for all types of filings for the year 2013 was: district courts 52,105 v. city/municipal/justice courts 237,147. These are filings, not cases decided to conclusion, but wow!

Many cases in both district and the limited jurisdiction courts across Montana are conducted with at least pro se party. My own personal observation is that this problem is common in the courts of limited jurisdiction, where the lesser amount at stake may not justify legal fees. A further complication is that many justices of the peace and city court judges are not formally law-trained. The Commission on Courts of Limited Jurisdiction zealously enforces mandatory attendance at the

3 http://courts.mt.gov/lcourt/stats/2013/2013CivilFilings
4 See MCA Title 3 for the specific statutes setting forth the jurisdictional limits for each type of court: 3-6-103 for municipal courts; 3-10-301 through 3-10-304 for justices’ courts; 3-11-102 through 3-11-104 for city courts; 3-7-501 and 3-7-502 for water courts; 5 The most recent online statistics for the Courts of Limited Jurisdiction are for 2014, but for the District Courts they cover 2013. I have used the 2013 statistics for both sets of court for the following comparisons so that we have kumquats v. kumquats.
6 http://courts.mt.gov/content/lcourt/stats/2013/2013CivilFilings
7 Of course, the District Courts handle lots of “other” non-criminal matters which are not within the subject matter jurisdiction of the city, justice and municipal courts: probate, family law, juvenile cases, commitments etc. I certainly do not intend to infer that the District Courts are underworked, by any means.
9 http://courts.mt.gov/content/dcourt/stats/2013stat.pdf
10 Municipal court judges are required to be admitted to the bar.

1 And, for the record, I do agree, on this subject at least, entirely with my former student and current Speaker of the Montana House of Representatives, Austin Knudsen, for whom I have great personal regard. When he was on the UMLS Trial Team, for three years, he compiled beautifully with the team sartorial requirements. Sadly, unless you are the coach of a team which you have selected, your experience is you can suggest but not mandate attire.
2 Even in this age, I would not encourage non-women to sport pearls, either on the neck or in the earlobe (or nose), in court. I apologize for this gender discrimination, but observe that men could wear all the pearls they want under their buttoned shirts and ties, and that their consolation is that really it is so much easier to get dressed: a couple of shirts, a couple of ties, a dark suit, decent shoes, and you are good to go.
twice-a-year trainings\textsuperscript{11}, which includes instruction in evidence, but there are so many subjects to cover in so little time that it is like drinking from a fire hose. Thus, it is extra important for lawyers who do appear in the courts of limited jurisdiction to know exactly what rules apply and be prepared to elucidate both the language of the rule and its policy and applicable precedent to the judge and the opponent.

\textbf{THE BAD NEWS: DIFFERENT RULES OF CIVIL PROCEDURE APPLY IN THE LIMITED JURISDICTION COURTS}

The Montana Rules of Civil Procedure apply to civil actions in District Court\textsuperscript{12}, but not in most of the courts of limited jurisdiction. Instead, the justice and city courts follow the Montana Justice and City Court Rules of Civil Procedure\textsuperscript{13} and the Montana Uniform Rules for the Justice and City Courts.\textsuperscript{14} You will note that the titles of these sets of rules do not include "municipal courts." Another chapter of Title 25 of the MCA, "Civil Procedure," covers these: "Chapter 30: Procedure in Municipal Courts." Section 25-30-101 shows the hybrid nature of these courts, and thus the relative complexity of ascertaining the rules that govern their civil proceedings:

25-30-101. Applicability of district court and justice's court rules. (1) The provisions of 3-10-222, 3-10-231 through 3-10-234, and 3-10-704 through 3-10-706; 25-31-102(2), 25-31-115, 25-31-402, 25-31-405, parts 7 through 11 of chapter 31 of this title (except 25-31-1002), and chapter 33 of this title; and chapter 9, part 10 of chapter 16, chapter 17, and part 15 of chapter 18 of Title 27 are applicable to municipal courts except when they are inconsistent with the provisions of this chapter and chapter 6 of Title 3, the words "municipal court" being substituted for justice's court and "judge" for justice of the peace.

(2) Except as otherwise provided by this chapter, chapter 6 of Title 3, and the supreme court's rules on disqualification of judges, the proceedings and practice in municipal court must be the same as in district court.

(Part 2100 of Chapter 30 deals separately with the procedure for appealing from municipal to district court). Luckily, we don't have to spend any more space in this column on civil procedure, and the applicability of the Montana Rules of Evidence is much more straightforward.

\textbf{THE GREAT NEWS: THE MRE APPLY TO ALL TRIALS IN ALL COURTS IN MONTANA}

You can see from the foregoing that it is imperative to identify and apply the specific rules of procedure for the exact type of court in which you are appearing. As we say in the law, "DUH." Sadly, you would be shocked by the number of limited jurisdiction judges who report to me that lawyers before them routinely cite the M.R.Civ.P. The good news I bring you here is that you don't have to switch to different Rules of Evidence, because the Montana Rules of Evidence apply in all of the Courts of Limited Jurisdiction, including the Workers' Compensation Court and the Water Court.

\textbf{The Montana Rules of Evidence Expressly Say They Apply Everywhere}

We often overlook the introductory rules, skipping directly to the subject area at immediate issue. However, rereading them occasionally yields great insight. For this subject, M.R.E. 101, "Scope" is a nugget of gold:

(a) Proceedings generally. These rules govern all proceedings in all courts in the state of Montana with the exceptions stated in this rule. (Emphasis added)

Subsection c lists the situations where the MRE do not apply: Rule 104(a) determinations by the court of preliminary questions of fact; grand jury proceedings; miscellaneous nontrial criminal proceedings, including sentencing; summary proceedings but explicitly not summary judgment motions; and matters which, when authorized by law, are uncontested or non-adversary. For trials, however, the general rule of 101(a) applies, requiring use of the Montana Rules of Evidence "in all courts in the state of Montana."

\textbf{Justice, City and Municipal Courts}

Nothing in the statutes governing these courts countermands the direction of M.R.E. 101, that the M.R.E. govern "in all proceedings in all courts in ... Montana," and nothing in the exceptions listed in M.R.E. 101 applies to trials in the justice/ city/municipal courts. Therefore, the same rules of evidence govern trials in these courts as in the district courts.

\textbf{Water Court}

The same is true of Water Court. The statutes located in Title 3, Chapter 7, "Water Courts," lay out various requirements for proceedings in these courts, including jurisdiction, but nothing indicates any intention for anything other than the Montana Rules of Evidence to apply in adversary proceedings in Water Court. I conclude that the Water Judge is bound by the Montana Rules of Evidence.

\textbf{Workers' Compensation Court}

We all know there is such a court, not least because Montana Supreme Court Justice James Shea used to be its judge. Interestingly, the provisions about this Court do not appear in M.C.A. 3-1-101, entitled "The several courts of this state." In fact, nothing anywhere in Title 3, "Judiciary, Courts," even mentions the Workers' Compensation Court, although Water Court does have a separate chapter (7) of Title 3 (see above) and there are contingent provisions for an Asbestos Claims Court.\textsuperscript{15} Regardless of its placement in the Code, the statute is clear: in Workers' Compensation Court, the Montana Rules of Evidence apply.

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\textsuperscript{11} M.C.A. 3-10-203.
\textsuperscript{12} M.R.Civ.P. 1 states: "Rule 1. Scope of Rules. These rules govern the procedure in all civil actions and proceedings in the district courts of the state of Montana, including probate proceedings, unless specifically provided to the contrary in the Uniform Probate Code...."
\textsuperscript{13} M.C.A. Title 25, Chapter 23.
\textsuperscript{14} M.C.A. Title 25, Chapter 24.
\textsuperscript{15} See the next section. It is amazing what you can, and cannot, find simply by perusing the Code.
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39-71-2903. Administrative procedure act and rules of evidence applicable. All proceedings and hearings before the workers’ compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. The workers’ compensation judge is bound by common law and statutory rules of evidence. (Emphasis added).

Asbestos Claims Court

M.C.A. Title 3, Chapter 20, contingently provides for an Asbestos Claims Court. I could not readily figure out what the contingency is, and I do not know of any use of these provisions. I include this potential court in my list of “Montana courts of limited subject matter jurisdiction” because such a court is statutorily restricted to a single type of case: “A civil action involving an asbestos-related claim,” M.C.A. 3-20-102; see also M.C.A. 3-20-101 for a definition of “asbestos-related claim.” Even though I don’t think that the Asbestos Claims Court has ever been constituted, I do know that if it ever is, it is subject to the MRE:

All proceedings before the asbestos claims judge must be conducted in accordance with the rules of evidence and procedure governing district courts.

M.C.A. 3-20-102(2).

CONCLUSION

You can carry your Montana Rules of Evidence with assurance into any and every state court in Montana, although you should be very careful to remember that different rules of procedure apply in the Justice and City Courts. Male or female, grab the MRE with confidence.

This ends the series on the applicable rules of evidence in all of Montana’s courts. Next month, I will return to specific subjects under the M.R.E., which we know now will cover all but the federal and tribal courts.

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the marriage. Consideration of the economic effects of abuse, such as medical expenses and a person’s ability to work and earn an income, is not an interjection of fault or an assignment of blame which is contemplated by the statutory prohibition of judicial consideration of marital misconduct. If the economic impact of abuse is excluded from consideration in making a division of the marital estate, a truly equitable apportionment cannot result.

The holding in Fenzau demonstrates the critical importance of understanding the dynamics of domestic violence and applying this knowledge to the intricacies of family law. Without recognizing and considering the economic impact of abuse in a divorce involving domestic violence, a marital estate cannot truly be equitably divided.

Mediation in family law cases, domestic violence

An issue that will likely arise in a family law case involving domestic violence is mediation. In 2011, the Montana Supreme Court held in Hendershott v. Westphal that district courts were explicitly prohibited from authorizing or continuing mediation where there is a reason to suspect emotional, physical, or sexual abuse. This is because domestic violence creates inherently unequal bargaining power among the parties, which can make mediation difficult, and often impossible.

However, the Montana legislature recognized in 2013 that Hendershott completely disallowed victims of domestic violence the right to mediate if they so chose. By passing House Bill 555, the legislature allowed victims to opt-in to mediation in family law cases if both parties provide written, informed consent.

If an attorney is representing a victim of domestic violence who provides informed consent to participate in mediation, the attorney should advise the client of several helpful safeguards for the mediation, such as using separate rooms for the victim and the abuser, and taking measures to ensure that each party enters and leaves the mediation location at separate times in order to avoid face-to-face contact between the parties. The victim should know that she has the right to conclude the mediation at any time and for any reason; that she may have her attorney present for any and all of the mediation; that she may ask for a break at any point; and that she may ask to speak privately with the mediator, the settlement master, her advocates, support persons, or attorney at any point during the mediation or settlement process.

The opportunity to represent a victim of domestic violence in a family law case will likely arise for every attorney in the state of Montana. The next time this opportunity presents itself, don’t run in the opposite direction. Take it. And if you’re not well versed in family law or domestic violence, don’t let that stop you. Reach out to your local domestic violence agency for training on domestic violence and reach out to other professionals to learn how to provide competent representation to victims. Although these cases can be complicated, providing representation in a family law case involving domestic violence might be the single most important thing you can do for a victim and her children.

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24 Mont. Code Ann. § 40-4-301.