

BEFORE THE WORKERS' COMPENSATION COURT
OF THE STATE OF MONTANA

In the matter of the amendment of)
ARM 24.5.301, 24.5.302, 24.5.303,)
24.5.306, 24.5.307, 24.5.309,)
24.5.310, 24.5.311, 24.5.316,)
24.5.318, 24.5.319, 24.5.320,)
24.5.322, 24.5.325, 24.5.327,)
24.5.329, 24.5.330, 24.5.334,)
24.5.336, 24.5.337, and 24.5.348)
pertaining to annual review; and the)
adoption of NEW RULE I, pertaining)
to pretrial identification of witnesses)
and exhibits, and NEW RULE II,)
pertaining to withdrawal of attorney)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On January 8, 2018, at 2:00 p.m., the Workers' Compensation Court is holding a public hearing in the courtroom, Workers' Compensation Court, 1625 11th Avenue, Helena, MT, to consider the proposed amendment and adoption of the above-stated rules.

2. The Workers' Compensation Court makes reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Workers' Compensation Court no later than 5:00 p.m. on January 3, 2018, to advise us of the nature of the accommodation that you need. Please contact the Workers' Compensation Court: in person at 1625 11th Avenue, Helena, MT; by mail at P.O. Box 537, Helena, MT 59620-0537; by phone at (406) 444-7794; by TTY at (406) 444-0532; by Montana Relay at 711; by fax at (406) 444-7798; or by e-mail at dliwccfilings@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY FOR ALL AMENDED AND ADOPTED RULES: The Workers' Compensation Court proposes these changes and additions as part of its regular internal rules review, with the input of the court's rules committee — a diverse group of stakeholders from the bar — which advises the court on rules of practice. The court proposes amending and adopting the following rules to eliminate redundancy; clarify procedures; improve organization; increase internal consistency, as well as consistency with the Montana Rules of Civil Procedure; address problems that have arisen; and conform to the guidelines of the Gregg Reference Manual, tenth edition, pursuant to ARM 1.2.519, and the court's practices. In so doing, the court is guided, where appropriate, by the Legislative Services Division's Bill Drafting Manual. The court provides further statements of reasonable necessity immediately following the specific rule whenever

additional bases for a proposed amendment or adoption exist, or additional comments about these general statements may be helpful.

4. The rules as the court proposes to amend them provide as follows, new matter underlined, deleted matter interlined:

24.5.301 PETITION FOR TRIAL (1) The petitioner shall make any All requests for trial before the Workers' Compensation Court ~~must be in petition form, and signed by the petitioner or the petitioner's attorney. The petition must comply with ARM 24.5.303(5).~~ Upon request, the court provides a form ~~which that the petitioner may~~ can be used as a petition. The petitioner shall ensure that the petition complies with ARM 24.5.306 and ~~The petition must include~~ the following information:

(a) through (d) remain the same.

(e) for accidents occurring on or after July 1, 1987, and for occupational disease claims, a statement that the parties have complied with the mediation provisions set forth in 39-71-2411, MCA; ~~have been complied with;~~

(f) a statement that the petitioner has freely exchanged all available pertinent medical records with the respondent pursuant to ARM 24.5.317 and ~~will~~ shall continue to do so;

(g) a list of the petitioner's potential witnesses and a summary of the subject matter ~~of on which the petitioner expects each witness to testify; and witnesses' anticipated testimony; and~~

(h) remains the same.

(2) The petitioner may ~~Alternative pleading is permissible in the alternative.~~

(3) The petitioner shall join and plead any ~~Any~~ claim for attorney fees, costs, and/or penalty with respect to the benefits or other relief the petitioner seeks sought by the petitioner ~~must be joined and pleaded in the petition or amended petition. If the petitioner fails~~ Failure to join and plead a claim for attorney fees, costs, and/or penalty with respect to the benefits or other relief the petitioner seeks sought in the petition or amended petition, the petitioner constitutes a waiver waives this claim and bars may not pursue any future claim with respect to ~~such~~ these attorney fees, costs, and/or penalty.

(4) ~~Except in cases involving a request for relief against~~ The petitioner may only name an employer, in the caption of the petition, as well as subsequent pleadings, motions, briefs, and other documents, ~~must not name if the petitioner seeks relief against~~ the employer. ~~This rule does not relieve~~ However, whether named or not, any employer ~~from shall fulfill~~ its duty to cooperate and assist its insurer, including any duty to assist in responding to discovery.

(5) The petitioner shall file the petition in accordance with ARM 24.5.303 and ARM 24.5.320. However, if the court receives the hard copy original of the petition after the petition deadline, it schedules the matter on the next trial docket. There is no filing fee. Petitions and all other materials must be filed with the Clerk of Court at 1625 11th Avenue, P.O. Box 537, Helena, MT 59624-0537. The party shall file an original and two copies of the petition. The petitioner shall provide the names and addresses of all adverse parties to be served. The court may return documents which fail to comply with (1) and (4) of this rule to the petitioner.

(6) The petitioner shall serve the petition in accordance with ARM 24.5.303.

(7) The court may return the petition unfiled if the petitioner fails to comply with (1) and (4) of this rule.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, 39-71-2905, MCA

REASON: The court proposes amending ARM 24.5.301(3), to allow the joinder and pleading of a claim for attorney fees, costs, and/or penalty in an amended petition, in keeping with the court's practice of allowing the liberal amendment of pleadings. The court proposes moving the service- and filing-related information in ARM 24.5.301(5) to proposed ARM 24.5.303(1)(a)(i), (2)(a), and (2)(b), because grouping like items together minimizes reliance upon lawyers and the courts. The court proposes adding the implementing reference to 39-71-2905, MCA, to correct its previous omission.

24.5.302 RESPONSE TO PETITION (1) Within the time set forth in ARM 24.5.320, the respondent shall serve upon the petitioner and all other parties, and file with the court, a response to the petition. The respondent shall ensure that the response complies with ARM 24.5.306 and ~~which~~ includes the following information:

(a) and (b) remain the same.

(c) a statement that the respondent has freely exchanged all available pertinent medical records with the petitioner pursuant to ARM 24.5.317 and shall continue to do so;

~~(d)~~ a list of the respondent's potential witnesses and a summary of the subject matter on which the respondent expects each witness to testify; and of the witnesses' anticipated testimony;

~~(d)~~ (e) a list of written documents relating to the claim which that the respondent may be introduced as evidence, by the respondent; and

~~(e) a statement that the respondent has exchanged all available pertinent medical records with the petitioner pursuant to ARM 24.5.317 and will continue to do so.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

24.5.303 SERVICE AND FILING (1) The court adheres to the following service rules:

(a) The court requires a party to make service in certain circumstances.

(i) Generally, the court makes service. Except as provided below, the court serves the furnished copies of the petition, amended petition, or third-party petition upon adverse opposing parties and others, as designated in the petitioner's or third-party petitioner's instructions, by mailing them from Helena, Montana, with first-class postage prepaid. The petitioner or third-party petitioner shall provide the following for each party the petitioner or third-party petitioner wishes the court to serve, including the petitioner or third-party petitioner:

(A) a copy of the petition or third-party petition; and

(B) a correct name and address.

~~(a) (ii) However, the~~ The party filing the petition or third-party petition shall cause make personal service of a summons and the petition or third-party petition upon the respondent or third-party respondent in accordance with the provisions of the Montana Rules of Civil Procedure regarding service of summons and complaint if the respondent or third-party respondent is an entity other than a Montana state agency, insurer doing business in Montana, self-insurer, insurance guarantee fund, or insurer qualified to do business in Montana at the time of an alleged injury or occupational disease and its successors and predecessors.

~~(b) If the matter involves a third-party respondent, service must include all pleadings and orders filed in the case to date.~~ The court requires that different materials be served depending on the identity of the server and whether the matter involves a third-party respondent.

(i) When the Workers' Compensation Court makes service, it serves copies of the petition, amended petition, or third-party petition.

(ii) When the party filing the petition or third-party petition makes service, the party shall serve a summons and the petition or third-party petition.

(iii) If the matter involves a third-party respondent, the court or third-party petitioner shall include all pleadings the parties have filed and orders the court has issued in the case to date with service.

~~(c) Time lines for service, return of service, and response must be in accordance with the rules of the Workers' Compensation Court or as ordered by the Workers' Compensation Court. The court requires a certificate of service as follows:~~

~~(d) The petitioner or third-party petitioner is responsible for providing correct names and addresses of all parties to be served by the court.~~

~~(2) (i) Each party shall provide the court with a certificate of service as described in M. R. Civ. P. 5 when filing a~~ All pleadings subsequent to after the original petition, every a written motion, and or any other document described in M. R. Civ. P. 5, must be accompanied by proof of service as provided in M. R. Civ. P. 5 when submitted to the court.

~~(ii) The court deems service~~ Service by mail is complete on mailing; a document is deemed served on the date as shown on the proof certificate of service.

~~(2)~~ The court adheres to the following filing rules:

~~(3) (a)~~ The court does not charge a filing fee.

~~(b) Unless the court specifically orders otherwise, A party may accomplish filing with the court may be accomplished by~~ as follows:

(i) by mail addressed to the clerk, with such to P.O. Box 537, Helena, MT 59624-0537;

(ii) by hand delivery to 1625 11th Avenue, Helena, MT;

(iii) by fax to (406) 444-7798; or

(iv) by e-mail attachment to dliwccfilings@mt.gov.

(c) The court deems filing deemed complete upon receipt by the court.

However, a party filing

~~(4) The court accepts fax and electronic filings, but an original signature page of any document filed by fax or e-mail attachment shall ensure that electronic means must be filed with the court receives a hard copy original within the time set forth in ARM 24.5.320; otherwise the filing is void. The signature of an attorney or party on any fax or electronic filing carries the same representations and consequences, as a~~

signature on an original filing. Electronic filings must be in Portable Document Format (PDF).

~~(5) Every pleading, motion, or other paper of a party represented by an attorney must be signed by at least one attorney of record in the attorney's individual name, and must state the attorney's address, phone number, fax number, and e-mail address. A party who is not represented by an attorney shall sign the pleading, motion, or other paper and state the party's address, phone number, fax number, and e-mail address, if available. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney or party constitutes a certification that the party has read the pleading, motion, or other paper; that to the best of the party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, the court strikes it unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, imposes upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney fee.~~

AUTH: 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA

IMP: 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA

REASON: The court proposes amending ARM 24.5.303(4), proposed ARM 24.5.303(2)(c), to eliminate a formatting requirement that may soon be rendered obsolete by the rapid pace of technological change. The court proposes moving the service- and filing-related information in ARM 24.5.301(5) to proposed ARM 24.5.303(1)(a)(i), (2)(a), and (2)(b), because grouping like items together minimizes reliance upon lawyers and the courts; accordingly, the court proposes adding the associated implementing reference to 39-71-2905, MCA. The court proposes relocating ARM 24.5.303(5) to proposed ARM 24.5.306(2)(i) for a better subject-matter fit. The court proposes adding the implementing reference to 39-71-2903, MCA, to correct its previous omission.

24.5.306 BREVITY IN PLEADINGS AND FORM OF PAPER PRESENTED FOR FILING (1) The court encourages brevity in all pleadings and other documents. ~~Documents which, The court may return documents that~~ in the court's opinion, are rambling or verbose ~~may be returned to the party who submitted the document with instructions to correct any deficiencies, and make the document more concise.~~

~~(2) All documents filed with the court must be typewritten or legibly printed on 8 1/2 x 11-inch unnumbered, unlined paper.~~

~~(a) Typewritten or machine-printed documents must use a font size of no smaller than 12 points.~~

~~(b) The court requests that parties produce all documents using a sans-serif font, preferably the font commonly known as Arial. Documents produced with a legible typeface are not rejected as nonconforming.~~

~~(3) The name of the attorney, if any, representing a petitioner or a respondent, or the name of the party appearing without an attorney, together with an address, phone number, fax number, and e-mail address, if available, must appear in the upper left-hand corner of the first page of any pleading filed with the court.~~

~~(4) (2) The parties shall file all documents in the form set forth below.~~

~~(a) The parties shall use All documents must be on standard quality opaque, white or unbleached, unglazed, acid-free recycled, unnumbered, unlined, 8 1/2 x 11-inch paper, and be a minimum of 25% cotton fiber content and a minimum of 50% recycled content, of which 10% must be post-consumer waste.~~

~~(b) The parties shall legibly handwrite or typewrite all text.~~

~~(i) For typewritten or machine-printed text, the parties shall use a font size of no smaller than 12 points.~~

~~(ii) The court requests that the parties use a sans-serif font, preferably the Arial font. The court does not reject documents produced with a legible typeface as nonconforming.~~

~~(5) (c) The parties shall single-space text. All documents filed with the court must be single-spaced with double-spacing double-space between paragraphs, print printed on one side of the paper, and with use a top margin of 1 1/2 inches and margins of 1 inch on all remaining sides, except the top margin which must be 1 1/2 inches.~~

~~(6) (d) The parties shall place the title of the document and the page number as a footer at At the bottom of the second and all subsequent pages, the title of the document and the page number must appear as a footer.~~

~~(7) (e) The parties shall leave lines Lines 1 through 7 of the right one-half of page 1 must be left blank for the use of the clerk.~~

~~(f) The parties shall two-hole punch the top of any document over 5 pages in length.~~

~~(g) The parties shall include the number the court has assigned to the file, if any.~~

~~(h) An attorney representing a party, or a party appearing without an attorney, shall place the name of the attorney or party appearing without an attorney, together with an address, phone number, fax number, and e-mail address, if available, in the upper left-hand corner of the first page.~~

~~(i) At least one attorney of record shall sign every pleading, motion, or other paper of a represented party in the attorney's individual name. A party who is not represented by an attorney shall sign the pleading, motion, or other paper. Except when a rule or statute specifically provides otherwise, a party need not verify the party's pleadings or include an affidavit with them. The court deems an attorney or party to have made the same representations by signing a document whether the attorney or party files by mail, hand delivery, fax, or e-mail attachment. The court deems an attorney's or party's signature on a pleading, motion, or other paper a certification that the party has read the pleading, motion, or other paper; that to the~~

best of the party's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law; and that the party has not interposed it for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If an attorney or party signs a pleading, motion, or other paper in violation of this rule, the court, upon motion or upon its own initiative, imposes upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney fee. The court strikes unsigned pleadings, motions, or other papers unless, upon notification, the attorney or party promptly rectifies the omission.

~~(8) Nonconforming papers may not be filed without leave of the court except in the case of an unrepresented party.~~

AUTH: 2-4-201, 39-71-2901, MCA

IMP: 2-4-201, 39-71-2901, 39-71-2905, 39-71-2914, MCA

REASON: The court proposes amending ARM 24.5.306(4), proposed ARM 24.5.306(2)(a), because of the difficulty of locating paper that meets all of the current criteria. The court proposes relocating ARM 24.5.303(5) to proposed ARM 24.5.306(2)(i) for a better subject-matter fit; accordingly, the court proposes adding the associated implementing reference to 39-71-2905, MCA, and adding the associated implementing reference to 39-71-2914, MCA, to correct its previous omission. The court proposes striking ARM 24.5.306(8) because the court's discretion to waive noncompliance with the rules is already set forth in ARM 24.5.349(1). The court proposes adding the authorizing reference to 39-71-2901, MCA, to correct its previous omission.

24.5.307 THIRD-PARTY PRACTICE (1) ~~Prior to or simultaneously with the filing of the response to a petition, the~~ The respondent may file a third-party petition with the court naming anyone not already a party to the action who may be liable to any named party for any or all of the claims asserted in the petition.

(a) ~~The third-party petitioner shall ensure that the third-party petition must contain~~ includes a short, plain statement of the third-party's petitioner's contentions with regard to the third-party's respondent's liability and may incorporate allegations of the petition and/or the response to the petition.

(b) ~~The third-party petitioner shall~~ must be filed the third-party petition in accordance with ARM 24.5.303 and ARM 24.5.320.

(c) ~~The third-party petitioner shall serve the third-party petition~~ must be served in accordance with ARM 24.5.303.

(2) ~~After filing the a response to a petition, has been filed, any the respondent may only attempt to join a third party into a pending case must be through noticed motion in accordance with ARM 24.5.308 and ARM 24.5.320.~~

(3) Within the time set forth in ARM 24.5.320, the third-party respondent shall serve upon all parties, and file with the court, a response ~~which~~ that complies with ARM 24.5.302.

AUTH: 2-4-201, 39-71-2401, 39-71-2901, 39-71-2903, 39-71-2905, MCA
IMP: 2-4-201, 39-71-2901, MCA

REASON: As it has done with all deadlines, and to make accurate the reference to ARM 24.5.320 already in ARM 24.5.307(1)(b), the court proposes moving the deadline set forth in ARM 24.5.307(1) to ARM 24.5.320.

24.5.309 INTERVENTION (1) ~~A party may intervene~~ ~~Intervention~~ in a pending proceeding ~~is governed by the considerations as~~ set forth in M. R. Civ. P. 24(a) and (b).

~~(2) Unless otherwise permitted by order of the court, a motion to intervene must be served within the time set forth in ARM 24.5.320. The motion must state the grounds upon which intervention is sought. A copy of the motion, supporting brief, and any affidavits must be served upon all parties. Any party to the dispute shall have the time set forth in ARM 24.5.320 to serve an answer brief. The court, in its discretion, determines whether or not to allow intervention.~~

~~(3) (2) If the court vacates the trial because of a party's intervention results in the trial being vacated and the petitioner demonstrates good cause, is shown, the court may order the insurance company alleged to be at risk at the time of the accident to pay benefits pending the trial. Such This insurer may seek indemnity from the responsible insurer if the court it is later determined determines that it is not liable.~~

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes removing ARM 24.5.309(2) as superfluous.

24.5.310 TIME AND PLACE OF TRIAL GENERALLY (1) The court has divided the state into six geographic areas. Generally, the court holds trials in the places designated in (3) except for ~~eases trials~~ in the Butte venue, which ~~are tried~~ the court holds in Helena unless the parties specifically request otherwise. Upon agreement of the parties and consent of the court, or upon order of the court, the court may hold a trial ~~may be held~~ at any time and any place. The court attempts to accommodate parties' requests for special trial settings; however, the court reserves the discretion to determine the time and place of all trials.

~~(2) Unless otherwise ordered, The court commences~~ trials ~~will commence~~ on Monday of the week set for trial. The court ~~will convenes~~ in each area four times per year unless the court finds good cause to cancel a trial term. ~~exists. Court will be is~~ in session or recess at the convenience of the court. The court ~~will~~ regularly prepares a schedule ~~which that~~ sets deadlines, the dates for pretrials conferences and trials, and the location of the pretrials conferences or trials in each area.

(3) The court has named each ~~Each~~ of the six areas designated for trial schedule purposes ~~is named~~ for the principal city in the counties making up the area as follows:

(a) through (4) remain the same.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

24.5.311 EMERGENCY TRIALS (1) The petitioner shall indicate any A request for emergency trial must be indicated in the title of the petition, and explain the facts constituting the emergency explained in the petition. The court may hold a trials upon less than 75 days' notice when if the petitioner demonstrates good cause, is shown. The court designates these Such trials are termed "emergency trials." The petitioner must shall set forth facts constituting the emergency in sufficient detail for the court to determine whether an actual emergency exists. The petitioner shall also set forth a statement indicating the petitioner is ready to proceed to trial. If the petitioner does not demonstrate good cause for the emergency setting is not shown in the petition, the court sets the trial on its regular trial calendar. The court may find that an emergency exists if the petitioner demonstrates:

(a) the potential for irreversible or serious harm resulting from inability to obtain medical care or medications;

(b) undue financial hardship constituting an inability to obtain the necessities of life such as food, shelter, clothing, or transportation; or

(c) other facts establishing an emergency.

(2) The court, on its own motion, may set a trial as an emergency trial. When the court orders an emergency trial, the court provides reasonable notice of the time and place for a pretrial conference and for the trial.

(2) (3) If the court determines makes a preliminary determination that good cause exists for an emergency trial setting, the court issues a notice to the opposing party-, indicating that:

(a) the petitioner filed a request for emergency trial;

(b) the court made a preliminary determination that the petitioner set forth good cause; and if

(c) the opposing party objects to the emergency trial setting, the party shall may file a written objection, within the time set forth in ARM 24.5.320. The written objection must containing a short, concise statement setting forth the basis for the objection, -If no objection is filed within the time set forth in ARM 24.5.320, -the court deems the emergency request valid and grants an emergency trial setting. If the opposing party files a written objection, the court may hold a hearing to determine whether to allow the emergency setting.

(4) The court schedules a hearing as soon as practicable after either the opposing party files a written objection or the time set forth in ARM 24.5.320 for objection to the request for emergency trial setting runs, whichever occurs first. The court may hold the hearing in person or by phone. The court conducts the hearing to determine the validity of any objections to the emergency trial setting and to confirm the parties are prepared to proceed to trial. The court issues an order granting or denying the request for an emergency trial setting within 5 business days, or as soon as practicable, after following the filing of the objection or at the conclusion of the hearing. The court includes a scheduling order fixing the deadlines referenced in ARM 24.5.310(4) within either the emergency or regular trial setting.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes amending ARM 24.5.311(1) to increase the likelihood that cases for which petitioners request emergency settings proceed to trial on an expedited basis, and adding subparts (a) through (c) to assist counsel in identifying the grounds upon which the court may grant an emergency trial setting. The court proposes adding (a) through (c) to ARM 24.5.311(2), proposed ARM 24.5.311(3), to specify the contents of the notice the court issues to opposing counsel upon receipt of a request for emergency trial setting potentially demonstrating good cause. The court proposes amending ARM 24.5.311(2), proposed ARM 24.5.311(4), to make scheduling a hearing standard procedure when the court receives a request for emergency trial setting potentially demonstrating good cause. This will enable the court to inquire about the parties' readiness to proceed to trial and set deadlines accordingly. The court further proposes setting forth the purpose of the hearing to assist counsel in preparing for it.

24.5.316 MOTIONS (1) ~~Unless a different time is specified in these rules, the~~ The court fixes the deadline for filing any a motion to amend a pleading, to dismiss, to quash, for summary judgment, to compel, for a protective order, in limine, or for other relief is fixed by the court in a scheduling or other order, unless the court specifies a different time in these rules.

~~(2) When an appeal is taken from a final order of the Department of Labor and Industry, unless a different time is fixed by order of the court, any motion related to the appeal must be filed and served prior to the date for submission of briefs.~~

~~(3) (2) The moving party shall make every~~ Every motion must be in writing or on the record.

(a) The moving party shall state within the motion whether any other party opposes it. If the moving party is unable to contact any other party, the moving party shall certify that the moving party attempted to do so.

(b) If the moving party contacts all other parties and none oppose the motion, the moving party need not file any other documents beyond the motion. The court deems the motion ripe for decision and rules.

(c) If a party opposes the motion, or if the moving party is unable to contact any other party, the moving party shall file the motion with and accompanied by a supporting brief. The moving party may include supporting Supporting documents and affidavits may accompany with the briefs. An party opposing adverse party a motion shall file a response brief within the time set forth in ARM 24.5.320, accompanied The party may include by appropriate documents and affidavits, within the time set forth in ARM 24.5.320. Within the time set forth in ARM 24.5.320, thereafter, the moving party may file a reply brief. The court may change these filing deadlines may be changed by order, of the court. In addition to the requirements set forth in this rule, a party filing a motion for summary judgment under ARM 24.5.329, as well as a party opposing that motion, shall comply with the requirements of that rule.

(a) (3) In addition to the requirements set forth in this rule, a party filing a motion for summary judgment under ARM 24.5.329, as well as a party opposing that

motion, shall comply with the requirements of that rule. A party shall not be required to file a response to a summary judgment motion earlier than the deadline for filing a response to a petition.

(4) The parties may present motions regarding discovery, procedure, and similar pretrial issues informally by phone conference. The court arranges the call and for the participation of all parties. The court may designate a hearing examiner to preside and decide the motion. The court may make an oral decision or direct the moving party to file the motion in writing and all parties to file briefs. The court confirms any oral decision thereafter by written decision.

(5) Notwithstanding anything in this rule, the parties may file or present motions or objections related to evidentiary and other matters arising at trial.

(6) A party seeking the court's leave for an extension of time shall make this request in writing. The requesting party shall state whether any other party opposes it. If the requesting party is unable to contact any other party, the requesting party shall certify that the requesting party attempted to do so. If the requesting party contacts all other parties and none oppose the request, the requesting party may make the request informally by e-mail message. If a party opposes the request, or if the requesting party is unable to contact any other party, the requesting party shall make the request by formal motion. If the court grants an ex parte extension, the requesting party shall immediately advise the party it was initially unable to contact of the new due date. The court does not grant extensions of more than 10 days from the original due date except under extraordinary circumstances. If the filing deadline has passed, the court grants extensions of time only if the requesting party demonstrates good cause.

(7) Unless the court either orders oral argument or enlarges the time, the court deems the motion submitted at the expiration of any of the applicable time limits. If the court orders oral argument, the court deems the motion submitted at the close of argument unless the court orders additional briefs, in which case the court deems the motion submitted at the deadline for filing the final brief.

~~(4) (8) The court may summarily rule on the motion if any party is required, but fails. Failure to file a briefs, may subject the motion to summary ruling. The court may deem Failure of the moving party's failure to file a brief with the motion may be deemed an admission that the motion is without merit. The court may deem Failure of the adverse opposing party's failure to timely file a response brief may be deemed an admission that the motion is well-taken. The moving party may file a reply brief. Reply briefs are optional; The court does not summarily rule on the motion if the moving party fails failure to file a reply brief, does not subject the motion to summary ruling.~~

~~(5) Unless otherwise ordered, the court does not permit oral argument. Unless the court orders oral argument, or unless the time is enlarged by the court, the motion is deemed submitted at the expiration of any of the applicable time limits. If the court orders oral argument, the motion is deemed submitted at the close of argument unless the court orders additional briefs, in which case the motion is deemed submitted at the time set for filing of the final brief.~~

~~(6) An application for an extension of time for filing briefs or affidavits must be made in writing but may be filed electronically or by fax. The application must state whether any party agrees to or opposes the extension of time requested. The court~~

~~may grant an application for an extension of time without notice to the adverse party only upon the applicant's written certification that an attempt was made to contact the adverse party. Whenever the court grants an ex parte extension, the moving party shall immediately advise the adverse party of the new due date. Except under extraordinary circumstances, the court does not grant extensions of more than 10 days from the original due date. If the filing deadline has passed, the court grants extensions of time only for good cause shown.~~

~~(7) Nothing in this rule precludes the filing or presentation of motions or objections related to evidentiary and other matters arising at trial.~~

~~(8) Motions regarding discovery, procedure, and similar pretrial issues may be presented informally by telephone conference. The moving party shall arrange the call and for the participation of all parties. The court may designate a hearing examiner to preside and decide the motion. The court may make an oral ruling or direct that the motion be presented in writing and briefed. Any oral order must thereafter be confirmed by written order.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

24.5.318 PRETRIAL CONFERENCE, AND PRETRIAL ORDER, AND EXHIBITS (1) The court holds a pretrial conference in every case it expects to proceed to trial.

(a) Generally, the A final pretrial conference precedes takes place 2 weeks before every trial unless otherwise ordered by the court.

(2) (b) The parties shall present any disputes regarding the content of the pretrial order at the pretrial conference.

(c) The court may appoints a hearing examiner to conduct the pretrial conference and may delegates authority to such the hearing examiner to make rulings rule on all matters discussed at the pretrial conference, including pretrial motions of the parties.

(3) (d) In the discretion of the The court in appropriate circumstances, may conduct a pretrial conference may be conducted by a telephone_ conference call.

(4) (2) The court requires a pretrial order as follows:

(a) At least one week prior to the pretrial conference, the parties shall confer to determine the contents of the pretrial order. The petitioner, or, in cases involving a pro sé petitioner, the respondent, shall include the following in the pretrial order: At the time of the pretrial conference, or as otherwise ordered by the court, the parties shall present a proposed pretrial order in the form provided in (5). Disputes as to the content of the final pretrial order must be presented and resolved at the pretrial conference. The final, signed pretrial order must be filed and received at the court on the date as set forth in the scheduling order.

(5) The pretrial order must be signed by all parties and set forth the following:

(a) through (d) remain the same, but are renumbered (i) through (iv).

(e) (v) a joint statement of the issues to be determined by the court;

(f) (vi) the parties' contentions, including in the case of the claimant all contentions which that the claimant argues provide the a basis for any claim of unreasonableness on the part of the insurer;

~~(g) (vii) a list of all exhibits to be offered by each party on an attached exhibit grid list; including any objections an adverse party may have to the admission of particular exhibits and the grounds upon which those objections are made;~~

~~(h) (viii) the identity a list of all witnesses, who may be called, including the name, address, and occupation of each witness, and a summary of the subject matter of the testimony on which the parties expect each witness to testify; will give;~~

~~(i) remains the same, but is renumbered (ix).~~

~~(j) (x) the estimated length of trial; and~~

~~(k) (xi) a statement as to whether or not the parties will be filing intend to file trial briefs and/or proposed findings of fact and conclusions of law; -~~

~~(xii) a statement as to whether the parties have taken or scheduled depositions; and~~

~~(xiii) the trial date, if known.~~

~~(6) (b) By the dates specified by the court, the petitioner, or, in cases involving a pro sé petitioner, the respondent, shall submit the proposed and final pretrial orders in the form set forth in ARM 24.5.318(2)(a)(i) through (xiii). The court considers pretrial orders submitted by fax or e-mail attachment compliant with the submission deadlines. Upon approval by the court, the pretrial order supersedes all other pleadings and governs the trial proceedings. Amendments to the pretrial order are allowed by either stipulation of the parties or leave of court for good cause shown.~~

~~(c) The parties shall sign the final pretrial order at trial. Upon the judge's signature, the court files the final pretrial order, which supersedes all other pleadings and governs the trial proceedings. The court allows amendments to the final pretrial order either by stipulation of the parties or for good cause.~~

~~(7) (3) The court adheres to the following exhibit rules:~~

~~(a) The parties shall prepare any exhibits as follows:~~

~~(i) Prior to the pretrial conference, the respondent shall provide to the petitioner sufficient copies for all parties of every exhibit that the respondent intends to offer for admission, including deposition exhibits. The respondent shall separate and number each exhibit, and number the pages within each exhibit (for example, Ex. 1-1). In the case of a pro sé petitioner, the pro sé petitioner shall provide the respondent with sufficient copies for all parties of every exhibit that the petitioner intends to offer for admission, including deposition exhibits. The pro sé petitioner shall separate and number each exhibit, and number the pages within each exhibit (for example, Ex. 1-1).~~

~~(ii) The parties may not submit duplicate exhibits unless the duplicate exhibit is imperative to the understanding of the subject records or, in the case of medical records, one provider is relying on the records of another provider.~~

~~(b) The parties shall prepare an exhibit list as follows:~~

~~(i) For each exhibit, the petitioner, or, in cases involving a pro sé petitioner, the respondent, shall set forth the following in the exhibit list:~~

~~(A) the exhibit number;~~

~~(B) a description of the exhibit;~~

~~(C) the number of pages in the exhibit;~~

~~(D) the offering party;~~

~~(E) whether any other party objects to the exhibit;~~

(F) the grounds upon which any objecting party bases the objection(s); and
(G) a blank column reserved for the court's decision on the admissibility of the exhibit.

(ii) The petitioner, or in cases involving a pro sé petitioner, the respondent, shall revise all copies of the exhibit list as necessary to reflect changes or additions requested by the court or agreed to by the parties at the pretrial conference.

(c) The parties shall prepare an exhibit book as follows:

(i) The petitioner, or, in cases involving a pro sé petitioner, the respondent, shall prepare the exhibit book, including:

(A) verifying that all parties' exhibits and their pages are numbered;

(B) combining and tabbing the exhibits;

(C) either binding the exhibits or placing them ~~The parties must provide all exhibits which either party intends to offer at trial to the court on the date set forth in the scheduling order. The exhibits must be bound or in a three-ring notebook; and~~

(D) including the exhibit list in the front of each exhibit book. ~~All parties' exhibits must be combined in the same exhibit notebook and must be tabbed and numbered sequentially beginning with 1. The pages within each exhibit must be numbered sequentially beginning with 1. Exhibits attached to depositions must also be numbered sequentially.~~

(ii) By a date specified by the court, the petitioner, or, in cases involving a pro sé petitioner, the respondent, shall:

(A) file the exhibit book by mail or hand delivery;

(B) provide conformed copies of the exhibit book to all parties at the time of filing;

(C) bring to trial a conformed exhibit book for any witness testifying live; and

(D) provide a conformed exhibit book to any witness testifying via videoconference.

(iii) The court may refuse to accept exhibits which that do not meet these criteria and/or may order ~~the parties to resubmit~~ resubmission of the exhibits in the correct format. ~~The petitioner shall provide an additional exhibit book for trial witnesses.~~

~~(8) Upon request, the court may schedule and hold an earlier preliminary pretrial conference to address any discovery or other issues encountered by the parties.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes adding: proposed ARM 24.5.318(2)(a) and (b); and (3)(a)(i) and (c)(ii); and amending: ARM 24.5.318(7), proposed ARM 24.5.318(3)(c)(i), as part of a comprehensive effort to shift procedures from the scheduling order to the rules so that the scheduling order can simply set forth deadlines while incorporating the rules by reference.

24.5.319 AMENDED PETITION PLEADINGS (1) A petitioner party may only must file an amended petition pleading within the time period set forth in the

scheduling order or by leave of court. ~~The~~ A party shall file any required response to the an amended pleading petition is due within the time set forth in ARM 24.5.320.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

24.5.320 COMPUTATION OF TIME (1) ~~The court applies the following provisions apply with respect to the computation of time for all filings:~~

(a) ~~In computing the time for any response as provided for in these rules, the court includes weekends and holidays. If a party's deadline falls on a weekend or holiday, the party shall file by deadline is the next workday.~~

(b) ~~Whenever a party has the right or is required to do some act within a prescribed period of time after the service by mail, or by electronic means if consented to in writing, of a notice or other paper upon the party, and the notice or paper is served by mail, the court adds 3 days to the prescribed period.~~

(c) ~~The court accepts fax and electronic filings, but an original signature page of any document filed A party filing by fax or electronic means must be filed with the court e-mail attachment shall ensure that the court receives a hard copy original within 5 days.~~

(2) ~~Except as provided elsewhere within these rules, the following time limits apply. This rule provides for the time limits only. The court sets forth specific Specific information as to regarding format and content requirements is located within the rule relating to each specific filing. : Except as provided elsewhere within these rules, the court applies the following time limits:~~

COMPUTATION OF TIME

Document Type	Reference Rule	<u>Days to File</u> <u>Time Limit</u>
response to petition	24.5.302(1)	20 <u>21</u> days after service of petition
response to amended petition	24.5.319	10 days after service of amended petition
<u>third-party petition</u>	<u>24.5.307(1)(b)</u>	<u>21 days after service of petition</u>
response to third-party petition	24.5.307(3)	10 days after service of third-party petition
motion to join third party	24.5.308(2)	30 days after service of petition
objection to joining third party	24.5.308(2)	10 days after service of motion to join third party
response to petition by third party	24.5.308(4)	10 days after service of order

Document Type	Reference Rule	Days to File Time Limit
		joining third party
motion to intervene	24.5.309(2)	30 days after service of the petition
answer to motion to intervene	24.5.309(2)	10 days after service of motion to intervene
objection to court's notice of <u>request for emergency trial setting</u>	<u>24.5.311(2)</u> <u>24.5.311(3)(c)</u>	5 days after service of notice of <u>request for emergency trial setting</u>
response to motion	24.5.316(3) <u>24.5.316(2)(c)</u>	10 days after service of motion
response to motion for summary judgment	24.5.316(3)(a) <u>24.5.316(2)(c)</u> , <u>(3)</u>	10 days after service of motion, but no earlier than the deadline for filing a response to a petition
reply to adverse <u>opposing</u> party	24.5.316(3) <u>24.5.316(2)(c)</u>	5 days after service of response brief to motion
<u>response to amended pleading</u>	<u>24.5.319(1)</u>	<u>10 days after service of amended pleading</u>
witness to sign deposition officer to sign and state that deposition was not signed by deponent	24.5.322(7)	40 <u>30</u> days after submission to witness
cross-questions to deposition upon written questions	24.5.322(11) <u>24.5.322(12)</u>	10 days after service of notice and written questions
redirect questions to deposition upon written questions	24.5.322(11) <u>24.5.322(12)</u>	10 days after service of cross-questions
recross-questions to deposition upon written questions	24.5.322(11) <u>24.5.322(12)</u>	5 days after service of redirect questions
response <u>answers</u> to interrogatories	24.5.323(2)	20 days after service of interrogatories
verification to interrogatories by unnatural person	24.5.323(4)	10 days after service of request
response to request for production	24.5.324(3)	20 days after service of request
<u>request for relief from default</u>	24.5.327(5)	60 days after entry

Document Type	Reference Rule	Days to File Time Limit
judgment		of judgment
<u>request for hearing on motion for summary judgment</u>	<u>24.5.329(5)</u>	<u>5 days after deadline for reply to opposing party</u>
objections to court's written findings of fact, conclusions of law, and judgment, and request for rehearing	24.5.335(1)(c)	20 days after entry of judgment
motion for reconsideration	24.5.337(1) <u>24.5.337(2)</u>	20 days after order or decision
opposition to motion for reconsideration	24.5.337(1)	10 days after service of motion for reconsideration
application for taxation of costs	24.5.342(1)	10 days after entry of judgment allowing costs
objection to application for taxation of costs	24.5.342(7)(a)	10 days after service of application for taxation of costs
<u>response to objection to application for taxation of costs</u>	<u>24.5.342(7)(b)</u>	<u>5 days after service of objection to application for taxation of costs</u>
claim for attorney fees	24.5.343(2)(a)	20 days after expiration of appeal period or remittitur on appeal of court's final decision or 20 days after filing of court's decision
objection to claim for attorney fees	24.5.343(2)(b)	20 days after service of claim for attorney fees
request for attorney fee hearing	24.5.343(2)(c)	10 days after service <u>filing</u> of objection (if hearing requested by claimant's attorney) or at same time as <u>as filing of</u> objection is filed (if hearing requested by objecting party)

Document Type	Reference Rule	Days to File Time Limit
petition for new trial and/or request for amendment to findings of fact and conclusions of law (refer to 24.5.344(1))	24.5.344(1)	20 days after service of order or judgment
opposition to petition for new trial and/or request for amendment to findings of fact and conclusions of law	24.5.344(2)	10 days after service of petition for new trial or request for amendment

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

REASON: As it has done with all deadlines, and to make accurate the reference to ARM 24.5.320 already in ARM 24.5.307(1)(b), the court proposes moving the deadline set forth in ARM 24.5.307(1) to ARM 24.5.320. The court proposes removing the times for motion to intervene and answer to motion to intervene to correspond with the proposed removal of ARM 24.5.309(2). As it has done with all deadlines, the court proposes moving the deadline previously set forth in ARM 24.5.329(5) to ARM 24.5.320. The court proposes removing the deadline for opposition to motion for reconsideration because it contemplates including a deadline in any order to respond it issues. The court proposes adding a deadline for response to objection to application for taxation of costs to be consistent with ARM 24.5.342(7)(b), which was new in 2015. The court proposes removing language in the Document Type column for petition for new trial and/or request for amendment to findings of fact and conclusions of law that is redundant to language in the Reference Rule column.

24.5.322 DEPOSITIONS (1) ~~Any party may take the testimony of any person, including a party, by deposition upon oral examination after the court or appropriate party has served the petition, has been served. The petitioner shall obtain leave~~ Leave of court, ~~granted with or without notice, must be obtained only if the petitioner seeks to take a deposition prior to the expiration of 20 days from the date of service of the petition. If a party seeks to take~~ The taking of a post-trial deposition, the party shall obtain requires leave of court. ~~The attendance of witnesses~~ A party may be compelled the attendance of witnesses by subpoena as provided by ARM 24.5.331.

(2) A party ~~desiring~~ seeking to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the proceeding: and:

(a) include in the ~~The notice must state~~ the time and place for taking the deposition and the name and address of each person to be examined; and

(b) If if intending to serve a subpoena duces tecum is to be served on the person to be examined, attach to or include in the notice the designation of the

materials to be produced as set forth in the subpoena, ~~must be attached to or included in the notice.~~

(3) ~~The court may, for good cause shown, lengthen or shorten the time for taking the deposition if a party demonstrates good cause.~~

(4) ~~The parties may examine Examination and cross-examine cross-examination of witnesses may proceed in the same manner as permitted that the court permits at the trial. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under the officer's direction and in that person's presence, stenographically record the testimony of the witness. The testimony must be stenographically recorded unless otherwise ordered by the court. If requested by one of the parties a party, the person who recorded the testimony must be shall transcribed it.~~

(5) ~~Unless they otherwise agreed otherwise, by the parties, shall make all objections must be made at the time of taking the deposition and on the record. be included within the transcript of the deposition. Evidence objected to must be The parties shall taken evidence to which a party objects subject to the objections. The parties shall brief deposition Deposition objections, must be briefed. The court may deem the parties' failure to do so a withdrawal of the objections.~~

(6) ~~At any time during the taking of the deposition, on motion of a party or of the deponent, and upon a showing that the officer is conducting the examination is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass, or oppress a party or the deponent, or party, the parties shall suspend the taking of the deposition must be suspended for the time necessary for the objecting party or deponent to move the court for an order. The court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition. If the court's order terminates ends the examination by order, the parties may resume the deposition may be resumed thereafter only upon further order of the court. The provisions of ARM 24.5.326 apply to the award of expenses incurred in relation to the motion. The court may order the offending party to pay to the other party the amount of the reasonable expenses that the adjournment and resumption of the deposition caused that party to incur, including reasonable attorney fees, and the court may adjudge the offending party or attorney guilty of contempt.~~

(7) ~~When the testimony is fully transcribed, the The witness shall examine any transcribed deposition must be submitted to the witness for examination and be either by reading to it or having it read aloud. by the witness. The witness shall enter any Any changes in form or substance which that the witness desires to make must be entered upon the deposition, which must then be signed by the The witness shall then sign under oath, unless the parties and the witness waive the signing or the witness is ill, cannot be found, or refuses to sign. If the witness does not sign the deposition within the time set forth in ARM 24.5.320, the officer shall sign it and state on the record the reason, if any, that the deposition witness has not been signed the deposition. A party may then use the The deposition may then be used as fully as though the witness had signed it.~~

(8) ~~Unless the court orders otherwise, the The parties, by written stipulation, or by stipulation entered upon the record of a deposition, may provide that they may take depositions may be taken before any person, at any time or place, upon any~~

notice, and in any manner, ~~and when~~ The parties may use these depositions so taken may be used like other depositions.

~~(9) Regardless of the availability of a witness or party to testify at trial, the circumstances of workers' compensation cases make it desirable, in the interest of justice, that a deposition of a witness or a party may be used by any party for any purpose unless the court restricts such usage upon a finding that the interests of justice would be served thereby. Any party may use the deposition of a witness or a party for any purpose, regardless of the availability of the witness or party to testify at trial, unless the court restricts the deposition's usage because it would serve the interests of justice.~~

(10) If a party proposes to offer a transcribed deposition for the court's consideration, that party shall:

(a) submit it by e-mail attachment by the date specified by the court; and

(b) file the hard copy original at or before trial.

~~(11) Any party participating in a deposition may make a simultaneous videotape or digital recording of the deposition. A party who intends to videotape or digitally record a deposition shall, notify all parties in the notice of deposition, ~~notify all parties.~~ If any party proposes to offer the videotaped or digitally recorded deposition for the court's consideration, that party shall provide a copy to the court. Any videotaped or digitally recorded deposition provided to the court must be in VHS or DVD format, and be labeled with the name of the case and the name or names of all witnesses whose depositions are contained on the videotaped or digitally recorded deposition. A party filing a ~~Each~~ videotaped or digitally recorded deposition filed with the court must be accompanied by ~~shall also provide~~ a transcript prepared by the court reporter who attended the deposition.~~

~~(11) (12) A party may take a deposition upon written questions. The party taking the deposition shall give reasonable~~ Reasonable notice to all other parties of the name and address of the person who is to answer the questions and the name or descriptive title and address of the officer before whom the deposition is to be taken. ~~must be given to opposing parties.~~ Within the time set forth in ARM 24.5.320 after service of the notice and written questions, ~~are served,~~ a party may serve cross-questions upon all other parties. Thereafter, within the time set forth in ARM 24.5.320, a party may serve redirect questions upon all other parties. ~~Recross-questions may be served upon all other parties within~~ Within the time set forth in ARM 24.5.320 after the service of the redirect questions, ~~a party may serve~~ recross-questions upon all other parties.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes adding proposed ARM 24.5.322(10) as part of a comprehensive effort to shift procedures from the scheduling order to the rules so that the scheduling order can simply set forth deadlines while incorporating the rules by reference. The court proposes amending ARM 24.5.322(11) to eliminate references to "videotape" and "VHS" since that technology is essentially obsolete.

24.5.325 LIMITING DISCOVERY (1) Upon motion by a party or by the person from whom discovery is sought, and for good cause, ~~shown~~, the court may make any order ~~which~~ that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (a) that the party seeking discovery ~~may not be had~~ have it;
- (b) that the party seeking discovery ~~may be had~~ only have it on specified terms and conditions, including a designation of the time or place;
- (c) that the party seeking discovery ~~may be had~~ only have it by a method of discovery other than that selected by the party seeking discovery;
- (d) that the party seeking discovery ~~may not inquire into~~ certain matters, ~~not be inquired into~~, or that the party seeking ~~scope of the~~ discovery ~~be~~ may have it limited to certain matters;
- (e) that the party seeking discovery ~~be~~ shall ~~conducted~~ it with no one present except persons designated by the court;
- (f) that a party may only open a deposition, ~~after being~~ the court has sealed ~~by order, be opened only~~ by further order of the court;
- (g) that a person from whom discovery is sought ~~need not disclose~~ a trade secret or other confidential research, development, or commercial information, or that the person need only disclose it ~~not be disclosed or be disclosed only~~ in a designated way;
- (h) that the parties ~~simultaneously~~ shall file specified documents simultaneously or shall enclose information ~~enclosed~~ in sealed envelopes to be opened as directed by the court.

(2) If the court denies the motion for a protective order ~~is denied~~ in whole or in part, the court may, on ~~such~~ terms and conditions as are just, order that any party or person provide or permit discovery.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes amending ARM 24.5.325(1)(f) to clarify that if the court receives a sealed deposition from a court reporter, no court order is necessary to open it.

24.5.327 DEFAULT (1) If a party required to file a responsive pleading under these rules fails to file a responsive pleading within the time specified, or otherwise fails to defend, the court at the request of the petitioner or upon its own motion ~~may issues~~ an order providing that the party shall file a responsive pleading within ~~10 days, or in the alternative, shall~~ the time ordered by the court. If the party fails to respond to the court's order within the time specified, the court orders the party to appear before the court at a specified date, time, and place to show cause why the party court should not ~~be found~~ find the party in default and grant relief ~~granted~~ in accordance with the petition. The court serves the order ~~is served~~ by mail if upon an insurer, otherwise by certified mail or through personal service as directed by and at the discretion of the court.

(2) If the party fails to file a responsive pleading within the time provided ~~or~~ and fails to appear at the show cause hearing, the court ~~may~~ enters a default judgment against the party. by default.

(3) remains the same.

(4) If, ~~in order~~ to enable the court to enter judgment or to carry it into effect, the court deems it is necessary to inquire into amounts of benefits or other matters, the court ~~shall~~ conducts a hearing into those matters.

(5) A party shall base any request Applications for relief from default judgment must be based upon good cause, shown, such as mistake, inadvertence, surprise, or excusable neglect, and must be made file it within the time set forth in ARM 24.5.320.

AUTH: 2-4-201, 39-71-2901, 39-71-2903, 39-71-2905, MCA

IMP: 2-4-201, 39-71-2901, MCA

24.5.329 SUMMARY JUDGMENT (1) ~~A party may, at any time after the filing of a petition for hearing Pursuant to any deadlines set by the court under ARM 24.5.316(1), a party may~~ move for a summary judgment in the party's favor upon all or any part of a claim or defense.

~~(a) The court fixes the time for filing as provided by ARM 24.5.316(1).~~

~~(b) (a) Because the court hears cases in the Workers' Compensation Court on an expedited basis, a motion for summary judgment may delay the trial without any corresponding economies. The time and effort involved in preparing briefs and resolving the motion may be as great or greater than that expended in resolving the disputed issues by trial. For these reasons, the court typically disfavors summary judgment motions. The court may decline to consider individual summary judgment motions where if it concludes that it may resolve the issues may be resolved as expeditiously by trial as by motion. The court may decline to consider a summary judgment motion that does not comply with ARM 24.5.329 or other applicable rules.~~

~~(c) (b)~~ If upon the filing of a motion for summary judgment, the party against whom the motion is directed believes that summary judgment is inappropriate for the reasons set forth in (1)~~(b) (a)~~ above, that party shall immediately notify the court and arrange for a telephone conference between the court and counsel. The court ~~will~~ determines after the conference whether further briefing and proceedings are appropriate.

(2) remains the same.

(3) ~~Any party filing a motion under this rule shall include set forth in its brief a statement of uncontroverted facts, setting forth in full the specific facts on which the party relies in support of the motion. The party shall set forth the specific facts upon which it relies in serial fashion and not in narrative form, and refer to a specific pleading, affidavit, or other document where it found each fact. The party shall authenticate all attached exhibits. If the movant and the party opposing the motion agree that no genuine issue of any material fact exists, they may jointly file a statement of stipulated facts with the court.~~

(4) ~~Any party opposing a motion filed under this rule shall include set forth in the party's opposition a its brief statement of genuine issues setting forth the specific facts which the opposing party asserts establish a genuine any specific issues of~~

material fact ~~that it believes preclude~~ precluding summary judgment in favor of the moving party. ~~Each~~ The party's brief must shall set forth the specific facts upon which it relies in serial fashion and not in narrative form. ~~As to each fact, the statement must and refer to a specific pleading, affidavit, or other document where the it found each fact, may be found. The court deems all properly supported facts asserted by the movant to be uncontroverted for the purposes of the summary judgment motion unless specifically and properly controverted by the opposing party. If the party opposing the motion includes additional facts in its brief, it shall set forth those facts in serial fashion and not in narrative form, and refer to a specific pleading, affidavit, or other document where it found each fact. The party shall authenticate all attached exhibits.~~

~~(4) If the movant and the party opposing the motion agree that no genuine issue of any material fact exists, they shall jointly file a stipulation with the court setting forth a statement of stipulated facts. This stipulation must be prepared and filed in lieu of the statements required by (3) of this rule.~~

(5) If either party desires a hearing on the motion, the party shall make the request in writing ~~no later than~~ within the time ~~specified for the filing of the last brief set forth in ARM 24.5.320.~~ The court may thereupon set a time and place for hearing. If no party requests for a hearing, ~~is made, the parties waive any right to a hearing afforded given by these rules, is deemed waived.~~ The court may order a hearing on its own motion.

(6) If on motion under this rule the court does not render judgment upon the whole case or for all the relief requested and deems a trial is necessary, the court may on its own motion ascertain what material facts exist without substantial controversy and what material facts are in good faith controverted. The court ~~thereupon then~~ makes an order specifying the facts that appear without substantial controversy and directs ~~such~~ further proceedings in the action as are just. Upon the trial of the action, the court deems the facts so specified established and conducts the trial accordingly.

(7) ~~A party shall make any supporting Supporting and or opposing affidavits must be made on personal knowledge, ; set forth such facts as would be admissible in evidence, ; and show affirmatively that the affiant is competent to testify to these matters, stated therein. The party shall attach to or serve with an affidavit Sworn sworn or certified copies of all papers or parts thereof referred to in an affidavit must be attached thereto or served therewith. of papers to which the affidavit refers. The court may permit a party to supplement or oppose affidavits to be supplemented or opposed by depositions, answers to discovery, or further affidavits. When If a party makes a motion for summary judgment is made and supported supports it as provided in this rule, an adverse opposing party may not rest upon the mere allegations or denials of the adverse opposing party's pleading, but the adverse party's response shall, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that a genuine issue exists for trial. If the adverse opposing party does not so respond, the court may enter summary judgment against the adverse opposing party.~~

(8) ~~Should~~ If it appears from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a

continuance to permit the party to obtain affidavits, to be obtained or take depositions, to be taken or have discovery, to be had or the court may make such another order as is just.

(9) If it appears to the satisfaction of the court ~~at any time~~ that a party has presented any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court orders the party employing them to pay to the other party the amount of the reasonable expenses ~~which that~~ the filing of the affidavits caused the other party to incur, including reasonable attorney fees, and the court may adjudge the any offending party or attorney may be adjudged guilty of contempt.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes amending ARM 24.5.329(3), proposed ARM 24.5.329(3) and (4), to create separate sections for opening and response briefs, because this arrangement will make it easier for the parties to find the requirements associated with filing each type of document. As it has done with all deadlines, the court proposes moving the deadline set forth in ARM 24.5.329(5) to ARM 24.5.320.

24.5.330 VACATING AND RESETTING TRIAL REQUESTS TO VACATE, PUT IN ABEYANCE, OR RESET TRIAL (1) A party ~~shall request seeking the court's leave to vacate, put in abeyance, or and reset a trial shall make the request in writing and for good cause shown. The application must requesting party shall state whether any other party agrees to or opposes the request it. If the requesting party is unable to contact any other party, the requesting party shall certify that the requesting party attempted to do so. If the requesting party contacts all other parties and none oppose the request, the requesting party may make the request informally by e-mail message. If a party opposes the request, or if the requesting party is unable to contact any other party, the requesting party shall make the request by formal motion and demonstrate good cause.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

24.5.334 SETTLEMENT CONFERENCE OR MEDIATION (1) In its discretion, the court may, either on its own motion or upon request of any party, order a settlement conference or mediation at any time before it issues a decision in any case pending before the court. ~~A hearing examiner appointed by the court normally conducts the settlement conference. The court may appoint a settlement master or mediator. If the parties use an outside settlement master or~~ However, if the parties agree, an outside mediator may conduct the conference. If the parties use an outside mediator, the parties shall equally share and pay the expense of hiring the mediator this person unless they agree otherwise. ~~The conference may be in person or by telephone conference at a time and place as the court may direct.~~

(2) ~~The court may direct that the person with ultimate settlement authority for each party shall attend the settlement conference or mediation in person. Upon~~

order of the court or agreement of the parties, the person with ultimate settlement authority may participate by phone.

(3) No party may disclose any statements or communications any participant or attendee, including the settlement master or mediator, made in connection with the settlement conference or mediation to anyone. No party may use any statements or communications any participant or attendee, including the settlement master or mediator, made during the settlement conference or mediation with regard to any aspect of the litigation. No party may subpoena or otherwise require the settlement master or mediator to testify in any future proceedings. No party may examine any participant or attendee concerning any statements or communications that person or any other participant or attendee, including the settlement master or mediator, made or allegedly made in connection with the settlement conference or mediation. However, the settlement master or mediator may disclose whether settlement was reached and the terms of the settlement.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes amending ARM 24.5.334(1), proposed ARM 24.5.334(2), to more closely follow the federal rule because requiring the person with ultimate settlement authority for each party to participate will make the settlement conference or mediation a more effective and efficient tool. The court proposes adding proposed ARM 24.5.334(3) to clarify which aspects of the settlement conference or mediation are confidential.

24.5.336 TRIAL BRIEFS AND PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW AND BRIEFS (1) The court may require any or all parties to file trial briefs or ~~other documents~~ proposed findings of fact and conclusions of law.

~~(2) The court may require any or all parties to file proposed findings of fact and conclusions of law. Requests that a decision not be certified as final pursuant to ARM 24.5.348(4) should ordinarily be included in the proposed findings of fact and conclusions of law, with the basis for the request set forth.~~

~~(3) Briefs and~~ Any party may file either a trial brief or proposed findings of fact and conclusions of law, or both, must be filed by the date set by the judge or hearing examiner.

~~(4) Briefs and proposed findings of fact and conclusions of law cannot be filed after the due date except by leave of court.~~

~~(5) (3) The court encourages any party filing a trial brief or~~ The court considers a trial brief or proposed findings of fact and conclusions of law filed by fax or e-mail attachment compliant with the filing deadline as long as a party ensures that the court receives the hard copy original at or before trial. to submit the document in electronic form by attaching it to an e-mail addressed to the court. Any party e-mailing filing such a brief or proposed findings and conclusions by fax or e-mail attachment shall further also file the original of the document with the court and serve ensure that the other parties as required by ARM 24.5.303 receive it the same day the party files it with the court.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

24.5.337 MOTION FOR RECONSIDERATION (1) ~~Any party may move for reconsideration of any order or decision of the Workers' Compensation Court. only upon the following three grounds:~~

- ~~(a) that the court overlooked some fact material to the decision;~~
- ~~(b) that the court overlooked some issue presented by the party that would have proven decisive to the case; or~~
- ~~(c) that the court's decision conflicts with a statute or controlling decision not addressed by the court.~~

~~(2) A party shall file any The motion for reconsideration of a decision must be filed within the time set forth in ARM 24.5.320, after the court issues its order or decision. The court reviews the motion before any other party responds. The court denies those motions it determines have no merit and orders the other party or parties to respond to those motions it determines may have merit. The opposing party shall have the time set forth in ARM 24.5.320 thereafter to respond unless the court orders an earlier response. Upon receipt of the response, or the expiration of the time for such If the court orders a response, the court it deems the motion submitted for decision upon receipt of the response or the expiration of the time for the response unless the court requests oral argument. The court does not consider reply briefs from moving parties.~~

~~(2) (3) Within 20 days of the its issuance of any ~~order or final~~ decision, the court may, on its own motion, and for good cause, reconsider the ~~order or~~ decision.~~

~~(3) (4) If the motion requests a party seeks reconsideration of an appealable ~~order or judgment~~ decision, the court does not deem the original ~~order or judgment~~ decision final until and unless the court denies the motion.~~

~~(5) No party may file a brief in support of or opposition to a motion for reconsideration that exceeds 5 pages.~~

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes amending ARM 24.5.337(1), and adding (a) through (c), to more closely mirror M. R. App. P. 20, because limiting the circumstances under which a party may seek reconsideration will reduce the likelihood that a losing party will simply make this motion as a matter of course. The court proposes adding ARM 24.5.337(2), to allow the court to deny meritless motions at the earliest moment, and ARM 24.5.337(5), to limit the length of briefs. Both additions will promote efficiency, both for the court and the parties.

24.5.348 CERTIFICATION OF DECISIONS, APPEALS TO SUPREME COURT (1) A party shall make any appeal ~~Appeals from the Workers' Compensation Court must be made as in the case of an appeal from a district court as provided in M. R. Civ. P. 72.~~

~~(2) The court's final certification for~~ For the purposes of appeal, the court's final certification is considered a notice of entry of judgment.

~~(3) A party appealing from the Workers' Compensation Court shall comply~~ Appeals must be in compliance with the Montana Rules of Appellate Procedure.

~~(4) The court certifies its decisions as final without a determination of~~ determining the amount of reasonable costs and attorney fees, except that:

~~(a) At any time prior~~ Prior to the court's issuance of the decision and certification, a party to the dispute may ~~submit~~ file a motion requesting that the court not certify the decision as final. ~~A party filing this~~ Such a request must motion shall demonstrate ~~include a showing of good cause, upon which the request is based.~~

~~(b) The court in its discretion may grant the request~~ motion, in which case the ~~decision of the court must~~ does not certify the judgment for purposes of appeal until ~~it determines~~ it determines the amount of the attorney fees and costs, ~~is determined.~~

~~(c) A party may petition for new trial or request amendment to the court's~~ findings of fact and conclusions of law in accordance with ARM 24.5.344, regardless ~~Regardless of whether or not the~~ court has certified the ~~decision is certified as final~~ for purposes of appeal, purposes, ARM 24.5.344 determines and limits the time ~~within which a party may petition for new trial or request amendment to the court's~~ findings of fact and conclusions of law.

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-71-2901, 39-71-2904, MCA

REASON: The court proposes adding the implementing reference to 39-71-2904, MCA, to correct its previous omission.

5. The rules the court proposes to adopt provide as follows:

NEW RULE I PRETRIAL IDENTIFICATION OF WITNESSES AND EXHIBITS (1) At the time set by the court, the parties shall exchange and file with the court:

(a) a list of all lay witnesses, including those the parties identified in the petition for hearing or response to petition for hearing, along with a summary of the subject matter on which the parties expect each lay witness to testify;

(b) a list of all expert witnesses, including those the parties identified in the petition for hearing or response to petition for hearing, along with a summary of the subject matter on, and the nature of the facts and opinions to, which the parties expect each expert witness to testify; and

(c) a list of all proposed exhibits, identifying the exhibit by date, author, and number of pages.

(2) If a party considers another party's disclosures inadequate, the party shall contact the other party within the time set by the court to request additional information. If the party remains dissatisfied with the information provided by the other party, the dissatisfied party may move to compel further disclosure in accordance with ARM 24.5.316 and any deadline on these motions set by the court.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes NEW RULE I as part of a comprehensive effort to shift procedures from the scheduling order to the rules so that the scheduling order can simply set forth deadlines while incorporating the rules by reference.

NEW RULE II WITHDRAWAL OF ATTORNEY (1) If an attorney representing a party is removed, withdraws, or ceases to act as such, the parties shall follow the procedures set forth in M. U. Dist. Ct. R. 10 and 37-61-405, MCA.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-71-2901, MCA

REASON: The court proposes NEW RULE II to formalize a practice already in effect and provide procedural guidance to those parties for whom the withdrawal of their attorneys was abrupt or unexpected.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Concerned persons also may submit written data, views, or arguments to Wendy Cash, Workers' Compensation Court, to be received no later than 5:00 p.m., January 8, 2018: in person at 1625 11th Avenue, Helena, MT; by mail at P.O. Box 537, Helena, MT 59620-0537; by fax at (406) 444-7798; or by e-mail at dliwccfilings@mt.gov.

7. An electronic copy of this proposal notice is available through the court's web site at <http://wcc.dli.mt.gov/proposedrules/proposalnotice112417.pdf>. The court strives to make the electronic copy of the notice conform to the official version of the notice, as published in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, the court considers only the official printed text. In addition, although the court works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. The Workers' Compensation Court maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this court. Persons who wish to have their names added to the list shall make a written request that includes the name, e-mail address, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding Workers' Compensation Court rulemaking actions. Persons may make these written requests to the Workers' Compensation Court: in person at 1625 11th Avenue, Helena, MT; by mail at P.O. Box 537, Helena, MT 59620-0537; by fax at (406) 444-7798; by e-mail at dliwccfilings@mt.gov; or by completing a request form at any rules hearing

held by the court. The court sends notices by e-mail unless a person notes a preference to receive notices by mail in the request.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Workers' Compensation Court has determined that the amendment and adoption of the above-referenced rules will not significantly and directly impact small businesses.

11. The Workers' Compensation Court has designated Wendy Cash to preside over and conduct the hearing.

/s/ Wendy S. Cash
Wendy S. Cash, Rule Reviewer
Workers' Compensation Court

/s/ David M. Sandler
David M. Sandler, Judge
Workers' Compensation Court

Certified to the Secretary of State November 8, 2017.