

**Hon. Charles C. Merrell
Lewis County Supreme Court
General Motion Practice Rules**

**NOTE: FOR 5TH JUDICIAL DISTRICT ASBESTOS LITIGATION
THESE RULES SUPPLEMENT THE ASBESTOS CASE MANAGEMENT
ORDER AND CASE SPECIFIC SCHEDULING ORDER.**

- A. **Submission**
Pursuant to Uniform Rule §202.8(d), all motions are deemed submitted without personal appearance unless oral argument is requested by a party and scheduled by the Court.
- B. **Return Date**
Motions shall be made returnable, on submission, on the first or third Thursday of the month at 10:00 a.m.
- C. **Oral Argument**
If oral argument is requested, it must be clearly stated on bold typeface in the case caption on the first page of the Notice of Motion, or in the case caption on the first page of answering papers, as the case may be.
- D. **Oral Argument Date**
In the event oral argument is granted, the Court will schedule a date for argument, at which appearances are expected.
- E. **Order to Show Cause**
Oral argument is required on all Orders to Show Cause seeking emergency relief, with personal appearances of parties and/or counsel as specified by the Court in the Order to Show Cause. The return date for an Order to Show Cause shall be determined by the Court at the time papers are submitted for consideration and execution.
- F. **Failure to Appear**
Failure of the moving party to appear for oral argument at the scheduled date and time may result in the motion being denied and otherwise marked off, while the failure of appearance by an opposing party may result in the motion being argued ex parte and then decided either on the merits or granted on default.
- G. **Special Proceedings**
Oral argument is required on all Article 78 proceedings.
- H. **Adjournments**
Upon consent of all counsel and pro se litigants, the Court will normally grant a first request for an adjournment of a motion or Order to Show Cause unless, in the discretion of the Court, there is a specific reason not to do so, in which

instance the Court will so advise the litigants. The party seeking the adjournment must obtain the consent of opposing parties and notify the Court Clerk at least twenty-four (24) hours before the return date. A written request for adjournment will not be entertained by the Court unless the party seeking the adjournment has first attempted to obtain consent from all other parties in the action. Parties seeking a non-consented adjournment must provide good cause why the adjournment should be granted.

I. Filing of Papers

Except with the express permission of the Court, all motion papers and Orders to Show Cause, including Notices of Motion, Notices of Petition, proposed Orders, affidavits or affirmations in support, affidavits or affirmations of good faith and memoranda of law, must be filed with the County Clerk of the county where the case is venued, who will deliver them to the Court Clerk.

J. Certification

All pleadings, motions, Orders to Show Cause, opposition papers, replies, memoranda of law and other submissions must be certified as non frivolous and signed by counsel to the extent required by Section 130-1.1-a of the Rules of the Chief Administrator.

K. Papers Required in Particular Motions

1. Pendente Lite relief. In any matrimonial action seeking pendente lite relief when a party's Statement of Net Worth is annexed as an exhibit, one courtesy copy of the Statement of Net Worth must be separately provided.
2. Motions for Summary Judgment and similar Relief. On any motion, seeking summary judgment under CPLR Rule 3212, dismissal of a complaint, a cross claim or counterclaim under CPLR Rules 3211 or 3212, or the striking of a pleading under CPLR 3124 and CPLR Section 3126, copies of all pleadings filed as of the date of the motion must be provided to the Court as exhibits by the moving party.
3. Motions to Renew or Reargue. On any motion seeking leave to renew or reargue a prior determination under CPLR Rule 2221, copies of all papers submitted on the prior motion, including all exhibits, must be provided to the Court by the moving party.
4. Motions to Amend, Supplement or Correct Pleadings. On any motion seeking to correct pleadings under CPLR Rule 3024 or to amend or supplement pleadings under CPLR Rule 3025, copies of all pleadings filed as of the date of the motion must be provided to the Court as exhibits by the moving party, together with the proposed amended, supplemented or corrected pleadings.

5. Applications Seeking Injunctive Relief. In any Order to Show Cause presented to the Court or motion which seeks a temporary restraining order or preliminary injunction or the vacatur or modification of injunctive relief, copies of the summons and complaint commencing the underlying action or proceeding, and any filed responsive pleadings, must be provided by the movant.
6. Discovery Motions. All motions involving issues of discovery under CPLR Article 31 must contain an affidavit or affirmation of good faith as required by Uniform Rule 202.7.

L. Decisions and Orders

1. Written Decisions and Orders. In certain instances, a Decision and Order may be reserved and rendered in written form following the full submission of the motion. The original Decision and Order will be mailed to the prevailing party for filing with the County Clerk. Supporting and opposition papers will be filed by the Court with the County Clerk. The prevailing party is responsible for serving a copy of the filed Decision and Order with Notice of Entry on all counsel and pro se litigants.
2. Oral Decisions and Orders. With many motions, the Court will render a Decision and issue an Order orally from the Bench, or by letter to counsel. In such instances, the prevailing party shall submit an Order for Court signature, approved as to form by other parties. If there is disagreement over the contents of the proposed order, the matter shall be submitted to the Court with a Notice of Settlement on a date obtained from the Court Clerk.
3. Notice of Entry. It is the responsibility of the prevailing party to provide other parties with a Notice of Entry of an Order determining a motion or Order to Show Cause, notwithstanding that the Order may have been entered by the Court with a written Decision.