UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

Local Rules of Procedure

[Table of Contents temporarily omitted.]

Effective _____, 2017

CHAPTER I. CIVIL RULES

CIVIL RULE 1. GENERAL RULES AND POLICIES

1.1 Scope of Local Rules.

(a) These are the Local Rules of Procedure of the United States District Court for the District of Montana, adopted pursuant to 28 U.S.C. § 2071, Fed. R. Civ. P. 83 and Fed. R. Crim. P. 57. They may be cited as "L.R. 1.1" or "L.R. CR 1.1."

(b) Chapter I governs civil proceedings. Chapter II, which incorporates this rule and portions of L.R. 83, governs criminal proceedings. Amendments become effective on the date set forth in the order adopting the amendments.

(c) A judge may excuse the parties in a specific case from complying with a local rule if authorized by these rules or if the order will affect only the parties.

(d) A judge may impose sanctions for violation of these rules.

1.2 Divisions of the Court.

(a) By Standing Order, the Chief Judge will equitably distribute the caseload of the District by allocating each division to one or more judges. Cases involving reapportionment, voting rights, campaign finance or disclosure laws, or otherwise relating to elections will be randomly assigned regardless of the division of filing.

(b) The clerk of court maintains an office in each division. Offices are open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except federal holidays.

(c) The divisions are as follows:

(1) The BILLINGS DIVISION is the Counties of Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden Valley, McCone, Musselshell, Park, Petroleum, Powder River, Prairie, Richland, Rosebud, Stillwater, Sweetgrass, Treasure, Wheatland, Wibaux and Yellowstone. Court is held at the James F. Battin Courthouse in Billings, Montana.

(2) The BUTTE DIVISION is the Counties of Beaverhead, Deer Lodge, Gallatin, Madison and Silver Bow. Court is held at the Mike Mansfield Federal Building and United States Courthouse in Butte, Montana.

(3) The GREAT FALLS DIVISION is the Counties of Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley. Court is held at the Missouri River Courthouse in Great Falls, Montana.

(4) The HELENA DIVISION is the Counties of Broadwater, Jefferson, Lewis and Clark, Meagher and Powell. Court is held at the Paul G. Hatfield Courthouse in Helena, Montana.

(5) The MISSOULA DIVISION is the Counties of Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders. Court is held at the Russell Smith Courthouse in Missoula, Montana.

1.3 Access to Court Proceedings and Records.

(a) Proceedings and Records Open to Public.

(1) All courtroom proceedings are open to the public unless the presiding judge closes the courtroom for reasons stated on the record. All persons must conduct themselves with respect for others and must rise on convening or reconvening of a session.

(2) All documents and items in the record of a case are available to public access unless access is limited or prohibited by federal law, federal or local rule, or by an order, issued on motion or *sua sponte*, stating the reasons for sealing.

(3) Standing orders and local rules are available on the court's website, http://www.mtd.uscourts.gov.

(b) Records of the Court.

(1) *Fees.* The Judicial Conference of the United States establishes fees for records or services provided by the clerk of court. The current fee

schedule is available on the court's website.

(2) *Case Files.* Unless access is restricted, documents and items filed in the record may be viewed at no cost at the clerk's office. Where feasible, copies may also be obtained for a fee. The electronic record is available to remote access for a fee.

(3) *Recordings.* If the court has made an electronic sound recording of a proceeding, a copy of the recording may be obtained from the clerk's office. A recording is not an official record of the court.

(4) *Transcripts.* Only certified transcripts filed by the clerk of court are official records of the court. Policies regarding compensation to court reporters and the availability of transcripts, as well as forms for requesting transcripts, may be found on the court's website, or by contacting the clerk's office.

(5) *Realtime*. Attorneys of record may order and receive Realtime transcription of court proceedings. Realtime unedited transcripts may only be distributed to ordering parties, their co-counsel, experts, and staff and are not to be made available to the public, including news organizations or other nonparticipants.

(c) Broadcasting Prohibited. Inside the courthouses of this District, broadcasting is prohibited, regardless of technology or medium.

(d) Cameras and Personal Electronic Devices.

(1) *General Rule.* Personal electronic devices, including but not limited to tablets, cameras, phones, or laptop computers, whether capable of transmitting or recording or not, must not be used or possessed in any courthouse of this District. Upon entry to a courthouse and upon demand, all such devices are subject to security screening and screening for compliance with this rule. Devices not subject to an exception must be left with court security officers.

(2) *Exceptions.*

(A) District of Montana judges and other federal district, appellate, magistrate, and bankruptcy judges may use personal electronic devices in any courthouse or courtroom and may set policy for

chambers staff.

(B) Employees of the clerk of court, the United States Probation Office, and the United States Marshals Service, contract court security officers, and building managers and General Services Administration employees ~~who are stationed on-site~~ may use personal electronic devices in any courthouse.

The Court Security Committee requests this amendment to facilitate travel between courthouses. It will apply to people whose job duties already involve extensive background checks.

(C) Attorneys appearing before the court in a calendared matter, including scheduling conferences, may use personal electronic devices that are not disruptive or distracting. Use must be limited to purposes related to the appearance. Personal electronic devices may not be used to communicate publicly about the case. Photography, video-recording, and verbatim recording are prohibited. Audible rings or alarms are prohibited. In courtrooms, voice communication using personal electronic devices is prohibited. In sealed proceedings, personal electronic devices may not be used for communication. An attorney may authorize an employee to use a device in compliance with this paragraph, but the attorney is exclusively responsible for the employee's conduct.

~~(D) Employees of the United States Attorney and federal agents or law enforcement officers visiting the United States Attorney's office may bring personal electronic devices into courthouses but may use them only inside the office space of the United States Attorney. Photography and video-recording showing courthouse space is prohibited.~~

(D) *Office of the United States Attorney*.

(i) The United States Attorney may authorize use of cameras and personal electronic devices inside his or her office space but must prohibit any use of such devices in courthouse space and any photography or video-recording showing courthouse space.

(ii) The following persons are authorized to bring personal electronic devices into a courthouse but may not use such devices, except as otherwise provided by this Rule:

(a) employees of the United States Attorney's Office or the U.S. Department of Justice;

(b) provided they have business in the U.S. Attorney's Office, federal agents or other law enforcement officers and federal employees holding a federal Personnel Identity Verification card; and

(c) any individual identified in a writing that is signed by an Assistant United States Attorney and presented to court security officers prior to the individual's entry.

This amendment reflects Standing Order DLC-36.

(E) Court reporters employed by or acting pursuant to contract with the court may use personal electronic devices. Photography and video-recording are prohibited. In courtrooms, personal electronic devices must not be used for voice communication and must not use audible rings or alarms.

(F) Persons who rely on personal electronic devices for medical reasons may use their devices. Photography and video-recording are prohibited.

Suggested by the United States Attorney's Office.

(~~F~~ G) By written order, a judge may authorize use of personal electronic devices in administrative proceedings and photography or video-recording on special occasions, such as naturalization or investiture proceedings.

(e) Court Staff. All courtroom and courthouse personnel, including but not limited to marshals, deputy marshals, court clerks and office personnel, probation officers and office personnel, and the staff of a judge, are prohibited from disclosing to any person, without authorization by the court, information relating to a pending matter that is not part of the public records

of the court. No such personnel may divulge any information concerning arguments or hearings held in chambers or otherwise outside the presence of the public.

1.4 Manner of Filing.

(a) Except as otherwise provided by these rules, nothing may be filed with the court by means other than use of the court's electronic case filing system ("ECF"), mail directed to the clerk of court's address for postal service, or in-person delivery to the clerk's office.

(b) To the greatest extent possible, the record of each case, including exhibits, will be maintained in ECF and available to remote public access. Anything filed electronically has the same force and effect as if a paper were signed, filed, and served in the traditional manner. All attorneys and self-represented litigants must follow the guidance of the clerk's office to facilitate electronic filing and to make the record legible and complete. The clerk of court is authorized to require filers to take action, such as additional training, to correct habitual filing errors.

(c) Attorneys.

(1) Pursuant to Fed. R. Civ. P. 5(d)(3) and Fed. R. Crim. P. 49(e), all attorneys appearing in this court must register and file electronically unless good cause, such as the unavailability of high-speed internet service, can be shown. Exemption may be sought on a case-by-case basis by filing Form G at the first appearance in the case. The clerk will not serve by mail an attorney who has not been exempted. Guidance for electronic filing is found in the Guide for Filing in the District of Montana, available on the court's website.

(2) Filing electronically constitutes service on registered users under Fed. R. Civ. P. 5 and Fed. R. Crim. P. 49. Registration waives the right to receive service by means other than ECF as to all documents filed in the electronic record by any party or by the clerk. The Notice of Electronic Filing is the clerk's certificate of service.

(3) Use of an attorney's log-in and password to obtain access to ECF is use by the attorney.

(4) *Technical Problems*.

(A) User's Problem. Technical problems on the user's end will not excuse untimely filing. Attorneys must consult the Guide for Filing in the District of Montana or call the help desk during business hours.

(B) Court's Problem.

(i) The clerk of court will deem the ECF filing site to be subject to a technical failure on a given day if the site is unable to accept filings for at least one hour after 10:00 a.m. that day. Known system outages will be posted on the court's website, if possible. Registered users are authorized to file conventionally until 5:00 p.m. of any day the clerk posts notice of an outage.

(ii) The clerk may post notice on the court's website extending filing deadlines for registered users to 9:00 a.m. the following business day. Registered users unable to meet the extended deadline by filing electronically or conventionally may seek appropriate relief from the presiding judge.

(5) *Judges' Requirements.* Judges may require parties to submit paper or alternative electronic forms of any filings.

(d) Self-Represented Litigants. Except where an attorney admitted to the bar of this court under L.R. 83.1(b) or (c) acts *pro se* in a pending matter, and except as provided by L.R. 83.8, a self-represented litigant may not file electronically and must file by submitting documents to the clerk by conventional mail or by in-person delivery to the clerk's office.

(e) Conventional Filing. Documents or items that cannot be scanned into the electronic record must be filed in the division of venue. If the document or item is presented to the clerk for filing in the wrong venue, the clerk may reject filing and note in the docket the party's attempt to file it. The party must present the document or item in the correct venue within three business days.

(f) Stricken Documents. A stricken document remains in the public record if originally filed there, unless the judge orders it sealed to protect privacy or

security interests. A stricken document remains under seal if it was sealed when stricken.

(g) Items Not Available in Electronic Record.

(1) *Documents.* Documents not filed in the electronic record will be kept in the clerk's custody until archived. The docket must reflect the date of their filing, a brief description, and their location.

(2) *Exhibits*.

(A) If it is not practical to file an exhibit in the electronic record, the court will not permanently retain the exhibit.

(i) At the conclusion of a trial or hearing, each party is responsible for reclaiming any unfiled exhibits, unless the presiding judge orders otherwise.

(ii) If an exhibit pertinent to a motion is not electronically filed, it must be reclaimed within seven days after the motion is terminated.

(B) In the event an exhibit not electronically filed is required by this or another court, the parties will be notified and must resubmit the exhibit as the clerk directs.

1.5 Form of Documents and Citations.

(a) Unless a form provided by the Administrative Office of the United States Courts is used, documents prepared for filing by a party must be:

(1) page size 8½ x 11 inches, printed on one side only, with top, bottom, and side margins of one inch, with no background shading, and free of materially defacing erasures or interlineations;

(2) double-spaced, except for quoted material and footnotes, and typewritten in 14-point font size or neatly handwritten.

(3) consecutively numbered at the bottom of each page; and

(4) formatted as to counsel or party identification, case caption, and

document title in substantial compliance with forms in Appendix C.

(b) When a hand signature is used, the name of the signer must be printed or typed under the signature line.

(c) Affidavits must be notarized and all signatures must be hand signatures.

(d) Citation form must follow the most recent edition of the Bluebook or of the Association of Legal Writing Directors (ALWD) Citation Manual. Pinpoint citation to paragraphs or pages of cases and to sections of statutes or acts is required. Citation to the United States Reporter is preferred. Parallel citations are not required. Hyperlinking is permissible, but neither the hyperlink nor any Internet site will be considered part of the record of the case.

CIVIL RULE 3. COMMENCING AN ACTION

3.1 Filing a New Case.

(a) Required Items. The following items are required to file a new case:

(1) a complaint, petition, or other originating document;

(2) unless the originating document is a petition for writ of habeas corpus, payment of the full amount of the filing fee or a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a); and

(3) a civil cover sheet, unless the plaintiff or petitioner is proceeding *pro se*.

(b) Patent, Trademark, and Copyright Cases. In addition to the items listed above, a party filing a patent, trademark, or copyright case or claim must:

(1) complete the appropriate report using Form AO-120 or Form AO-121, available on the court's website;

(2) after obtaining a deputy clerk's signature, file the report;

(3) deliver the report to third parties as directed by the form; and

(4) update the report and the filing as required.

(c) Social Security Cases. Plaintiffs asserting only a claim under 42 U.S.C. § 405(g) must, no later than the time the complaint is served, provide the plaintiff's full name and social security number by e-mail to USAMT.SSAClerk@usdoj.gov or by hand or by postal service to SSA Clerk, U.S. Attorney's Office, 2601 2nd Ave. North, Suite 3200, Billings, MT 59101. The case will proceed under L.R. 78.2.

This new subsection incorporates Standing Order DLC-34 ¶ 1.

(~~e~~ d) Manner of Filing.

(1) *Conventional Filing.* Any attorney or party may file a new case by mailing or personally delivering to the clerk each of the required items in paper form. All required items must be received simultaneously; otherwise, items may be returned without filing or other record of submission. The filing date will be the date of the clerk's receipt of all required materials.

(2) *Electronic Filing.* Any attorney or party who is authorized to file documents with the court electronically may file a new case by following procedures established by the clerk of court and published on the court's website. Failure to comply with the clerk's procedures may result in deletion of the case.

(~~d~~ e) Complaints Accompanied by Motions to Proceed In Forma Pauperis.

(1) A complaint that is accompanied by a motion to proceed in forma pauperis is deemed lodged until the motion is decided.

(2) When a motion to proceed in forma pauperis is granted, the complaint is deemed filed on the date the complaint was lodged, except where an earlier filing date is provided by law.

(3) When a motion to proceed in forma pauperis is denied, the movant must be given a specified time of not less than 14 days to pay the full filing fee.

(A) If full payment is timely received, the complaint is deemed filed on the date the complaint was lodged, except where an earlier filing date is provided by law.

(B) If full payment is not timely received, the action is dismissed.

(4) A prisoner, as defined by 28 U.S.C. § 1915(h), may not maintain more than two (2) concurrent non-habeas actions in forma pauperis. Before leave to proceed in forma pauperis is denied under this rule and before lodged pleadings are screened, a prisoner must be given notice of this rule and an opportunity:

(A) to show that he is in imminent danger of serious physical injury;

(B) to pay the full filing fee for one or more of the pending or proposed actions;

(C) to dismiss voluntarily, pursuant to Fed. R. Civ. P. 41(a)(1), one or more pending actions in which the prisoner is proceeding in forma pauperis; or

(D) to withdraw one or more of the actions for which leave to proceed in forma pauperis is sought.

(~~e~~ f) Cases Filed Under Seal. When a party files a civil action authorized to be initiated under seal, such as a qui tam action, the title of the pleading must include the phrase "TO BE FILED UNDER SEAL," followed by pinpoint citation to the statutory or other federal authority for sealing, for instance, in a qui tam action, 31 U.S.C. § 3730(b)(2). The case will be filed and conducted under seal without further leave of court unless the judge orders otherwise.

3.2 Venue.

(a) Certification by Filer. The caption of an initial pleading or notice of removal constitutes certification that venue conforms with this rule. If the caption of any initial pleading does not name a division, the clerk will assign venue.

Proper venue for a removed case is defined by 28 U.S.C. § 1441(a). This amendment makes clear that a party removing a case certifies the venue is correct, just as a plaintiff does upon filing a new case.

(b) Proper Divisional Venue. Except as set forth below, venue is proper in any division of the court containing a county of proper venue under the laws of the State of Montana.

(1) Cases alleging a tort against the United States are venued in the division containing the county:

(A) where the tort occurred;

(B) where the plaintiff resided at the commencement of the action; or

(C) where any defendant other than the United States resided at the commencement of the action.

(2) Habeas cases are venued:

(A) in the division containing the county where judgment was entered, if a judgment is challenged;

(B) in the Helena Division, if denial or conditions of parole are challenged;

(C) in the division containing the county where the petitioner is incarcerated, if pretrial detention is challenged.

(3) Prisoner civil rights cases are venued in the division where an alleged wrong was committed.

(c) Motions to Change Venue Within the District.

(1) A defendant must file any motion for change of divisional venue with its first appearance.

(2) A plaintiff must file any motion for change of divisional venue within 14 days of the first appearance of any party whose appearance makes existing venue improper.

(3) Failure to file a timely motion for change of divisional venue constitutes consent to the existing venue.

(d) Trial. Cases are tried in the division to which the case is assigned, unless the court, in its discretion, orders trial in another division.

3.3 Removal and Remand.

(a) Removal. Within seven days after filing a notice of removal to this court of any action originally filed in state court, the removing party must deliver to the state court a copy of the notice of removal. When the state court file is received in this court, the clerk will scan into the CM/ECF system the pleadings and orders filed to date in the state court. All other documents will be scanned and attached as exhibits to the state court docket sheet. Motions and other requests directed to the state court are automatically terminated

upon removal but may be refiled in this court.

(b) Remand. Promptly upon receipt of an order remanding an action to state court, the clerk will produce the record in the form requested by the state court, along with a certification in like form. This court's record and the original state court record will be delivered by certified mail with return receipt requested, by personal delivery, or by other means requested by the state court. The clerk must obtain a receipt or other confirmation of delivery and file such confirmation in this court's record of the case. The electronic record will be retained by this court.

3.4 Petitions for Writ of Habeas Corpus Filed by State Prisoners.

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the clerk will serve on the Attorney General for the State of Montana a copy of each § 2254 habeas petition filed in this court. This rule does not confer an obligation on the Attorney General to make an appearance in the case.

CIVIL RULE 4. SUMMONS

4.1 Issuance and Service of Process.

The issuance and service of process must be in conformity with the Federal Rules of Civil Procedure. Only the clerk may issue process in all proceedings brought to quash an IRS summons. The clerk may sign, seal, and issue a summons in CM/ECF, but service must be accomplished in the conventional manner.

4.2 Service of Process Under State Procedure.

In those cases where the Federal Rules of Civil Procedure authorize the service of process to be made in accordance with Montana practice, it is the serving party's duty to file the return of service of process.

4.3 Proof of Service of Process.

(a) Proof of service of process must be filed promptly and in any event before action is to be taken by the court or the parties. The proof must show the day and manner of service and may be by written acknowledgment of service, by certificate of the person who served process, or by any other proof satisfactory to the court.

(b) Failure to prove service as required by this rule does not affect the validity of service. The court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to the substantial rights of any party.

4.4 Service of Subpoenas by U.S. Marshals Service.

Any party to a civil proceeding requesting service of a subpoena by the United States Marshals Service must provide notice to the Marshal of the request, along with all documentation necessary to effectuate service, no later than 30 days before the desired date of service. A lesser time period may be allowed only upon motion and good cause shown.

4.5 Time Limit for Service.

(a) For purposes of Fed. R. Civ. P. 4(m), in any case where a plaintiff applies to proceed in forma pauperis and has not been denied, the time for

service to be effected begins the day after entry of an order requiring service of the complaint. Unless the court orders otherwise, service must be accomplished within 90 days.

(b) In all other cases, service must be accomplished in accordance with the time limitations in Fed. R. Civ. P. 4(m).

CIVIL RULE 5. SERVING AND FILING PLEADINGS AND OTHER PAPERS

5.1 Filing with the Clerk.

The judges of this Court do not agree to accept papers for filing. All papers must be filed with the clerk. Papers submitted to or in chambers may be disregarded.

This new rule states long-standing practice. Fed. R. Civ. P. 5(d)(2)(B) provides that a paper is "filed by delivering it (A) to the clerk; or (B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk." The federal rule does not explain what constitutes "agreement." The proposed local rule negates agreement.

5.~~1~~ 2 Filing Under Seal.

(a) Good Faith. In addition to the certifications set forth in Fed. R. Civ. P. 11(b), any person who files a document or item under seal, with or without prior leave, certifies that sealing is appropriate to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances and with due regard to the public's right of access.

(b) When Motion for Leave Required. A motion for leave to file under seal is required unless the case is sealed or unless:

(1) a protective order is sought under Fed. R. Civ. P. 26(c) and L.R. 26.4; or

(2) filing under seal is otherwise preauthorized by state or federal law or an order already entered in the case.

(c) Caption. Any document preauthorized to be filed under seal must include the phrase "FILED UNDER SEAL" in the case caption, followed by citation to the authority for sealing, e.g., "Per Fed. R. Civ. P. 45(e)(2)(B)," or "D. Mont. L.R. 5.1(b)(1), 26.4."

(d) Contents of Motion for Leave. A motion for leave to file under seal must:

(1) be filed in the public record of the case;

(2) without disclosing confidential information, describe the document or item to be sealed and explain why inclusion in the public record is not appropriate; and

(3) either:

(A) state why it is not feasible to file a redacted version of the document or item in the public record, or

(B) be accompanied by a redacted version of the document or item filed in the public record.

(e) Electronic Filing. Following the directions of the clerk's office, attorneys ~~Attorneys~~ filing electronically must ~~follow the guidance of the clerk's office~~ lodge under seal the document or item for which leave to seal is sought. Electronically filed sealed documents must be conventionally served on all other parties unless ex parte filing is authorized.

This amendment restores a provision improvidently omitted by a prior amendment on the belief that the administrative guide covered the matter. Since the omission, however, attorneys have been confused about what they must file. The clerk's assistance is needed to lodge the sealed document, but the rule, not the clerk, should say what is required of the filing party.

Lodging the full, unredacted document under seal allows the presiding judge to see the effect of sealing before deciding whether sealing is or is not appropriate.

(f) Conventional Filing. Persons filing conventionally must submit to the clerk:

(1) the document or item to be sealed, placed in an envelope with the case number, date, and "Filing Under Seal Requested" clearly printed on the envelope; and,

(2) if required, the motion for leave to seal and brief in support.

(g) Response and Order.

(1) The court may rule on a motion for leave to seal without awaiting a response.

(2) If leave to file under seal is granted, the document or item will be

deemed filed under seal, and the party need not refile the document.

(3) The court may order that a document be redacted for the public record. Until the filing party complies, the unredacted document will not be deemed filed.

(4) If leave to file under seal is denied, the document or item will remain in the record under seal but will be deemed not filed.

5.~~2~~ 3 Addresses for Service.

(a) Address Changes. An attorney or a self-represented party whose e-mail, post office box or physical mailing address changes while an action is pending must promptly file with the court and serve upon all other parties a Notice of Change of Address specifying the new address for service. E-mail addresses for attorneys and their staff must be maintained as provided in the Guide for Filing in the District of Montana.

(b) Dismissal Due to Failure to Notify. The court may dismiss a complaint without prejudice or strike an answer when:

(1) a document directed to the attorney or self-represented party by the court has been returned to the court as not deliverable; and

(2) the court fails to receive within 60 days of this return a written communication from the attorney or self-represented party indicating a current address for service.

CIVIL RULE 7. MOTIONS AND OTHER PAPERS

7.1 Motions.

(a) Scope. Except for pleadings under Fed. R. Civ. P. 7(a), pleadings in proceedings under 28 U.S.C. §§ 2241, 2254, or 2255, or applications for a temporary restraining order, Rules 7.1 and 7.2 apply to all written requests that the court take or refrain from taking a particular action, except where another rule provides otherwise.

(b) Timeliness. All motions must be made sufficiently in advance of trial to comply with the time periods set forth in this rule or other order of the court and to avoid any delays in the trial.

(c) Prerequisites to Filing a Motion.

(1) The text of the motion must state that other parties have been contacted and state whether any party objects to the motion. Parties that have not yet appeared in the action or whose default has been entered need not be contacted. This Rule 7.1(c)(1) does not apply to any party in a case filed by a self-represented prisoner.

The amendment is proposed for two reasons. First, it is frequently difficult for prisoners to contact opposing counsel in a timely manner, so the rule frequently leads to unnecessary delays. Second, perhaps due to the difficulty of making contact, complying with the rule frequently seems to intensify conflict between the parties. This result is contrary to the rule's objective.

(2) When a motion is unopposed, the word "unopposed" must appear in the title of the motion.

(3) *Proposed Orders.* Except as otherwise provided in these rules or by order, a proposed order is required and permitted only with a motion for extension of time or with an unopposed motion. All proposed orders must:

(A) be attached to the motion **in PDF format** as an exhibit, so that the order, as proposed, is filed in the electronic record of the case;

(B) be e-mailed to the judge **in WordPerfect, Word, or a compatible program**, so that the judge may alter it;

(C) use 14-point font;

(D) omit macros or special coding or formatting other than appropriate citation format;

(E) be e-mailed only to the judge's address for proposed orders; for example, a judge whose initials are XYZ would have an e-mail address of xyz_propord@mtd.uscourts.gov; and

(F) be identified in the subject line of the e-mail by the first plaintiff's last name, the case number, and an abbreviated description of the document and the moving party, for example, Smith CV 03-289-GF p-ord gr def ext time.

(4) Failure to comply with this rule may result in summary denial of the motion. Denial must be without prejudice on the first occasion and the filer must be given an opportunity to refile the motion.

(d) Briefs.

(1) *Briefing Schedule*.

(A) A motion, if opposed, must be accompanied by a brief in support filed at the same time as the motion. Briefs in support of a motion must be filed separately from the motion. Failure to timely file a brief will result in denial of the motion, subject to refiling in compliance with the rule.

(B) Responses.

(i) Responses to motions to dismiss, for judgment on the pleadings, or for summary judgment must be filed within 21 days after the motion was filed.

(ii) Responses to all other motions must be filed within 14 days after the motion was filed. As to these motions, except where a *pro se* litigant files a motion for the appointment of counsel, failure to file a response brief

may be deemed an admission that the motion is well-taken.

(C) The moving party may file a reply within 14 days after the response was filed.

(D) No further briefing is permitted without prior leave. A motion is deemed ripe for ruling at the close of the time for response.

(2) *Length of Briefs*.

(A) Briefs in support of a motion and response briefs are limited to 6500 words.

(B) Reply briefs are limited to 3250 words.

(C) Any brief of 4000 words or more must include a Table of Contents, Table of Authorities, and Exhibit Index.

(D) Filing serial motions to avoid word limits may result in denial of all such motions.

(E) Briefs must include a certificate of compliance with this rule stating the number of words in the brief, excluding caption, certificates of service and compliance, table of contents and authorities, and exhibit index. An attorney may rely on the word count of a word-processing system used to prepare the brief.

(e) Argument. The court may hear argument on the record in open court, by video conference, or by telephone conference call. The court must ensure that each party's statements to the court are audible to all other participants. A party may be directed to arrange for and/or pay the cost of any video or telephone conference.

7.2 Motion Exhibits.

(a) Exhibits must be identified and electronically filed so as to allow the court, the parties, and the public to locate easily and refer unambiguously to a specific page of a specific exhibit. Use of a short descriptive name in filing the exhibit, e.g., "Smith Aff." or "Range Rover Vehicle Registration," in the docket and in the text of the brief is required.

(b) Only exhibits that are directly germane to the matter under consideration by the court may be filed.

(c) Excerpted material must be prominently identified as such.

(d) When an exhibit cannot be filed in the electronic record, the docket must reflect the date of its filing, a brief description, and its location. When the exhibit is returned to the filing party's custody, the docket must reflect the return.

7.3 Motion for Reconsideration.

(a) Leave of Court Required. ~~Before the entry of a judgment adjudicating all of the claims and the rights and liabilities of all the parties in a case, any party may make a motion before a judge requesting that the judge grant the party leave to file a motion for reconsideration of any interlocutory order made by that judge on any ground set forth in L.R. 7.3(b)(1) or (2). No party may file a motion for reconsideration without prior leave of court.~~ No one may file a motion for reconsideration of an interlocutory order without prior leave of court.

(b) Form and Content of Motion for Leave. A motion for leave to file a motion for reconsideration may seek reconsideration only of an interlocutory order, must be limited to 2,275 words or, for pro se litigants, seven pages, and must ~~specifically meet~~ specify why it meets at least one of the following ~~two criteria~~:

(1) (A) the facts or applicable law are materially different from the facts or applicable law that the parties presented to the court before entry of the order for which reconsideration is sought, *and*

(B) despite the exercise of reasonable diligence, the party applying for reconsideration did not know such fact or law before entry of the order; *or*

(2) new material facts ~~emerged~~ arose or a change of law occurred after entry of the order.

(c) Prohibition Against Repetition of Argument. No motion for leave to file a motion for reconsideration of an interlocutory order may repeat any

oral or written argument made by the applying party before entry of the order. Violation of this restriction subjects the offending party to appropriate sanctions.

(d) Response ~~Determination of Motion~~. ~~Unless otherwise ordered by the assigned judge, no response may be filed to a motion for leave to file a motion for reconsideration or to a motion for reconsideration filed without leave. If the judge decides to permit reconsideration, the judge will fix an appropriate schedule.~~ No response may be filed to a motion seeking leave to file a motion for reconsideration. Unless the presiding judge orders a response, no response may be filed to a motion seeking reconsideration of an interlocutory order.

Stylistic and clarifying amendments. No change in practice is intended.

7.4 Notice of Supplemental Authority.

If pertinent and significant authority comes to a party's notice after the briefs have been filed but before decision, a party may promptly advise the court by notice setting forth the citations and stating the reason the authority was not cited in the party's brief. The notice must specifically refer either to a page of the brief(s) already filed or to a point argued orally. The notice may not exceed two pages and must not present a new argument. No response may be filed unless the presiding judge so authorizes.

7.5 Amicus Brief.

(a) Who May File. No one may file an amicus brief without prior leave of court.

(b) Motion for Leave.

(1) A motion for leave to file an amicus brief must be served on each party and submitted to the clerk in conventional form. The motion may not be accompanied by a brief.

(2) The motion must:

(A) comply with L.R. 7.1(b) and (c) and be limited to 3250 words;

(B) include, if the amicus is a corporation, a disclosure statement

like that required of parties by Fed. R. Civ. P. 7.1(a);

(C) state why the amicus is interested in the matter; and

(D) state why an amicus brief is desirable and relevant, including why the parties cannot adequately address the matter.

(3) Parties to the case may respond to the motion within 14 days of its electronic filing by the clerk. Responses must be limited to 3250 words and must comply with L.R. 7.1(d)(2)(E). There shall be no further briefing.

(c) Leave to File. If leave is granted, the amicus must file the brief and any other submissions electronically.

CIVIL RULE 11. SIGNING PLEADINGS, MOTIONS, AND OTHER PAPERS

11.1 Signatures in Electronic Filings.

(a) A registered user's log-in and password serve as the user's signature on all documents electronically filed with the court and as a signature for purposes of Fed. R. Civ. P. 11, these rules, and any other purpose for which a signature is required in connection with proceedings before the court.

(b) Except as provided by L.R. 11.2, where a hand signature would otherwise appear, each document filed electronically by a registered user may be signed "/s/ John E. Attorney."

(c) A registered user must not knowingly permit or cause his or her log-in and password to be used by anyone other than an authorized agent of the registered user. If a registered user has reason to suspect that the security of his or her log-in and password have been compromised, the clerk must be contacted immediately.

(d) Only a judge, a registered user, the clerk of court, a court reporter, or deputy clerks of court may use the "/s/" signature form, and, except as provided by L.R. 11.2(a)(1), only when signing the document as the filer and filing electronically. All other signatures, including those on any affidavit, must be hand signatures.

11.2 Jointly Filed Documents; Multiple Signatures.

(a) Documents requiring signatures of more than one party may be filed in one of the following ways:

(1) Where all signers are registered users and where all consent to the filing, by using the "/s/" electronic signature as to all parties;

(2) Where all signers use hand signatures, by scanning the document and filing it electronically without the "/s/" signature by any party;

(3) By scanning one or more identical documents with hand signatures and attaching each document as an exhibit to a document bearing the registered user's "/s/" electronic signature; or

(4) By using any other method prescribed by the clerk of court.

(b) In no event may one signature page be signed in the "/s/" electronic form by one party and by hand signature by another party.

CIVIL RULE 12. DEFENSES AND OBJECTIONS

12.1 Responding to Prisoner-Plaintiffs – Waiver of Reply.

(a) Definition of "Prisoner-Plaintiff." Regardless of whether the person is represented by counsel or appears *pro se*, any plaintiff who is incarcerated or detained in any facility, and who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program, is a "prisoner-plaintiff" within the meaning of this rule, provided the person is so incarcerated or detained on the date of service of the complaint.

(b) Waiver of Reply Not Appropriate. As to all plaintiffs not described by the terms of subsection (a), this rule does not apply and the defendant must timely file an answer or other appropriate motion, pursuant to Fed. R. Civ. P. 8 and 12.

(c) Timely Filing of Waiver of Reply; Defenses Preserved. When a prisoner-plaintiff serves the complaint before the court has ordered either service or a response to the complaint, any defendant may file a waiver of reply, pursuant to 42 U.S.C. § 1997e(g), within the time set forth in Fed. R. Civ. P. 12(a) or 81(c)(2), in lieu of an answer or other appropriate motion. Timely filing of a waiver of reply preserves the defendant's ability to raise all defenses set forth in Fed. R. Civ. P. 12 in a subsequent answer or motion, pursuant to the terms of that rule.

(d) Entry of Default and Default Judgment. Failure to timely file a waiver of reply, an answer, or other appropriate motion in response to a complaint by a prisoner-plaintiff may result in entry of default and default judgment pursuant to Fed. R. Civ. P. 55. Pursuant to Fed. R. Civ. P. 55(b)(2), default judgment may be granted against a defendant who has filed a waiver of reply but fails to file an answer or other appropriate motion when ordered to do so.

(e) Findings Implicit in Court's Order for Service or Response. Regardless of whether the order so states, the court's ordering of service or of a response to the complaint is deemed a finding that the plaintiff has a reasonable opportunity to prevail on the merits, within the meaning of 42 U.S.C. § 1997e(g)(2), and that the complaint is not, on its face, frivolous or malicious, and that it does not seek solely monetary relief against a

defendant who is immune from such relief, all within the meaning of 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). If the court has ordered service, or if the court has ordered a response to the complaint, filing of a waiver of reply in lieu of an answer or other appropriate motion is not permitted and may result in the entry of default and/or default judgment.

12.2 Notice of Appearance – In Forma Pauperis Case.

In all cases proceeding under 28 U.S.C. § 1915, the defendant or respondent must file a notice of appearance at the time the first document, other than a return of the waiver of service of summons, is filed. Form C, Notice of Appearance in an In Forma Pauperis Action, may be used for this purpose.

12.3 Commissioner's Answer in Social Security Case.

The certified administrative record shall serve as the Commissioner's Answer in a case filed solely under 42 U.S.C. § 405(g). The case will proceed under L.R. 78.2.

This Rule incorporates Standing Order DLC-34 ¶ 2.

1~~2.3 Notice and Warning to Self-Represented Prisoner~~.

~~Any motion that requires the court to consider matters outside the pleadings, such as a motion to dismiss for failure to exhaust administrative remedies, must be accompanied by the Notice and Warning to Plaintiff as set forth in L.R. 56.2(a) if the opposing party is proceeding *pro se* and is incarcerated or detained at any time before filing a response to the motion. Motions and briefs in support must be filed and served simultaneously with, but separately from, the Notice and Warning. Failure to comply with this rule may result in summary denial of the motion.~~

This warning is no longer necessary. The case on which it was based, Wyatt v. Terhune, 315 F.3d 1108 (9th Cir. 2003), was overruled by Albino v. Baca, 747 F.3d 1162 (9th Cir. 2014). The notice and warning should still be given when a motion to dismiss is converted to a motion for summary judgment, but the order converting the motion will give the notice.

CIVIL RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS

15.1 Motion for Leave to Amend or Supplement.

When a party moves for leave to amend or supplement a pleading, the proposed pleading must be attached to the motion as an exhibit. If leave is granted, the party must promptly file the pleading.

CIVIL RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

16.1 Pretrial Conferences; General Rules.

(a) Authority and Attendance. At any pretrial conference, an attorney must have authority to enter into stipulations and to make admissions regarding all matters the parties may reasonably anticipate discussing. Lead trial counsel must attend the preliminary and final pretrial conferences in person and may be required to attend any other conference or hearing in person.

(b) Other Matters Pending. All conferences will proceed as scheduled regardless of whether motions are pending or alternative dispute resolution is being pursued.

(c) Status Conferences. Status conferences may be held in any case as deemed necessary by the court or on motion of a party explaining the need for a conference.

16.2 Preliminary Pretrial Conference.

(a) Exempt Cases. Unless the court orders otherwise, this rule does not apply to proceedings described in Fed. R. Civ. P. 26(a)(1)(B).

(b) Filings Before Preliminary Pretrial Conference. Each of the following documents must be filed no later than seven days before the preliminary pretrial conference:

(1) *Preliminary Pretrial Statement.* A statement must be filed by each party and must include:

(A) a brief factual outline of the case;

(B) the basis for federal jurisdiction and for venue in the division;

(C) the factual basis of each claim or defense advanced by the party;

(D) the legal theory underlying each claim or defense, including, where necessary to a reasonable understanding of the claim or

defense, citations to authority;

(E) a computation of damages;

(F) the pendency or disposition of any related state or federal litigation;

(G) proposed additional stipulations of fact not included in the Statement of Stipulated Facts, *see* L.R. 16.2(b)(3), and the parties' understanding as to what law applies;

(H) proposed deadlines relating to joinder of parties or amendment of the pleadings;

(I) identification of controlling issues of law suitable for pretrial disposition;

(J) the name and city and state of current residence of each individual known or believed to have information that may be used in proving or denying any party's claims or defenses, and a summary of that information. If known, the address and telephone number of the individual must be provided to all counsel on request;

(K) the substance of any insurance agreement that may cover any resulting judgment;

(L) the status of any settlement discussions and prospects for compromise of the case; and

(M) suitability of special procedures.

(2) *Discovery Plan*.

(A) In addition to the matters set forth in Fed. R. Civ. P. 26(f), the parties must identify likely areas of expert testimony.

(B) Plaintiff must file on behalf of all parties the discovery plan resulting from the Rule 26(f) conference.

(3) *Statement of Stipulated Facts.* Plaintiff must separately file a

Statement of Stipulated Facts to which all parties agree.

16.3 Scheduling.

(a) Scheduling Order.

(1) After discussing the Pretrial Statements and Joint Discovery Plan with the parties, the judge will issue a scheduling order.

(2) In exempt cases, unless a dispositive motion is filed, the court will, within 45 days after the case is at issue, establish a schedule for final disposition.

(3) Unless the last deadline in a scheduling order sets a conference or a trial date, it must require the parties to file a joint notice stating the matter is ready for trial or further scheduling.

(b) Continuances.

(1) Requests for continuances of trial will not be routinely granted. Parties must prepare diligently for trial and are discouraged, absent extraordinary circumstances, and good cause shown, from seeking continuance of a trial. In granting a motion for continuance, the court may impose costs and conditions.

(2) *Unavailability of a Witness or Evidence*.

(A) A motion to postpone or continue trial based on the unavailability of a witness or evidence must be supported by an affidavit showing:

(i) the nature and materiality of the testimony or evidence;

(ii) the moving party's efforts to secure the testimony or evidence on time; and

(iii) compelling reason to believe the witness or evidence will be available if a postponement or continuance is granted.

(B) If the opposing party stipulates to the admissibility and content of the testimony or evidence sought, trial will not be postponed

or continued unless trial without it would be unjust to the moving party.

(c) Jury Cost Assessment in Final Week Before Trial. When a civil action scheduled for jury trial is settled or otherwise disposed of less than seven days before trial, all jury costs, Marshal fees, mileage, and per diem may be assessed as directed by the court.

16.4 Final Pretrial Order.

(a) Parties' Planning Conference. At least 14 days before the proposed final pretrial order is due, the plaintiff must convene a conference of all counsel and self-represented parties at a suitable time and place to prepare the proposed final pretrial order. If a party fails to cooperate in the conference or in preparation of the order, another party may move the court for sanctions.

(b) Prerequisites. Before filing the proposed final pretrial order, the parties must:

(1) *Exchange Exhibits.* Exchange copies of all items expected to be offered as exhibits, and all schedules, summaries, diagrams, charts, etc., to be used but not offered at trial. Impeachment or rebuttal exhibits need not be exchanged. Items must be premarked for identification. A party must make the original or the underlying documents of any proposed exhibit available for inspection on request.

(2) *Designate Deposition Excerpts.* Serve statements designating excerpts from depositions proposed to be offered at trial, other than for impeachment and rebuttal. Statements must specify witness, page numbers, and line numbers.

(3) *Provide Deposition Summaries.* Serve a copy of any summary of deposition testimony a party proposes to offer at trial, provided the parties have stipulated to a summary in lieu of reading a deposition.

(4) *Confer and Stipulate.* Attempt to resolve objections to witnesses, proposed exhibits, and designations and summaries of deposition testimony. Counsel must stipulate to the admissibility of as many exhibits as is practical and consistent with preserving legitimate objections.

(5) *Specify Outstanding Evidentiary Objections.* Specify unresolved objections in writing on the opposing party's witness and exhibit lists. Objections not shown on the lists will be deemed waived.

(c) Contents of the Order. As shown in Appendix Form D, the proposed final pretrial order must address the following matters:

(1) *Nature of Action.* A plain, concise statement of the nature of the action and defenses asserted.

(2) *Jurisdiction and Venue.* The statutory basis of federal jurisdiction and factual basis supporting jurisdiction and venue in the District of Montana.

(3) *Jury or Nonjury.* Whether a party has demanded a jury of all or any of the issues and whether any other party contests trial of any issue by jury.

(4) *Agreed Facts.* A statement of all material facts that are not in dispute.

(5) *Elements of Liability.* The legal elements of each theory of liability under which relief is sought.

(6) *Defense Elements.* The legal elements of each defense asserted.

(7) *Relief Sought.* The elements of monetary damage, if any, and the specific nature of any other relief sought.

(8) *Legal Issues.* A statement of disputed legal issues, including, where necessary to a reasonable understanding of the claim or defense, citations to authority.

(9) *Dismissals.* A statement of requested or proposed dismissals of parties, claims or defenses.

(10) *Use of Discovery Documents.* A list of specific answers to interrogatories and responses to requests for admissions that a party expects to offer at trial.

(11) *Estimate of Trial Time.* An estimate of the number of court days each

party requires for presentation of its case in chief.

(d) Witness Lists. As shown in Appendix Form E, and except for impeachment witnesses, each party must attach to the proposed final pretrial order one will-call witness list and one may-call witness list. As to each witness, the list must show:

(1) the witness's city and state of residence;

(2) whether the witness is an expert witness and, if so, the date of the witness's report;

(3) whether the witness will appear in person, remotely, or by deposition;

(4) if the party intends to offer a deposition in its case in chief:

(A) page and line numbers or time frames of any deposition excerpts the party intends to offer;

(B) whether any deposition summary will be offered and, if so, whether the parties stipulate to a summary;

(5) each other party's objections to each witness's testimony.

(e) Exhibit Lists. As shown in Appendix Form F, and except for impeachment or rebuttal exhibits, each party must attach to the proposed final pretrial order one will-offer exhibit list and one may-offer exhibit list. As to each exhibit, the list must:

(1) include columns showing:

(A) the number of the exhibit;

(B) a brief description of it;

(C) each other party's objections to its admission; and

(D) whether all parties stipulate to its admission; and

(2) include columns intended to show:

(A) whether the exhibit was admitted at the final pretrial conference;

(B) the date the exhibit was offered at trial;

(C) the date ruling on its admission was reserved;

(D) the date the exhibit was admitted; and

(E) the date the exhibit was refused or withdrawn.

(f) Filing. The proposed final pretrial order must be signed by all counsel and self-represented parties, filed in the electronic record, and e-mailed to chambers in compliance with L.R. 7.1(c)(3)(B)-(F).

16.5 Alternative Dispute Resolution.

(a) Mediation and Evaluation.

(1) Pursuant to 28 U.S.C. § 651 et seq., the court encourages mediation and neutral evaluation as alternative dispute resolution ("ADR") procedures. Parties must consider using ADR procedures at an appropriate point in the litigation. Parties may engage in ADR with or without the assistance of the court.

(A) Mediation is a non-binding process in which an impartial third party assists the parties in reaching an agreed settlement. A settlement conference is mediation conducted by a judicial officer. A mediator may confer separately and privately with any party during a session.

(B) Neutral evaluation is a non-binding process in which the parties present summaries of their cases to an evaluator, who assesses the parties' legal positions and provides them with an impartial evaluation of the case. The evaluator may help the parties identify areas of agreement, provide case planning guidance, and assist in negotiating a settlement.

(2) The chief deputy clerk of court must annually prepare a statement for the Chief Judge regarding the District's use of ADR procedures.

(b) General Rules.

(1) The presiding judge retains case management responsibility at all times. Where a case is referred to a magistrate judge for all pretrial proceedings, the magistrate judge is the presiding judge.

(2) All settlement proceedings are confidential. Attorneys, participants, mediators, and evaluators must preserve the confidentiality of all communications made in the course of ADR procedures.

(3) All persons serving as mediators or evaluators under this rule are performing quasi-judicial functions and are entitled to the immunities and protections accorded by law to persons serving in such capacity.

(4) *Obligation of Good Faith.*

(A) Each party must ensure that a person with ultimate settlement authority attends and participates in any ADR procedure ordered by the presiding judge. A unit or agency of government satisfies this attendance requirement if represented by a person who has, to the greatest extent feasible, authority to settle and who is knowledgeable about the facts of the case, the governmental unit's position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements.

(B) Failure to participate in good faith may result in the imposition of sanctions against the offending party.

(5) When a case is settled, the parties must immediately notify the court by filing a notice in the case.

(6) Names of available mediators and evaluators are available from the chief deputy clerk of court.

(c) Motions and Orders for ADR.

(1) The presiding judge may, *sua sponte* or on the motion of a party, order the parties to participate in mediation or neutral evaluation.

(2) The presiding judge will select the mediator or evaluator and may

select any person not involved in the case.

(3) The presiding judge or a judicial mediator or evaluator may issue appropriate orders to govern the proceedings. A non-judicial mediator or evaluator may set forth the governing procedures in a letter to the parties. Such letters will not be filed in the record of the case.

CIVIL RULE 17. PLAINTIFF AND DEFENDANT

17.1 Guardian ad Litem.

(a) Qualifications. A person is qualified to be a guardian ad litem if he or she:

(1) has no interest adverse to the ward;

(2) is not financially connected with the ward's attorney, the opposing party, or opposing party's counsel; and

(3) has sufficient means to answer to the ward for any injury caused by the guardian's negligence or misconduct.

(b) Appointment.

(1) A person or party may file an ex parte petition for appointment of a guardian ad litem. The petition must set forth the reasons appointment is necessary.

(2) The court may appoint a guardian ad litem *sua sponte* or act on a petition. If the court grants a petition for appointment, it may appoint a person other than the petitioner as guardian ad litem.

(c) Bond. Before receiving money or property on the ward's behalf, a guardian must post a bond in an amount fixed by the judge.

CIVIL RULE 24. INTERVENTION

24.1 Motion to Intervene.

(a) A motion to intervene and the required supporting documents must be submitted to the clerk in conventional form and must be served in conventional form on each party. With the exception of a reply brief in support of the motion to intervene, further materials may not be filed unless and until leave to intervene is granted.

(b) Anyone moving to intervene must:

(1) comply with L.R. 7.1(c) and (d);

(2) state whether leave is sought under Fed. R. Civ. P. 24(a) or (b) and the grounds for intervention; and

(3) submit to the clerk and serve on the parties all of the following at one time:

(A) the motion and separate brief in support;

(B) the proposed pleading;

(C) if the proposed intervenor is a corporation, a disclosure statement as provided by Fed. R. Civ. P. 7.1(a); and

(D) if counsel is not a member of the bar of this court, a complete application for leave to appear *pro hac vice* under L.R. 83.1(d), excepting only the fee.

(c) ~~If~~ After leave to intervene is granted, the intervenor must~~:~~ file electronically.

~~(1) file electronically; and~~

~~(2) immediately pay any *pro hac vice* fees.~~

Payment of pro hac vice fees is covered by the pro hac vice rule.

CIVIL RULE 26. DISCOVERY

26.1 Rule 26(f) Conference and Discovery Plan.

(a) Except in cases exempted by Fed. R. Civ. P. 26(a)(1)(B), or unless otherwise directed, the parties must confer at least 21 days before the preliminary pretrial conference to consider the matters set forth in Fed. R. Civ. P. 26(f) and to prepare the Statement of Stipulated Facts, *see* L.R. 16.2(b)(3), to be filed before the preliminary pretrial conference.

(b) Each party must serve initial disclosures conforming with Fed. R. Civ. P. 26(a)(1)(A) no more than 14 days after the Rule 26(f) conference. The parties are encouraged to serve initial disclosures at least seven days before the Rule 26(f) conference.

(c) Initial disclosures may not be filed.

(d) In actions brought without counsel, no party may begin discovery until a scheduling order has been issued.

26.2 Documents of Discovery.

(a) Filing Prohibited. Pursuant to Fed. R. Civ. P. 5(d)(1), initial disclosures under Fed. R. Civ. P. 26(a)(1)(A), depositions, interrogatories, requests for documents, requests for admissions, answers, responses, and objections, expert disclosures, expert reports, notices of deposition, notices of service of subpoena, and certificates or notices indicating service of discovery documents on opposing parties are not routinely filed.

(b) Filing Required. Regardless of subsection (a), when any motion is filed relating to discovery, the party filing the motion must attach as exhibits to the motion all of the documents relevant to the motion if the documents have not been previously filed.

(c) Other Motions. Discovery responses or admissions relied on as evidence relevant to another type of motion, such as summary judgment, are considered exhibits rather than discovery documents and are not governed by this rule.

(d) **Expert Disclosures.** At trial, reports by retained experts and disclosures

of testifying non-retained experts must be available for review by the court.

Stylistic amendment to conform with subsections (a)-(c).

26.3 Discovery Responses and Motions.

(a) Responses to Discovery.

(1) Answers and objections to interrogatories pursuant to Fed. R. Civ. P. 33 and responses and objections to requests for admissions pursuant to Fed. R. Civ. P. 36 must identify and quote each interrogatory or request for admission in full immediately preceding the statement of any answer or objection.

(2) Each objection must be followed by a statement of reasons. When an objection is made to part of an interrogatory, the remainder of the interrogatory must be answered at the time the objection is made, or within the period of any extension of time to answer, whichever is later.

(3) Responses to requests made pursuant to Fed. R. Civ. P. 34(a) must set forth each request in full before each response or objection. Each objection must be followed by a statement of reasons.

(4) Failure to object to interrogatories or requests for the production of documents or things under Fed. R. Civ. P. 33 and 34, within the time fixed by the rules, or within the time to which the parties have agreed, constitutes a waiver of any objection.

(5) The parties, and when appropriate a non-party witness, may stipulate to alter any form or procedure for discovery or any time limit for discovery that does not extend the dates set for the close of discovery, the motions deadline, lodging the pretrial order, pretrial conferences, or trial of the case. The court will not enforce oral stipulations.

(b) Demand for Prior Discovery. Whenever a party makes a written demand for discovery that took place prior to the time the party became a party to the action, each party who has previously provided responses to interrogatories or requests for admission or requests for production must furnish to the demanding party, at the demanding party's expense, a copy of the documents containing the discovery responses in question. Alternatively,

each responding party must furnish to the demanding party a list identifying each responsive discovery document by title and, upon further demand and at the demanding party's expense, a copy of any listed discovery response specified in the demand. In the case of requests for production of things, the responding party must make available for inspection by the demanding party all things previously produced. Each party who has taken a deposition must advise the demanding party of the availability of a copy of the transcript at the latter's expense by providing the name, address and telephone number of the certified court reporter who prepared the deposition transcript.

(c) Discovery Motions.

(1) The court will deny any discovery motion unless the parties have conferred concerning all disputed issues before the motion is filed. The mere sending of a written, electronic, or voicemail communication does not satisfy this requirement. Rather, this requirement can be satisfied only through direct dialogue and discussion in a face to face meeting (whether in person or by electronic means), in a telephone conversation, or in detailed, comprehensive correspondence.

(2) All motions to compel or limit discovery must:

(A) set forth the basis for the motion;

(B) certify that the parties complied with subsection (c)(1) or a description of the moving party's attempts to comply; and

(C) attach, as an exhibit:

(i) the full text of the discovery sought; and

(ii) the full text of the response.

(d) Original Discovery. Originals of responses to requests for admission or production and answers to interrogatories must be served upon the party who made the request or propounded the interrogatories, and that party must make such originals available for use by any other party at the time of any pretrial hearing or at trial. Likewise, the deposing party must make the original transcript of a deposition available for use by any party at the time of any pretrial hearing and at trial, or for filing with the court if so ordered.

26.4 Protective Orders.

(a) Motion for Order or Review. When a person or party seeks a protective order under Fed. R. Civ. P. 26(c) and submits documents or items for *in camera* review:

(1) the documents or items sought to be protected may be filed under seal, following L.R. 5.1(b)(1) and (c), without prior leave of court;

(2) the motion for protective order or *in camera* review and brief in support must be filed in the public record and must describe the nature of the documents or items in a manner that, without revealing information sought to be protected, enables an assessment of the propriety of a protective order; and

(3) the party may also file under seal a more detailed supplemental brief in support of the motion for protective order.

(b) Filing Documents That Are Subject to a Protective Order.

(1) *Sealing Not Available.* Documents constituting or containing information subject to a protective order may, if filed in the court's record, be redacted but may not be filed under seal.

(2) *Motion for Leave to Redact.* Prior to filing ~~in the court's record~~ a redacted version of a document constituting or containing information subject to a protective order, the filing party must:

~~(A) show that the public interest in open judicial records is outweighed by a compelling reason, based on specified facts, if the document is filed in connection with a dispositive motion; or,~~

~~(B) if the document is filed in connection with a non-dispositive motion, make a particularized showing under Fed. R. Civ. P. 26(c)(1) that good cause supports redaction.~~

(A) show that the public interest in open judicial records is outweighed by a compelling reason~~,~~ based on specified facts~~, if the document is filed in connection with a dispositive motion~~;

or

(B) if the document is filed in connection with a ~~non-dispositive~~ motion concerning case management or trial management, make a particularized showing under Fed. R. Civ. P. 26(c)(1) that good cause supports redaction.

The phrase "in the court's record" is eliminated as redundant with "filing." The rest of the amendment is necessary to adapt to changing case law. Center for Auto Safety v. Chrysler Group, LLC, 809 F.3d 1092 (9th Cir. 2016), modified the previous distinction between dispositive and non-dispositive motions. Now, "public access will turn on whether the motion is more than tangentially related to the merits of a case." Id. at 1101. If the motion is merits-related, sealing it is justified only if the sealing party meets the higher "compelling reason" standard. The lower "good cause" standard applies to matters that are related "to the judge's role in management of the trial" (or, more broadly, the case) but that "play no role in the adjudication process." Id. at 1100 (internal quotation marks and citation omitted). The amendment reflects the appellate court's decision.

CIVIL RULE 38. JURY TRIAL

38.1 Demand for Jury Trial.

When a demand for a jury trial is incorporated in a pleading, the title of the pleading must so indicate.

CIVIL RULE 47. SELECTING JURORS

47.1 Examining Jurors.

(a) Confidentiality of Juror Information. Other than use at trial, any disclosure of juror information must be limited to parties and counsel involved in the case and persons consulted about the composition of the jury. Those persons must take reasonable steps to protect the confidentiality of the information.

(b) Juror Questionnaires. Case specific juror questionnaires may be allowed at the discretion of the presiding judge and under such terms and conditions as ordered by the presiding judge.

(c) Voir Dire. The court will conduct voir dire unless it orders otherwise. The court may permit limited voir dire by the parties, following the voir dire conducted by the court.

(d) The Electronic Record. The clerk's list of trial jurors' names and information must be sealed if filed in the record of the case.

47.2 Manner of Selection and Order of Examination.

(a) Composition of Panel.

(1) *Initial Panel*. The initial panel called will consist of the number of jurors ordered by the court plus the number of allowable peremptory challenges. The clerk will assign numbers to the jurors in the order in which they are called.

(2) *Challenges.* If any juror in the initial panel is excused for cause, an additional juror will be immediately called and will take the seat and number of the excused juror. After the initial panel is filled and challenges for cause are exhausted, the parties will exercise peremptory challenges.

(3) *Trial Jury.* After challenges are exhausted, the clerk will call by name the agreed number of jurors who have the lowest assigned numbers. These jurors constitute the trial jury.

(b) Arizona Strike Method. If the court orders use of the Arizona strike method, each side will exercise its peremptory challenges simultaneously and without disclosure to other parties.

CIVIL RULE 48. JURORS

48.1 Communications with Trial Jurors.

(a) Before or During Trial. No person involved with the case may communicate with, or cause anyone else to communicate with, a juror, a prospective juror, or a juror's or prospective juror's family member.

(b) After Trial.

(1) Neither parties nor counsel may interview jurors unless, within 28 days after entry of judgment, a party files:

(A) proposed written questions to be asked of the jurors;

(B) an affidavit showing good cause; and,

(C) if granted leave, a second affidavit showing the results.

(2) Unless otherwise ordered by the court, a juror or prospective juror may decline to communicate with anyone concerning a trial in which the juror was involved.

CIVIL RULE 51. INSTRUCTIONS TO THE JURY

51.1 Requests for Instructions to Jury.

(a) Requests for instructions to the jury must be filed with the court and served upon each adverse party in accordance with the deadline set by the court in the scheduling order. The proposed instructions to the jury must encompass all rules of law applicable to the evidence adduced. Appropriate citations should be noted following the text on each page of the charge to the jury.

(b) The court may receive additional requests for instructions to the jury relating to questions or issues arising during the trial at any time prior to the closing arguments. The parties submitting such late proposed instructions must be prepared to explain to the court both the need for the additional instruction and the reason for its omission from the instructions proposed before trial.

(c) Proposed instructions to the jury must be served upon opposing parties when they are filed with the court, in accordance with the scheduling order.

CIVIL RULE 54. COSTS AND FEES

54.1 Taxation of Costs.

(a) Procedure.

(1) Within 14 days after the entry of a judgment allowing costs, the prevailing party may serve and file an application for the taxation of costs. The application must be made on Form AO-133, Bill of Costs, available on the court's website. Failure to comply with any provision of this subsection (a) will be deemed a waiver of all costs except clerk costs.

(2) The opposing party may object within 14 days after the application was filed. Any objection must specify the item and/or amount objected to and give reasons for the objection.

(3) Within 14 days after an objection is filed, the clerk must either tax the costs or, at his or her discretion, hold a hearing on the application.

(4) If a hearing is set, the date, time, and manner of the hearing must be reflected in the docket of the case. Hearings must be recorded and will generally be conducted by telephone. The clerk must tax the costs within 14 days of the hearing.

(5) Clerk's costs may be inserted in the judgment without application.

(6) A party may appeal the clerk's decision by filing a motion for review within seven days of entry of the clerk's taxation of costs. The party must specify each objection to the decision and give reasons for its objection. The court will consider the same documents and evidence submitted to the clerk and any pertinent docket entries.

(b) Items Taxed.

(1) *Transcripts and Video Depositions*.

(A) Costs of depositions taken solely for discovery purposes and depositions of the moving party's witnesses who are withdrawn or precluded from testifying are not allowed.

(B) Absent an objection, the clerk will presume it was reasonably necessary for the moving party to obtain:

(i) video depositions it used at trial; and

(ii) transcripts of depositions and court proceedings used at trial, after trial, or in supporting or opposing a motion for summary judgment.

(C) Reporter's fees will be allowed at the rate paid or at the rate specified by the Judicial Conference, whichever is less.

(2) *Witness Fees*.

(A) Costs and fees for witnesses paid under 28 U.S.C. § 1821 are allowed for each day a witness testifies at trial. Otherwise, the moving party must establish the witness's presence was required.

(B) For expert witnesses, the party seeking costs may be entitled to recover only the statutory fees and mileage unless the presiding judge orders otherwise prior to the time costs are sought.

(3) *Fees for Exemplification and Copies*.

(A) Reasonable costs of reproducing exhibits on the moving party's will-offer exhibit list are allowed. Otherwise, the moving party must establish the reasonable necessity of reproducing the exhibit.

(B) Costs of converting exhibits into digital-display format are allowed. The moving party must establish the reasonableness of the rate.

(4) *Bond Premiums.* Bond premiums paid pursuant to law or a court order are presumed reasonably necessary absent objection. Otherwise, the moving party must establish the reasonable necessity of obtaining a bond.

(5) *Other Costs.* Other costs are allowed as provided by federal law.

54.2 Attorney Fees.

Attorney fees will only be allowed upon an order of a judge.

CIVIL RULE 56. SUMMARY JUDGMENT

56.1 Motion for Summary Judgment.

(a) Any party filing a motion for summary judgment must simultaneously file a Statement of Undisputed Facts. The Statement must:

(1) set forth in serial form each fact on which the party relies to support the motion;

(2) pinpoint cite to a specific pleading, deposition, answer to interrogatory, admission or affidavit before the court to support each fact;

(3) be filed separately from the motion and brief; and

(4) immediately upon filing of the motion, be e-mailed in a word processing format to each party against whom summary judgment is sought.

(b) Any party opposing a motion for summary judgment must file a Statement of Disputed Facts simultaneously with and separately from the response brief. Similar to the example provided in Appendix Form A, the Statement must:

(1) set forth verbatim the moving party's Statement, adding only:

(A) whether each fact in the moving party's Statement is "undisputed" or "disputed"; and,

(B) if "disputed," pinpoint cite to a specific pleading, deposition, answer to interrogatory, admission or affidavit before the court to oppose each fact; and

(2) set forth in serial form:

(A) each additional fact on which the party relies to oppose the motion;

(B) pinpoint cite a specific pleading, deposition, answer to

interrogatory, admission or affidavit before the court to support each additional fact.

(c) In the alternative, the movant and the party opposing the motion may jointly file a statement of stipulated facts if the parties agree there are no material disputed facts. Such stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

(d) Where the parties do not file a joint stipulation, failure to file a Statement of Undisputed Facts will be deemed an admission that material facts are in dispute. Failure to file a Statement of Disputed Facts will be deemed an admission that no material facts are in dispute.

56.2 Motion Filed Against Self-Represented Prisoner.

(a) A defendant must file and serve the following "Notice and Warning to Plaintiff," in a document separate from the motion and from the brief, at the time the defendant files and serves any motion for summary judgment against a plaintiff who is proceeding *pro se* and who is incarcerated or detained at any time before filing a response to the motion:

The court requires this Notice and Warning to be given to all *pro se* prisoner litigants when an opposing party files a motion for summary judgment.

Defendant _____ [name defendant, or state "all defendants"] has/have moved for summary judgment by which [appropriate pronoun] seek[s] to have your remaining claims dismissed and judgment entered against you. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case [as to the following claims: _____].

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact – that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations or other sworn testimony, you cannot simply rely on what your complaint says. Instead, you must set out

specific facts in the record, including depositions, documents, affidavits or declarations, stipulations, admissions, interrogatory answers, or other materials, as provided in Rule 56(c), or comply with Rule 56(d), to contradict the facts shown in the other party's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, judgment will be entered against you and there will be no trial.

Additionally, a local rule of the District of Montana, D. Mont. L. R. 56.1(b), requires that "[a]ny party opposing a motion for summary judgment must file a Statement of Disputed Facts setting forth the specific facts, if any, that establish a genuine issue of material fact precluding summary judgment in favor of the moving party."

(b) Failure to provide the above Notice and Warning will result in denial of the motion for summary judgment, regardless of whether the motion is fully briefed.

CIVIL RULE 58. ENTERING JUDGMENT

58.1 Entering Judgment.

(a) When Required. Except as to orders disposing of motions listed in Fed. R. Civ. P. 58(a), the clerk will enter judgment by separate document at the conclusion of each case.

(b) Time and Manner of Entering Judgment.

(1) When a jury returns a general verdict without special interrogatories or denies all relief, or when the court awards only costs or a sum certain, the clerk must promptly enter judgment, in favor of one party and against another party, without awaiting direction by the court.

(2) In the text of any order on which it is appropriate for the clerk to enter judgment, the court will direct the clerk as to the time and manner of entering judgment. If the court finally denies all relief in the case but gives no direction as to entry of judgment, the clerk must enter judgment without awaiting the court's direction.

(c) Proposed Judgment. The court may order the prevailing party to file a proposed judgment. Objections to the proposed judgment may be filed within seven days of its filing.

CIVIL RULE 67. DEPOSIT INTO COURT

The following rules, currently 67.1 and 67.2, are revised to incorporate some aspects of Standing Order DLC-28 and to facilitate the Court's use of the Court Registry Investment System in compliance with controlling federal law, including IRS regulations. Current L.R. 67.2 is deleted as unnecessary.

~~**67.1 Order for Deposit; Interest Bearing Account.**~~

~~Whenever a party seeks a court order for money to be deposited by the clerk in an interest-bearing account, the party must personally deliver a proposed order to the clerk or financial deputy, who will inspect the proposed order for proper form and content and compliance with this rule prior to signature by the judge assigned to the case.~~

~~**67.2 Order Directing Investment of Funds by Clerk.**~~

~~**(a)** Any order obtained by a party or parties in an action that directs the clerk to invest in an interest-bearing account or instrument funds deposited in the registry of the court pursuant to 28 U.S.C. § 2041 must include the following:~~

~~(1) the amount to be invested;~~

~~(2) the name of the depository approved by the Treasurer of the United States as a depository in which funds may be deposited;~~

~~(3) a designation of the type of account or instrument in which the funds must be invested; and~~

~~(4) wording that directs the clerk to deduct from the income earned on the investment a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office of the United States Courts, whenever such income becomes available for deduction and without further order of the court.~~

~~**(b)** Information regarding the authorized fee is available from the clerk's office upon request.~~

67.1 Order for Deposit.

(a) Terms governing registry funds and payment of associated fees are set forth in a Standing Order that may be found on the Court's website. The Court Registry Investment System ("CRIS") is the sole authorized investment mechanism for money deposited in the Court's registry. Parties will save time and effort by contacting the Financial Unit for guidance on Judicial Conference policy before preparing documents to file with the Court.

(b) Prerequisites to Filing Motion to Deposit Funds.

(1) Before filing a motion to deposit money in the Court's registry, a party must deliver the following documents to the clerk's office:

(A) a motion for an order to deposit funds into the Court's registry, stating whether ownership of the funds is disputed;

(B) a completed and signed Registry Deposit Information Form from the Court's website; and

(C) a proposed order stating the amount to be deposited.

(2) When the Financial Unit confirms the documents are correct, the party must file the motion, the Registry Deposit Information Form, and a proposed order and serve all other parties who have appeared.

(c) The clerk is not authorized to accept funds for deposit without a court order.

67.~~3~~ 2 Order for Disbursement of Funds.

(a) Whenever a party seeks a court order for money to be disbursed, it must include the following:

(1) the name(s) of the payee;

(2) the address(es) of the payee;

(3) the social security and/or tax ID number of the payee; and

(4) the amount of principal and interest for each payee.

(b) The party must file a redacted version of its motion in the public record, *see* Fed. R. Civ. P. 5.2(a), and ~~a complete~~ an unredacted version under seal.

Stylistic amendment.

67.~~4~~ 3 Security for Costs.

(a) On a party's or its own motion, the court may at any time order any party to file a bond for costs in such amount and so conditioned as the court may designate.

(b) Whenever a security is required to be given, in unspecified form, except in bankruptcy proceedings, and except when given to secure the appearance of a defendant in a criminal case, it must be given in substance and form as provided by Montana law. The bond is deemed sufficient unless the secured party objects in writing to the sufficiency of the surety and applies to the court for a hearing.

CIVIL RULE 72. MAGISTRATE JUDGES – GENERAL AUTHORITY; MATTERS REFERRED

72.1 Authority of Magistrate Judge.

Each United States magistrate judge appointed by this court is authorized and designated by the Article III judges of the court to exercise all powers and perform all duties described by 28 U.S.C. § 636 and by federal rules and other federal law and may perform any additional duty that is not inconsistent with the Constitution or laws of the United States or with these rules.

72.2 Referral to Magistrate Judge.

(a) Referral on Filing of a New Case. Except as otherwise provided by order, and except for motions under 28 U.S.C. § 2255, actions for writs filed by federal prisoners, cases originating in the bankruptcy court, and cases governed by Appendix A, the following cases will be assigned to an Article III judge and referred to a magistrate judge upon filing:

(1) prisoner civil rights actions, habeas corpus actions, social security actions, cases in which one or more plaintiffs are self-represented, and cases in which leave to proceed in forma pauperis is sought. A case will not be reassigned based on a party's change of status after filing.

(2) cases in which a magistrate judge's name is randomly drawn.

(b) Referral After Filing. An active Article III judge may at any time designate a United States magistrate judge to exercise jurisdiction over a civil case, matter, or motion in accordance with 28 U.S.C. § 636.

(c) In any case referred to a magistrate judge under subsection (a), the Article III judge may act *sua sponte* regardless of the referral.

72.3 Objection and Response.

(a) An objection filed pursuant to 28 U.S.C. § 636(b)(1) must itemize:

(1) each factual finding of the magistrate judge to which objection is made, identifying the evidence in the record the party relies on to contradict that finding; and

(2) each recommendation of the magistrate judge to which objection is made, setting forth the authority the party relies on to contradict that recommendation.

(b) An objection must be filed within 14 days of service of the magistrate judge's order or findings and recommendation. A response must be filed within 14 days of service of the objection. Objection and response are limited to 6500 words. A reply is not permitted.

CIVIL RULE 73. MAGISTRATE JUDGES – CONSENT PROCEDURE

73.1 Consent Election.

(a) Anonymity. Parties are free to give or withhold their consent to magistrate judge jurisdiction. No judge will be notified as to the identity of any party giving or withholding consent to the exercise of jurisdiction by a magistrate judge, except when all parties consent. No party may disclose its own or any other party's consent or lack of consent.

(b) Filing or Destruction. If all parties consent to magistrate judge jurisdiction, each party's written consent will be filed in the record of the case. If fewer than all parties consent to magistrate jurisdiction, the parties' consent forms will be destroyed at the conclusion of the case in this court.

(c) Notice. When a civil action has been referred to a magistrate judge under L.R. 72.2(a), the clerk will notify the parties of such referral and advise them that they may give or withhold consent to the magistrate judge's exercise of jurisdiction. In cases that are pre-screened pursuant to 28 U.S.C. § 1915(e)(2), 28 U.S.C. § 1915A(a), 42 U.S.C. § 1997e(c), or Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the clerk will serve the notice and consent election form after all parties ordered to be served have made an appearance. In all other cases, the clerk will serve the notice and consent election form within seven days after the last party has appeared. At the direction of the court, the clerk may conduct new consent elections at any time.

(d) Return of Consent Election Forms. Parties have 14 days from service of the clerk's notice and consent election form to complete and return the form to the clerk. If any party's form is not received within 17 days after service, that party is deemed to have withheld consent. The clerk will keep custody of all consent election forms. If all parties give consent, the case will be reassigned to a magistrate judge for all purposes, including trial and entry of judgment, pursuant to 28 U.S.C. § 636(c).

73.2 Motion for Reassignment.

All parties may jointly move for reassignment from an active Article III judge to a magistrate judge, based on each party's written consent as shown in the motion. The court may, in its discretion, grant or deny such a motion.

CIVIL RULE 78. HEARING MOTIONS; SUBMISSION ON BRIEFS

78.1 Submission on Briefs.

Except where a hearing is ordered in the court's discretion, a matter is submitted on the briefs without oral hearing.

78.2 Social Security Cases.

~~**(a) Administrative Record.** In cases seeking judicial review of a decision by the commissioner of social security under 42 U.S.C. § 405(g), the defendant must file the administrative record with its answer.~~

(~~b~~ a) Special Briefing Schedule. Unless the defendant files a motion to dismiss, the clerk will issue a briefing schedule when the ~~answer and~~ administrative record ~~are~~ is filed. The clerk will set specific due dates based on the following schedule:

(1) The plaintiff's opening brief must be filed within 60 days after filing of the ~~answer~~ administrative record. Failure to timely file the brief may result in summary dismissal of the case.

(2) The defendant's response brief must be filed within 30 days after the plaintiff's brief is filed;

(3) The plaintiff's reply brief, if any, must be filed within 14 days after the defendant's brief is filed and may contain no more than 3250 words.

Conforming amendments to reflect Standing Order DLC-34 and amendments to L.R. 3.1 and 12.3.

(~~c~~ b) Briefs. Principal briefs must contain:

(1) a statement of the issues presented for review;

(2) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for review, with appropriate references to the record;

(3) the party's contentions and the reasons for them, with citations to the authorities and parts of the record on which the party relies;

(4) a short conclusion stating the precise relief sought; and

(5) no more than 6250 words.

~~CIVIL RULE 79. RECORDS KEPT BY THE CLERK~~

~~79.1 Judgments of Bankruptcy Court.~~

~~Judgments issued by the bankruptcy court must be entered in the district court's civil judgment book.~~

This rule is deleted as there is no longer a book containing the district court's judgments. Pursuant to Fed. R. Bankr. P. 5003(c), a party may still request that a judgment of the Bankruptcy Court be kept and indexed with the District Court's civil judgments.

CIVIL RULE 83. RULES GOVERNING ATTORNEYS AND REPRESENTATION

83.1 Attorney Admission and Appearance.

(a) General Rules.

(1) An attorney who appears in this court is subject to its disciplinary jurisdiction. See Appendix B.

(2) Only an attorney authorized to appear under this rule may appear on behalf of a party.

(3) An attorney authorized to appear in this court must promptly notify the court of any change in the attorney's status in another jurisdiction that would make the attorney ineligible for membership or ineligible to appear under subsections (c) or (d) of this rule.

(b) Membership in the Bar.

(1) Only attorneys of good moral character who are members in good standing of the State Bar of Montana may be admitted as members of the bar of this court. Member attorneys on active status may appear in any case.

(2) *Procedure for Admission.* Each applicant for admission must present to the clerk of court:

(A) a petition for admission signed by the applicant and setting forth:

(i) the applicant's residence and date of admission to the State Bar of Montana; and

(ii) certification by a member of the bar of this court that the applicant is of good moral character and a member in good standing of the State Bar of Montana;

(B) the current admission fee shown on the court's website; and

(C) the signed oath card.

(3) *Continued Good Standing.* When the clerk receives notice that a member of the Bar is not in good standing, the clerk will notify the attorney that he or she may not appear in any case. On the clerk's receipt of notice from the State Bar of the attorney's return to good standing, the attorney is reinstated to practice in this court.

(c) Attorneys for the United States and Federal Defenders. An attorney currently employed or retained by the United States or by the Federal Defenders of Montana may appear in this court in any matter within the scope of the attorney's employment, provided the attorney is an active member in good standing of another federal bar or of the bar of the highest court of a State, territory, or insular possession of the United States.

As a courtesy to the United States and the Federal Defenders, their employee-attorneys' admission requirements and fees are waived. When an attorney is not acting as an employee of the United States or Federal Defenders, he or she should be admitted under the rules that apply to other attorneys.

(d) *Pro Hac Vice* Appearance.

(1) A non-member attorney who does not reside and is not regularly employed in Montana but who is an active member in good standing of the Bar of any United States court or of the highest court of any state or of any territory or insular possession of the United States, who is of good moral character, and who has been retained to appear in this court, may, upon motion to and in the discretion of the presiding judge, appear and participate in a particular case. A *pro hac vice* applicant may not file electronically unless granted leave to appear *pro hac vice*.

(2) An applicant attorney must obtain the name, address, telephone number, and written consent of local counsel who is a member of the bar of this court and with whom the court and opposing counsel may readily communicate regarding the conduct of the case, upon whom documents will be served, and who will be responsible to participate as required under subsection (5) of this rule.

(3) Local counsel must file a motion for the applicant attorney's admission *pro hac vice* and must attach to the motion the applicant's affidavit stating, under penalty of perjury:

(A) the applicant's state or territory of residence and office addresses, including firm name and telephone, fax, and e-mail contact information;

(B) that the applicant has paid or will pay, simultaneously with filing the application, the admission fee shown on the court's website, subject to reimbursement if the application is denied;

(C) that the applicant either has completed the District of Montana's online training for electronic filing or is proficient in electronic filing in another federal district court;

(D) by what court(s) the applicant has been admitted to practice, the date(s) of admission, and the date(s) of termination of admission, if any;

(E) that the applicant is in good standing and eligible to practice in these courts;

(F) that the applicant is not currently suspended or disbarred in any other court;

(G) whether the applicant has ever been held in contempt, otherwise disciplined by any court for disobedience to its rules or orders, or sanctioned under Fed. R. Civ. P. 11 or 37(b), (c), (d) or (f) or their state equivalent; the name of the court before which the proceedings were conducted; the date of the proceedings; and what action was taken in connection with those proceedings. A copy of any such contempt, discipline, or sanction order must be included with the application;

(H) whether the applicant has concurrently or within the two years preceding the date of application made any *pro hac vice* application to this court, the title and the cause number of each matter in which an application was made, the date of application, and whether the application was granted;

(I) that the applicant understands that *pro hac vice* admission in this court is personal to the attorney only and is not admission of a law firm and that the attorney will be held fully

accountable for the conduct of the litigation in this court; and

(J) that the applicant has complied with Mont. R. Prof'l Conduct 8.5.

(4) Leave to appear *pro hac vice* is granted or denied solely at the discretion of the presiding judge. Revocation of leave to appear pertains to the instant case only and does not automatically bar application in another case or membership in the bar of the court.

(5) *Pro hac vice* counsel must update the information required by L.R. 83.1(d)(3)(A), (D) (as to termination of admission only), (E), (F), and (G) if it is or becomes incorrect or incomplete at any point in the duration of the admission.

The amendment requires pro hac vice counsel to apprise the Court of any change in key information underlying counsel's admission.

(~~5~~ 6) *Duties of Local Counsel.* Local counsel must participate actively in all phases of the case, including, but not limited to, attendance at depositions and court proceedings, preparation of briefs and discovery requests and responses, and all other activities to the extent necessary for local counsel to be prepared to go forward with the case at all times. Unless otherwise ordered, local counsel must sign all pleadings, motions, and briefs. The court, in extraordinary circumstances and on motion by local counsel, may suspend or modify local counsel's duties. If the court alters local counsel's duties or waives this rule—neither of which will occur routinely—all documents subsequently filed must be signed by counsel actively involved in the case.

83.2 Standards of Conduct.

(a) Professional Rules. The standards of professional conduct of attorneys appearing in this court include the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct. For a willful violation of any professional rules or standards in connection with any pending matter, an attorney is subject to appropriate disciplinary action and to referral of the matter to the appropriate authority for disciplinary proceedings.

(b) Attorney Under Appointment of Court.

(1) *Compensation.* It is the duty of an attorney to act without compensation whenever the attorney is appointed by the court to represent an indigent person in any proceeding not covered by the provisions of 18 U.S.C. § 3006A, except as otherwise provided by statute or rule.

(2) *Gratuities.* Attorneys appointed by the court to represent an indigent person may not, without specific approval of the court, accept or solicit any money for any purpose from any person on account of the representation. Any attorney violating this rule will be disciplined by the court. If it comes to the attention of any attorney appointed to represent an indigent that the person is in fact not indigent or has sources of money for payment of fees or costs, that fact must be presented to the court, regardless of whether the attorney is permitted to accept or solicit money on account of the representation.

(c) Lawyers must wear appropriate professional attire for all proceedings before the court.

83.3 Substitution and Withdrawal of Counsel.

(a) Substitution of Counsel. When a party changes attorneys, a notice of substitution signed by the incoming and the outgoing attorney must be filed by the incoming attorney. The incoming attorney is responsible for ensuring that he or she is added to the case for the correct party or parties and is properly designated to receive notices of electronic filing. When the incoming attorney makes an appearance, the clerk must terminate electronic service on the outgoing attorney. Substitution of counsel automatically revokes any consent to fax or e-mail service under Fed. R. Civ. P. 5(b)(E)-(F) or Fed. R. Crim. P. 49(b).

(b) Withdrawal of Counsel.

(1) When an attorney's withdrawal will leave any party without counsel for any period of time, the attorney may withdraw only by leave of court.

(2) A motion for leave to withdraw must state the client's last known mailing address and must be accompanied by either:

(A) the client's written consent to counsel's withdrawal, signed by the attorney and the client and acknowledging the client's obligation immediately to retain new counsel or appear *pro se*; or

(B) an affidavit of counsel showing that:

(i) a notice of intent to file a motion to withdraw was personally served on the client at least 14 days prior to filing the motion to withdraw;

(ii) the client has been advised of its obligation immediately to retain new counsel or appear *pro se* if the motion to withdraw is granted; and

(iii) facts constituting good cause support withdrawal. A showing of good cause may be made by filing an ex parte affidavit separate from the affidavit addressing subsections (i) and (ii) above. An ex parte affidavit must be served on the client but need not be served on any other party.

83.4 Agreements of Attorneys.

(a) When an attorney disputes the existence of an agreement or stipulation, the agreement is unenforceable unless:

(1) it is in writing and signed by an attorney of record for the party against whom enforcement is sought; or

(2) it is in an electronic communication sent by an attorney of record for the party against whom enforcement is sought; or

(3) its existence is supported by a clerk's minutes or a court reporter's record.

(b) In open court, an agreement or stipulation made by any attorney of record for a party is enforceable against that party.

83.5 Attorney as Witness.

If an attorney representing any party is examined as a witness in a case and gives testimony on the merits, the attorney may not argue the merits of the case, either to the court or jury, except by permission of the court, and as limited by the court.

83.6 Appointment of Counsel.

(a) Civil Pro Bono Panel.

(1) The Civil Pro Bono Panel is the court's resource for identifying those members of the bar of this court who are willing to make a pro bono contribution to the District of Montana. Names of panel members may not be publicly disclosed or disseminated.

(2) An attorney may participate on the panel by writing to the Chief Judge a letter setting forth:

(A) the attorney's number of years in practice, including any particularly relevant litigation background or law school preparation; and

(B) the attorney's preference for appointment among various types of actions (e.g., social security appeals, employment discrimination actions, civil rights actions, habeas corpus).

(3) An attorney may, by letter, withdraw from the panel at any time.

(4) Participation on the panel is not a prerequisite to appointment. The court's practice will be to contact counsel before appointment to determine counsel's ability and willingness to accept appointment. However, a judge has discretion to select any member of the bar of this court.

(b) Request for Counsel.

(1) Counsel may be appointed on a *pro se* party's motion for the appointment of counsel.

(2) With the party's consent, counsel may be appointed on the court's own motion. In social security disability cases, counsel may not be appointed unless the party has been advised that counsel may be entitled to obtain compensation from any award of benefits.

(c) Factors Considered. The judge will consider the following factors in determining whether counsel should be appointed:

(1) The potential merit of the claim or claims;

(2) The nature and complexity of the action, both factual and legal, including the need for factual investigation and expert witnesses;

(3) The likelihood of conflicting testimony calling for a lawyer's presentation of evidence and cross-examination;

(4) The party's ability to prepare and present the case *pro se*;

(5) The party's inability to obtain counsel by other means;

(6) The extent to which the interests of justice will be served by appointment of counsel, including the benefit the court may derive from counsel's assistance;

(7) The extent to which counsel might be appointed for a limited purpose rather than full representation; and

(8) Any other factors relevant to the exercise of the court's discretion.

(d) Selection and Appointment.

(1) When the judge concludes that appointment is warranted, an attorney or firm will be selected by the judge.

(2) The judge will issue an order:

(A) appointing an individual attorney;

(B) staying proceedings for at least 45 days; and

(C) setting a deadline for the parties to file, jointly or separately, a status report setting forth a proposed plan and schedule for disposition of the remainder of the case.

(3) The clerk will immediately provide to appointed counsel courtesy

copies of the order of appointment and all documents filed in the case prior to the date of appointment.

(e) Scope of Appointment. Except as the scope of representation may be expressly limited by the judge, counsel must represent the party in the action through final judgment or other resolution of the case in the district court. Counsel may but need not represent the party on appeal. Appointment is made only for purposes of the case in which the order is entered.

(f) Notice of Appearance. Within seven days of entry of an order appointing counsel, the appointed attorney must file a notice of appearance.

(g) Relief from Appointment. An appointed attorney may move to be relieved of an order of appointment pursuant to Montana Rule of Professional Conduct 1.16 or on the following grounds:

(1) conflict of interest;

(2) personal incompatibility or a substantial disagreement on litigation strategy or tactics;

(3) the party is proceeding for purposes of harassment or malicious injury, or that the party's claims or defenses are not warranted under existing law and cannot be supported by good faith argument for extension, modification or reversal of existing law; or

(4) any other basis that, in the discretion of the presiding judge, justifies withdrawal.

(h) Expenses.

(1) Counsel must seek payment of costs from the adverse party if entitled to do so.

(2) With prior approval of the court on a properly documented motion, counsel may obtain reimbursement for expenses reasonably incurred by appointed counsel or by counsel associated by appointed counsel. Reimbursement may be made from non-appropriated funds in an amount up to $3,000.00. Reimbursement for expenses over $3,000.00 must be approved by the Committee on Non-Appropriated Funds.

(3) The court will not reimburse counsel:

(A) for costs personally taxed against appointed counsel or paid by the adverse party; or

(B) where a judgment or settlement was obtained for at least $6,000.00.

(4) Reimbursement will generally be made at the conclusion of the representation. Where reimbursement is made on an interlocutory basis and appointed counsel later obtains a judgment or settlement of at least $6,000.00, counsel must reimburse the court for costs it has already paid to counsel.

(i) Fees. An appointed attorney may seek fees from the adverse party as provided by law.

83.7 Student Participation.

(a) Purpose. This rule is adopted to support clinical instruction and mentoring in litigation practice. It authorizes participation by law students in this court on a case-by-case basis.

(b) Participation.

(1) *Authorization.* After the required certifications are filed in the record of a case, a student may participate in preparing written submissions to the court in that case and make presentations for the client in open court. The student may not sign documents and may not be registered in the CM/ECF system.

(2) *Presiding Judge.* At any time, the presiding judge may limit, condition, or disallow a student's participation.

(3) *Withdrawal or Termination of Required Certification.* Any person required to provide certification or consent may withdraw it at any time by written notice to the clerk of court. All required certifications will terminate upon announcement of the results of the first bar exam taken by the student.

(c) Student Eligibility. To participate under this rule, a student must:

(1) (A) be enrolled at an ABA-accredited law school and complete at least two-thirds of the credits required to graduate; or

(B) be a recent graduate who has not yet taken a bar exam or who is awaiting the results;

(2) be familiar with the Federal Rules of Civil Procedure, of Criminal Procedure, and of Evidence, the Model Rules of Professional Conduct, the Montana Rules of Professional Conduct, and the Local Rules;

(3) provide personal certification using Form K in the Appendix; and

(4) obtain certification from the dean of his or her law school, using Form L, and from a supervising attorney, using Form M.

(d) Supervising Attorney. A supervising attorney must:

(1) explain to the client the terms of the student's participation in each case and obtain the client's written consent to the student's participation, using Form J;

(A) Where the client is the United States, the consent of the United States Attorney for the District of Montana is required;

(B) Where the client is the State of Montana, the consent of the Attorney General is required;

(2) file Form M in the record of the case, attaching Forms J, K, and L;

(3) assist and counsel the student and accept full personal and professional responsibility for all work performed by the student;

(4) ensure that at least one supervising attorney:

(A) is present in person throughout the student's presentations in open court;

(B) signs all written submissions in which the student participates and briefly notes the student's participation; and

(5) at the student's first presentation in open court, introduce the student to the presiding judge.

83.8 Self-Represented Litigants.

(a) Any individual acting without an attorney must appear personally and may not delegate that duty to any other person who is not a member of the bar of this court. A self-represented person is bound by the federal rules and all applicable local rules. Sanctions, including but not limited to entry of default judgment or dismissal with prejudice, may be imposed for failure to comply with local rules.

(b) Any entity other than an individual, including but not limited to a corporation, an unincorporated association, a partnership, or a union, may appear only by an attorney.

Generally, the following subdivisions (c) and (d) of this Rule enable pro se litigants to serve and receive case documents electronically, as attorneys do via CM-ECF, but without giving pro se litigants filing rights in CM-ECF. See L.R. 1.4(d).

Traditionally, a self-represented litigant serves and receives service of documents by mail, while attorneys serve and receive documents in the same instant the documents are filed in CM-ECF. Under prior versions of Fed. R. Civ. P. 6(d), this gave e-filers an advantage over pro se parties, because e-filers still had three additional days for "mailing," even though they always received service as soon as the document was filed. To level the playing field, subdivisions (c)(4) and (d)(4) of this Rule, as currently phrased, distinguish between dates of filing and dates of service so that parties receiving service electronically do not get three additional days but parties receiving service by mail do.

Effective Dec. 1, 2016, Fed. R. Civ. P. 6(d) was amended to omit the three-day mailing period when documents are served via CM-ECF. As it is no longer necessary for the local rule to level the playing field, it can be simplified. Subdivisions (c)(4) and (d)(4) are deleted, and new subsection (e) addresses time to respond.

(c) Filing and Service by Self-Represented Litigants~~; Time to Respond~~.

(1) No sooner than 30 days after the commencement of a case or *pro se* appearance, the clerk may agree to accept by e-mail from a self-represented litigant scanned documents intended for filing in the

electronic record. The agreement must be in writing and filed in the record of the case. All documents intended for filing must be signed by hand by the self-represented litigant.

(2) A self-represented litigant need not conventionally serve on any attorney filing electronically any document that is filed in the electronic record. Any document not filed in the electronic record must be conventionally served.

(3) If a self-represented litigant presents to the clerk for filing a document or item that cannot be scanned or does not produce a legible electronic image, the clerk must:

(A) briefly describe the document or item and note the date of its submission in the record of the case; and

(B) notify the litigant to serve the document or item by other means within three business days.

~~(4) *Other Party's Time to Respond to a Self-Represented Litigant.* Except where a response is due on a date certain:~~

~~(A) when service is made via ECF, a party's time to respond to a filing by a self-represented litigant runs from the date of filing and is not extended by three days under Fed. R. Civ. P. 6(d).~~

~~(B) when service is made conventionally, a party's time to respond to a filing by a self-represented litigant runs from the date of service and is extended by three days under Fed. R. Civ. P. 6(d).~~

(d) ~~Service~~ Serving Documents on Self-Represented Litigants~~; Time to Respond~~.

(1) A self-represented litigant may agree with the clerk to receive e-mail service of all documents filed electronically, whether filed by the clerk or by registered users. Consent must be in writing and filed in the record of the case. Documents not filed in the electronic record will be served conventionally.

(2) Alternatively, or in addition, pursuant to Fed. R. Civ. P. 5(b)(2)(E) ~~and (F)~~, a self-represented litigant may agree with one or more other

parties to receive and/or effect service by specified means. Any such agreement must be made in writing, ~~and~~ signed by each participating party, and filed in the record of the case.

(3) Where neither (d)(1) nor (d)(2) ~~provide otherwise~~ apply, attorneys filing electronically must conventionally serve a self-represented litigant.

~~(4) *Self-Represented Litigant's Time to Respond.* Except where a response is due on a date certain:~~

~~(A) when a self-represented litigant is served by electronic means, time to respond runs from the date of filing and is not extended by three days under Fed. R. Civ. P. 6(d).~~

~~(B) when a self-represented litigant is served conventionally, time to respond runs from the date of service and is extended by three days under Fed. R. Civ. P. 6(d).~~

(e) Application of Three-Day Mailing Rule. When a party may or must respond to a document within a specified time period, three days are added to the end of the response time when the party receives the document by conventional means but not when the party receives it via ECF.

Proposed subdivision (e) is essentially Fed. R. Civ. P. 6(d), but it may be helpful to spell it out here.

CHAPTER II. CRIMINAL RULES

CRIMINAL RULE 1. SCOPE

CR 1.1 Rules Incorporated from Chapter I.

Rules L.R. 1 and 83, except 83.3(b), 83.6, and 83.8, apply in criminal proceedings.

CRIMINAL RULE 6. THE GRAND JURY

CR 6.1 When and Where Impaneled.

Grand juries are summoned when the public interest requires and convene where and when the court deems appropriate.

CR 6.2 Secrecy.

~~Unless a judge directs disclosure, all matters associated with a grand jury are sealed with access provided only to designated court staff. Indictments are sealed until all named defendants have appeared or are in custody.~~

(a) Grand Jury Matters. Matters associated with a grand jury are sealed with access provided only to designated court staff.

(b) Service of Indictments. When the United States serves a summons, lodges a detainer, or executes an arrest warrant (whichever comes first), it shall provide the defendant with the indictment and contact information for the Federal Defenders of Montana.

(c) Sealing and Unsealing of Indictments.

(1) Indictments generally will not be sealed. On motion by the United States based on the circumstances of the case, an indictment may be filed under seal.

(2) While an indictment is sealed, the Federal Defenders or counsel they designate may discuss the indictment with a defendant, provided:

(A) the defendant so requests, and

(B) either:

(i) the United States requested a summons for the defendant; or

(ii) the defendant is in custody in any jurisdiction.

(3) The United States may move to unseal an indictment at any time.

(4) A sealed indictment will be unsealed when the clerk receives notice that any named defendant has appeared on the indictment in a federal court.

(d) Redaction of Indictments. All indictments available to the public must redact the name and signature of the grand jury foreperson. The original indictment will be maintained under seal.

(e) Proceedings Conducted Under Seal. This Rule does not affect cases required or authorized to be conducted entirely under seal, such as juvenile cases or cases in which the presiding judge orders all proceedings sealed to protect national security or an ongoing investigation.

Proposed subsections (b) and (c) will change current practice. Currently, neither Federal nor local rules require that a defendant receive a copy of the indictment with a warrant, summons, or detainer. In addition, under current practice, all indictments are sealed when they are handed down by the grand jury and unsealed only when all named defendants have appeared in this Court.

This practice has created anomalies. For instance, if one defendant cannot be found, the indictment remains sealed and cannot be viewed by the public, even while ten other defendants named in it may be tried by a jury, convicted, and sentenced in open court on the still-secret indictment.

Further, when an indictment is sealed, Fed. R. Crim. P. 6(e)(4) provides that "no person may disclose the indictment's existence until the defendant is in custody or has been released pending trial." That means no defendants are able to consult with counsel before they appear. This restriction particularly affects defendants who receive summonses and defendants who are in another jurisdiction's custody, because they might not appear in this Court until weeks or even months after they are indicted. In fact, under current practice, a defendant cannot even obtain a copy of the indictment until he or she appears in this Court.

The new proposal implements four fundamental changes: (1) indictments will be sealed only on a case-by-case basis; (2) every defendant will receive a copy of the indictment with a summons or detainer or upon arrest; (3) any indictments that are sealed will be unsealed when one defendant appears; and (4) counsel is authorized to discuss a sealed indictment with the defendant, provided the defendant either received a summons or is in custody somewhere.

Subsection (d) of the proposed amendment complies with a Judicial Conference policy designed to protect the privacy of grand jurors. All indictments, in their original form, will be maintained under seal. The public version of the

indictment will redact the grand jury foreperson's name and signature.

Subsection (e) clarifies the scope of the rule in general.

CRIMINAL RULE 11. PLEAS

CR 11.1 Sealed Plea Agreements.

No plea agreement may be filed under seal unless a party moves for leave to seal under L.R. CR 49.1.

CRIMINAL RULE 16. DISCOVERY

CR 16.1 Production by the Government.

~~**(a) Time.** Upon request by the defendant, and unless otherwise ordered by the court, the government must provide all discovery required by Fed. R. Crim. P. 16(a)(1)(A), (B), (C), (D), (E), and (G) no later than 14 days after the date of arraignment. Upon request by the defendant, the government must provide all discovery required by Fed. R. Crim. P. 16(a)(1)(F) as soon as reasonably possible, but in no event shall such production occur later than seven days before trial. The government must disclose in a timely manner all exculpatory information in its possession, but in no event shall such production occur later than seven days before trial.~~

(a) Time. Unless the presiding judge orders earlier disclosure:

(1) on the defendant's request, the government must provide all discovery required by Fed. R. Crim. P. 16(a)(1)(A)-(E) and (G) no later than 14 days after arraignment;

(2) on the defendant's request, the government must provide all discovery required by Fed. R. Crim. P. 16(a)(1)(F) as soon as reasonably possible and no later than seven days before trial; and

(3) the government must disclose all exculpatory information in its possession in a timely manner and no later than seven days before trial.

The amendment clarifies that a judge may routinely order disclosure of Brady material, for instance, 14 or 21 days before trial. Other changes are stylistic.

(b) Exculpatory Information Defined. Exculpatory information is all information that is favorable to the defendant because it:

(1) casts doubt on the defendant's guilt as to an essential element in any count in the indictment or information;

(2) casts doubt on the admissibility of evidence that the government anticipates offering in its case-in-chief;

(3) casts doubt on the credibility or accuracy of any evidence or testimony that the government anticipates offering in its case-in-chief; or

(4) may be relied upon to support an argument for a lesser punishment at sentencing.

(c) Rule 16(a)(2). The government's obligation to disclose exculpatory information extends to information covered under Fed. R. Crim. P. 16(a)(2). Exculpatory information need not be admissible so long as it is reasonably likely to lead to the discovery of admissible evidence.

(d) *In Camera* Inspection. Questions as to whether information in the possession of the prosecution is exculpatory should be resolved in favor of the defendant. The government may voluntarily submit information to the court for *in camera* inspection to determine whether it constitutes exculpatory information that must be produced. Upon submitting such information, the government shall file in the record a written notice of submission describing in general terms that information being submitted for inspection.

CR 16.2 Production by the Defendant.

Upon request by the government, and unless otherwise ordered by the court, the defendant shall provide all discovery required by Fed. R. Crim. P. 16(b) within 21 days from the date of the request.

CR 16.3 Expert Witnesses.

An expert witness disclosure under Fed. R. Crim. P. 16(a)(1)(G) or 16(b)(1)(C) must include the following information:

(a) identification of all documents or other information reviewed by the expert;

(b) a summary of the results of any studies, examinations, or tests performed by the expert regarding the subject matter of the testimony;

(c) the expert's qualifications;

(d) a written summary of the expert's testimony describing the expert's

opinions and the bases and reasons for those opinions; and

(e) a statement as to whether the expert will also testify as a lay witness.

CR 16.4 Sensitive Material.

(a) When disclosing information that is of a sensitive nature because it contains personal information, personal identifiers, or financial information, a party may make the disclosure subject to protections contained in this rule by including with the disclosure a written notice explicitly referencing this rule and setting forth the reasons why such protections are warranted. Upon disclosure the party must include the designation "SENSITIVE MATERIAL - SUBJECT TO L.R. CR 16.4."

(b) Upon written notice and designation of sensitive material in accordance with this rule, the following restrictions shall apply to the designated material:

(1) Access to documents shall be limited to:

(A) attorneys representing the defendant or the government;

(B) expert witnesses whose review of the material is necessary for the presentation of the party's case;

(C) such law clerks, investigative agents, paralegals, and secretaries employed by defendant or the government, whose review of the material is required for the preparation and presentation of the party's case; and

(D) the defendant. Documents shall not be left in the defendant's possession without defense counsel present.

(2) Documents shall be used in connection with a matter pending before this court and for no other purpose. Attorneys shall expressly advise every authorized person who reviews the documents as to this limitation on lawful use.

(3) It shall be the responsibility of the attorneys of record in this action to employ, consistent with this rule, reasonable measures to control duplication of, access to, and distribution of the documents.

(c) Failure of any party to comply with the terms of this rule will be subject to punishment to the full extent of the Local Rules, the Federal Rules of Criminal Procedure, and the court's inherent authority.

CR 16.5 Continuing Duty to Disclose.

Any party that discovers additional information subject to disclosure under this rule after the deadline for such disclosure shall promptly disclose the information to the other party or the court.

CRIMINAL RULE 17. SUBPOENA

CR 17.1 Obtaining Presence of Incarcerated Person.

A party to a criminal proceeding requesting production of a prisoner by the United States Marshals Service for any court proceeding, by writ of habeas corpus ad testificandum or otherwise, must obtain a court order directing such production no later than 21 days before the date of the proceeding. A lesser time period may be allowed only upon motion and good cause shown.

CR 17.2 Summons and Subpoena.

(a) Any party to a criminal proceeding requesting service of a criminal summons or subpoena by the United States Marshals Service must notify the Marshal of the request, along with all documentation necessary to effectuate service, no later than 21 days before the desired date of service. A lesser time period may be allowed only upon motion and good cause shown. Orders issued under Fed. R. Crim. P. 17(b) and this rule must direct the United States Marshals Service to serve the subpoena.

(b) Only a judge or a grand jury may direct a witness to produce designated items within a federal courthouse before trial.

CRIMINAL RULE 17.1. PRETRIAL CONFERENCES

CR 17.1.1 When Pretrial Conference Held.

When deemed advisable by the court, a pretrial conference will be held in criminal cases pursuant to Fed. R. Crim. P. 17.1.

CR 17.1.2 Continuances.

No extension of time or continuance may be granted except upon order of a judge or a full-time magistrate judge. Enlargements are to be sparingly granted and only in a manner consistent with the Speedy Trial Act.

CRIMINAL RULE 18. PLACE OF PROSECUTION AND TRIAL

CR 18.1 Divisional Venue.

Criminal cases are venued in the division containing a county where a crime allegedly occurred, unless the court orders a change of venue.

CRIMINAL RULE 24. TRIAL JURORS

CR 24.1 Impaneling a Trial Jury.

(a) Examination of Jurors.

(1) Examination of jurors in criminal cases must be in accordance with the Federal Rules of Criminal Procedure.

(2) Alternate jurors may be impaneled in criminal cases in the discretion of the court in accordance with the provisions of the Federal Rules of Criminal Procedure.

(3) Unless the court orders otherwise:

(A) examination of trial jurors will be conducted by the court; and

(B) questions the parties want the court to ask the jurors must be submitted at least one court day before trial commences.

(b) Manner of Selection and Order of Examination of Jurors.

(1) *Composition of Panel*.

(A) Initial Panel. The initial panel called will consist of twelve jurors plus the number of alternates ordered by the court plus the number of allowable peremptory challenges. The clerk will assign numbers to the jurors in the order in which they are called.

(B) Challenges. If any juror in the initial panel is excused for cause, an additional juror will be immediately called and will take the seat and number of the excused juror. After the initial panel is filled and challenges for cause are exhausted, the parties will exercise peremptory challenges.

(C) Trial Jury. After challenges are exhausted, the clerk will call by name the agreed number of jurors who have the lowest assigned numbers. These jurors constitute the trial jury.

(2) *Exercise of Peremptory Challenges.* The court may order either of the following two methods for exercising peremptory challenges:

(A) Traditional Method. In criminal cases in which the government has six and the defense ten challenges, the first is exercised by the government, the second by the defense, the next by the Government, the next two by the defense, the next by the government, the next two by the defense, the next by the government, the next two by the defense, the next by the government, the next two by the defense, the next by the government, and the last by the defense. The passing of a peremptory challenge by either party is the equivalent of a challenge.

(B) Arizona Strike Method. All peremptory challenges are exercised simultaneously and without disclosure to other parties.

CR 24.2 Communications with Trial Jurors.

(a) Before or During Trial. No person involved with the case may communicate with, or cause anyone else to communicate with, a juror, a prospective juror, or a juror's or prospective juror's family member.

(b) After Trial.

(1) Unless a different time applies under Fed. R. Crim. P. 33(b)(1) or a judge's order, neither parties nor counsel may interview jurors unless, within 14 days after the jury returns its verdict, a party files:

(A) proposed written questions to be asked of the jurors;

(B) an affidavit showing good cause; and,

(C) if granted leave, a second affidavit showing the results.

(2) Unless otherwise ordered by the court, any juror or prospective juror may decline to communicate with anyone concerning a trial in which the juror was involved.

The amendment makes clear that a judge has discretion to disregard the 14-

day time limitation. See Pena-Rodriguez v. Colorado, __ U.S. __, 137 S. Ct. 855 (2017).

CRIMINAL RULE 32. SENTENCING AND JUDGMENT

CR 32.1 Presentence Reports.

(a) Electronic Filing.

(1) The probation office shall provide to the clerk for filing under seal in the electronic record the final presentence report as transmitted to the parties and the court before sentencing.

(2) Unless the sentencing judge adopts the final presentence report in full, the judge's rulings and determinations under Fed. R. Crim. P. 32(i)(3)(B) and any other changes to the guideline calculation must be set forth in the Statement of Reasons or, if the judge so orders, in the certified sentencing transcript or an excerpt of it.

(b) Delivery to Bureau of Prisons. The probation office must ensure that the Bureau of Prisons receives both the pre-sentencing version of the presentence report and any rulings, determinations, or changes made by the sentencing judge.

CRIMINAL RULE 41. SEARCH AND SEIZURE

CR 41.1 Return of Seized Property.

Before a conviction becomes final by termination in this court or in a higher court, the parties must confer to identify non-contraband property in federal custody or control that may be returned to the defendant or his or her designee and to accomplish return of the property.

CRIMINAL RULE 44. RIGHT TO AND APPOINTMENT OF COUNSEL

CR 44.1. Submissions by Defendant Personally.

If a defendant is represented by counsel, documents received from the defendant personally must be filed and sealed from public view pending the court's review. When the right to counsel no longer applies in this court, *pro se* filings may not be dismissed or stricken on the grounds that the filer was represented by counsel.

CRIMINAL RULE 46. BAIL

CR 46.1 Security.

(a) All bonds in non-capital criminal cases for appearance before a magistrate judge taken by a magistrate judge or other officer acting as a committing magistrate judge pursuant to 18 U.S.C. § 3041 must be endorsed with his/her approval and immediately forwarded to the clerk of court, together with any money or negotiable bonds or notes of the United States deposited as security. Any money deposited may be forwarded to the clerk of court by cashier's check or certified check.

(b) A receipt will be given by the magistrate judge for any money, bonds or notes deposited with him/her and a copy forwarded to the clerk of court. The clerk must deposit such monies received from the magistrate judge into the registry of the court.

(c) ~~Magistrate judges do not have the authority to order funds withdrawn from the court's registry.~~ When a bond is exonerated, disbursement from the registry of the court or release of bonds or notes may only be made on order of the court.

Whatever may have been true in the past, magistrate judges now do have the authority to order disbursement of registry funds in matters under their jurisdiction.

CR 46.2 Persons Not to Act as Sureties.

(a) No officer of the court, nor any member of the Bar, nor his/her office associates or employees may act as surety.

(b) In lieu of surety in any criminal case there may be deposited with the clerk of court lawful money or negotiable bonds or notes of the United States.

CRIMINAL RULE 47. MOTIONS AND SUPPORTING AFFIDAVITS

CR 47.1 Prerequisites to Filing a Motion.

(a) The text of the motion must state that all other parties have been contacted and state whether any party objects to the motion. Defendants who have not yet been arraigned by a judge of this court need not be contacted.

(b) When a motion is unopposed, the word "unopposed" must appear in the title of the motion.

(c) Proposed Orders. Except as otherwise provided in these rules or by order, a proposed order is required and permitted only with a motion for extension of time or with an unopposed motion. All proposed orders must:

(1) be attached to the motion **in PDF format** as an exhibit, so that the order, as proposed, is filed in the electronic record of the case;

(2) be e-mailed **in WordPerfect or Word format** to the judge, so that the judge may alter it;

(3) use 14-point font;

(4) omit macros or special coding or formatting other than appropriate citation format;

(5) be e-mailed only to the judge's address for proposed orders; for example, a judge whose initials are XYZ would have an e-mail address of xyz_propord@mtd.uscourts.gov; and

(6) be identified in the subject line of the e-mail by the first defendant's last name, the case number, and an abbreviated description of the document and the moving party, for example, Smith CR 08-29-GF p-ord gr def ext time.

(d) Failure to comply with this rule may result in summary denial of the motion. Denial must be without prejudice on the first occasion, and the filer must be given an opportunity to refile the motion.

CR 47.2 Briefing.

(a) A motion must be accompanied by a brief in support filed separately and at the same time as the motion. A motion is deemed ripe for ruling after the response is filed. Briefing will proceed as follows:

[Filing Date]	Motion and Supporting Brief 6500 words maximum
+14 days	Response Brief 6500 words maximum
+ 7 days	Reply 3250 words maximum

(b) Failure to file briefs within the prescribed time may subject any motion to summary ruling and may be deemed an admission that the non-filing party's position lacks merit.

(c) Briefs must include a certificate of compliance with this rule stating the number of words in the brief, excluding the caption and certificates of service and compliance. An attorney may rely on the word count of a word-processing program used to prepare the brief.

(d) Where leave to file a longer brief is granted, the brief must include a table of contents and a table of authorities with page references.

(e) Oral argument may be ordered *sua sponte* or on a party's motion.

CR 47.3 Motion Exhibits.

(a) Exhibits must be identified and electronically filed so as to allow the court and the parties to locate easily and refer unambiguously to a specific page of a specific exhibit.

(b) Only exhibits that are directly germane to the matter under consideration by the court may be filed.

(c) Excerpted material must be prominently identified as such.

(d) When an exhibit cannot be filed in the electronic record, the docket must reflect the date of its filing, a brief description, and its location. When the

exhibit is returned to the filing party's custody, the docket must reflect the return.

CR 47.4 Notice of Supplemental Authority.

If pertinent and significant authority comes to a party's notice after the briefs have been filed but before decision, a party may promptly advise the court by notice setting forth the citations and stating the reason the authority was not cited in the party's brief. The notice must specifically refer either to a page of the brief(s) already filed or to a point argued orally. The notice may not exceed two pages and must not present a new argument. No response may be filed unless the presiding judge so authorizes.

CRIMINAL RULE 49. SERVING AND FILING PAPERS

CR 49.1 Filing with the Clerk.

The judges of this Court do not agree to accept papers for filing. All papers must be filed with the clerk. Papers submitted to or in chambers may be disregarded.

This new rule states long-standing practice. Fed. R. Crim. P. 49 provides that papers must be filed "in a manner provided for in a civil action." Fed. R. Civ. P. 5(d)(2)(B) provides that a paper is "filed by delivering it (A) to the clerk; or (B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk." The federal rule does not explain what constitutes "agreement." The proposed local rule negates agreement.

CR 49.~~1~~ 2 Filing Under Seal.

(a) When Motion to Seal Required.

(1) Regardless of subsection (2), a motion for leave to file under seal is always required if a party wants to seal a plea agreement.

(2) A motion for leave to seal is not required if the case is sealed or if the item to be sealed:

(A) is submitted for *in camera* inspection;

(B) contains sensitive material as defined by L.R. CR 16.4(a);

(C) is or contains material from a psychiatric or psychological report or contains confidential medical information and redaction is not practical;

(D) contains minutes or transcribed material from sealed proceedings and redaction is not practical;

(E) is a motion under U.S.S.G. § 5K1.1 or Fed. R. Crim. P. 35(b) or otherwise contains details of or seeks a reduced sentence for a defendant's assistance to authorities;

(F) is or contains material from a pretrial services report, a

presentence report, or a statement of reasons for the sentence and redaction is not practical; or

(G) is otherwise preauthorized to be filed under seal by federal or state law or an order previously entered in the case.

(b) Caption. Any document preauthorized to be filed under seal or ex parte must include the phrase "FILED UNDER SEAL" or "EX PARTE" in the case caption, followed by citation to the authority for sealing, e.g., "Fed. R. Crim. P. 17(b)" or "D. Mont. L.R. CR 49.1(a)(2)(E)."

(c) Contents of Motion for Leave. A motion for leave to file under seal must:

(1) be filed in the public record of the case;

(2) without disclosing confidential information, describe the document or item to be sealed and explain why inclusion in the public record is not appropriate; and

(3) either:

(A) state why it is not feasible to file a redacted version of the document or item in the public record, or

(B) be accompanied by a redacted version of the document or item filed in the public record.

(d) Electronic Filing. Following the directions of the clerk's office, attorneys ~~Attorneys~~ filing electronically must ~~follow the guidance of the clerk's office~~ lodge under seal the document or item for which leave to seal is sought. Electronically filed sealed documents must be conventionally served on all other parties unless ex parte filing is authorized.

As with L.R. 5.1(e) (proposed 5.2(e)), this amendment restores a provision improvidently omitted by a prior amendment on the belief that the administrative guide covered the matter. Since the omission, however, attorneys have been confused about what they must file. The clerk's assistance is needed to lodge the sealed document, but the rule, not the clerk, should say what is required of the filing party.

Lodging the full, unredacted document under seal allows the presiding judge

to see the effect of sealing before deciding whether sealing is or is not appropriate.

(e) Conventional Filing. Persons filing conventionally must submit to the clerk:

(1) the document or item to be sealed, placed in an envelope with the case number, date, and "Filing Under Seal Requested" clearly printed on the envelope; and,

(2) if required, the motion for leave to seal and brief in support.

(f) Response and Order.

(1) The court may rule on a motion for leave to seal without awaiting a response.

(2) If leave to file under seal is granted, the document or item will be deemed filed under seal, and the party need not refile the document.

(3) The court may order that a document be redacted for the public record. Until the filing party complies, the unredacted document will not be deemed filed.

(4) If leave to file under seal is denied, the document or item will remain in the record under seal but will be deemed not filed.

CR 49.2 Motions Under 28 U.S.C. § 2255.

Except as otherwise ordered by the presiding judge, documents filed in connection with proceedings under 28 U.S.C. § 2255 need not be served on other defendants or defense counsel. Where a movant appears *pro se*, movant's trial and appellate counsel need not be served.

CRIMINAL RULE 55. RECORDS

CR 55.1 Matters Held Under Seal.

(a) Parties and Counsel. Parties aware of matters or items under seal must employ reasonable measures to control access to them. Counsel may not release a jury list or a transcript of voir dire to a defendant without a written order.

(b) Court Staff. Court staff must obtain a judge's approval to provide a party with copies of sealed charging documents, pretrial services reports, jury lists, voir dire transcripts containing jurors' names, presentence reports, and documents submitted by the United States for *in camera* review. But court staff may provide copies of other sealed documents filed with respect to a particular defendant to that defendant after sentencing.

Consistent with Judicial Conference policy, voir dire transcripts are sealed to protect jurors' privacy. Requiring a court order to authorize their release to a defendant will provide an opportunity to redact jurors' names before the transcript is released. Some transcripts, however, are prepared using only numbers instead of names. They can be provided to a defendant without a court order.

(c) Sealed Proceedings. Delinquency proceedings against juveniles are confidential and must be conducted entirely under seal with electronic access provided only to court staff.

(d) Sealed Items. The following items must be filed in the electronic record under seal:

(1) grand jury matters, if filed in a case;

(2) pretrial services reports;

(3) petitions for summons or warrant, until the defendant appears on the petition;

(4) psychological or psychiatric reports;

(5) lists of prospective or seated jurors;

(6) transcripts of voir dire, if filed;

(7) presentence reports; and

(8) the judge's statement of reasons for the sentence imposed.

CRIMINAL RULE 57. DISTRICT COURT RULES

CR 57.1 Pretrial Publicity.

(a) Investigative Phase. When an investigation or grand jury proceeding is pending, an attorney and his or her agent must not, outside judicial proceedings, make a statement that a reasonable person would expect to be publicly disseminated, unless the statement is:

(1) limited to informing the public that an investigation is underway or describing its scope; or

(2) necessary to warn the public of danger or to obtain assistance in locating evidence or a suspect.

(b) Judicial Phase. From the initiation of a prosecution to disposition, and outside judicial proceedings, an investigative agency, attorney, or agent of either, if involved in the prosecution or defense:

(1) must not release, comment on, or authorize release of or comment on:

(A) the defendant's character, reputation, or criminal record, including arrests or other charges;

(B) the fact or content of any statement by the defendant;

(C) the fact or content of the defendant's decision not to make a statement;

(D) the performance or result of an examination or test or the defendant's decision not to submit to an examination or test;

(E) the identity, testimony, or credibility of a prospective witness;

(F) the possibility of a guilty plea to the offense charged or a lesser offense; or

(G) an opinion about the defendant's guilt or innocence or the merits of the case; and

(2) may quote or refer without comment to public records of the court and may publicly announce:

(A) the charge and a brief description of the offense;

(B) the defendant's name, age, city of residence, and occupation;

(C) information necessary to warn the public of any danger or to obtain assistance in locating evidence or a suspect;

(D) the time, place, and circumstances of an arrest, the identity of the investigating officer or agency, and the length of the investigation;

(E) without further comment, the fact that the defendant denies guilt;

(F) a brief description of physical evidence, excluding any reference to statements or testimony;

(G) the identity of the victim, if not otherwise prohibited; and

(H) the schedule or result of any stage in the judicial process.

(c) Action by Court. The court, on motion or *sua sponte*, may issue different or additional orders governing the conduct of persons involved in a case to ensure a fair trial by an impartial jury.

CRIMINAL RULE 58. PETTY OFFENSES AND OTHER MISDEMEANORS

CR 58.1 Fixed Sums Payable in Lieu of Appearance.

In criminal cases with petty offense charges at issue, defendants must be permitted to pay a fixed sum in lieu of appearance. Acceptance and payment of such fixed sum terminates the action. However, if payment of the fixed sum is not timely made, a magistrate judge may, in his or her discretion, fix a higher amount so long as the fixed sum does not exceed the maximum fine which could be imposed.

CR 58.2 Appeal from Judgment of United States Magistrate Judge.

(a) When an appeal is taken from a judgment of a United States magistrate judge under 18 U.S.C. § 3402 and Fed. R. Crim. P. 58(g)(2), the clerk will issue an order setting specific due dates based on the following schedule:

(1) The official transcript must be ordered seven days after the notice of appeal is filed;

(2) The official transcript must be filed 21 days after the notice of appeal is filed;

(3) The appellant's brief must be filed within 14 days after the official transcript is filed;

(4) The appellee's brief must be filed within 14 days after the appellant's brief is filed;

(5) The reply brief must be filed seven days after the appellee's brief is filed.

(b) If the appellant's brief is not timely filed, the appeal is subject to summary dismissal.

CRIMINAL RULE 59. MATTERS BEFORE A MAGISTRATE JUDGE

CR 59.1 Authority of Magistrate Judge.

Each United States magistrate judge appointed by this court is authorized and designated by the Article III judges of the court to exercise all powers and perform all duties described by 28 U.S.C. § 636 and by federal rules and other federal law and may perform any additional duty that is not inconsistent with the Constitution or laws of the United States or with these rules.

CR 59.2 Objection to Findings and Recommendation of Magistrate Judge.

(a) An objection filed pursuant to Fed. R. Crim. P. 59 must itemize:

(1) each factual finding of the magistrate judge to which objection is made, identifying the evidence in the record the party relies on to contradict that finding; and

(2) each recommendation of the magistrate judge to which objection is made, setting forth the authority the party relies on to contradict that recommendation.

(b) Objections must be limited to 6500 words and be filed within 14 days of service of the magistrate judge's order or findings and recommendation. Response and reply are not permitted unless ordered by the court.

APPENDIX A. IMMINENT EXECUTION OF DEATH SENTENCE
Pre-Filing Requirements

1. This rule applies when:

   A. any party intends to file an action challenging the validity or manner of execution of any death sentence imposed by a court of the State of Montana;

   B. the action may, at any stage, result in temporary or permanent stay of execution; and

   C. any person's execution is set for a date less than 90 days from the date of the intended filing.

2. Before filing any document to initiate an action described above:

   A. an attorney who is a member of the bar of this court and any attorney intending to apply for leave to appear *pro hac vice* must speak with the clerk of court or designee during regular business hours; and

   B. counsel must:

      i. briefly explain the nature of the intended filing;

      ii. state what relief will be sought and what relief will not be sought;

      iii. state approximately when the filing will be made; and

      iv. follow any further instructions of court staff.

   C. Counsel would comply with this rule if, for instance, she telephoned the clerk's office at 4:45 p.m. and told the clerk of court or designee that she intended to file an action under 42 U.S.C. § 1983 challenging the method of execution, along with a motion for stay of execution, at about 7:00 a.m. the next day, but no challenge would be made to the underlying conviction or sentence.

   D. Failure to comply with this requirement may result in the unavailability of a judge to review the filing when it is made.

3. Counsel must be familiar with the applicable Federal Rules of Appellate Procedure and Ninth Circuit Rules 22-1 to 22-6. The clerk of court must advise counsel regarding lodging of documents filed in this court in the Ninth Circuit Court of Appeals.

4. If a stay of execution is denied, the clerk of court or designee will immediately notify the clerk of the Ninth Circuit Court of Appeals by telephone of the filing of any notice of appeal and forward copies of the notice of appeal, this court's docket, the death warrant, and all orders issued in the case by electronic mail in PDF format to the Ninth Circuit clerk or designee, pursuant to Ninth Circuit Rule 22-6(a).

APPENDIX B. ATTORNEY DISCIPLINE, SUSPENSION, AND DISBARMENT

1. General Provisions.

A. An attorney at law who appears in this court is subject to discipline under this rule for:

i. disciplinary sanction by a competent authority in any state, federal, territory, commonwealth or foreign jurisdiction;

ii. conviction of any crime of which the elements or underlying facts may impact fitness to practice law;

iii. any act or omission, including incompetence or incapacity, that violates L.R. 83.2;

iv. violation of any court order; or

v. misrepresentation or concealment of a material fact made in any application for admission or readmission to the bar of this court.

B. This rule does not limit any inherent power of the court, such as contempt power, and does not preclude or condition imposition of sanctions for violation of professional standards or an order, rule, or other law.

C. Except as otherwise provided by this rule, or unless the Disciplinary Judge orders otherwise, proceedings under this rule are confidential.

D. Discipline imposed under this rule may consist of one or any combination of the following:

i. disbarment or suspension with or without conditions;

ii. public censure or private reprimand;

iii. probation with or without conditions;

iv. restitution, fine, and/or assessment of costs, including reasonable attorney fees; or

v. referral to appropriate disciplinary authority.

The amendment clarifies that fees are included with costs.

E. All proceedings under this rule involve the exercise of discretionary judgment in inherently judicial functions. All persons participating on behalf of or at the request of the court in past, present or future matters are immune from civil liability.

F. Costs of all proceedings under this rule will initially be borne by the court, but payment of costs and reasonable attorney fees may be imposed on a disciplined attorney.

G. All documents submitted pursuant to this rule must be delivered to the clerk of court, not to a judge's chambers, and may be enclosed in an envelope marked "Confidential Attorney Matter."

H. "Disciplinary Judge" means the Chief Judge or another district judge designated by the Chief Judge to exercise authority in matters of attorney discipline, suspension, or disbarment.

I. The term "attorney" does not include a federal judge. Complaints against judges must be filed in compliance with procedures established by the Ninth Circuit Court of Appeals.

2. Reciprocal Discipline.

A. *Duty to Notify of Pending Disciplinary Actions.* Upon receiving notice from any jurisdiction that a disciplinary authority has found probable cause to believe conduct warranting discipline has occurred, an attorney must promptly notify the clerk of court of the matter and provide copies of documents issued in that action.

B. *Duty to Notify Clerk of Discipline Imposed in Another Jurisdiction.* Upon notice of the imposition of discipline in any jurisdiction, an attorney must promptly notify the clerk of court of the matter and provide copies of documents imposing discipline. Failure to comply with this requirement waives the right to object to imposition of reciprocal discipline in this court.

C. *Show-Cause Order*. Upon receiving notice of imposition of discipline in another jurisdiction, the Disciplinary Judge will issue a show-cause order to

the disciplined attorney. The order will include:

i. a copy of any information received directly from the disciplining jurisdiction;

ii. an opportunity to show cause in no less than 21 days why the same discipline should not be imposed in this court;

iii. a requirement that the attorney either produce a certified copy of the record from the other jurisdiction or show why the record is not required;

iv. a notice that failure to respond will result in imposition of reciprocal discipline without further notice; and,

v. if the Disciplinary Judge did not receive notice from the attorney under 2(B), notice that the attorney may be deemed to have waived the right to object.

D. *Response by Attorney; Findings; Order*.

i. *Failure to Respond or Comply.* If the Disciplinary Judge finds the attorney did not respond to the show-cause order or did not comply with 2(B), the identical discipline will be imposed and the matter may be continued under subsections (3) or (4).

ii. After considering the attorney's response, the Disciplinary Judge will impose identical discipline unless:

(a) the attorney was deprived of fair notice or a fair opportunity to be heard in the other jurisdiction;

(b) the proof establishing the misconduct was so unreliable or lacking as to make a finding of misconduct insupportable; or

(c) other substantial reasons counsel against acceptance of the other jurisdiction's conclusions.

iii. If the Disciplinary Judge declines to impose identical discipline, lesser discipline may be imposed, or the matter may be continued under subsections (3) or (4) or closed without imposition of discipline.

E. *Return to Good Standing*. Where discipline consists of suspension for a specific period of time and the other jurisdiction returns the attorney to good standing at the end of that period, the clerk may return the attorney to good standing in this Court.

Under the conditions described, this amendment will "automate" reinstatement and avoid a proceeding under Part 5 of this Appendix.

3. Attorneys Convicted of Crimes.

A. Upon receipt of reliable proof that an attorney has pled guilty or nolo contendere or been found guilty of a crime that may impact the attorney's fitness to practice law, the Disciplinary Judge must immediately suspend the attorney from practice and issue an order to the attorney to show cause why suspension is inappropriate and why a lesser discipline or no discipline is appropriate.

B. When the availability of direct and discretionary appeal has been exhausted, a criminal conviction is conclusive evidence in any disciplinary proceeding that the attorney committed the crime.

C. Upon receipt of reliable proof that a criminal conviction has been reversed, the Disciplinary Judge must vacate any disciplinary order that is based solely on the fact of conviction.

4. Grievance Procedure. The following procedures apply when a ~~person~~ judge files a grievance against an attorney.

This amendment will restrict the grievance procedure to judges' use and channel parties or attorneys to more appropriate remedies.

A. *Grievances*.

~~i. A grievance must specify grounds for discipline under subsection (1)(A) of this rule and must be filed under seal with the clerk of court. A grievance filed by any person other than a judge of this court must be signed under penalty of perjury and enclosed in an envelope marked "Confidential Attorney Matter."~~

~~ii. The Disciplinary Judge may decide that no action is warranted, may refer the matter to another disciplinary authority, and/or may order an~~

~~investigation.~~

i. The clerk must notify the attorney and provide a copy of the grievance.

ii. The attorney shall not respond unless directed to do so by the Disciplinary Judge.

~~ii~~ iii. ~~The~~ A Disciplinary Judge who has not filed a grievance against the attorney will review the grievance and may:

(a) decide that no action is warranted;

(b) refer the matter to another disciplinary authority;

(c) order an investigation under Part B; or

(d) after giving the attorney notice and an opportunity to respond:

(1) decide that no action is warranted;

(2) impose private reprimand, restitution, fine, and/or assessment of costs; or

(3) either:

(A) impose any discipline to which the attorney consents in writing; or

(B) refer the matter to another disciplinary authority or order an investigation.

iv. The clerk will notify the attorney of the Disciplinary Judge's decision.

These amendments are intended to give the Disciplinary Judge more flexibility. Currently, the Disciplinary Judge must choose between doing nothing or initiating further proceedings by forwarding a grievance to a state bar or appointing an investigator under the procedures in Part B, below. While retaining those options, the amendments add authority to require a response and impose sanctions where a matter is too serious to dismiss but not serious or complex enough to warrant referral or investigation.

In addition, the rule is amended to ensure attorneys will know when a

grievance has been filed against them and when and how it has been resolved. A response is prohibited until the Disciplinary Judge requires one. This will allow the Judge to screen out unfounded grievances or take any action that can currently be taken without notice to the attorney (i.e., reference to State Bar or investigation).

B. *Investigation.*

i. The Disciplinary Judge may designate one or more members of the bar of this court to investigate a disciplinary matter.

ii. The investigation must proceed expeditiously and must recommend:

(a) dismissal of the grievance; or

(b) intervention short of discipline; or

(c) filing of a formal complaint to initiate further proceedings.

iii. Where there is more than one investigator, the report must be made jointly, but each investigator must make his or her own recommendation.

iv. Investigators are authorized to administer oaths and to issue subpoenas.

v. The attorney must be given a reasonable opportunity to submit relevant evidence or statements.

vi. The report must include copies of all witness statements, all relevant documentary evidence, and a summary of findings.

C. *Review by Disciplinary Judge*. After review of the investigative report, the Disciplinary Judge must:

i. dismiss the grievance; or

ii. refer the matter to another disciplinary authority and/or, with the attorney's consent, impose measures short of discipline; or

iii. designate one or more members of the bar of this court to prosecute the matter.

D. *Prosecutor*.

i. The Disciplinary Judge may designate the investigator(s) and/or one or more other members of the Bar of this court to prosecute a disciplinary matter.

ii. Prosecutors are authorized to administer oaths and to issue subpoenas and may investigate the matter further before and after filing a complaint.

E. *Complaint and Hearing.*

i. The prosecutor's filing of a complaint will initiate a civil action. ~~The case must be assigned to~~ The Disciplinary Judge or another Article III judge ~~who is not the Disciplinary Judge and~~ who has not filed a grievance against the attorney will preside.

ii. The complaint must adequately inform the attorney of the alleged misconduct. It must be served pursuant to Fed. R. Civ. P. 4. A ~~deficient~~ complaint may be amended.

The first two amendments on this page give the Disciplinary Judge flexibility to decide whether it is necessary to involve other persons in an ongoing proceeding. The roles of investigator and prosecutor can be consolidated as they would be in any other civil action handled by an attorney. All decisions about whether and how to proceed remain with the judge, not the investigator or prosecutor. But if, for instance, the Disciplinary Judge believes an investigator may need to testify, new personnel may still be brought in. Similarly, the Disciplinary Judge may choose to conserve judicial resources by presiding over the civil action if appropriate.

The third amendment, deleting the word "deficient," clarifies that a complaint may be amended, whether to cure a deficiency or for another reason.

iii. The presiding judge must promptly hold a conference to set a schedule for all proceedings.

iv. The Federal Rules of Evidence apply. The presiding judge will determine whether and to what extent the Federal Rules of Civil Procedure apply.

v. Evidence must be presented in open court. Neither party has a right to a jury. Misconduct must be proved by clear and convincing evidence. The parties must be permitted to present evidence and argument as to the

merits, mitigation, and appropriate discipline, if any.

vi. Within a reasonable time after the close of the evidence, the presiding judge must issue Findings of Fact and Conclusions of Law and specify the disciplinary action to be taken, if any.

F. *Decision*. Entry of an order imposing discipline is final and appealable to the United States Court of Appeals for the Ninth Circuit. If disbarment, suspension, or public censure is imposed, the clerk of court must notify the clerk of the Court of Appeals for the Ninth Circuit and the disciplinary authorities in the jurisdictions in which the attorney is admitted to practice.

5. Reinstatement.

A. *Time for Petition*.

i. Any disbarred attorney may seek reinstatement at the expiration of the term specified in the order imposing disbarment or within ten years of entry of the order, whichever comes first.

ii. Any attorney on suspension or probation may seek reinstatement after the attorney has served one-half the total term imposed.

iii. If the attorney was disbarred, suspended, or placed on probation under subsection (2) of this rule, the attorney may seek reinstatement when the jurisdiction originating discipline recognizes a change in the attorney's status.

B. A petition for reinstatement must be filed with the clerk of court. The attorney must demonstrate qualification and fitness to practice law. The petition must be supported by competent evidence and the attorney may request an evidentiary hearing.

C. The Disciplinary Judge will hear the petition. Any expenses incurred by the court may be assessed against the attorney regardless of the decision.

D. The Disciplinary Judge may order full or conditional reinstatement or deny reinstatement.

E. The clerk of court must notify the clerk of the court of Appeals for the Ninth Circuit and the disciplinary authorities in the jurisdictions in which the

attorney is admitted to practice of full or conditional reinstatement.

APPENDIX C. FORMS

APPENDIX D. ABBREVIATED INDEX

[temporarily omitted]