

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA



Local Rules of Procedure

Effective December 1, 2019

3.1 Filing a New Case.

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(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.~~

This rule was implemented when the three-strikes provision of 28 U.S.C. § 1915(g) was relatively new. Some prisoners were incurring its permanent consequences before they had a realistic opportunity to learn what those consequences would be. As the Court's form complaint for pro se litigants advises prisoners of the provision, the rule may be deleted as no longer necessary.

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83.6 Appointment of Counsel.

As of August 27, 2019, L.R. 83.6 is superseded by Standing Order DLC-47. The following proposal incorporates and, as shown, amends the Standing Order.

(a) Civil Pro Bono Panel.

- (1) The Civil Pro Bono Panel is the court's resource for identifying attorneys willing to make a pro bono contribution to the District of Montana. Names of panel members not available to litigants or the public.
- (2) Applications are available on the Court's website.
- (3) An attorney may, by letter to the clerk of court, withdraw from the panel at any time.

(b) Request for and Appointment of Counsel.

- (1) Counsel may be appointed on a *pro se* party's motion or on the court's own motion with the party's consent. In social security disability cases, counsel ~~may~~ will not be appointed unless the party acknowledges counsel is entitled to obtain compensation from any award of benefits.
- (2) Generally, counsel will be ~~contacted and~~ consulted before appointment.

- (3) With the order of appointment, the clerk will provide counsel ~~free~~ courtesy copies of documents filed in the case to date.
- (4) Unless the judge orders otherwise, counsel must represent the party only in the case in which the order is entered and through final judgment or other resolution in the district court. Counsel may but need not represent the party on appeal.

(c) Notice of Appearance. On receiving an order of appointment, counsel must immediately file a notice of appearance to ensure receipt of all future filings in the case.

(d) Withdrawal.

(1) An appointed attorney may move to withdraw as counsel pursuant to Montana Rule of Professional Conduct 1.16(a) or on counsel's certification that ~~counsel and client have~~ :

~~(1 A)~~ counsel has a conflict of interest;

~~(2 B)~~ a substantial disagreement on litigation strategy or tactics or a disagreement about the application of Rule 11 counsel and client substantially disagree about litigation tactics or the application of Federal Rule of Civil Procedure 11;

~~(3 C)~~ serious personal incompatibility ~~that~~ makes effective representation impractical; or

~~(4 D)~~ any other basis that, in the discretion of the presiding judge, justifies withdrawal a compelling reason justifies withdrawal.

(2) Leave to withdraw is in the judge's discretion.

This proposed revision clarifies that withdrawal on any grounds, not only as to subsection (4), is in the judge's discretion.

(e) Expenses.

- (1) Counsel must seek costs from ~~the adverse party~~ adverse parties if entitled to do so.

- (2) At the conclusion of the case, appointed counsel may seek reimbursement for reasonable expenses, including costs of associate counsel, from non-appropriated funds. Reimbursements ~~for expenses~~ over \$3,000.00 must be approved by the Non-Appropriated Funds Advisory Committee.
- (3) The court will not reimburse counsel for costs personally taxed against appointed counsel or paid by ~~the~~ an adverse party.

(f) **Fees.** An appointed attorney may seek fees from ~~the~~ an adverse party as provided by law.

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83.8 Self-Represented Litigants.

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(c) Agreement with Clerk's Office.

- (1) ~~Except in attorney discipline matters, a~~ A self-represented litigant and the clerk's office may agree to serve each other and file documents via email. The agreement must be in writing, signed by the litigant and a deputy clerk, and filed in the record of the case. The clerk may add terms and conditions other than those in this rule and may revoke the agreement at any time.

The proposed amendment clarifies that filing by email is not available in attorney discipline matters. Disciplinary matters warrant more formal conventional procedures.

CR 49.3 Filing Under Seal.

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(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)~~ 49.3(a)(2)(E)."

Cross-reference corrected.

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CR 55.1 Matters Held Under Seal.

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(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 statements of reasons, 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.

Statements of reasons, like presentence reports, may compromise a defendant's safety by showing the defendant cooperated with law enforcement.

Form H. Form Order on Grand Jury Returns

Withdrawn pending revision. Please refer to L.R. CR 6.2.

The Form Order was adapted from the order used before enactment of L.R. CR 6.2. As the new approach required by CR 6.2 has become more familiar, the Form Order creates confusion by inadvertently preserving outdated assumptions. It will be revised but, for the time being, should be eliminated.