

PROPOSED LOCAL RULE CHANGES 2021

GLOBAL CHANGES

1. ECF to CM/ECF
2. conventionally vs. nonelectronically throughout
3. email to e-mail

CIVIL RULES

4. Civil 1 General Rules
 - a. 1.2(b)—the Clerk’s office is not open in the Helena courthouse.
 - b. 1.3(b)(6)—Deleted entire section and it is now addressed in LR 5.1.
 - c. 1.3(c)—Broadcasting. Added exception for SO BMM-10—pilot project
 - d. 1.3(d)—Cameras and Personal Electronic Devices—proposed changed to allow cameras and computers into courthouses
 - e. 1.4 Means of Filing—requires that administrative records be filed in CM/ECF as it now has the capability to handle those large files. Addressed more thoroughly in LR 5.1 but the purpose is to provide greater public access and better records management. File size limits will be set in the Guide to Filing.
 - f. 1.4(b)(3)—Added Paragraph (3) due to NextGen change of allowing pro se litigants to file through PACER.
 - g. 1.4(c)(1)—deleted and addressed in LR 5.1
 - h. 1.4(c)(2)—deleted due to NextGen changes
 - i. 1.5(A)(1)—added “no staples”
5. Civil 3 Commencing an Action
 - a. 3.1(b) Patent, Trademark cases—clarifying requirements of 15 USC § 1116(c).
 - b. 3.2 Venue. Added a provision to allow the court to sua sponte change divisional venue when it is apparent from the pleadings that the case was not filed in the proper division to reflect standard practice.
 - c. 3.3(4) Removal and Remand—extension for non-removing party’s counsel to become member and to appear to respond to motions.
6. Civil 4 Summons
 - a. 4.1 Service of Process—allows clerks to not issue summonses for pro se plaintiffs proceeding IFP.
7. Civil 5—Serving
 - a. 5.1—This is a proposed new local rule which covers all the types of exhibits that may be filed. It consolidates some of the sections of LR

- 1.3 and 1.4 and clarifies the filing of exhibits in accordance with the District's Records Management plan.
 - b. 5.2(b)(2) Filing under seal—added submitting documents for in camera review
 - c. 5.2(g)—Added section on HSDs to incorporate SO BMM-9
 - d. 5.3—revised section on address changes as attorneys will need to do this through PACER after NextGen is implemented.
 - e. 5.4—Added section on emergency filings to incorporate SO BMM 07
8. Civil 7 Motions
- a. 7.1(c)—added non-dispositive as the prerequisites are frequently inapplicable for dispositive motions
 - b. 7.1(d)(1)(B) and (C)—changed to entered in the docket as opposed to filed.
 - c. 7.1(d)(1)(D)—added remark regarding scheduling order since not all judges consider motions ripe at the close of the time for the response.
 - d. 7.1(e)—costs of video or telephone conference removed because outdated.
 - e. 7.2 Motion Exhibits—deleted 7.2(d) as it is covered by new LR 5.1
9. Civil 11 Signing
- a. 11.1 Signatures--Subsection (b) requires a filing attorney's visible endorsement on the document.
 - b. 11.2 Jointly Filed Documents--These two amendments will authorize an attorney and a self-represented litigant, for example, to file a proposed pretrial order without the need for hand signatures.
10. Civil 16.5(b)(6) Alternative Dispute Resolution—names of mediators are listed on the website, so parties don't need to call clerk.
11. Civil 26 Discovery
- a. 26.2 Documents of Discovery—added language requiring discovery to comply with FRCP 5.2. Deposition transcripts do not necessarily have to go through a redaction process prior to filing but frequently contain private information of not just parties but third parties as well. This change emphasizes the requirement that redaction under Rule 5.2 lies with the parties filing the discovery including depositions.
12. Civil 47 Selecting Jurors
- a. 47.1 Examining Jurors—clarifies sealing of juror names to make the civil rule consistent with criminal LR 55.1.
13. Civil 48—Jurors
- a. 48.1 Communications with trial jurors—adds section on what to do if jurors contact attorneys or parties

14. Civil 54—Costs and Fees

- a. 54.1 Taxation of Costs—adds requirement that receipts etc. should be submitted with application for taxation of costs and sets forth a new procedure where the clerk’s office will approve costs if there are no objections, but judges will decide applications for costs where objections are filed.

15. Civil 56 Summary Judgment

- a. 56.1 Motion for Summary Judgment—clarifies that do not need to e-mail prisoners (56.1(a)(4) and that prisoner do not need to rewrite the statement of undisputed facts (56.1(b)(1).

16. Civil 72.2—the new wheel management process no longer directly refers prisoner cases, habeas cases, etc. to a magistrate.

17. Civil 83

- a. 83.1 Attorney admission—added a number of changes to clarify admission process. Multiple changes due to implementation of NextGen. Added requirements that must be an active member of the bar to apply (except law clerks) and that applicants must disclose whether they have ever had Rule 11 or Rule 37(b) sanctions.
- b. 83.2 Standards of Conduct and Discipline—incorporated Appendix B into the rule.
- c. 83.6 Appointment of Counsel. Clarifies the process for reimbursement of expenses.
- d. 83.8 Self Represented Litigants—due to the transition to NextGen, pro se litigants will no longer be allowed to file by e-mail but they may still consent to electronic service.

CRIMINAL RULES

18. Criminal 16.1—redrafted to comply with the Due Process Protection Act.

19. Criminal 16.4 Sensitive Material—added the CJA supervising attorney.

Counsel appointed under the Criminal Justice Act must explain their funding requests—for expert services, travel, or unusual attorney hours—to the CJA Supervising Attorney. The Supervising Attorney may also assist with litigation planning. She should be able to draw on all relevant information about the case.

20. Criminal 24.2 Communications with Trial Jurors—added requirement that have to comply if contacted by jurors

21. Criminal 32.1 Presentence Reports--The proposed amendment reflects long-standing practice. It will clarify that nondisclosure is the standard practice, so that even if an order in the case happens to omit the restriction, it will still apply unless the sentencing judge specifically orders disclosure. *See, e.g.,*

L.R. 1.1(c).

22.Criminal 47

- a. 47.1 Prerequisites to Filing a Motion—added “except for motions for appointment of counsel.”
- b. 47.2(a) Briefing: When a lawyer files electronically, the document is filed and entered simultaneously. But self-represented litigants mail, personally deliver, or e-mail documents to the clerk, and a document is “filed” on the date the clerk receives it. When a party is self-represented, the “filed” date will frequently be one day before the “entered” date. The discrepancy may rise to a few days over a weekend or holiday. This amendment ensures all parties will have the full allotted number of days to respond or reply.
- c. 47.2(f)—added “Post-judgment motions are governed by the briefing schedule in subsection (a) unless the motion is docketed as a motion under 28 U.S.C. § 2255 or the Court issues an order regarding recharacterization of the motion under § 2255. Notwithstanding subsection (a), the Court may deny a post-judgment motion without awaiting a response.”

23.Criminal 55.1 Matters held under seal— The proposed amendment will solve a conundrum and preserve the secrecy of sealed indictments.

Currently, court staff do not respond to inquiries about sealed indictments. But if no indictment exists, court staff say so. That means that failure to respond tells the person inquiring that an indictment exists.

24.Criminal 55.1(3) added “After sentencing, and subject to subsection (1),” court staff may provide copies of other sealed documents filed with respect to a particular defendant to that defendant after sentencing.