

**CHAPTER I.
GENERAL RULES**

RULE 1

SCOPE AND PURPOSE OF RULES; GENERAL PROVISIONS

1.1 TITLE AND CITATION. [no change]

1.2 EFFECTIVE DATE. [no change]

1.3 SCOPE OF RULES.

These Rules supplement the Federal Rules of Civil Procedure, Title 28 U.S.C., and the Federal Rules of Criminal Procedure, Title 18 U.S.C. These Rules apply in ~~all proceedings in~~ the United States District Court for the District of Montana.

*Not all Rules apply in all proceedings. Chapter I applies in all proceedings.
Chapter II applies only in civil proceedings, Chapter III in criminal proceedings.*

1.4 NUMBERING. [no change]

1.5 RELATIONSHIP TO PRIOR RULES & ACTIONS PENDING. [no change]

1.6 ELECTRONIC FILING GENERALLY.

(a) Authorization. The Case Management/Electronic Case Files (“CM/ECF”) system is hereby authorized for use in this Court. The Clerk of Court is authorized to establish procedures for the acceptance and maintenance of electronic files and filing in the CM/ECF system and to establish registration procedures and requirements for those seeking to file documents electronically.

(b) Definitions. The word “conventional” refers to the traditional means of presenting papers to the clerk for filing or mailing copies of documents to opposing parties. The term “registered user” refers to an attorney who is duly registered in Pacer and in this Court’s CM/ECF system and who is using CM/ECF.

(c) Pacer Registration and Registration in This Court's CM/ECF System. By January 10, 2007, all attorneys admitted to the Bar of this Court or permitted to appear pro hac vice are required to register in and to use CM/ECF unless good cause, such as the unavailability of high-speed internet service, can be shown. To meet this requirement, an attorney must have both a log-in and password from the national PACER system, www.pacer.psc.uscourts.gov, and a separate log-in and password from this Court, www.mtd.uscourts.gov. Attorneys must complete and submit the ECF User Registration Form found on the Court's website. Registration in this Court's CM/ECF system waives the registrant's right to service by means other than CM/ECF as to all documents uploaded into the system.

(d) Conventional Filers. Non-attorneys may file conventionally without seeking prior leave of Court. After January 10, 2007, attorneys may seek exemption from registration in CM/ECF on a case-by-case basis by filing a motion for leave to file conventionally at their first appearance in the case or, in a case pending on January 10, 2007, at their next appearance after that date. Form H, Motion by Attorney for Leave to File Conventionally In This Case, must be used for this purpose.

(e) Clerk's Policy Directives. The Clerk of Court may issue temporary policy directives suspending, deleting, or amending any provisions of these Local Rules with regard to CM/ECF. The Clerk must serve a copy of any policy directive on each member of the Local Rules Committee within five (5) days of its implementation. Any policy directive may be rescinded by the Local Rules Committee and must be considered at the next regular meeting of the Committee. Parties are directed to consult the Court's website for notice and copies of current policy directives.

(f) Record of the Case. The official record of each case shall consist of all documents that are available in electronic form, whether scanned or originally filed in electronic form, and all documents or items that are available only in conventional form. When a higher court or a state court requires a paper version of the record, the clerk will produce and certify the paper record as a true and correct copy of the Court's official record.

(g) Disposal or Retention of Paper Documents. Paper documents that are submitted to the clerk for filing will be discarded after they are scanned into the CM/ECF system. Documents that are too large to scan, that are required to be maintained in paper form, or that do not produce a legible image will be retained in paper form and the existence of a paper document shall be noted in the docket. Whenever a registered user files a document in paper form, Form A, Notice of Conventional Filing of Document or Item, must be used.

(h) Correction of Filing or Docketing Errors in CM/ECF. Any registered user who erroneously files or docketing a document shall immediately contact the clerk and shall take direction from the clerk in correcting the error. No one but the clerk shall attempt to undo or change an electronic filing.

(i) Technical Failures. The Clerk's Office shall deem the CM/ECF 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, and registered users may seek appropriate relief from the Court. The Clerk of Court shall establish procedures to be followed by registered users experiencing technical problems. Technical problems on the user's end will not excuse untimely filing. Registered users are directed to consult the Court's website or call the help desk at (406) 000-0000.

(j) Filing and Response Deadlines. Examples of the operation of the following rules can be found on the Court's website.

- (1)** Except as to a pleading initiating a case, the filing deadline is 5:00 p.m. Mountain time on the due date. A document filed in CM/ECF after 5:00 p.m. on the due date is not timely filed. In the case of a technical failure or need for guidance in filing, assistance is available from the Clerk's Office only during regular business hours and on regular business days.
- (2)** For purposes of computing time for response or reply to a served document, the date the document is served controls, regardless of the time the document is served.

(k) Proposed Orders. A WordPerfect or Word version of any proposed order attached to a motion filed by a registered user must be e-mailed to the appropriate judge at the same time the motion is filed. The e-mail address is the initials of the judge to whom the proposed order is presented, immediately followed by .propord, followed by @mtd.uscourts.gov: for example, xyz.propord@mtd.uscourts.gov. A proposed order is required and permitted only with a motion for extension of time or with an unopposed motion.

(l) Judges' Requirements. Judges may require parties to submit to chambers a paper copy and/or a Word or WordPerfect copy of any document electronically filed. Parties are directed to consult the Court's website for the individual requirements of each judge.

New L.R. 1.6 authorizes electronic filing, defines the official record, and sets forth other matters of basic policy where electronic filing is concerned. Electronic filing will eventually be mandatory for all attorneys. Attorneys must attend a training session in order to be registered in the Court's system.

1.7 COURT REPORTERS AND TRANSCRIPTS.

Policies regarding compensation to court reporters and the availability of transcripts are established by the Administrative Office of the United States Courts and/or the Clerk of this Court. Counsel and parties are directed to contact the Clerk's Office or consult the Court's website, www.mtd.uscourts.gov, for further information, copies of such policies, and forms for

requesting transcripts.

The Judicial Conference of the United States is considering but has yet to make authoritative policy concerning the availability of electronically filed transcripts. Parties are alerted to the need to consult the website for developments.

3.7 1.8 PRIVACY POLICY AND PUBLIC ACCESS TO ELECTRONIC RECORDS.

(a) In compliance with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the court, including exhibits thereto, whether ~~filed~~ the document is made available electronically or only in paper, unless otherwise ordered by the Court.

- (1) *Social Security and Driver's License Numbers.* If an individual's social security number or driver's license number must be included in a document, only the last four digits of that number ~~should~~ shall be used.
- (2) *Names of Minor Children.* If the involvement of a minor child must be mentioned, only the initials of that child ~~should~~ shall be used.
- (3) *Dates of Birth.* If an individual's date of birth must be included in a document, only the year ~~should~~ shall be used.
- (4) *Financial Account Numbers.* If financial account numbers are relevant, only the last four digits of these numbers ~~should~~ shall be used.

(b) Any party may move to file under seal medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, national security information, or sensitive security information as described in 49 U.S.C. § 114(s).

(b c) In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above ~~may file an unredacted document under seal. This document shall be retained by the court as part of the record. The court may, however, still require the party to file a redacted copy for the public file~~ shall file the redacted version and attach the unredacted version of the document under seal.

(c d) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk will not review each document for compliance with this rule.

(e) The following will not be available for public access:

- (1) unexecuted criminal summonses and warrants;
- (2) pretrial bail reports and presentence investigation reports;
- (3) the sentencing judge's statement of reasons in a criminal judgment;
- (4) juvenile records;
- (5) documents containing identifying information about jurors or potential jurors;
- (6) financial affidavits filed by persons seeking representation pursuant to the Criminal Justice Act;
- (7) ex parte documents, including but not limited to requests for authorization of investigative, expert or other services pursuant to the Criminal Justice Act;
- (8) sealed documents, including but not limited to motions for subpoenas under Fed. R. Crim. P. 17(b) and motions for downward departures for substantial assistance;
- (9) minutes and transcripts from sealed court proceedings;
- (10) other documents or proceedings as provided by statute, rule, or policy.

Subsections (a), (c), and (d) of new L.R. 1.8 are relocated from current L.R. 3.7.

Parties must bear in mind the possible privacy implications where documents are available, for a small fee, on the desktop computer of every registered PACER user anywhere in the world.

Electronic filing will not change the Court's current policies on the public availability of the listed documents. Subsection (e) sets forth those items that traditionally have been sealed and not available for public access.

3.1 1.9 DIVISIONS WITHIN DISTRICT.

The District Court of Montana is divided into Divisions as follows:

~~(a) Civil Cases:~~

- († a)** The BILLINGS DIVISION is comprised of 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 shall be held

at the James F. Battin Courthouse, Billings, Montana.

- (2 b)** The BUTTE DIVISION is comprised of the Counties of Beaverhead, Deer Lodge, Gallatin, Madison and Silver Bow. Court shall be held at the Mike Mansfield Federal Building and United States Courthouse, Butte, Montana.
- (3 c)** The GREAT FALLS DIVISION is comprised of the Counties of Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley. Court shall be held at the Post Office Building, Great Falls, Montana.
- (4 d)** The HELENA DIVISION is comprised of the Counties of Broadwater, Jefferson, Lewis and Clark, Meagher and Powell. Court shall be held at the Paul G. Hatfield Courthouse, Helena, Montana.
- (5 e)** The MISSOULA DIVISION is comprised of the Counties of Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders. Court shall be held at the Russell Smith Courthouse, Missoula, Montana.

~~**(b) Criminal Cases.** The composition of Divisions for Criminal Cases is the same as that for Civil Cases.~~

New L.R. 1.9 is relocated from current L.R. 3.1 because it applies in all cases and so should be in Chapter I. The proposed amendments are stylistic only.

3.2 1.10 ASSIGNMENT OF CASES.

(a) Jurisdiction. All Article III judges of the District of Montana, including ~~senior~~ judges designated to serve in Montana by the Chief Judge of the Circuit, shall have jurisdiction over all criminal and civil cases filed in the District of Montana, and may make and sign any orders, decrees or judgments.

(b) Assignment of Division Workload. For the purpose of allocating the work of the judges, the Chief Judge of the District shall, by order, assign each of the Divisions of the Court to one or more of the judges. All ~~applications~~ motions for orders in cases pending in any Division shall be made to the judge to whom the case is assigned for pretrial proceedings or for trial.

(c) Right to an Article III Judge. The right to have all civil proceedings conducted by a United States District Judge appointed pursuant to Article III of the United States Constitution shall be preserved inviolate.

(d) Duties and Powers of Magistrate Judges. Each United States Magistrate Judge

appointed by this Court is authorized to exercise such jurisdiction and perform all the duties prescribed by 28 U.S.C. § 636 and may be assigned any additional duty by this Court that is not inconsistent with the Constitution or the laws of the United States.

~~(d) Assignment of Civil Cases to Magistrate Judges.~~

- ~~(1) — The full-time United States Magistrate Judges of the District of Montana are designated to hear all prisoner civil rights actions, all habeas corpus actions (excluding motions filed under 28 U.S.C. § 2255), all cases in which one or more plaintiffs are proceeding pro se, and all cases in which leave to proceed in forma pauperis is sought. Except as otherwise provided by order, all such cases shall be assigned to a magistrate judge upon filing. A case will not be reassigned based on a party's change of status after filing.~~
- ~~(2) — Any active Article III judge may designate a United States Magistrate Judge to exercise jurisdiction over any other civil case in accordance with 28 U.S.C. § 636 and Chapter IV of these Rules.~~
- ~~(3) — A magistrate judge designated to hear a matter shall be assigned to preside over the case for all purposes, including trial and entry of judgment, only if each party not in default consents in writing within thirty (30) days after service of a notice of assignment as set forth in L.R. 73.2.~~

Current L.R. 3.2, in Chapter II, and L.R. 73.1 and 73.2, in Chapter IV, are relocated. With one exception involving federal prisoners' petitions for writs, there is no change in current practice under any of the current Rules concerning magistrates.

Current L.R. 3.2(a)-(c) becomes new L.R. 1.10(a)-(c) in Chapter I, because it applies in all cases. Current L.R. 73.1, Chapter IV, is relocated to new L.R. 1.10(d), because it too applies in all cases. Current L.R. 3.2(d) is relocated to Chapter II, which applies only in civil cases, as new L.R. 73.1. Current Chapter IV is thus deleted in its entirety, but with little substantial change.

~~3.3~~ 1.11 VENUE.

...

(b) Criminal Cases. Venue in criminal cases is in accordance with the Federal Rules of Criminal Procedure and L.R. ~~3.1(b)~~ 1.9.

(c) Appeal from Judgment of a Magistrate Judge. Appeal to the District Court from a judgment of conviction by a United States Magistrate Judge under 18 U.S.C. § 3402 shall be taken in accordance with the Federal Rules of Criminal Procedure and L.R. ~~3.1(b)~~ 1.9.

New L.R. 1.11 is relocated from current L.R. 3.3 because it applies in all cases and so should be in Chapter I. Conforming amendments are made.

CHAPTER II.
CIVIL CASES

Chapter II properly begins with L.R. 3 rather than with current L.R. 4. L.R. 3 applies only in civil cases.

RULE 3

COMMENCEMENT OF ACTION

~~3.1 — DIVISIONS WITHIN DISTRICT.~~

~~3.2 — ASSIGNMENT OF CASES.~~

~~3.3 — VENUE.~~

Current L.R. 3.1, 3.2, and 3.3 are relocated to new L.R. 1.9, 1.10, and 1.11, respectively.

3.1 OPENING A NEW CASE.

(a) The following items are required to open 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) Any attorney or party may open a new case by mailing or personally delivering to the Clerk of Court each of the required items. All required items must be received simultaneously; otherwise, one or more items may be returned without filing or other record of submission. Documents may be submitted either in paper form or in PDF form on disk or CD-ROM. The case will be opened immediately upon the clerk's receipt of the required materials. A Notice of Electronic Filing will be electronically issued to registered users and mailed or otherwise delivered to counsel or parties who are not registered users.

(c) Any attorney or party who is authorized to file documents with the Court electronically may open a new case by:

- (1) Faxing or e-mailing a completed civil cover sheet to the Clerk of Court;
- (2) Obtaining a case number from the clerk; and
- (3) Electronically filing the complaint, petition, or other originating pleading and paying the filing fee **immediately** upon receipt of the case number.

Although attorneys who are duly registered for electronic filing will be able to file new cases electronically, it will be necessary to contact the clerk so that the clerk can open a "shell" for the new case. Clerks will not be available around the clock. Practically, therefore, it will only be possible to file a new case during regular business hours.

3.4 3.2 REMOVAL AND REMAND

(a) Removal. ~~In any action removed to this Court from a state court, the removing party shall file in this Court, at the time the notice of removal is filed, or within ten (10) days thereafter, either the original file in the state court action, or copies of all papers on file in the action in the state court at the time of its removal, including copies of all returns of the service of summons or other process. Within five (5) 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 pleadings or orders. Motions and other requests directed to the state court are automatically terminated upon removal.~~

(b) Remand. ~~Immediately Promptly upon receipt of an order remanding an action to state court, the clerk shall forward to the clerk of the state court to which the action is remanded the original file in the action together with a certified copy of the order of remand 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 shall be delivered Delivery shall be by certified mail with return receipt requested, or by personal delivery, or by other means requested by the state court. for which t The clerk shall obtain a receipt or other confirmation of delivery and file note such mailing or delivery such confirmation on the docket sheet in the in this Court's record of the case. The original order of remand electronic record will be retained in the files of by this Court.~~

There will be no change in the current practice of the state courts' sending the file to this Court upon removal and this Court's returning the file to the state court upon remand. However, this Court's official record will be the electronic record.

See new L.R. 1.6(f). Therefore, even upon remand, the state court record will be retained by this Court.

3.5 3.3 TERMS OF COURT.

Terms of court shall be set for the trial of civil cases in each Division of the Court by the judge to whom the case is assigned.

Renumbered.

~~3.6~~ ~~PRE-FILING REQUIREMENTS.~~

~~(a) Pursuant to 28 U.S.C. § 1915, a party may apply to proceed in forma pauperis by submitting a proposed complaint or petition simultaneously with an affidavit that includes a statement of all assets the applicant possesses and that the person is unable to pay the filing fee required by 28 U.S.C. § 1914 or give security therefor. The affidavit shall state the nature of the action, defense or appeal and the applicant's belief that he or she is entitled to redress. The Court's standard Application to Proceed *In Forma Pauperis* may serve as the required affidavit, if completed by the party. A prisoner may, but is not initially required to, submit a trust account statement in support of the affidavit or Application.~~

~~(b) In all other cases, the filing fee required by 28 U.S.C. § 1914(a) shall be prepaid in full prior to the institution of any civil action, suit, or proceeding.~~

~~(c) Except for habeas petitions, any complaint or petition not submitted simultaneously with either the full filing fee, pursuant to subsection (b), or an affidavit or Application to Proceed *In Forma Pauperis*, pursuant to subsection (a), may be returned without filing or other record of its submission. Filing fees, affidavits, or Applications received after a complaint has been returned shall be promptly returned to the plaintiff or other sending authority.~~

The contents of this Rule are now set forth in new L.R. 3.1.

~~3.7~~ ~~PRIVACY POLICY.~~

This Rule is relocated to new L.R. 1.8 and expanded.

~~CHAPTER II.~~
~~CIVIL CASES~~

The beginning of Chapter II is relocated to Rule 3.

RULE 4

SUMMONS AND SERVICE OF PROCESS ~~AND PAPERS~~

4.1 ISSUANCE AND SERVICE OF PROCESS.

The issuance and service of process shall be in conformity with the Federal Rules of Civil Procedure. The clerk shall 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.

Electronic filing has no effect on the service requirements of Fed. R. Civ. P. 4.

4.2 SERVICE OF PROCESS UNDER STATE PROCEDURES.

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 of counsel for the party seeking service to file or cause to be filed with the Clerk of Court~~ the return of service of process.

Stylistic change only.

4.3 PROOF OF SERVICE OF PROCESS.

(a) Proof of service of ~~all papers required or permitted to be served, other than discovery documents and those for which a particular method of proof is prescribed in the Federal Rules of Civil Procedure,~~ process shall be filed in the clerk's office promptly and in any event before action is to be taken by the Court or the parties. The proof shall show the day and manner of service and may be by written acknowledgment of service, by certificate of the person who served ~~the papers~~ process, or by any other proof satisfactory to the Court.

(b) Failure to prove service as required by this ~~subdivision~~ 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.

Stylistic change only.

4.4 SERVICE OF SUBPOENAS BY U.S. MARSHAL. [no change]

4.5 TIME LIMIT FOR SERVICE. [no change]

RULE 5

SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS DOCUMENTS

~~5.1 — CIVIL COVER SHEET.~~

~~(a) The clerk shall require a completed and executed Civil Cover Sheet (AO Form JS 44(c)), which shall accompany each civil case filed.~~

~~(b) Institutionalized persons filing civil cases pro se are exempt from the foregoing requirement.~~

The content of this Rule is relocated to new L.R. 3.1.

5.1 CONSEQUENCES OF ELECTRONIC FILING.

(a) Orders. All orders, decrees, judgments, and proceedings of the Court will be electronically filed. Such filing constitutes entry on the clerk's docket. A judge may also issue an Order solely by making an entry on the docket. Transmission of the Notice of Electronic Filing constitutes the notice and service required by the Federal Rules of Civil Procedure. The clerk will print the Notice of Electronic Filing and attach it to any document that is conventionally served. Any order, decree, judgment, or other proceeding of the Court that is filed electronically without the original signature of the judge or clerk has the same force and effect as if the judge or clerk had signed a paper document that was filed and served in the conventional manner.

(b) Other Documents. Filing of any document in the Court's CM/ECF system, together with transmission of a Notice of Electronic Filing, constitutes entry of the document on the Clerk's docket and filing of the document for all purposes. As between registered users, transmission of the Notice of Electronic Filing constitutes the service required by the Federal Rules of Civil Procedure, and a certificate of service is moot.

This Rule authorizes service "through the court's transmission facilities," per Fed. R. Civ. P. 5(b)(2)(D), and provides that an electronic order or document filed in CM/ECF is the equivalent of a paper order or document, per Fed. R. Civ. P. 5(e) and 79.

5.2 ACTIONS INVOLVING CONVENTIONAL FILERS.

(a) Both registered users and conventional filers must serve conventional filers by one of

the methods set forth in Fed. R. Civ. P. 5(b)(2)(A)-(C). Alternatively, a conventional filer may consent to accept service by e-mail or fax from other parties by serving and filing Form B, Notice Regarding Electronic Service. The Court will serve conventional filers by mail.

(b) A certificate of service is required with any document that is not served via CM/ECF. Form I, Certificate of Service, may be used for this purpose.

(c) Substitution of counsel automatically revokes consent to fax or e-mail service. Consent to fax or e-mail service may also be revoked by serving and filing Form B, Notice Regarding Electronic Service.

Parties filing in CM/ECF cannot use CM/ECF to serve parties that are not filing in CM/ECF. Additionally, the "Notice of Electronic Filing" generated by the CM/ECF system upon each filing in a case will not show how parties filing conventionally were served (whether by mail, e-mail, etc.). Consequently, a certificate of service is still required in any case involving a party not using CM/ECF. CM/ECF users, however, will receive notice of all documents, regardless of whether the filer is a registered user, via CM/ECF, because the Clerk's Office will scan conventionally filed documents into the system.

5.3 DOCUMENTS SERVED BUT NOT FILED.

Documents that are served but not filed, such as discovery, must be served by one of the methods set forth in Fed. R. Civ. P. 5(b)(2)(A)-(D), except that CM/ECF may not be used. A certificate of service must accompany each such document.

Discovery is not filed. See Fed. R. Civ. P. 5(d); L.R. 26.2(a). Use of CM/ECF constitutes filing. See L.R. 5.1(b). Therefore, parties cannot use CM/ECF for the service of discovery.

~~5.3 ELECTRONIC SERVICE.~~

~~In its first appearance in any action, each represented party shall file with the Court and serve on all other parties a Notice Regarding Electronic Service. Electronic service is only permitted when the party being served, whether represented by counsel or acting pro se, has executed the following or similar notice on or prior to the date the document is electronically served. If a party wishes to revoke such consent, the party shall file written notification with the Court. Substitution of counsel operates as a revocation of consent.~~

MARY JONES, _____) CV 00-000-XX-XXX
_____)

____ Plaintiff, _____)
____)
____ vs. _____)
____)
WESTBEST NURSING HOME, _____)
____)
____ Defendant. _____)
____)
____)

NOTICE REGARDING ELECTRONIC SERVICE PURSUANT TO L.R. 5.3

~~_____ I agree that all other parties to this litigation may electronically serve me with copies of all documents filed with the Court.~~

~~Electronic service shall be accomplished by (include all that apply):~~

~~_____ facsimile transmission to [facsimile number].~~

~~_____ electronic mail at [electronic mail address] limited to documents created in the following document and word processing formats: _____.~~

~~_____ both facsimile transmission to [facsimile number] and electronic mail at [electronic mail address] limited to documents created in the following document and word processing formats: _____.~~

~~_____ Electronic service must be accompanied by simultaneous service by mail or commercial carrier of a paper copy of the electronically filed document.~~

OR

~~_____ I do not agree that other parties to this litigation may electronically serve me with copies of all documents filed with the Court.~~

[Signed] _____
Attorney for _____ [name of party]

The content of this Rule is reflected in new L.R. 5.2(a). The form is relocated to the Appendix.

5.2 5.4 ELECTRONIC FAX AND E-MAIL FILINGS PROHIBITED.

∅ Except as otherwise provided in these Rules or by specific direction of the Court, documents may not be transmitted by fax, use of telefacsimile (“fax”) equipment e-mail, or any other electronic means other than the CM/ECF system for filing with the Court.

CM/ECF uses an e-mail function to deliver Notices of Electronic Filing to the parties in a particular case, but it is not e-mail. It is an interactive web application. E-mailing a document to the Court does not constitute electronic filing.

5.4 5.5 ADDRESS CHANGES.

(a) Duty to Notify. An attorney or a party proceeding pro se whose address for service changes while an action is pending must promptly file with the Court and serve upon all opposing parties a Notice of Change of Address specifying the new address for service.

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

- (1) mail a document directed to the attorney or pro se 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 pro se party indicating a current address for service.

Stylistic changes only.

RULE 6

TIME

6.1 COMPUTATION.

Time for filing shall be computed according to Federal Rule of Civil Procedure 6. Where service is via mail or electronically transmitted made by means other than hand delivery, time shall be extended as provided in Federal Rule of Civil Procedure 6(e).

Fed. R. Civ. P. 6(e) will be amended as follows, effective December 1, 2005:

(e) Additional Time After Certain Kinds of Service Under Rule 5(b)(2)(B), (C), or (D). ~~Whenever a party has the right or is required to do some act or take some proceedings must or may act~~ within a prescribed period after ~~the service of a notice or other paper upon the party and the notice or paper is served upon the party~~ service and service is made under Rule 5(b)(2)(B), (C), or (D), 3 days ~~shall be~~ are added to after the prescribed period.

Only hand delivery precludes the three-day extension. Service by any other means, including service via CM/ECF, extends the served party's response time by three days.

6.2 EXTENSIONS OF TIME.

(a) Extensions of time to further plead or file briefs or to continue a hearing may be granted by order of the Court upon written application motion. The movant shall note that opposing counsel has been contacted concerning the extension or continuance, and whether opposing counsel objects to the extension or continuance.

(b) All requests for extension of time or continuance shall be accompanied by an appropriate form of a proposed order, separate from the motion. Registered users shall attach the proposed order to the motion under the heading "Text of Proposed Order" and shall also e-mail a WordPerfect or Word version as set forth in L.R. 1.6(k). Conventional filers must include sufficient addressed, stamped envelopes for the clerk to serve all conventional filers.

The change in subsection (a) is stylistic only.

Proposed orders must accompany all motions for extension of time, and all unopposed motions, see L.R. 7.1(j). Those are the only two occasions when a proposed order is required or permitted. A proposed order must be e-mailed as a WordPerfect or Word document to a separate e-mail address because only PDF documents can be transmitted via CM/ECF and the presiding judge cannot alter or sign a document in PDF. The proposed order must nonetheless be attached to

*the motion so that other parties have notice of the contents of the proposed order.
The “Text of ...” heading is a menu selection available in CM/ECF.*

RULE 7

MOTION PRACTICE

7.1 MOTIONS.

(a) The provisions of L.R. 7 shall apply to motions, applications, petitions, orders to show cause, and all other proceedings (all such being included within the term “motion” as used herein) except a trial on the merits and applications for a temporary restraining order, unless otherwise ordered by the Court or provided by statute.

(b) All motions, unless made on the record during a hearing or trial, shall be in writing and shall 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) Upon serving and filing a motion, or within five (5) days thereafter, the moving party shall serve and file a brief. The five-day grace period does not apply in proceedings under L.R. 56.2. Briefs on motions shall contain an accurate statement of the questions to be decided, and set forth succinctly the relevant facts and the argument of the party with supporting authorities; ~~and be not longer than twenty (20) pages, exclusive of exhibits, table of contents, and certificate of service.~~

(~~e~~ d) Within twenty (20) days after service of a brief in support of a motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment, unless the Court orders a shorter time, any party opposing a motion shall file a response brief ~~not to exceed twenty (20) pages.~~ Response briefs shall be filed within eleven (11) days after service of a brief in support of any other motion.

(~~d~~ e) ~~B~~ Principal briefs in excess of twenty (20) pages will not be accepted and shall not be filed by the clerk if the party has not obtained prior leave of Court. may not exceed twenty (20) pages, excluding exhibits, any table of contents, and certificate of service, unless the filing party has obtained prior leave of Court. If filed without leave, overlength briefs will not be considered by the Court. Briefs exceeding twenty (20) pages shall have a table of contents and a table of cases with page references. CM/ECF filers must check the Court’s website to determine whether an overlength brief must be divided into segments before filing.

(f) A reply to the response brief, not to exceed ten (10) pages, may be served and filed by the moving party within eleven (11) days after service of the opposition’s statement. Reply briefs may not exceed ten (10) pages unless the filing party has obtained prior leave of Court. If filed without leave, such briefs will not be considered by the Court. in excess of ten (10) pages will not be accepted and shall not be filed by the clerk if the party has not obtained prior leave of Court.

(g) No further briefing shall be allowed without leave of Court. Upon the filing of a brief in support and a response brief, the motion shall be deemed submitted and taken under advisement by the Court.

(h) The Court may, in its discretion, order or allow oral argument on any motion or other proceeding in open court or by video conference or telephone conference call, provided that all conversations of all parties are audible to each participant and the Court. The Court may direct which party shall pay the cost of the call.

(i) Failure to file briefs within the prescribed time may subject any motion to summary ruling. The moving party's failure to file a brief shall be deemed an admission that the motion is without merit. Failure to file a brief by the adverse party shall be deemed an admission that the motion is well taken. The practice of filing motions to dismiss without a brief in support in order to gain additional time to respond ~~is discouraged~~ may be viewed by the Court as a violation of Fed. R. Civ. P. 11.

(j) Within the text of each motion submitted to the Court, the moving party shall note that other parties have been contacted concerning the motion and whether other parties object to the motion. Unopposed motions shall be accompanied by ~~an appropriate~~ a proposed order, separate from the motion. Registered users shall attach the proposed order to the motion under the heading "Text of Proposed Order" and shall also e-mail a WordPerfect or Word version as set forth in L.R. 1.6(k). Conventional filers must include sufficient addressed, stamped envelopes for the clerk to serve all conventional filers.

~~(k) Each exhibit attached to each motion or brief must be labeled by number or letter. If an exhibit contains more than one page, each page of the exhibit must be numbered. References to exhibits must include specific page numbers.~~

~~(k) Where the Court denies a motion "subject to renewal," the renewed motion must be accompanied by an original brief and any exhibits referred to therein, in addition to the number of copies prescribed by L.R. 10. Previously filed briefs may not be incorporated by reference. If the Court specifically authorizes the party to rely on the briefs and/or exhibits already filed, one copy of the original brief and exhibits must be submitted with the renewed motion.~~

The changes in current subsection (d), relocated to subsection (e), and in subsection (f), are stylistic and are made to reflect the fact that the CM/ECF system will not automatically block the filing of an overlength brief. The first person to notice that a brief contains more than twenty pages will now be the judge, not the clerk at the front desk. Overlong briefs filed without permission will be ignored in toto.

The change in subsection (i) is made because the Court continues to receive empty 12(b)(6) motions, despite the Rule's having discouraged the practice for many years.

Subsection (j) reflects the same changes as in L.R. 6.2(b); the only occasions on which a proposed order is required or permitted are when a party moves for an extension of time and when a motion is unopposed.

Subsection (k) is relocated to new Rule 7.2 and expanded.

7.2 EXHIBITS TO MOTIONS.

(a) Parties shall submit as exhibits only those documents or items that are directly germane to the matter under consideration by the Court. Exhibits must be attached to the brief in support of the motion and each exhibit must be labeled by number or letter. If an exhibit contains more than one page, each page of the exhibit must be numbered. References to exhibits must include specific page numbers. Use of a Bates stamp, PDF Bates stamp, or similar device is strongly encouraged. Excerpted material must be prominently identified as such.

(b) Except as these Rules otherwise provide, registered users must file exhibits in electronic form. A party may move for leave to file an exhibit in CD-ROM or non-electronic form by describing the exhibit and explaining why it cannot be filed in electronic form. Form A, Notice of Conventional Filing of Document or Item, may be used for this purpose. The Court's website provides guidance regarding what constitutes an exhibit too large to file or scan and other ways of handling exhibits. The following exhibits may be filed in either CD-ROM or in non-electronic form, but not both, without prior leave of court:

- (1) exhibits that are too lengthy to file or scan;**
- (2) exhibits that are oversized, such as blueprints or maps;**
- (3) administrative records; or**
- (4) trial exhibits.**

(c) Copies of exhibits filed in non-electronic form must be conventionally served on all parties.

The Court will consider all exhibits that are properly submitted. However, because the Court will download from CM/ECF each document filed by the parties, and because downloading times increase as documents lengthen, it is important to limit exhibits to those that are germane to the particular issue before the Court.

It may not be possible to scan some exhibits. In such cases, a party may move for leave to file the exhibit conventionally. Prior leave is not required for filing exhibits described in subsection (b)(1)-(4). A copy of any exhibit that is not available in electronic form must be conventionally served on all parties, including CM/ECF users.

Pursuant to L.R. 1.6(g), whenever a registered user files a document in paper form, Form A, Notice of Conventional Filing of Document or Item, must be used.

7.2 7.3 MOTIONS FOR RECONSIDERATION.

...

(d) Determination of Motion. Unless otherwise ordered by the assigned judge, no response may be filed to a motion for leave to file a motion ~~to reconsider~~ 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.

The change is made to clarify that a response does not become permissible based on the moving party's failure to comply with the Rule.

77.6 7.4 ~~FILING UNDER SEAL~~ MOTIONS TO FILE UNDER SEAL, SEALED MOTIONS, AND EX PARTE MOTIONS.

(a) Unless otherwise provided by statute or rule, no case or document shall be filed under seal without prior approval by the Court. A sealed document or item must be served on all other parties to the case unless ex parte filing is authorized by statute, rule, or other law.

(b) Registered Users. ~~If a filing under seal is requested, a written application and a proposed order shall be presented to the judge along with the document submitted for filing under seal. Unless otherwise ordered by the Court, the application and proposed order and document shall not be served on opposing parties.~~ Parties wishing to file a document under seal or ex parte in CM/ECF are encouraged to consult with the clerk's office to ensure the matter is correctly accomplished. A party filing in CM/ECF may elect to file sealed motions or ex parte motions conventionally.

(c) Conventional Filers. A document or item requested to be sealed shall be submitted to the clerk in paper form or on disk or CD-ROM in a sealed envelope with the case number, date, and "Filing Under Seal Requested" clearly printed on the envelope. If leave to file under seal is granted, the document or item shall be filed under seal either by the clerk or, at the clerk's direction, the party. If leave to file under seal is denied, the document or item will be returned to the movant without filing. The original and judge's copy of the document shall be sealed in separate envelopes with a copy of the title page attached to the front of each envelope. Conformed copies need not be placed in sealed envelopes.

This Rule is relocated from current Rule 77.6.

Documents may be filed in CM/ECF under seal, but the parties should consult with the Clerk's Office to ensure they accomplish what they want, whether it be access by the parties in the case but not the general public or access only by the filer and the Court. CM/ECF users are not required to use CM/ECF when attempting to file a document under seal.

7.5 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 (2) pages and shall not present a new argument. No response may be filed unless the presiding judge so authorizes.

This new Rule permits a party to alert the Court to authority not cited in the briefing. The notice is only that, a notice, not an argument. The party must explain why the authority was not cited in the briefing. No response is permitted unless the judge asks for the opposing party's input.

RULE 10

FORM OF PLEADINGS

~~10.2~~ 10.1 ~~FORM OF FILINGS~~ FORMAT OF ALL DOCUMENTS.

~~(b a)~~ ~~The content of all papers~~ All documents shall be typewritten (or neatly handwritten, if submitted by a pro se litigant) , printed, or prepared on one side of the paper only, and must be in true double-spacing and double-spaced, except for quoted material and footnotes, in at least 12-point font size without erasures or materially defacing interlineations. Spacing mechanisms such as “Exactly 24” are not acceptable. Page size must be 8½x11 inches.

~~(c b)~~ Each page shall be numbered consecutively at the bottom.

~~(d c)~~ The top, bottom and side margins must be at least one inch.

~~(e d)~~ Names shall be printed or typed under all ~~signatures~~ signature lines.

~~(f)~~ ~~The signature on each original pleading or motion must be an original.~~

~~(a e)~~ **Counsel or Party Identification.** ~~The following information must appear in the upper left-hand corner of the first page of each paper other than proposed orders presented for filing, except that in multi-party or multi-attorney actions or proceedings, reference may be made to the signature page for the complete list of attorneys and parties represented: The following information must appear in the upper left-hand corner of the first page of each document, other than orders or proposed orders. The required information shall extend no farther than four inches from the left edge of the document:~~

- (1) name of the attorney(s) filing the document and the firm name(s) (or name of the party, if appearing pro se);
- (2) conventional mailing and physical address;
- (3) telephone number, or, if none, a telephone number where they may be contacted;
- (4) facsimile number, if available;
- (5) e-mail address, if the parties have consented to electronic service; and
- (6) the filing party's name and interest role in the litigation (i.e., e.g., Plaintiff Pro Se, Attorney for the Defendant, etc.).

(b f) Caption And Title. The caption must ~~begin four inches from the top of the page and must~~ contain the name and division of the Court, the parties' names, the cause number, and a title describing the ~~paper document~~ filed and identifying the filing party, in the ~~following format: format exemplified in the Appendix.~~

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

_____ DIVISION

PARTY NAME, _____)	Cause No. CV 00-000-XX-XXX
_____)	
Plaintiff, _____)	
_____)	
vs. _____)	PARTY & TITLE DESCRIBING THE
_____)	DOCUMENT OR ACTION REQUESTED
PARTY NAME, _____)	(e.g., Answer, Motion, etc.)
_____)	
Defendant. _____)	
_____)	

~~(e) Court Use.~~ The top four inches on the right of the center of the first page shall be left blank for the use of the Clerk of Court.

The changes in this Rule are designed to apply uniform rules to all documents, regardless of whether they are filed solely in electronic form by CM/ECF users or presented on paper for scanning and uploading into the CM/ECF system.

10.1 10.2 FORM OF PAPERS PRESENTATION OF PAPER DOCUMENTS FOR FILING.

(a)

All ~~original papers~~ paper documents presented for filing ~~and copies as provided in L.R. 10.3~~ shall be on 8½ x 11-inch uncolored opaque paper of good quality, flat and unfolded, without back or cover and typewritten, printed, or prepared on one side of the paper only and not hole-punched. Documents must be paper-clipped or clamped together but **not** stapled or bound. ~~and shall be firmly bound together and pre-punched to accommodate a 2¾ inch two-prong fastener centered at the top of the page.~~ Original papers presented by prisoners may be folded. ~~and need not be bound or pre-punched.~~ An original and one copy of all paper documents must be submitted.

Paper documents must be suitable and ready for scanning when they are presented to the clerk.

~~(b) At the time of filing, parties must furnish to the clerk all necessary copies of any pleading, judgment or order, or other matter filed of record in a cause so as to permit the clerk to comply with the notice and service provisions of any applicable statute or rule, and the provisions of Federal Rule of Civil Procedure 79(b) with reference to final judgment, appealable orders, or order affecting title to or lien upon real or personal property. All copies so furnished shall be legible copies.~~

Deleted as unnecessary.

~~10.3~~ **COPIES TO BE FURNISHED TO CLERK.**

~~(a) Parties shall promptly furnish to the clerk all necessary copies of any pleading, judgment or order, or other matter filed of record in a cause so as to permit the clerk to comply with the notice and service provisions of any applicable statute or rule, and the provisions of Federal Rule of Civil Procedure 79(b) with reference to final judgment, appealable orders, or order affecting title to or lien upon real or personal property. All copies so furnished shall be legible copies.~~

~~(b) At the time of filing, parties must provide to the clerk an original and two (2) copies of the complaint, and an original and one copy of answers, pretrial statements, motions, and briefs. No complimentary copies shall be provided directly to the presiding judge. If *forma pauperis* status is granted, the plaintiff must provide one original of each exhibit and one original and one copy of all pleadings, motions, and briefs presented for filing.~~

Deleted as unnecessary.

~~10.4~~ 10.3 **CITATION FORM.**

...

(c) A party may, but is not required to, hyperlink a document to a cited authority at an Internet site. Neither the hyperlink nor the Internet site will be considered part of the record of the case.

~~(c d)~~ For any violation of L.R. ~~10.4~~ 10.3, the Court in its discretion may return the document for correction.

*Hyperlinking will enable the Court quickly to review an authority cited in a brief.
It is optional.*

10.5 10.4 SANCTIONS.

If any filings do not comply with L.R. 10, the clerk shall bring the failure to comply to the attention of the filing party and to the presiding judge. The Court may sanction a violation of L.R. 10. The sanction ~~will~~ may include a ~~\$50.00~~ an assessment of up to \$50.00 and up to \$5.00 per page for each nonconforming page.

The last sentence is made permissive rather than mandatory in view of the considerable adjustments that everyone will make as attorneys become familiar with new practices in CM/ECF. However, notice is provided of the range of sanctions.

RULE 11

SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO COURT; SANCTIONS

11.1 ATTORNEY 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, the local rules of this Court, and any other purpose for which a signature is required in connection with proceedings before the Court.

(b) The signature in each document filed electronically, where an original hand signature would otherwise appear, must be in the following form:

/s/ John E. Attorney
John E. Attorney
Attorneys R Us, P.C.
Attorneys for the Defendant

(c) A registered user shall 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.

This new Rule provides that use of a log-in and password to access the CM/ECF system constitutes an attorney's signature for purposes of Fed. R. Civ. P. 11 and any other purpose for which a signature is required. An attorney's signature line in an electronically filed document will not be a hand signature or an electronic image of a signature but simply "/s/" followed by the attorney's name, firm name if any, and party represented. An attorney signing a document for another attorney might write "/s/ Jane Doe" on the signature line and "For John E. Attorney" on the second line, followed by the firm name and party represented.

Signatures of non-attorneys, for example in affidavits, should be presented only in scanned documents so that an image of a hand signature is shown.

11.2 ELECTRONIC FILING OF JOINTLY FILED DOCUMENTS OR DOCUMENTS REQUIRING MULTIPLE SIGNATURES.

Documents requiring signatures of more than one party shall be filed by one party in one of the following ways:

- (a)** Scanning the signature page and attaching it as an exhibit to the document;
- (b)** Using the “/s/” electronic signature as to the filing party only, using blank signature lines followed by the information required by L.R. 11.1 as to the other parties, and representing in the text of the document that all parties whose signature lines appear in the document have consented to its filing;
- (c)** Identifying on the document when filed the parties whose signatures are required and stating that each party will file a notice of endorsement within three (3) business days of the document’s filing, with each party timely filing its own notice of endorsement;
- (d)** Where all signators are conventional filers, by presenting to the Clerk one document bearing the original signature of each signator; or
- (e)** By using any other method prescribed by the Clerk of Court.

Technological changes may create other means of obtaining the endorsements of several parties. Should that occur, the Court’s website will reflect any new options available.

RULE 12

DEFENSES AND OBJECTIONS

12.1 RESPONDING TO PRISONER-PLAINTIFFS -- WAIVER OF REPLY. [no change]

12.2 NOTICE OF APPEARANCE IN A 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 a Forma Pauperis Action, may be used for this purpose.

This new Rule is necessary to ensure that the CM/ECF system can accurately track certain deadlines. A Notice of Appearance is required only upon a defendant's first appearance in an action where a plaintiff is proceeding in forma pauperis.

RULE 15

AMENDED PLEADINGS

15.1 FILING OF PLEADINGS REQUIRING LEAVE OF COURT.

(a) Registered Users. ~~Upon the filing of a motion~~ When moving for leave to file pleadings that require leave of Court to file, a registered user shall attach the proposed pleading as an exhibit to the motion. If leave to file is granted, the party shall promptly file the pleading. ~~an amended complaint or answer, a complaint in intervention, or other pleading requiring leave of Court to file, the movant shall file with the motion a copy of the proposed pleading or amendments and lodge the original with the clerk. If leave to file is granted, the clerk shall promptly file the original.~~

(b) Conventional Filers. When a conventional filer moves for leave to file a pleading that requires leave of Court to file, the clerk shall file the proposed pleading as an exhibit to the motion. If leave to file is granted, the clerk shall promptly file the pleading.

There is no "lodging" in CM/ECF. Attaching the proposed pleading as an exhibit to the motion for leave will permit the Court to review the pleading but will not constitute filing of the pleading without leave. If leave is granted, the party may then file the pleading or, if the movant is not a registered user, the clerk will do so.

RULE 16

PRETRIAL PROCEEDINGS

16.1 PRETRIAL CONFERENCES. [no change]

16.2 PRELIMINARY PRETRIAL CONFERENCE.

...

(b) Filings Before Preliminary Pretrial Conference. Each of the following documents must be filed no later than seven (7) calendar 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;

...

(H) proposed stipulations of fact and ~~law~~ the parties' understanding as to what law applies;

(c) Conduct of Conference. Not later than ninety (90) days after a case is at issue, or one hundred twenty (120) days after filing of the complaint, whichever comes first, the judge to whom the case is assigned shall hold a preliminary pretrial conference to discuss the matters included in the discovery plan and the preliminary pretrial statements and to discuss and schedule the following matters:

(1) joinder of additional parties;

(2) amendment of pleadings;

(3) stipulations of fact and ~~law~~ the parties' and the Court's understanding as to what law applies;

The amendment is made because the parties cannot stipulate to the law.

16.3 SCHEDULING ORDER.

...

(b) Procedure When No Trial Set.

- (1) When a trial date is not set in the Pretrial Scheduling Order, the judge to whom the case is assigned shall, within thirty (30) days of the submission of a proposed final pretrial order, convene a status conference to determine the readiness of the case for trial and to establish a trial date. Pursuant to the status conference, the judge shall immediately enter a final scheduling order that establishes dates for:
- (A) a final pretrial conference, unless deemed unnecessary;
 - (B) filing of each party's proposed voir dire questions and jury instructions or proposed findings of fact and conclusions of law (~~each filed both in paper form and on disk~~); and
 - (C) trial. . . .

(c) Continuances.

- (1) Requests for continuances of trial shall not be routinely granted. Counsel must prepare diligently for trial and are discouraged, absent extraordinary circumstances, and good cause shown, from seeking continuance of a trial. In granting ~~an application~~ a motion for continuance, the Court may impose costs and conditions.

There are special menu options available in CM/ECF for proposed voir dire, proposed jury instructions, and proposed findings and conclusions. It will not be necessary for either conventional filers or registered users to submit these documents in both paper and electronic form. The change in subsection (c)(1) is stylistic.

16.4 FINAL PRETRIAL ORDER.

(a) Preparation and Lodging. At least two weeks before the final pretrial order is due, Plaintiff's counsel shall convene a conference of all counsel and pro se parties at a suitable time and place for the purpose of preparing the order. If ~~counsel~~ for any party refuses to cooperate in the preparation of the pretrial order, the opposing party may move the Court for sanctions. On or before the date established in the pretrial scheduling order, ~~counsel for the parties shall a~~ registered user involved in the trial and selected by all parties shall lodge with the Clerk of Court file a proposed final pretrial order signed by all counsel and pro se parties. . . .

(b) Form and Content. The final pretrial order shall address the following matters:

. . .

- (10) **Witnesses.** Each party must identify in **separate witness lists** each witness who **will be called**, and each witness who **may be called**. A witness on either list must be identified by name and address and subject area of expected testimony. Witness lists must be in the form set forth in ~~Appendix A~~ Form E and shall be attached as exhibits to the Proposed Final Pretrial Order.
- (11) **Exhibits.** Each party must identify in **separate exhibit lists** each document, photograph or other item that the party **will offer** as an exhibit at trial, and each document, photograph or other item that the party **may offer** as an exhibit at trial. Documents intended for impeachment or rebuttal need not be identified on either exhibit list except by reference to purpose, i.e., “impeachment” or “rebuttal.” Exhibit lists must be in the form set forth in ~~Appendix A~~ Form F and shall be attached as exhibits to the Proposed Final Pretrial Order.

The changes are mostly stylistic, except that subsection (a) reflects that a registered user should file the proposed final pretrial order. As with proposed voir dire, etc., there is a special menu option in CM/ECF for a proposed final pretrial order.

16.5 FINAL PRETRIAL CONFERENCE. [no change]

16.6 NEUTRAL EVALUATION.

...

(C) NOMINATION AND APPOINTMENT OF NEUTRALS.

(1) Unless otherwise directed by the assigned judge, the parties may nominate a neutral who is not on the panel. The parties shall ~~submit with~~ attach as an exhibit to their report on neutral evaluation a written agreement, signed by counsel for each participating party and the nominee, among the parties and the nominee, stating that neutral evaluation shall occur within a specified time frame. ~~Faxed documents may be attached~~ Conventional filers may attach faxed documents to the report if paper copies are simultaneously mailed to the Clerk of Court for filing.

...

No change in the substantive requirements is intended.

RULE 26

DISCOVERY

26.1 RULE 26(f) CONFERENCE AND DISCOVERY PLAN. [no change]

26.2 DOCUMENTS OF DISCOVERY.

(a) Initial disclosures under Federal Rule of Civil Procedure 26(a)(1), depositions upon oral examinations and interrogatories, requests for documents, requests for admissions, answers and responses, expert disclosures, and expert reports shall not be routinely filed (*see* Federal Rule of Civil Procedure 5(d)). However, when any motion is filed relating to discovery, the parties filing the motion shall attach as exhibits to the motion all of the documents relevant to the motion if the documents have not been previously filed. Certificates or notices indicating service of discovery documents on opposing parties shall not be filed. . . .

Fed. R. Civ. P. 5(d) lists the items set forth here and also refers to Federal Rule 26(a)(1) and (2), which pertains to initial disclosures and expert disclosures, but there still seems to be some confusion as to whether expert disclosures or reports ought to be filed. They should not be filed. The change clarifies this. Discovery items should be filed only when and to the extent necessary to permit the Court to resolve a particular issue.

26.3 DISCOVERY AND DISCOVERY RESPONSES.

...

(c) Discovery Motions. . . .

- (2) The Court will deny any discovery motion unless counsel shall have conferred concerning all disputed issues before the motion is filed. The mere sending of a written, electronic, or voice-mail communication does not satisfy this requirement. Rather, this requirement can be satisfied only through direct dialogue and discussion in a face to face meeting, in a telephone conversation, or in detailed, comprehensive correspondence.
- (3) If counsel for the moving party seeks to arrange ~~such~~ a conference described in subsection (2), and opposing counsel refuses or fails to confer, the judge may order the payment of reasonable expenses, including attorney's fees, pursuant to Federal Rule of Civil Procedure 37(a)(4). Counsel for the moving party shall include in the motion a certificate of compliance with this Rule.

This change clarifies that the “conference” the Court has in mind here is not satisfied by, for instance, an exchange of phone messages. Subsection (2) puts the burden on the moving party to initiate a conference; subsection (3) addresses an opposing party’s failure or refusal to confer.

RULE 38

JURY TRIAL

38.1 DEMAND FOR JURY TRIAL. [no change]

RULE 47

SELECTION OF JURORS

47.1 EXAMINATION OF JURORS. [no change]

RULE 48

JURORS & PARTICIPATION IN VERDICT

48.1 NUMBER OF JURORS. [no change]

48.2 COMMUNICATIONS WITH TRIAL JURORS. [no change]

RULE 51

INSTRUCTIONS TO THE JURY

51.1 REQUESTS FOR INSTRUCTIONS TO JURY.

(a) Requests for instructions to the jury shall be ~~presented to~~ 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. . . .

The change is stylistic only.

RULE 52

FINDINGS BY THE COURT

52.1 FINDINGS AND CONCLUSIONS; PREPARATION AFTER DECISION.

The Court may, after decision, request the prevailing party to prepare findings of fact and conclusions of law in accordance with the decision. The findings, unless otherwise ordered, shall be ~~submitted~~ filed, served and objected to within the schedule provided in L.R. 54.2.

Stylistic change only.

52.2 PREPARATION OF JUDGMENT OR FINDINGS AND CONCLUSIONS UPON FAILURE OF PREVAILING PARTY TO DO SO. [no change]

RULE 54

JUDGMENTS & COSTS

54.1 JUDGMENTS PREPARED BY CLERK.

Unless the Court otherwise directs, and subject to the provision of Federal Rule of Civil Procedure 54(b), judgment upon the verdict of a jury (except those verdicts mentioned in L.R. 54.2) shall be promptly prepared, ~~signed and entered~~ and filed by the clerk. When the Court directs that a party recover only money or costs, or that all relief be denied, the clerk shall prepare, ~~sign, and enter~~ and file judgment upon receipt of the Court's direction. No other judgment shall be entered in the cases provided for in this Rule.

Stylistic change only.

54.2 JUDGMENTS ENTERED ONLY ON DIRECTION OF COURT.

Upon a special verdict or on a general verdict accompanied by interrogatories returned by a jury pursuant to Federal Rule of Civil Procedure 49, and in all cases tried by the Court without a jury, except when the Court directs that a party recover only money or costs or that all relief be denied, the Court will give direction as to entry of judgment, and no judgment shall be ~~entered~~ filed by the clerk until such direction is given. In the cases provided for by this Rule, the prevailing party shall within ten (10) days, unless additional time is granted by the Court, prepare and submit to the clerk a draft of the judgment and serve a copy upon the other party. Each other party shall then have ten (10) days within which to serve and file objections to the form of the proposed judgment. ~~When the time for objections has expired, the clerk shall deliver the proposed judgment, together with all objections, to the presiding judge.~~ The presiding judge shall review the proposed judgment and take action after all objections have been filed.

Stylistic change only.

54.3 TAXATION OF COSTS.

(a) Application to the Clerk.

- (1) Within ten (10) days after the entry of a judgment allowing costs, the prevailing party shall serve and file an application for the taxation of costs. The application shall be ~~on a Bill of Costs form, which shall be furnished by the clerk. If an application for costs is received that is not on the appropriate form, the clerk shall promptly notify the party seeking costs, forward the form, and extend the time for filing the amended claim form no more than ten (10) days.~~ made on Form G, Application for Taxation

of Costs. . . .

(e) Fees for Exemplification and Copies of Papers or Documents Necessarily Obtained for Use in the Case. Reasonable fees for exemplification and copies of exhibit evidence such as digitally produced exhibits, charts, drawings, maps, photographs, movies, videotapes, and models, etc., which were reasonably necessary to the presentation of the prevailing party's case will be allowed as costs. In taxing costs the clerk will presume that exhibit evidence used at trial was reasonably necessary to the presentation of the case and that exhibit evidence not used was not reasonably necessary to the presentation of the case. . . .

(i) Review. A dissatisfied party may appeal upon written motion served within five (5) days of the clerk's decision, as provided in Federal Rule of Civil Procedure 54(d). The motion shall specify all objections to the clerk's decision and the reasons for the objections. Appeals shall be heard upon the same ~~papers~~ documents and evidence submitted to the clerk.

The change in subsection (a)(1) makes the Administrative Office's form Bill of Costs part of the Local Rules and renames it in accordance with 28 U.S.C. § 1920. Changes in subsections (e) and (i) are stylistic only.

54.4 ATTORNEY'S FEES. [no change]

RULE 56

SUMMARY JUDGMENT

56.1 MOTIONS FOR SUMMARY JUDGMENT.

(a) Any party filing a motion for summary judgment shall also file a Statement of ~~Uncontroverted~~ *Undisputed* Facts setting forth, separately from the memorandum of law and in full, the specific facts on which that party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific portion of the record where the fact may be found (e.g., affidavit, deposition, etc.).

(b) Any party opposing a motion for summary judgment must file a Statement of Genuine Issues setting forth the specific facts, if any, that establish a genuine issue of material fact precluding summary judgment in favor of the moving party. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall refer to a specific portion of the record where the fact may be found (e.g., affidavit, deposition, etc.).

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

(d) Upon filing of the Statement of ~~Uncontroverted~~ *Undisputed* Facts and Statement of Genuine Issues, the factual record for the motion shall be deemed complete. Parties shall file no further factual materials except with leave of the Court upon a showing that factual materials were reasonably omitted in the Statement of ~~Uncontroverted~~ *Undisputed* Facts and Statement of Genuine Issues.

Stylistic change only.

56.2 MOTIONS FILED AGAINST PRO SE PRISONER-PLAINTIFFS IN CIVIL ACTIONS. [no change]

RULE 67

DEPOSIT OF FUNDS IN CUSTODY OF COURT

- 67.1 ORDER FOR DEPOSIT; INTEREST BEARING ACCOUNT.** [no change]
- 67.2 ORDERS DIRECTING INVESTMENT OF FUNDS BY CLERK.** [no change]
- 67.3 ORDER FOR DISBURSEMENT OF FUNDS.** [no change]
- 67.4 SECURITY FOR COSTS.** [no change]

RULE 73

AUTHORITY OF MAGISTRATE JUDGES

~~73.1 DUTIES AND POWERS OF MAGISTRATE JUDGES.~~

~~Each United States Magistrate Judge appointed by this Court is authorized to exercise such jurisdiction and perform all the duties prescribed by 28 U.S.C. § 636 and may be assigned any additional duty by this Court that is not inconsistent with the Constitution or the laws of the United States.~~

The content of this Rule is relocated to new Rule 1.10(d).

73.1 ASSIGNMENT OF CIVIL CASES TO MAGISTRATE JUDGES

(a) The full-time United States Magistrate Judges of the District of Montana are designated to hear all prisoner civil rights actions, all habeas corpus actions (excluding motions filed under 28 U.S.C. § 2255 or actions for writs filed by federal prisoners), all cases in which one or more plaintiffs are proceeding pro se, and all cases in which leave to proceed in forma pauperis is sought. Except as otherwise provided by order, all such cases shall be assigned to a magistrate judge upon filing opening. A case will not be reassigned based on a party's change of status after filing.

(b) Any active Article III judge may designate a United States Magistrate Judge to exercise jurisdiction over any other civil case in accordance with 28 U.S.C. § 636 and Chapter IV of these Rules.

(c) A magistrate judge designated to hear a matter shall be assigned to preside over the case for all purposes, including trial and entry of judgment, only if each party not in default consents in writing within thirty (30) days after service of a notice of assignment as set forth in L.R. 73.2. Only an Article III judge may enter a default judgment against a nonconsenting party.

This Rule is relocated here from current L.R. 3.2(d).

The first change in subsection (a) will mean that petitions filed under 28 U.S.C. § 2241 by federal prisoners will not be automatically assigned to the magistrate judge. Changes in subsection (c) delete as unnecessary the requirement that consent be received within thirty days of service of the notice of assignment and clarify that a magistrate who has the consent of all non-defaulting parties may not enter judgment against a party in default.

73.2 CONSENT ELECTION WHERE CASE IS ASSIGNED TO MAGISTRATE

JUDGE.

(a) Requirement for Conventional Notice and Filing. In all cases, the consent election shall be carried out on paper. Returned consent forms shall be held under seal in the clerk's office. If all parties consent to magistrate jurisdiction, each party's consent form will be scanned into the record of the case. If all parties do not consent to magistrate jurisdiction, the returned consent forms will be shredded at the conclusion of the case in this Court.

(a b) Notice. When a civil action has been conditionally assigned to a magistrate judge, the Clerk of Court shall notify the parties of such assignment and advise them that they may give or withhold consent to the magistrate'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 shall mail the notice and consent election form after all parties ordered to be served have made an appearance. In all other cases, the clerk shall mail the notice and consent election form within ten (10) days of a party's appearance.

(b c) Return of consent election forms. Parties shall have thirty (30) days from service of the notice of assignment to complete and return to the Clerk of Court the consent election form indicating whether they do or do not consent to a magistrate judge's exercise of jurisdiction over the case for any and all proceedings including trial and entry of judgment, pursuant to 28 U.S.C. § 636(c). The Clerk will keep custody of all consent election forms. If all parties give consent, the case will continue before or be reassigned to a magistrate judge. In the event any party withholds consent to the magistrate judge's jurisdiction, the case will be reassigned to an Article III judge.

(e d) Anonymity. Parties are free to give or withhold their consent. 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.

Subsection (a) is necessary because parties are ensured anonymity in the consent election, per subsection (d), but judges can see all sealed documents in CM/ECF. Therefore, the consent election will be conducted by the Clerk's Office in paper form. Only where all parties consent will the consent forms be made part of the record of the case.

RULE 77

CLERK OF COURT

77.1 LOCATION AND HOURS.

Offices of the Clerk shall be maintained in the cities of Billings, Butte, Great Falls, Helena, and Missoula, and shall be open between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday. ~~All~~ Except as provided in L.R. 77.2(b), all papers may be conventionally filed with the clerk in any Divisional office.

See L.R. 77.2(b).

77.2 CONVENTIONAL FILING BY THE CLERK.

(a) ~~Except as otherwise provided by these Rules, the clerk shall file all papers presented for conventional filing by upon payment of proper fees or upon receipt of an affidavit or Application described in Rule 3.6(a). It shall be the duty of the clerk to immediately promptly scanning and e-mailing the documents forward all papers to the clerk's office of the appropriate Division where the case is venued when papers are filed in a division other than that of the division in which the case is pending.~~

(b) When the clerk is presented with a document or item that cannot be scanned and that is required to be filed in another Division, the clerk will enter a notice of the party's attempt to file the document or item in the docket and the party will have a grace period of three (3) business days to deliver the document or item to the Division of venue or to another Division as directed by the clerk.

(b c) ~~All original papers~~ Papers presented for conventional filing shall be filed with presented to the clerk and not with to any judge.

Subsection (b) will require parties to assume the cost and responsibility of mailing documents or exhibits that cannot be scanned to the Division of venue or elsewhere as directed by the clerk.

Although judges may require paper copies of all or selected documents to be submitted for their use, such delivery will not constitute filing of the document. Conventional filers must continue to present documents to the clerk to be filed.

77.3 NON-ELECTRONIC FILES AND RECORDS, WHERE MAINTAINED.

The Non-electronic files and records in cases arising in a particular division will be maintained in

the ~~Clerk's Office~~ clerk's office at that division unless otherwise ~~ordered by the Court~~ directed by a judge or removed to long-term storage.

The electronic record will be available anywhere. Items available only in non-electronic form will be stored in the Division of venue unless a judge directs otherwise.

77.4 CUSTODY OF NON-ELECTRONIC RECORDS AND RELEASE.

~~No~~ A non-electronic record or paper belonging to the files of the Court shall not be taken from the custody of the clerk except with the permission of the judge to whom the case is assigned, and a receipt given by the party obtaining it, specifying the record or paper, the date of its receipt, and the date it is to be returned. In the event the presiding judge is not available or cannot be reached to give permission, then the clerk or deputy in charge of the office is vested with the discretion to release any non-electronic record or paper.

Non-electronic records and papers will remain subject to the same restrictions that apply to all court files at present.

77.5 CUSTODY OF EXHIBITS AND RELEASE.

~~(a) Custody.~~ Every exhibit placed on file shall be held in the custody of the clerk. Unless there is good reason why the original should be retained, upon application or on its own motion, ~~the Court may order a copy filed in its place.~~

~~(b) Disposal.~~ Any party may withdraw any exhibit the party has filed upon filing a waiver of the right to an appeal and to new trial. If another party or witness files notice within five days thereafter that that party or witness is entitled to the exhibit, the clerk shall keep the exhibit in custody until the Court has determined who is entitled to it or until all interested persons consent to its release. If exhibits are not withdrawn within thirty (30) days after the judgment has become final, the clerk may dispose of them within a reasonable time after notice to the party offering the exhibit.

The clerk shall keep custody of exhibits that are not available in CM/ECF for the duration of trial or, as to exhibits submitted in connection with a motion, until the presiding judge directs their return to the filing party. Otherwise, exhibits that are not available in CM/ECF shall be kept in the custody of the filing party. In the event the exhibit is required by this or another Court after it has been returned, the filing party will be so notified.

The Rule is amended primarily to conform to current practice, though it also reflects the transition to CM/ECF. Exhibits filed in CM/ECF will remain a permanent part of the Court's record.

~~77.6—FILING UNDER SEAL.~~

~~Unless otherwise provided by statute or rule, no case or document shall be filed under seal without prior approval by the Court. If a filing under seal is requested, a written application and a proposed order shall be presented to the judge along with the document submitted for filing under seal. Unless otherwise ordered by the Court, the application and proposed order and document shall not be served on opposing parties. The original and judge's copy of the document shall be sealed in separate envelopes with a copy of the title page attached to the front of each envelope. Conformed copies need not be placed in sealed envelopes.~~

This Rule is now addressed by new L.R. 7.3.

RULE 83

DISTRICT COURT RULES AND DIRECTIVES

83.1 DECORUM. [no change]

83.2 ATTIRE. [no change]

83.3 ADMISSION TO AND PRACTICE IN THIS COURT.

...

(c) Practice in this Court. Except as otherwise provided in this Rule, only members of the Bar of this Court who are classified as active members in good standing by the State Bar of Montana shall practice in this Court. An attorney's continued registration in the Court's CM/ECF system is not evidence of good standing.

(d) Attorneys for the United States. An attorney who is not eligible for admission under L.R. 83.3(a) but who is a member in good standing of and eligible to practice before 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, and who is of good moral character, may practice in this Court in any matter in which that attorney is employed or retained by the United States or its agencies and is representing the United States or any of its officers. Attorneys so permitted to practice in this Court are subject to the jurisdiction of the Court with respect to their conduct to the same extent as members of the Bar of this Court. Effective December 1, 2006, attorneys whose new principal employment is to represent the United States in the District of Montana are not permitted to practice under this Rule and must be members of the Bar of the State of Montana.

(e) Pro hac vice.

- (1) An attorney not eligible for admission under L.R. 83.3(a), but who is a member in good standing of and eligible to practice before 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 ~~written application~~ motion to and in the discretion of the presiding judge, be permitted to appear and participate in a particular case. A pro hac vice applicant may not register in the Court's CM/ECF system until granted permission to appear pro hac vice.
- (2) Unless authorized by the Constitution of the United States or acts of Congress, an attorney is not eligible to practice pursuant to this subsection if (A) the attorney

resides in Montana, or (B) the attorney is regularly employed in Montana.

- (3) An applicant attorney shall 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 shall be served, and who will be responsible to participate as required under subsection (f) of this Rule.
- (3 4) Local counsel shall file a motion for the applicant attorney's admission pro hac vice and shall attach to the motion the applicant's affidavit ~~An attorney applying to appear pro hac vice shall file and serve on all parties an application stating, under penalty of perjury:~~
- (A) the attorney's state or territory of residence and office addresses;
 - (B) by what court(s) the attorney has been admitted to practice, the date(s) of admission, and the date(s) of termination of admission, if any;
 - (C) that the attorney is in good standing and eligible to practice in these courts;
 - (D) that the attorney is not currently suspended or disbarred in any other court,
 - (E) whether the attorney has ever been held in contempt, otherwise disciplined by any court for disobedience to its rules or orders, or sanctioned under Federal Rules of Civil Procedure 11 or 37(b), (c), (d) or (g) 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 ~~attached to~~ included with the application; and
 - (F) if the attorney has concurrently or within the year 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 or not the application was granted; ~~and~~
 - ~~(G) 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 papers shall be served, and who will be responsible to participate as required under subsection (f) of this Rule.~~
- (4 5) Permission to appear pro hac vice is granted or denied solely at the discretion of the presiding judge. Revocation of permission to appear pro hac vice pertains to

the instant case only and does not constitute disbarment from the Bar of this Court. Revocation of a CM/ECF log-in or password does not constitute disbarment from the Bar of this Court or bar future registration.

(f) Duties of local counsel. Unless otherwise ordered, local counsel designated pursuant to this Rule shall sign all pleadings, motions and briefs. In all cases, local counsel shall participate actively in all phases of the case, including, but not limited to, attendance at depositions and court proceedings, preparation of discovery responses and briefs, and all other activities to the extent necessary for local counsel to be prepared to go forward with the case at all times. The Court, upon motion by local counsel, may waive this Rule on a showing of extraordinary circumstances. Upon waiver of this Rule by the Court, all ~~papers~~ documents subsequently filed shall be signed by counsel actively involved in the case. Such a waiver is not to be routinely granted.

The change in subsection (c) prevents an attorney from relying on CM/ECF registration as evidence of good standing, for instance, in a pro hac vice application to another court.

Subsection (d) provides that attorneys who act on behalf of the United States in this Court must be members of the State Bar of Montana. Current assistant United States attorneys who are not members of the State Bar may continue their current status. The amendment will put new assistant United States attorneys on an even footing with federal defenders, who are required to be members of the State Bar.

The substantive change in subsection (e) means that local counsel will be responsible for filing the motion of an attorney applying to appear pro hac vice because a pro hac attorney will not be permitted to use the Court's CM/ECF system unless and until his or her motion is granted. The amendment to subsection (e)(5) specifies the terms that apply if a pro hac attorney's CM/ECF log-in or password is revoked. Other changes in (e) are stylistic.

The change in subsection (f) is stylistic.

83.4 NOTICE OF CHANGE OF STATUS. [no change]

83.5 ATTORNEY UNDER APPOINTMENT OF COURT. [no change]

83.6 STUDENT PRACTICE RULE.

...

(b) Activities.

...

- (3) A law student permitted to practice under this Rule shall not be registered in the CM/ECF system. . . .

Law students currently are not permitted to sign pleadings. Since use of a log-in and password constitutes a signature for all purposes, including Federal Rule 11, law students may not use CM/ECF.

83.7 ATTORNEY AS A WITNESS. [no change]

83.8 AGREEMENTS OF ATTORNEYS. [no change]

83.9 WITHDRAWAL FROM CASE AND SUBSTITUTION OF ATTORNEYS.

(a) Leave of Court and Notice. ~~No~~ Except as provided in subsection (c), no attorney may withdraw from any case, civil or criminal, except by leave of Court after filing a motion to withdraw and:

- (1) ~~notice is served~~ -serving notice on both the attorney's client(s) and opposing counsel and showing good cause, or
- (2) attaching to the motion as an exhibit the client's written consent to the withdrawal, signed by ~~is signed by~~ the attorney and the client(s) ~~and filed with the Court.~~

(b) Responsibility of Attorney. When an attorney of record for any reason ceases to act for a party, the party must immediately ~~appoint~~ retain another attorney or appear ~~in person~~ pro se. Until the Court authorizes withdrawal, the authority and the responsibility of the attorney shall continue for all proper purposes.

(c) Substitution of Counsel. When a party changes attorneys, a notice of substitution signed by the incoming and the outgoing attorney must be filed.

Subsection (a) adds an explicit requirement for a motion to withdraw and requires a showing of good cause where the client does not consent in writing to the attorney's withdrawal. Changes in subsection (b) are stylistic. Subsection (c) requires a notice of substitution so that a new attorney does not begin to act in a case before a former attorney is aware of the new attorney's appearance.

83.10 PHOTOGRAPHING, TELEVISIONING, BROADCASTING. [no change]

83.11 STATUTORY THREE-JUDGE COURT.

...

(b) In statutory three-judge cases, ~~filings directed to all three judges shall be made in triplicate~~ one original and three copies of any conventionally filed documents must be submitted to the clerk.

In the rare event that a three-judge court is convened, it is helpful to have sufficient paper copies for each judge in addition to their access to the electronic record.

83.12 GUARDIANS AD LITEM. [no change]

83.13 STANDARDS OF PROFESSIONAL CONDUCT. [no change]

83.14 SUSPENSION, DISBARMENT AND DISCIPLINE OF ATTORNEYS.

(a) Jurisdiction.

- (1) Any attorney admitted to practice before this Court, any attorney admitted for a particular proceeding, or any attorney otherwise authorized to appear before this Court is subject to the disciplinary jurisdiction of this Court.
- (2) “Chief Judge,” as used in this Rule, means the Chief Judge of the district or another district judge designated by the Chief Judge.
- (3) Nothing contained in this Rule shall be construed to limit or deny the Court such powers as are necessary to maintain control over proceedings before it, such as contempt power. Termination of a registered user’s log-in and password does not constitute discipline or disbarment and may be effected at any time without prejudice to the user’s ability to file conventionally.

...

(d) Reciprocal Discipline.

- (1) An attorney subject to this Court’s disciplinary jurisdiction shall, upon being notified of pending formal professional disciplinary action in any jurisdiction, promptly inform the Chief Judge of such action and provide the Chief Judge with a copy of any disciplinary letter, notice, order, or other paper document received by the attorney. . . .

In subsection (a)(3), the amendment provides that a registered user’s log-in and password may be terminated without triggering the disciplinary process and without affecting the user’s ability to file and serve documents in the conventional manner. Other changes are stylistic.

83.15 PRO SE LITIGANTS. [no change]

83.16 APPOINTMENT OF COUNSEL IN CIVIL ACTIONS.

. . .

(c) Appointment Procedure.

. . .

- (6) Whenever the Judge concludes that appointment of counsel is warranted, the Judge shall issue an order, pursuant to 28 U.S.C. § 1915(e)(1) or other appointment authority, directing appointment of an attorney from the Civil Pro Bono Panel to represent the pro se party. The Judge may direct appointment of an attorney not on the Panel or a specific attorney on the Panel who is especially qualified by interest or otherwise to undertake the representation. It shall be the practice of the Court to contact counsel in advance of appointment to determine counsel’s willingness to accept a particular appointment. However, the Judge shall have discretion to select involuntarily anyone who is a member of the federal bar for the District of Montana. The order of appointment shall be ~~transmitted forthwith to the office of the Clerk in the Division in which the action is pending~~ filed forthwith.

. . .

- (9) The Clerk shall immediately ~~send written notice of the appointment to the selected attorney. Copies of the order of appointment, these rules governing procedures for appointment, the pleadings filed to date, and other documents as may appear relevant shall accompany such notice.~~ notify the selected attorney of the appointment and shall ensure that copies of the order of appointment, these rules governing procedures for appointment, the pleadings filed to date, and other documents as may appear relevant are available to the selected attorney. Upon receiving such notice, the appointed attorney shall forthwith enter an appearance

in the action or apply for relief from appointment, as provided below.

...

(d) Relief from Appointment.

(1) An appointed attorney may ~~apply~~ move to be relieved of an order of appointment pursuant to Montana Rules of Professional Conduct Rule 1.16, or on the following grounds: . . .

(3) ~~An application~~ A motion by an appointed attorney for relief from an order of appointment on any of the grounds set forth in subsection (d)(1)(A) through (D) must be made to the Judge within thirty (30) days after the attorney's receipt of the order of appointment, or within such additional period as may be permitted by the Judge for good cause shown.

...

(5) Whenever an attorney seeks to be relieved of an order of appointment on any of the grounds set forth in subsection (d)(1)(E), he or she shall ~~file an application~~ move for relief with the Clerk within thirty (30) days after receiving an order of appointment or within a reasonable period of time not to exceed thirty (30) days after learning of the facts warranting such relief. The ~~application~~ motion shall set forth in full the factual and legal basis for the request for relief. The ~~application~~ motion shall be a privileged court document kept under seal and shall not be available in discovery or otherwise used in the litigation. ~~The Clerk shall thereupon submit the application for relief of the appointed attorney to the Judge for review.~~ The Judge shall either (i) deny the ~~application of the attorney~~ motion and direct the attorney to proceed with the representation, or (ii) grant the ~~application~~ motion. ~~and permit the party to prosecute or defend the action pro se. In the latter case, the Clerk shall inform the party that no further appointments shall be made and that, upon request of the pro se party, the Judge shall recuse himself.~~

(6) If an ~~application~~ motion for relief from an order of appointment is granted for any reason, the Judge may issue an order directing appointment of another attorney to represent the party. The Judge shall have discretion not to issue a further order of appointment, in which case the party shall be permitted to prosecute or defend the action pro se.

(e) Discharge.

...

- (2) When such a request is supported by good cause (e.g., substantial disagreement between the party and the appointed attorney on litigation strategy), the Judge shall forthwith issue an order discharging the appointed attorney from further representation of the party in the action. In such cases, the Judge may issue a further order directing appointment of another attorney to undertake the representation, ~~in accordance with the provisions of Rule 2.~~ The Judge shall have discretion not to issue a further order of appointment in such cases. Where a party requests discharge of a second appointed attorney, no additional appointments shall be made. . . .

(f) Expenses. Attorneys who are appointed pursuant to subsection (b c) may seek reimbursement for expenses incident to representation of indigent clients by application motion to the Court. Reimbursement or advances shall be permitted to the extent possible in light of available resources, including Non-appropriated Funds as provided in General Order No. PGH-4. Requests for reimbursement should be filed *ex parte* with the Court and must be accompanied by detailed documentation. All reimbursements made shall require the approval of the Chief Judge or a judge designated by the Chief Judge to authorize such reimbursements. To the extent that appointed counsel seeks reimbursement for expenses that are recoverable as costs to a prevailing party under Fed. R. Civ. P. 54, the appointed attorney must first exhaust the party's remedies for recovery of costs under Rule 54.

(g) Compensation for Services.

. . .

- (2) Upon appropriate application motion by the appointed attorney, the Judge may award attorney's fees to the appointed attorney for services rendered in the action, as authorized by applicable statute, regulation, rule or other provision of law. . . .

(i) Educational Panels.

- (1) The Court ~~shall authorize~~ authorizes the establishment of panels of attorneys and others experienced in the preparation and trial of the most common types of civil actions involving pro se parties brought before the Court (e.g., Social Security Appeals, Employment Discrimination Actions, Civil Rights Actions, Habeas Corpus Actions). . . .

Changes are stylistic only.

**CHAPTER III.
CRIMINAL RULES**

CR 1

SCOPE

CR 1 SCOPE OF CHAPTER III.

This chapter applies in all criminal proceedings in the District of Montana. Local Rules 6, 7.2, 7.3, 7.4, 7.5, 10, 48.2, 54, 77, and 83 also apply to criminal proceedings to the extent they are not inconsistent with federal law or with other Local Rules in this chapter.

This new Rule explicitly provides for what was previously implicit: certain rules in Chapter II, Civil Cases, apply in criminal cases to the extent that they do not conflict with federal law or other Rules in Chapter III.

RULE CR 6
GRAND JURY

CR 6.1 **WHEN AND WHERE IMPANELED; SECRECY.** [no change]

RULE CR 11

PLEAS

CR 11.1 SERVICE OF NOTICE OF INTENT TO CHANGE PLEA AND PLEA AGREEMENTS ON OTHER PARTIES.

At the time of filing a notice of intent to change plea, the defendant shall certify that all parties to the case have been informed of the defendant's intention to plead guilty and shall state whether the plea agreement is to be filed under seal.

This new Rule requires each defendant who files a notice of intent to change his or her plea to inform all parties, including all other defendants in the case, of that fact, as well as whether the plea agreement will be filed under seal.

RULE CR 12

MOTIONS – NOTICE AND OBJECTIONS

CR 12.1 MOTIONS.

(a) Time. Upon serving and filing a motion, or within five (5) days thereafter, the moving party shall serve and file a brief. The adverse party shall have ten (10) days thereafter within which to serve and file a response brief. A reply brief may be served and filed within five (5) days thereafter. Upon filing of the brief in support and the brief in response, the motion shall be deemed made and submitted and taken under advisement by the Court, unless the Court orders oral argument on the motion. The Court may, in its discretion, order oral argument on its own motion; or upon ~~an application contained in the brief~~ the motion of either party.

(b) Length. Briefs may not exceed twenty (20) pages unless the filing party has obtained prior leave of Court. If filed without leave, overlength briefs will not be considered by the Court. in excess of twenty (20) pages will not be accepted and shall not be filed by the clerk if the party has not obtained prior leave of Court. Briefs exceeding twenty (20) pages shall have a table of contents and a table of cases with page references. CM/ECF filers must check the Court's website to determine whether an overlength brief must be divided into segments before filing.

(c) Failure to file. Failure to file briefs within the prescribed time may subject any motion to summary ruling. Failure to file a brief by the moving party shall be deemed an admission that, in the opinion of counsel, the motion is without merit. Failure to file a brief by the adverse party shall be deemed an admission that, in the opinion of counsel, the motion is well taken.

(d) Submission by Fax. ~~⊘~~ Except as otherwise provided in these Rules or in an order, documents may not be transmitted by fax, use of telefacsimile ("fax") equipment e-mail, or any other electronic means other than the CM/ECF system for filing with the Court.

The changes in subsection (b) are stylistic and are made to reflect the fact that the CM/ECF system will not automatically block the filing of an overlength brief. The first person to notice that a brief contains more than twenty pages will now be the judge, not the clerk at the front desk. Overlong briefs filed without permission will be ignored in toto. Authorized briefs exceeding twenty pages may overtax the system's memory; parties should check the Court's website for the most current information regarding document size and segmentation.

The amendment to subsection (d) reflects that CM/ECF uses an e-mail function to deliver Notices of Electronic Filing to the parties in a particular case, but it is not e-mail. E-mailing a document to the Court does not constitute electronic filing.

CR 12.2 NOTICE TO OPPOSING COUNSEL AND OBJECTIONS. [no change]

RULE CR 17

SUBPOENAS AND WRITS

CR 17.1 **OBTAINING PRESENCE OF INCARCERATED PERSON.** [no change]

CR 17.2 **SUMMONS AND SUBPOENAS.** [no change]

RULE CR 17.1

PRETRIAL CONFERENCES

CR 17.1.1 **WHEN PRETRIAL CONFERENCE HELD.** [no change]

CR 17.1.2 **SETTLEMENT CONFERENCES IN COMPLEX CRIMINAL CASES.** [no
change]

CR 17.1.3 **CONTINUANCES.** [no change]

RULE CR 24

TRIAL JURORS

CR 24.1 **IMPANELING A TRIAL JURY.** [no change]

RULE CR 26

TRIAL

CR 26.1 **NUMBER OF EXPERT WITNESSES.** [no change]

RULE CR 30
INSTRUCTIONS

CR 30.1 REQUESTS FOR INSTRUCTIONS TO JURY.

Jury instructions shall be ~~submitted~~ filed in accordance with the terms of the Scheduling Order entered in the case.

Stylistic change only.

RULE CR 46

BAIL

CR 46.1 **SECURITY.** [no change]

CR 46.2 **PERSONS NOT TO ACT AS SURETIES.** [no change]

RULE CR 49

SERVING AND FILING PAPERS

CR 49.1 CONSEQUENCES OF ELECTRONIC FILING.

(a) Orders. All orders, decrees, judgments, and proceedings of the Court will be electronically filed. Such filing constitutes entry on the clerk's docket. Orders may also be made solely by an entry on the docket. Transmission of the Notice of Electronic Filing constitutes the notice and service required by the Federal Rules of Criminal Procedure. The clerk will print the Notice of Electronic Filing and attach it to any document that is conventionally served. Any order, decree, judgment, or other proceeding of the Court that is filed electronically without the original signature of the judge or clerk has the same force and effect as if the judge or clerk had signed a paper document that was filed and served in the conventional manner.

(b) Other Documents. Filing of any document in the Court's CM/ECF system, together with transmission of a Notice of Electronic Filing, constitutes entry of the document on the Clerk's docket and filing of the document for all purposes. Transmission of the Notice of Electronic Filing constitutes the service required by the Federal Rules of Criminal Procedure. Documents that must be conventionally served must be accompanied by a printed copy of the Notice of Electronic Filing.

(c) Certificate of Service. All documents that are not generated by the Court and that are conventionally filed must include a conventional certificate of service.

Pursuant to Fed. R. Crim. P. 49(b), this new Rule authorizes service "through the court's transmission facilities," per Fed. R. Civ. P. 5(b)(2)(D), and provides that an electronic order or document filed in CM/ECF is the equivalent of a paper order or document, per Fed. R. Crim. P. 55.

RULE CR 58

MISDEMEANORS

CR 58.1 **FIXED SUMS PAYABLE IN LIEU OF APPEARANCE.** [no change]

CR 58.2 **APPEAL FROM JUDGMENT OF UNITED STATES MAGISTRATE
JUDGE.** [no change]

**CHAPTER IV.
MAGISTRATE JUDGE RULES**

RULE 73

AUTHORITY OF MAGISTRATE JUDGES

~~73.1—DUTIES AND POWERS OF MAGISTRATE JUDGES.~~

~~Each United States Magistrate Judge appointed by this Court is authorized to exercise such jurisdiction and perform all the duties prescribed by 28 U.S.C. § 636 and may be assigned any additional duty by this Court that is not inconsistent with the Constitution or the laws of the United States.~~

Relocated to new L.R. 1.10(d).

~~73.2—CONSENT ELECTION WHERE CASE IS ASSIGNED TO MAGISTRATE JUDGE.~~

~~**(a) Notice.** When a civil action has been conditionally assigned to a magistrate judge, the Clerk of Court shall notify the parties of such assignment and advise them that they may give or withhold consent to the magistrate'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 shall mail the notice and consent election form after all parties ordered to be served have made an appearance. In all other cases, the clerk shall mail the notice and consent election form within ten (10) days of a party's appearance.~~

~~**(b) Return of consent election forms.** Parties shall have thirty (30) days from service of the notice of assignment to complete and return to the Clerk of Court the consent election form indicating whether they do or do not consent to a magistrate judge's exercise of jurisdiction over the case for any and all proceedings including trial and entry of judgment, pursuant to 28 U.S.C. § 636(c). The Clerk will keep custody of all consent election forms. If all parties give consent, the case will continue before or be reassigned to a magistrate judge. In the event any party withholds consent to the magistrate judge's jurisdiction, the case will be reassigned to an Article III judge.~~

~~**(c) Anonymity.** Parties are free to give or withhold their consent. 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.~~

Relocated to Chapter II, Civil Rules.

APPENDIX A: SAMPLE FORMS

- Form A. Notice of Conventional Filing of Document or Item**
- Form B. Notice Regarding Electronic Service**
- Form C. Notice of Appearance in a Forma Pauperis Case**
- Form D. Final Pretrial Order**
- Form E. One Party's Witness Lists**
- Form F. One Party's Exhibit Lists**
- Form G. Application for Taxation of Costs**
- Form H. Motion by Attorney for Leave to File Conventionally In This Case**
- Form I. Certificate of Service**
- Form J. Witness Information Sheet**

Additional forms may be available on the Court's website.

Forms A, C, G, H, and I are new. Form A is designed for registered CM/ECF users who are filing in CM/ECF but need to file a particular document or item in conventional form. Forms C, G and I may be used by registered users and conventional filers alike. Form H is designed for use by attorneys who still have not taken the Court's training and have not received a CM/ECF log-in and password by January 10, 2007, when attorneys must begin showing cause for not using CM/ECF.

Form B is relocated to the Appendix; it is presently located within current L.R. 5.3. Changes are stylistic, except that the scope of consent to e-mail service is extended to include documents served but not filed, such as discovery. Form D contains, in order, a conforming amendment, a stylistic amendment, and an amendment to reflect that the Final Pretrial Order "supersedes" but does not "supplement" the pleadings. Amendments to Forms E and F remove certain unnecessary information. Exhibit numbers are changed on Form F to reflect that a plaintiff will generally use exhibit numbers from 1 to 499 but may also introduce defense exhibits and also to reflect that impeachment and rebuttal exhibits need not be specifically identified.

Form J is presently located at page A12 of the current Local Rules. Although the witness information sheet is not mentioned in the Local Rules, some judges require its use at trial or at hearings. Unnecessary information is deleted.

Please note that there is no Two Dot Division or Judge Zanthopoulos in this Court. Those names are for purposes of illustration only. No real case number should end with "TD-XYZ."

FORM A
NOTICE OF CONVENTIONAL FILING OF DOCUMENT OR ITEM
L.R. 1.6(g)

John E. Attorney
Attorneys R Us, P.C.
1234 Main Street
Billings, MT 59101
ph. (406) 000-0000
fax (406) 000-1111
AttRUs@AttRUs.com
Attorneys for Defendant Smith

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
TWO DOT DIVISION

MARY BROWN,	)	Case No. CV 99-316-TD-XYZ
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT SMITH'S NOTICE OF
	)	CONVENTIONAL FILING OF
JENNIFER JONES; PAUL SMITH; DAN	)	DOCUMENT OR ITEM
WEBSTER,)	
)	
Defendants.)	
_____)	

Please take notice that Defendant Smith, a registered CM/ECF user, has conventionally filed the architect's original hand drawings of the Brown house. The document(s) or item(s) is/are not available in electronic form. The document(s) or item(s) has/have not been filed electronically because:

_____ scanning is not practicable;

- the electronic file exceeds ____ megabytes in size;
- the filing is under seal;
- a court order excuses conventional filing;
- the filing is exempted under Local Rule 7.2(b)(2);
- the filer experienced the following technical difficulties, as shown by the attached documentation: _____

_____.

DATED this 5 day of November, 2005.

/s/ John E. Attorney
John E. Attorney
Attorneys R Us, P.C.
Attorneys for Defendant Smith

FORM B
NOTICE REGARDING ELECTRONIC SERVICE
L.R. 5.2(a)

Jane Doe
Jane Doe, P.C.
17 Pioneer Blvd.
Suite 1A
Kalispell, MT 59904
ph. (406) 888-8888
fax (406) 888-8881
janed@anonymallaw.com
Attorney for Plaintiff Brown

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

TWO DOT DIVISION

MARY BROWN,	)	Case No. CV 99-316-TD-XYZ
)	
Plaintiff,)	
)	
vs.	)	PLAINTIFF BROWN'S NOTICE
	)	REGARDING ELECTRONIC SERVICE
JENNIFER JONES; PAUL SMITH; DAN)	
WEBSTER,)	
)	
Defendants.)	
_____)	

 X I agree that all other parties to this litigation may electronically serve me with copies of all documents filed with the Court or served without being filed in the course of this action.

Electronic service shall be accomplished by *(include all that apply)*:

___ ~~facsimile transmission~~ fax to [~~facsimile~~ fax number] _____.

X ~~electronic mail~~ e-mail at to [electronic e-mail address] janed@anonymallaw.com ,
limited to documents created in the following document and word processing
formats: PDF and WordPerfect.

 ~~both facsimile transmission to [facsimile number] and electronic mail at~~
~~[electronic mail address] fax to [fax number] and e-mail to [e-mail address],~~
limited to documents created in the following document and word processing
formats: _____.

 ~~Electronic service must be accompanied by simultaneous service by mail or commercial~~
~~carrier of a paper copy of the electronically filed document.~~

 I revoke my previous consent to accept electronic service, which was filed in this case on
_____, 20__.

DATED this 8 day of November, 2005.

[conventional hand signature]
Jane Doe
Jane Doe, P.C.
Attorney for Plaintiff Brown

FORM C
NOTICE OF APPEARANCE
L.R. 12.2

James Doe
179 Freeway View Dr.
Two Dot, MT 59085
jimdoe@retainme.com
ph. (406) 999-9999
fax (406) 999-9991
Attorney for Defendant Jones

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
TWO DOT DIVISION

MARY BROWN,	)	Case No. CV 99-316-TD-XYZ
)	
Plaintiff,)	
)	
vs.	)	DEFENDANT JONES' NOTICE OF
	)	APPEARANCE IN A FORMA PAUPERIS
JENNIFER JONES; PAUL SMITH; DAN	)	CASE
WEBSTER,)	
)	
Defendants.)	
_____)	

The undersigned attorney hereby enters this Notice of Appearance on behalf of

Defendant Jennifer Jones .

DATED this 17 day of December, 2005 .

/s/ James Doe
James Doe
Attorney for Defendant Jones

FORM D
PROPOSED FINAL PRETRIAL ORDER
L.R. 16.4

Jane Doe
Jane Doe, P.C.
17 Pioneer Blvd.
Suite 1A
Kalispell, MT 59904
ph. (406) 888-8888
fax (406) 888-8881
janed@anonymallaw.com
Attorney for Plaintiff Brown

James Doe
179 Freeway View Dr.
Two Dot, MT 59085
jimdoe@retainme.com
ph. (406) 999-9999
fax (406) 999-9991
Attorney for Defendant Jones

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

TWO DOT DIVISION

MARY JONES,	)	CV 00-001-TD-XYZ
)	
Plaintiff,)	
)	
vs.	)	FINAL PRETRIAL ORDER
)	
WESTBEST NURSING HOME,)	
)	
Defendant.)	
_____)	

Pursuant to Fed. R. Civ. P. 16 and L.R. 16.4, the parties submit this Final Pretrial Order to govern the course of trial in this matter.

I. Nature of Action.

This is a negligence claim against Westbest Nursing Home that arises out of the injury and death of Mary Jones. Plaintiff claims the nursing home was negligent in physically

restraining and then over-medicating Mary Jones. Mary Jones died when she became entangled in restraints caused by a medically induced disorientation.

Defendant denies it was negligent and claims it conformed to the applicable standard of care for nursing homes. Furthermore Defendant asserts that the cause of death was not related to either the restraints used or to the medications administered. Defendant also claims that Mary Jones was comparatively at fault because she ignored specific instructions about attempting to leave her bed, instructions given when she was in full possession of her faculties.

II. Jurisdiction and Venue.

Mary Jones is a citizen of the State of Montana. Westbest Nursing Home is a corporation organized under the laws of Oregon having its principle place of business in Oregon. Subject matter jurisdiction is based upon Diversity of Citizenship, 28 U.S.C. § 1332. Personal jurisdiction is not questioned. Venue is proper in the Missoula Division as the incident occurred in Polson, Montana. L.R. ~~3.1(a)(1)~~ 1.11(e).

III. Jury.

The case is set for trial before a jury of 9 persons. Neither party contests trial of any issue by the jury.

IV. Agreed Facts.

The following facts are agreed upon and require no proof:

- (a) Mary Jones was born on July 4, 1914.
- (b) Mary Jones was a patient at Westbest Nursing Home in Polson, Montana from April 15, 2000 until May 23, 2000.
- (c) Mary Jones died at 1:30 p.m. on May 23, 2000.

- (d) The cause of Mary Jones' death was asphyxiation.
- (e) Mary Jones is survived by her daughter Anna Jones Murphy and her son Thomas Jones.
- (f) The reasonable funeral expenses incurred are \$7,640.00.

V. Elements of Liability.

A plaintiff's *prima facie* case in an action against a nursing home for injury or death of a patient due to misuse of a chemical or physical restraint consists of the following elements:

- (a) A duty owed by the nursing home to the patient. Plaintiff contends that under the provisions of the Nursing Home Patients' Bill of Rights Westbest had a duty to keep Plaintiff free from chemical and physical restraints unless authorized by a physician.
- (b) The breach of that duty by the nursing home, either by omitting to perform or by performing wrongly, its duty to the patient. Plaintiff contends she was restrained for the convenience of the Westbest staff without authorization by her treating physician.
- (c) Injury to or death of the nursing home patient. Plaintiff died of asphyxiation from the restraints placed on her by Westbest staff.
- (d) Causation. Westbest Nursing Home's breach of duty caused the Plaintiff's injury or death.

VI. Defense Elements.

The following are elements of defenses asserted by Defendant:

- (a) The nursing home conformed to the applicable standard of care.

- (b) There is no causal relationship between the alleged negligent conduct and Mary Jones' injury or death.
- (c) Mary Jones was comparatively at fault for her own injuries because she was negligent in failing to follow instructions. The sub-elements of this defense are:
 - (1) Mary Jones had a duty to follow medical advice;
 - (2) Mary Jones breached that duty by failing to follow specific instructions given to her by nurses and doctors;
 - iii. Mary Jones' injuries were caused by her own actions.

VI. Relief Sought.

Plaintiff claims special and general damages for wrongful death and survivorship, including the following:

- (a) Funeral expenses in the amount of \$7,640.00.
- (b) Medical expenses after injury and before death \$5,200.00.
- (c) Mental and physical pain and suffering \$150,000.00.
- (d) Wrongful death \$150,000.00.
- (e) Survivorship \$75,000.00.

VII. Legal Issues.

The issue of causation will be disputed at the time of jury instruction. *See Busta v. Columbus Hosp. Corp.*, ~~276 MT 342~~ 916 P.2d 122 (Mont. 1996); *Hunsaker v. Bozeman Deaconess Found.*, ~~179 MT 305~~ 588 P.2d 493 (Mont. 1978).

IX. Dismissals.

The parties have stipulated to dismiss with prejudice Defendants Dr. Daniel Ork and

Nurse Patricia Pattern.

X. Witnesses.

Attached to this pretrial order are the following *separate* witness lists:

- (a) Plaintiff's will-call witnesses;
- (b) Plaintiff's may-call witnesses;
- (c) Defendant's will-call witnesses;
- (d) Defendant's may-call witnesses.

XI. Exhibits.

Attached to this pretrial order are the following *separate* Exhibit Lists. Objections not disclosed on the Exhibit Lists, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, are waived unless excused by the Court for good cause.

- (a) Plaintiff's will-offer exhibits;
- (b) Plaintiff's may-offer exhibits;
- (c) Defendant's will-offer exhibits;
- (d) Defendant's may-offer exhibits.

XII. Discovery Documents.

Plaintiff will offer the following discovery documents:

- (a) Defendant's answers to Interrogatories
 - No. 1
 - No. 13
 - No. 20 (a), (b)
- (b) Defendant's responses to Requests for Admission

No. 3

No. 9

No. 15

(c) Defendant's responses to Requests for Production

No. 7 (with attached documents)

Defendant will offer the following discovery documents:

(a) Plaintiff's answers to Interrogatories

No. 17

No. 23

(b) Plaintiff's responses to Requests for Admission

No. 10

No. 11

XIII. Estimate of Trial Time.

The parties estimate that Plaintiff will require two and one half (2½) days of trial to complete her case in chief. Defendant estimates it will require one (1) day to complete its case in chief. Plaintiff will call 16 lay witnesses and 2 expert witnesses. Defendant will call 7 lay witnesses and 2 expert witnesses.

///

///

This Order ~~supplements and~~ supersedes the pleadings in this matter.

Dated this ____ day of ~~November~~ _____, 2000 __.

Xavier Yanni Zanthopoulos
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

/s/ Jane Doe
Jane Doe
Jane Doe, P.C.
Attorney for Plaintiff Brown

/s/ James Doe
James Doe
Attorney for Defendant Jones

FORM E
ONE PARTY'S WITNESS LIST
L.R. 16.4(b)(10)

DEFENDANT'S WITNESS LIST - WILL CALL

Case Name: Jones v. Westbest Nursing Home
Case Number: CV 00-001-TD-XYZ
Presiding Judge: ~~_____~~ Honorable Donald W. Molloy
Courtroom Deputy: ~~_____~~ Mary Nieblas
Court Reporter: ~~_____~~ Daina Hodges
Plaintiffs' Attorney: ~~_____~~ Jane Doe
Defendants' Attorney: ~~_____~~ James Doe

Name	Address & Telephone	Manner of Presentation	Expert?/ Date of Report	Designated Excerpt
John Appleseed	Westbest Nursing Home 1935 Third Avenue East, Polson, Montana 59845, (406) 694-5200	in person	yes; 1-17-02	
Billy Bathgate	9999 Bronx Ave. Brooklyn, NY 10101	read deposition	no	page 16, line 1 to page 20, line 15

Name	Address & Telephone	Manner of Presentation	Expert?/ Date of Report	Designated Excerpt
Harmon Highline Highline Experts, Inc.	669 Killebrew Court P.O. Box 9999 Fort Sumter, SC 30303	video deposition	yes; 1/29/02 supp. 03/01/02 2d supp. 06/07/02	6' 35" to 15' 57"
Sam Surgeon, M.D.	Surgeon, Inc. 1111 Boxx St. San Francisco, CA 94122	live video conference	yes; 02/28/02	

DEFENDANT'S WITNESS LIST - MAY CALL

Case Name: Jones v. Westbest Nursing Home
 Case Number: CV 00-001-TD-XYZ
 Presiding Judge: ~~Honorable Donald W. Molloy~~
 Courtroom Deputy: ~~Mary Nieblas~~
 Court Reporter: ~~Daina Hodges~~
 Plaintiffs' Attorney: ~~Jane Doe~~
 Defendants' Attorney: ~~James Doe~~

Name	Address & Telephone	Manner of Presentation	Expert?/ Date of Report	Designated Excerpt
Patricia Pattern, R.N.	Westbest Nursing Home 1935 Third Avenue East Polson, Montana 59845 (406) 694-5200	in person	no	
Daniel Ork, M.D.	Westbest Nursing Home 1935 Third Avenue East Polson, Montana 59845 (406) 694-5200	in person	no	
Ralph Runcible	Purity Janitorial Services 121 East Avenue Polson, Montana 59845	in person	no	

FORM F
ONE PARTY'S EXHIBIT LIST
L.R. 16.4(b)(11)

PLAINTIFF'S EXHIBITS – WILL OFFER

Case Name: Jones v. Westbest Nursing Home
Case Number: CV 00-001-TD-XYZ
Presiding Judge: ~~Honorable Donald W. Molloy~~
Courtroom Deputy: ~~Mary Nieblas~~
Court Reporter: ~~Daina Hodges~~
Plaintiffs' Attorney: ~~Jane Doe~~
Defendants' Attorney: ~~James Doe~~

#	Description	Δ's Objection	Date Offered	Date Admitted	Date Refused	Date Reserved
500 <u>001</u>	Incident Report No. 389789, Officer Ruffian					
504 <u>024</u>	Video: nursing home room, without narrative	Rule 401				
505 <u>107</u>	Photograph of Plaintiff's bed and restraints					

514 329	Video: A Day in the Life of Westbest Residents	Rule 403; Rule 801; Rule 802; Rule 26(a)(2) (B)&(C)				
507	Westbest employee's handbook, pages 2-16 through 2-30	Rule 401; Rule 402; <i>Yaeger v. Deane</i>				
---	<u>Impeachment Exhibits</u>					
---	<u>Rebuttal Exhibits</u>					

PLAINTIFF'S EXHIBITS – MAY OFFER

Case Name: Jones v. Westbest Nursing Home
 Case Number: CV 00-001-TD-XYZ
 Presiding Judge: ~~Honorable Donald W. Molloy~~
 Courtroom Deputy: ~~Mary Nieblas~~
 Court Reporter: ~~Daina Hodges~~
 Plaintiffs' Attorney: ~~Jane Doe~~
 Defendants' Attorney: ~~James Doe~~

#	Description	Δ's Objection	Date Offered	Date Admitted	Date Refused	Date Reserved
508 <u>103</u>	Photograph of Plaintiff immediately after death	Rule 401				
501	Hospital records of Plaintiff					
506	Restraining devices					
511	Medication use records of Westbest in 2001	Rule 401; Rule 402				

FORM G
APPLICATION FOR TAXATION OF COSTS
L.R. 54.3

John E. Attorney
Attorneys R Us, P.C.
1234 Main Street
Billings, MT 59101
ph. (406) 000-0000
fax (406) 000-1111
AttRUs@AttRUs.com
Attorneys for Defendant Smith

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
TWO DOT DIVISION

MARY BROWN,	)	Case No. CV 99-316-TD-XYZ
)	
Plaintiff,)	
)	
vs.	)	APPLICATION FOR TAXATION OF
	)	COSTS
JENNIFER JONES; PAUL SMITH; DAN)	
WEBSTER,)	
)	
Defendants.)	
_____)	

Judgment having been entered in the above-entitled action on [date] against
 [party] , the Clerk is asked to tax the following as costs:

Fees of the Clerk	\$ _____
Fees for service of summons and subpoena	_____

Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case _____

Fees and disbursements for printing _____

Fees for witnesses (itemize separately) _____

Fees for exemplification and copies of documents or items necessarily obtained for use in the case _____

Docket fees under 28 U.S.C. § 1923 _____

Costs as shown in the mandate of the Court of Appeals _____

Compensation of court-appointed experts _____

Compensation of interpreters and costs of special interpretation services under 28 U.S.C. § 1828 _____

Other costs (itemize separately) _____

TOTAL \$ _____

WITNESS FEES							
(for computation, see 28 U.S.C. § 1821)							
Name and Residence	Attendance		Subsistence		Mileage		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Days	Total Cost	
TOTAL							

Other Costs:

DECLARATION

28 U.S.C. §§ 1746(2), 1924

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. Documentation is attached for all requested costs. A copy of this bill was served on the following persons by the following means:

- | | | |
|--|----|--------------------------------|
| <u> 1 </u> CM/ECF | 1. | Clerk, U.S. District Court |
| <u> </u> Hand Delivery | | |
| <u> 2 </u> Mail | 2. | Clarence Darrow |
| <u> </u> Overnight Delivery Service | | Darrow & Kunstler, PLLC |
| <u> </u> Fax | | 24 Main St. |
| <u> 3 </u> E-Mail | | Two Dot, MT 59085 |
| | | Attorney for Defendant Webster |
| | 3. | Jane Doe |
| | | janed@anonymlaw.com |
| | | Attorney for Plaintiff Brown |

DATED this ____ day of _____, 20 ____.

/s/ John E. Attorney
John E. Attorney
Attorneys R Us, P.C.
Attorney for Defendant Smith

FORM H
MOTION BY ATTORNEY FOR LEAVE TO FILE CONVENTIONALLY
L.R. 1.6(d)
(for use after January 10, 2007)

Clarence Darrow
Darrow & Kunstler, PLLC
24 Main St.
Two Dot, MT 59085
(406) 999-2222
scopes@evolve.com
Attorney for Defendant Webster

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
TWO DOT DIVISION

MARY BROWN,	)	Case No. CV 99-316-TD-XYZ
)	
Plaintiff,)	
)	
vs.	)	MOTION BY ATTORNEY FOR LEAVE
	)	TO FILE CONVENTIONALLY IN THIS
JENNIFER JONES; PAUL SMITH; DAN	)	CASE
WEBSTER,)	
)	
Defendants.)	
_____)	

I, Clarence Darrow, hereby move the Court for leave to file documents conventionally in this case because:

_____ high-speed Internet service is not available in the area where I practice.

_____ my office does not yet have high-speed Internet service and I do not have ready access to a Kinko's or other site that has high-speed Internet service.

X I and/or my staff have not yet taken the Court's CM/ECF training. An appointment will be scheduled and kept.

 this is a Social Security case and the nature of the case makes electronic filing infeasible.

 of the following special circumstances: _____

_____.

DATED this 13 day of December , 20 07 .

_____ [conventional hand signature]

Clarence Darrow
Attorney for Defendant Webster

FORM I
CERTIFICATE OF SERVICE
L.R. 5.2(b)

I hereby certify that, on 12/16/05, a copy of the foregoing document was served on the following persons by the following means:

<u>1, 3</u>	CM/ECF
<u> </u>	Hand Delivery
<u>2</u>	Mail
<u> </u>	Overnight Delivery Service
<u> </u>	Fax
<u>4</u>	E-Mail

1. Clerk, U.S. District Court
2. Clarence Darrow
Darrow & Kunstler, PLLC
24 Main St.
Two Dot, MT 59085
Attorney for Defendant Webster
3. John E. Attorney
Attorneys R Us, P.C.
Attorneys for Defendant Smith
4. Jane Doe
janed@anonymallaw.com
Attorney for Plaintiff Brown

/s/ James Doe
James Doe
Attorney for Defendant Jones

FORM J
WITNESS INFORMATION SHEET

WITNESS INFORMATION SHEET

Case Name: _____ Jones v. Westbest Nursing Home
Case Number: _____ CV 00-000-XX-XXX
Presiding Judge: _____ Honorable Donald W. Molloy
Courtroom Deputy: _____ Mary Nieblas
Court Reporter: _____ Daina Hodges
Plaintiffs' Attorney: _____ Jane Doe
Defendants' Attorney: _____ James Doe

Thomas Q. Testifier
1936 3rd Avenue East
Polson, Montana 59845

Mr. Testifier lives directly across the street from Westbest Nursing Home and has a plain view directly into Plaintiff's room. He is an eye-witness to the events leading up to Plaintiff's death.

Date of statement: 02-16-2002

Exhibits that may arise in Mr. Testifier's testimony:

514
515
519
521
533