

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA



Local Rules of Procedure

Effective _____, 2010

Local Rules of Procedure

**United States District Court
for the District of Montana**

Table of Contents

CHAPTER I. GENERAL RULES

RULE 1. Scope of Rules.....

1.6 Electronic Filing Generally.....

1.9 Divisions Within District.

CHAPTER II. CIVIL CASES

RULE 3. Commencement of Action.

3.1 Filing a New Case.

3.2 Removal and Remand.....

RULE 5. Service and Filing of Pleadings and Other Documents.....

5.2 Actions Involving Conventional Filers.....

5.5 Addresses Changes for Service.....

RULE 7. Motion Practice.....

7.2 Exhibits to Motions.

RULE 16. Pretrial Proceedings.

16.2 Preliminary Pretrial Conference.

16.6 Alternative Dispute Resolution.

RULE 73. Authority of Magistrate Judges.

73.1 Referral and Assignment of Civil Cases to Magistrate
Judges.

73.2 Consent Election Where Case is Referred to Magistrate
Judge.

RULE 83. District Court Rules and Directives.

83.3 Admission to and Practice In This Court.

83.6 Student Practice Participation Rule.

83.14 Suspension, Disbarment, and Discipline of Attorneys.

83.17 Amicus Briefs

CHAPTER III. CRIMINAL RULES

RULE CR 58. Misdemeanors.

58.2 Appeal from Judgment of United States Magistrate Judge.

APPENDIX A: Sample Forms.

Form A. Notice of ~~Convention Filing of Document or~~ Intent to File
Item.

~~Form B. Notice Regarding Electronic Service.~~

Form J. Client’s Consent to Student’s Participation.

Form K. Student’s Certification.

Form L. Dean’s Certification.

Form M. Supervising Attorney’s Certification.

**CHAPTER I.
GENERAL RULES**

RULE 1

SCOPE OF RULES

...

1.6 ELECTRONIC FILING GENERALLY.

...

(c) Pacer Registration and Registration in This Court's CM/ECF System. All attorneys appearing in this Court 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. Termination of a registered user's log-in and password does not alone constitute discipline or disbarment and may be effected at any time without prejudice to the user's ability to file conventionally.

*Relocated from current L.R. 83.14(a)(3), the attorney discipline rule.
Input from Clerk of Court on proposed deletion is pending.*

...

(f) Disposal or Retention of Paper Documents. Paper documents that are submitted to the clerk for filing will be discarded after they are filed in the CM/ECF system. Documents that are too large to scan, that are required to be retained in paper form, or that do not produce a legible image will be retained in paper form and the existence of a paper document must be noted in the docket. ~~Except where non-electronic filing is required, Form A, Notice of Conventional Filing of Document or Item, must be filed when a document or item is submitted to the clerk to be retained in non-electronic form.~~

Amendment to conform to revision of L.R. 7.2(b).

...

1.9 DIVISIONS WITHIN DISTRICT.

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

...

(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 is held at the ~~Post Office Building~~ Missouri River Courthouse, Great Falls, Montana.

...

Correcting an omission from last year's amendments.

CHAPTER II.
CIVIL CASES

RULE 3

COMMENCEMENT OF ACTION

3.1 FILING A NEW CASE.

...

(b) Conventional Filing. Any attorney or party may file a new case by mailing or personally delivering to the Clerk of Court each of the required items in paper form. 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 filing date will be the date of the clerk's receipt of the all 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.~~ For purposes of commencing a new action pursuant to this Rule, an attorney need not move for leave to file the complaint conventionally and need not file a notice of conventional filing.

(c) Electronic Filing. Any attorney or party who is authorized to file documents with the Court electronically may file a new case by ~~+~~ following procedures established by the Clerk of Court and published on the Court's website, www.mtd.uscourts.gov. Failure to comply with the Clerk's procedures may result in deletion of the case.

~~(1) Faxing or e-mailing a completed civil cover sheet to the clerk;~~

- ~~(2) Obtaining a case number from the clerk;~~
- ~~(3) Paying the filing fee or stating that a motion to proceed in forma pauperis will be filed; and~~
- ~~(4) Electronically filing the complaint, petition, or other originating pleading within one business day of receipt of the case number. The filer must attach the civil cover sheet to the complaint as an exhibit. Failure to timely file the complaint may result in deletion of the case and the filer may be required to start the process over.~~

...

This amendment will allow procedures for electronic filing of a new case to change as the capacities of CM/ECF and clerks' procedures change. Conventional filing of an initial pleading in paper form is retained as an option that any filer, whether a registered user or not, may use. The option for submitting a complaint in the conventional manner but in digital rather than paper form is deleted to avoid problems with data corruption, viruses, or device compatibility. Just as a complaint may be rejected and a filing deadline missed because the filing party does not have the filing fee or attempted to e-mail the complaint to a judge, so failure to have the complaint in paper form may result in rejection of the pleading.

3.2 REMOVAL AND REMAND.

(a) Removal. Within seven (7) 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~~ state court docket sheet. Motions and other requests directed to the state court are automatically terminated upon removal but may be refiled in ~~federal court~~ this Court.

...

Amended to reflect current practice. The rule is intended in part to direct the clerks' practice but also to let parties and the state court know how the state court docket is entered upon removal.

RULE 5

SERVICE AND FILING OF PLEADINGS AND OTHER DOCUMENTS

...

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 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.

...

(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.~~

Form B is no longer necessary. It was designed in 2005 for use by attorneys who wanted to be served electronically but could not file electronically for whatever reason (e.g., lack of high-speed internet access). Deleting Form B makes the second sentence of current subsections (a) and (c) unnecessary.

...

5.5 ~~ADDRESS CHANGES~~ ADDRESSES FOR SERVICE.

~~(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.~~

(a) Address Changes. An attorney or a party proceeding pro se whose e-mail, post office box or physical mailing address for service changes while an action is pending must promptly file with the Court and serve upon all other opposing parties a Notice of Change of Address specifying the new address for service. E-mail addresses for attorneys and their staff must be maintained as provided in the CM/ECF Administrative Procedures Manual. See L.R. 1.6(a).

...

When an attorney's e-mail address changes, or any attorney's or pro se party's physical address changes, notice must be filed in the case to ensure that all parties recognize the change. Staff e-mail addresses change frequently, resulting in many bounce-back messages to CM-ECF users. The proposed amendment requires that those addresses, not just attorneys' addresses, also be kept current.

RULE 7

MOTION PRACTICE

...

7.2 EXHIBITS TO MOTIONS.

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

...

~~(b) **Registered Users.** Exhibits must be filed electronically whenever possible.~~

~~(1) Except as provided by L.R. 1.6(d) for cases under seal, a registered user must electronically file Form A, Notice of Conventional Filing of Document or Item, whenever an exhibit is filed conventionally, and the exhibit must be conventionally served on all parties.~~

~~(2) The following exhibits may be filed conventionally without prior leave of Court:~~

~~(A) exhibits that are too lengthy to file or scan, as defined by the Clerk's Office Administrative Manual;~~

~~(B) exhibits that are oversized, such as blueprints or maps;~~

~~(C) administrative records;~~

~~(D) photographic or videotape exhibits; or~~

~~(E) trial exhibits.~~

~~(3) A registered user must obtain leave to file conventionally any exhibit not described in subsection (b)(2). The motion must describe the exhibit and the form in which it will be filed (paper, CD-ROM, etc.) and must explain why it cannot be filed electronically. Form A may be adapted for this purpose.~~

~~(c) **Voluminous Exhibits.** The filing party must serially number each page of an exhibit or set of exhibits that is too voluminous to file electronically.~~

(b) Form of Exhibits.

(1) Exhibits must be filed electronically whenever possible.

(2) When an item is to be entered in the record of the case as an exhibit but cannot be scanned or otherwise included in the electronic record – for example, an administrative record, a large map, or a DVD – the following steps must be taken:

(A) The filing party must:

(i) serially number each page if the item is in paper form but is too voluminous to scan;

(ii) submit the item to the clerks' office with Form A, "Notice of Filing Item"; and

(iii) conventionally serve Form A and the item on all other parties.

(B) The clerk must:

(i) scan and file Form A in the electronic record; and

(ii) retain Form A with the item.

Amended to clarify and simplify. Something in the electronic record must indicate the existence of an item that is not in the electronic record and show that other parties have been served. The "Notice," Form A, does that. Neither subsection (b) of the current rule nor motions for leave to file are necessary any longer.

RULE 16

PRETRIAL PROCEEDINGS

...

16.2 PRELIMINARY PRETRIAL CONFERENCE.

...

(b) Filings Before Preliminary Pretrial Conference. Each of the following documents must be filed no later than seven (7) days before the preliminary pretrial conference:

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

...

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

~~(K) a copy or description of documents, data compilations, or tangible things that may be used in proving or denying any party's claims or defenses;~~

~~(L) the substance of any insurance agreement that may cover~~

any resulting judgment;

~~(M)~~(I) the status of any settlement discussions and prospects for compromise of the case; and

~~(N)~~(K) suitability of special procedures.

...

Current subsections (J), (K), and (L) are deleted as unnecessary. The initial disclosures portion of the federal rule, Fed. R. Civ. P. 26(a)(1), requires the parties to exchange these materials between themselves. The Court has no need for a copy.

16.6 ALTERNATIVE DISPUTE RESOLUTION.

...

(b) General Rules.

...

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

Amended to emphasize the confidentiality of settlement proceedings.

RULE 73

AUTHORITY OF MAGISTRATE JUDGES

73.1 REFERRAL AND ASSIGNMENT OF CIVIL CASES TO MAGISTRATE JUDGES.

...

(c) Assignment. A magistrate judge designated to hear a matter will 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 after service of a notice of assignment. ~~Only an Article III judge may enter a default judgment against a nonconsenting party.~~

The revision follows 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73(a) (“if all parties consent.”).

73.2 CONSENT ELECTION WHERE CASE IS REFERRED TO A MAGISTRATE JUDGE.

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

...

Amended to ensure that each party’s decision is kept confidential.

RULE 83

DISTRICT COURT RULES AND DIRECTIVES

...

83.3 ADMISSION TO AND PRACTICE IN THIS COURT.

...

(c) Practice in this Court.

...

- (2) When the clerk receives notice that a member of the Bar of this Court is inactive or not in good standing, the clerk will so notify the attorney. The attorney may not thereafter practice in this Court until proof of active status or reinstatement to good standing is filed with the clerk.

Requested by the Clerk of Court to make it easier to monitor attorney status.

...

83.6 STUDENT PRACTICE RULE.

[please see attached document]

...

83.14 SUSPENSION, DISBARMENT AND DISCIPLINE OF ATTORNEYS.

[please see attached document]

...

83.17 AMICUS BRIEFS. *[new rule]*

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

(b) Motion for Leave.

- (1) A motion for leave to file amicus brief must be submitted to the Clerk of Court in conventional form and must be served in conventional form on counsel for each party.
- (2) The motion must:
 - (A) comply with L.R. 7.1(b) and (c);
 - (B) include, if the amicus is a corporation, a disclosure statement like that required of parties by Fed. R. Civ. P. 7.1(a);
 - (C) state why the amicus is interested in the matter; and
 - (D) state why an amicus brief is desirable and relevant, including why the parties cannot adequately address the matter.

(3) Parties to the case may respond to the motion within fourteen days of its electronic filing. There shall be no further briefing.

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

Currently, an amicus brief can simply be filed in the record of the case, without leave or notice to the parties, by any attorney who is a registered user. The proposed rule prohibits filing without leave.

Subsection (b)(1) will ensure that the identification and addresses of the amicus are correctly and consistently entered in the Court's database. If leave is granted, subsection (c) requires all further filing to be done electronically. Subsection (b)(2)(A) requires an amicus applicant to act in a timely way and to contact the parties and state their positions on the motion. Subsection (b)(2)(B) incorporates Fed. R. App. P. 29(c) (which will become 29(c)(1) as of December 1, 2010, absent contrary Congressional action). Subsections (b)(2)(C) and (D) are based on Fed. R. App. P. 29(b)(1) and (2). Subsection (b)(3) sets a deadline for the parties to respond to the motion, if they oppose it, and disallows filing of a reply by the amicus.

No attempt is made to define when amicus participation is appropriate or what restrictions apply to an amicus brief. Those matters are left to the presiding judge.

**CHAPTER III.
CRIMINAL RULES**

...

RULE CR 58

MISDEMEANORS

...

**CR 58.2 APPEAL FROM JUDGMENT OF UNITED STATES
MAGISTRATE JUDGE.**

~~(a) An appeal from a judgment of a United States Magistrate Judge lies pursuant to Fed. R. Crim. P. 58 and 18 U.S.C. § 3402.~~

~~(b) In processing the appeal, the clerk must issue an Order setting the schedule for filing of the official transcript, appellant's brief, appellee's response brief, and appellant's optional reply brief.~~

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

- (1) The official transcript must be ordered seven (14) days after the notice of appeal is filed;
- (2) The official transcript must be filed twenty-one (21) days after the

notice of appeal is filed;

- (3) The appellant's brief must be filed within fourteen (14) days after the official transcript is filed;
- (4) The appellee's brief must be filed within fourteen (14) days after the appellant's brief is filed;
- (5) The reply brief must be filed seven (7) days after the appellee's brief is filed.

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

Current subsection (a) is deleted as unnecessary. Proposed subsection (a) follows L.R. CR 12.1 and provides authority for the dates set by the clerk. For several years, the schedule has followed that of an appeal to the Ninth Circuit, which is set by its local rules.

Many appellants are pro se litigants. New subsection (b) will let the appellant know the consequences of failure to file the brief.