CHAPTER I
CIVIL RULES

CIVIL RULE 1

General Rules and Policies

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1.3 Access to Court Proceedings and Records.

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(b) Records of the Court.

(1) *Fees.* The Judicial Conference of the United States establishes fees for records or services provided by the Clerk's office. The current fee schedule is available on the Court's website, www.mtd.uscourts.gov.

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

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

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

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

An attorney can obtain an outside court reporter's transcription of an audio recording of a court proceeding, but neither the tape itself nor the transcript is an official record of the proceeding. To create an official record, transcription of the tape must be ordered through the Clerk's office. Subsection (5) is relocated from current L.R. 1.3(d)(4).

. . .

~~**(d) Cameras and Personal Electronic Devices.** Except as set forth below, no person may bring any camera, transmitting or recording device, or personal electronic communication or computing device, including but not limited to cellular phones, pagers, personal data assistants, laptops, notebook/netbook computers, and any other comparable device, into the courthouses of the District of Montana. The exceptions are:~~

~~(1) A written Court Order allows a person access to the courthouse with any of the referenced devices;~~

~~(2) All employees of the District of Montana (United States Probation, Clerk's Office, Chambers Staff, and United States Marshal Service) and persons who have offices in the courthouse may bring referenced devices into the courthouse;~~

~~(3) Any attorney of record in a pending case during and in connection with a judicial proceeding will be allowed to use a laptop computer or other comparable computing device, provided that the equipment may not be used to photograph, audio-record, broadcast, televise, or otherwise send images or sounds of the court proceeding. Absent permission from the presiding judge, accessing the internet is prohibited;~~

~~(4) Attorneys of record may order and receive Realtime translation of court~~

~~proceedings. Realtime unedited transcripts may only be distributed to ordering parties, their co-counsel, experts, and staff, and are not to be made available to the public, including news organizations or other nonparticipants;~~

~~(5) Any attorney permitted to practice law in the District of Montana may bring a cellular phone into the courthouse of the District. The cellular phone must, however, be left with Court Security; and~~

~~(6) All persons summoned for jury service and members of a seated jury may bring a cellular phone into a courthouse of the District. The cellular phone must, however, be left with Court Security.~~

(d) Cameras and Personal Electronic Devices.

(1) *General Rule.* No person may bring into a courthouse of the District of Montana a camera, transmitting or recording device, or personal electronic communication or computing device, including but not limited to a cell phone or smart phone, pager, personal data assistant, laptop, notebook/netbook computer, iPad, or other comparable device. If brought to a courthouse, such devices must be left with court security officers.

(2) *Persons Excepted.* This Rule does not apply to:

(A) District of Montana Judges and Chambers Staff, the Clerk's Office, the United States Probation Office, the United States Attorney's Office, and the United States Marshals Service;

(B) court reporters and court security officers employed by or acting pursuant to contract with the Court or the Marshals Service; or

(C) persons granted leave by a judge of this Court.

Stylistic amendment to consolidate and to clarify that people need not

return devices to their vehicles but may leave them with court security. Current subsection (d)(4) is relocated to 1.3(b)(5) above. No change in practice is intended.

1.4 Manner of Filing.

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(c) Attorneys Filing Electronically.

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

The Clerk's Office requests this reminder.

1.5 Form of Documents and Citations.

(a) Documents prepared for filing must be page size 8½ x 11 inches, printed on one side only, with top, bottom, and side margins of one inch and free of materially defacing erasures or interlineations. Text must be double-spaced, except for quoted material and footnotes, and typewritten in 14-point font size or neatly handwritten. Each page must be consecutively numbered at the bottom.

A suggestion was made to delete the page-numbering requirement. Several judges, however, require that a paper copy of briefs and motions of a certain length must be submitted to chambers, and some ECF users may not view documents with their headers.

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

(c) Counsel or party identification, case caption, and title of document must

substantially comply with the formatting exemplified by the forms in the Appendix.

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

The amendment will minimize doubt for counsel who wonder about it.

CIVIL RULE 3

Commencing an Action

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3.2 Venue.

(a) Certification by ~~Filing Counsel~~ Filer. The caption of an initial pleading constitutes certification ~~by counsel~~ that venue conforms with this Rule. If the caption of any initial pleading does not name a division, the clerk will assign venue.

This amendment and some of the following amendments are intended to clarify the Rule's application to attorneys, to self-represented litigants, or both. These comments will refer to them as "counsel amendments."

CIVIL RULE 7

Motions and Other Papers

7.1 Motions.

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(c) Prerequisites to Filing a Motion.

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(3) *Proposed Orders.*

. . .

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

The proposed amendment will allow use of open-source or other software, provided it is compatible with WordPerfect or Word.

7.5 Amicus Brief.

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

(b) Motion for Leave.

(1) A motion for leave to file amicus brief must be served on each party and submitted to the Clerk of Court in conventional form ~~and must be served in conventional form on counsel for each party~~.

Counsel amendment.

CIVIL RULE 11

Signing Pleadings, Motions, and Other Papers

11.1 Signatures in Electronic Filings.

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

Many attorneys scan documents after signing them. Originally, the rule was intended to encourage attorneys not to scan, as a scanned document takes considerably more storage space. It has not worked.

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

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

Court reporters should have /s/ authorization as transcripts are prepared electronically.

11.2 Jointly Filed Documents; Multiple Signatures.

. . .

~~**(b)** For purposes of filing documents requiring more than one signature, any registered user may choose to use a hand signature rather than the "/s/" form.~~

This provision is moot if L.R. 11.1(b) is amended as proposed.

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

Conforming amendment.

CIVIL RULE 16

Pretrial Conferences; Scheduling; Management

16.1 Pretrial Conferences; General Rules.

(a) Authority and Attendance. ~~At least one of the attorneys for each party participating in any conference before trial~~ At any pretrial conference, an attorney must have authority to enter into stipulations and to make admissions regarding all matters ~~that the participants~~ the parties may reasonably anticipate discussing. ~~The judge assigned to the case may require the presence of lead trial counsel at any conference or hearing.~~ Lead trial counsel must attend the preliminary and final pretrial conferences and may be required to attend any other conference or hearing.

~~**(b) Preliminary and Final Pretrial Conferences.** All parties receiving notice of a preliminary or final pretrial conference must attend in person or by lead counsel, unless excused by the Court, and must be prepared to discuss the implementation of orders conducive to the efficient and expeditious determination of the case. The attorneys who will serve as lead counsel in trying the case must attend.~~

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

Stylistic amendment. The last sentence of subsection (a), as proposed to be amended, consolidates subsection (b) with (a). The last sentence of subsection (b) is separated from subsection (a) and renamed.

(c) Status Conferences. Status conferences may be held in any case as deemed necessary by the ~~judge to whom the case is assigned.~~ Court or on motion of a party explaining the need for a conference. ~~A party may move the Court to convene a status conference by filing an appropriate motion advising the judge of the necessity for a conference.~~

~~**(d) Settlement Conferences.** The judge to whom a civil case is assigned or referred may, upon the motion of any party or upon the judge's own motion, order the~~

~~parties to participate in a settlement conference.~~

Settlement conferences are addressed in current L.R. 16.6(c) (proposed L.R. 16.5(c)). Subsection (d) is not necessary.

16.2 Preliminary Pretrial Conference.

~~**(a) Exempt Cases.** Unless otherwise ordered by the judge assigned to the case, the following cases are exempt from the requirements of this Rule:~~

~~(1) appeals from proceedings of an administrative agency of the United States;~~

~~(2) petitions for writ of habeas corpus;~~

~~(3) actions brought without counsel by persons in the custody of federal, state, or local authorities;~~

~~(4) proceedings under the Bankruptcy Code (Title 11 of the United States Code) and appeals from the Bankruptcy Court;~~

~~(5) actions prosecuted by the United States to collect upon a debt or to recover benefits payments;~~

~~(6) forfeiture actions prosecuted by the United States;~~

~~(7) actions to enforce arbitration awards;~~

~~(8) actions to enforce or quash a summons or subpoena of an administrative agency; and~~

~~(9) any case which the judge to whom the case is assigned or referred orders to be excepted from the requirements of L.R. 16.2(b) and (c).~~

~~In exempt cases, the assigned judge will, no later than forty-five (45) days from the date the case is at issue, establish a schedule for final disposition of the case. In actions brought without counsel, no party may begin discovery until a Scheduling~~

~~Order has been issued.~~

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

The list of exempt cases was intended to reflect Fed. R. Civ. P. 26(a)(1)(B) when the initial disclosure requirement was implemented in December 2000, but it was tailored to our terms for these proceedings, and it eliminated things that don't happen here (e.g., proceedings in admiralty). At this point, it is better to refer to the Federal Rule. To the extent there is any variance, it could only cause confusion. No change in practice is intended.

The next-to-last sentence of the current Rule is relocated to proposed L.R. 16.3(a)(2). The last sentence is relocated to L.R. 26.1(d), as it pertains to discovery.

(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:

(A) a brief factual outline of the case;

(B) ~~issues concerning jurisdiction and venue~~ the basis for federal jurisdiction and for venue in the Division;

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

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

(E) a computation of damages;

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

litigation;

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

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

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

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

(K) suitability of special procedures.

(2) *Discovery Plan.* ~~See L.R. 26.1 and Fed. R. Civ. P. 26(f).~~

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

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

Stylistic amendment in (b)(1)(B). The cross-reference in (b)(2) is deleted now that the discovery plan requirement has been in the Federal Rules for ten years. Subsection (b)(2)(A) is essentially relocated from current L.R. 16.2(c)(7); areas of expert testimony are not specifically mentioned in Fed. R. Civ. P. 26(f). With that relocation and a few other changes, subsection (c) becomes redundant and is folded in to 16.3.

~~**(c) Conduct of Conference.** No 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 will 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 the parties' and the Court's understanding as to what law applies;~~

~~(4) elimination of frivolous or redundant claims or defenses;~~

~~(5) feasibility of settlement;~~

~~(6) filing and hearing of motions;~~

~~(7) areas of expert testimony and deadlines for identification of expert witnesses;~~

~~(8) completion of discovery and sufficiency of the initial disclosures required by Fed. R. Civ. P. 26(a)(1);~~

~~(9) drafting and filing of the proposed final pretrial order;~~

~~(10) final pretrial conference;~~

~~(11) a trial date; and~~

~~(12) any other dates necessary for appropriate case management.~~

The time limitations in (c) is in Fed. R. Civ. P. 16(b)(2). Several subsections are in Fed. R. Civ. P. 16(b)(3). Subsections (1), (2), (3), and (5) repeat matters included in the Pretrial Statements. Subsections (7) and (8) repeat matters included in the Joint Discovery Plan. Subsection (4) is in Fed. R. Civ. P. 16(c)(2)(A). Subsections (6), (9), (10), (11), and (12) are matters for the Scheduling Order. Subsection (c) can be eliminated.

16.3 Scheduling ~~Order~~.

~~**(a) Order.** After the preliminary pretrial conference, the assigned judge will immediately enter an order summarizing the matters discussed and action taken, setting a schedule limiting the time for those matters referred to in L.R. 16.2(c), and covering such other matters as are necessary to effectuate the agreements made at the conference.~~

~~**(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 will, 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 will 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; and~~

~~(C) trial.~~

~~(2) The trial date established may not be more than ninety (90) days after the date of the status conference, unless the assigned judge enters an order certifying that~~

~~(A) the demands of the case and its complexity render a trial date within ninety days incompatible with serving the ends of justice; or~~

~~(B) the trial cannot reasonably be held within ninety days because of the status of the judge's trial docket.~~

(a) Scheduling Order.

(1) After discussing the Pretrial Statements and Joint Discovery Plan with

the parties, the judge will issue a scheduling order.

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

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

Fed. R. Civ. P. 40 requires that "Each court must provide by rule for scheduling trials." Current L.R. 16.3(b) complies with Rule 40, but it does not reflect varied practices among the Divisions. The proposed amendment is intended to allow each Judge to continue current practice while also complying with Fed. R. Civ. P. 40. In addition, the amendment adds a reporting requirement designed to prevent cases from falling through the cracks when, for example, a motions deadline is set but no motions are filed, or when a case is referred to a magistrate judge and the Article III judge has ruled on Findings and Recommendation but has not been advised that the ruling means the matter is ready for trial.

(~~c~~ b) Continuances.

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

~~(2) A motion to postpone or continue a trial on the grounds of absence of a witness or evidence may be made upon affidavit showing the nature and materiality of the expected testimony or evidence. The affidavit must also state that diligent effort was timely made to secure the witness or the evidence and that reasonable grounds exist for the production of the witness or evidence if postponement or continuance is granted. If the testimony or the evidence would be admissible during the trial, and the~~

~~adverse party stipulates that it will be considered as actually given during the trial, there will be no postponement or continuance unless, in the opinion of the Court, a trial without the witness or evidence would work an injustice on the moving party.~~

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

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

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

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

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

(B) If the opposing party stipulates to the admissibility and content of the testimony or evidence sought, trial will not be postponed or continued unless trial without it would be unjust to the moving party.

The proposed amendments raise the standards for obtaining a continuance to conform with current practice. Merely "stating" diligent effort or "reasonable" grounds to think a continuance will help are not enough. The amendment is also stylistic and made to conform more closely to other, similar rules.

(~~d~~ c) ~~Jury~~ Cost Assessment in Final Week Before Trial. ~~Whenever any~~ When a civil action scheduled for jury trial is settled or otherwise disposed of less than seven (7) days before trial, all jury costs, Marshal~~'s~~ fees, mileage, and per diem may~~, except for good cause,~~ be assessed ~~equally against the parties and their counsel, or otherwise assessed~~ as directed by the Court.

Stylistic amendment.

16.4 Final Pretrial Order.

(a) ~~**Preparation and Lodging.**~~ **Parties' Planning Conference.** At least fourteen (14) days before the proposed final pretrial order is due, Plaintiff~~'s counsel~~ must convene a conference of all counsel ~~and pro se parties~~ and self-represented parties at a suitable time and place ~~for the purpose of preparing a~~ to prepare the proposed final pretrial order. If ~~any~~ a party ~~refuses~~ fails to cooperate in the conference or in preparation of the ~~pretrial~~ order, ~~the opposing~~ another party may move the Court for sanctions. ~~On or before the date established in the pretrial scheduling order, a registered user involved in the trial and selected by all parties must file a proposed final pretrial order signed by all counsel and pro se parties.~~

Stylistic and counsel amendment. The last sentence is relocated to proposed subsection 16.4(c).

Current L.R. 16.5(b) is relocated below as proposed 16.4(b), because it lists tasks the parties must complete in order to file the proposed final pretrial order:

(b) ~~Counsel must have completed all of the following tasks at the time the proposed final pretrial order is filed. In cases proceeding under L.R. 16.2(a) or 16.3(b), these tasks must be completed not less than seven (7) days before the final pretrial conference or, if none is held, not less than seven (7) days before trial.~~ Before filing the proposed final pretrial order, the parties must:

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

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

(3) *Provide Deposition Summaries.* Serve ~~and file~~ a copy of any summary of deposition testimony ~~that~~ a party proposes to offer at trial~~. This requirement applies only to those cases where~~ , provided the parties have stipulated to ~~the use of deposition summaries~~ a summary in lieu of reading a deposition ~~transcript~~.

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

(5) *Specify Outstanding Evidentiary Objections.* ~~With respect to unresolved objections, s~~Specify ~~any remaining~~ unresolved objections in writing ~~set forth~~ on the opposing party's witness and exhibit lists ~~and exhibit list~~. Objections not ~~specified on the exhibit list and any objections to deposition excerpts or summaries that are not~~ shown on the ~~witness~~ lists will be deemed waived. ~~The lists so prepared must be served and filed with the proposed final pretrial order. In cases proceeding under L.R. 16.2(a) or 16.3(b), exhibit and witness lists must be filed and served at the time of the final pretrial conference or, where none is held, no later than seven (7) days before trial.~~

Stylistic amendments and amendments to conform to practice; some phrases misstate the requirements. No change in practice is intended. The final sentence is deleted as unnecessary. Proposed L.R. 16.3(a)(2) provides for issuance of a scheduling order in "exempt" cases, and either that order or a subsequent one will set these deadlines.

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

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

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

Montana.

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

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

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

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

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

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

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

~~(10) *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 city and state of current residence. Witness lists must be in the form set forth in Form E and must 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 Form F and must be attached as exhibits to the proposed final pretrial order.~~

(~~12~~ 10) *Use of Discovery Documents.* A list of specific answers to interrogatories and responses to requests for admissions that a party expects to offer at trial.

~~(13) *Deposition Excerpts and Summaries.* The witness lists should reflect any designated deposition excerpts that either party intends to offer at trial, except for impeachment or rebuttal, and any party's objections to designated deposition excerpts, as well as an indication whether the parties have stipulated to the use of any deposition summary in lieu of reading a deposition transcript.~~

(~~14~~ 11) *Estimate of Trial Time.* An estimate of the number of court days ~~counsel for~~ each party ~~expects to be necessary for the~~ requires for presentation of ~~their respective cases~~ its case in chief.

Current subsections (10), (11), and (13) are addressed separately as they pertain to witness and exhibit lists and are not detailed in the body of the final pretrial order. A conforming amendment will be made to ¶¶ X, XI, and XIII in Form D.

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

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

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

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

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

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

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

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

The proposed amendment consolidates current L.R. 16.4(b)(10) and (13) and reorganizes their current contents. No change in practice is intended. A conforming amendment will be made to add reference to deposition summaries in Form E.

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

(1) include columns showing:

(A) the number of the exhibit;

(B) a brief description of it;

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

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

(2) include columns intended to show:

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

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

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

(D) the date the exhibit was admitted; and

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

~~(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 Form F and must be attached as exhibits to the proposed final pretrial order.~~

The proposed amendment reorganizes current L.R. 16.4(b)(11) and requires the information shown in current Form F. "Whether all parties stipulate to its admission" is a new requirement but does not represent a change in practice (see L.R. 16.5(b)(4)). No change in practice is intended. A conforming amendment will be made to Form F.

(f) Filing. ~~On or before the date established in the pretrial scheduling order, a registered user involved in the trial and selected by all parties must file a proposed final pretrial order signed by all counsel and pro se parties.~~ The proposed final pretrial order must be signed by all counsel and self-represented parties, filed in the electronic record, and e-mailed to chambers in compliance with L.R. 7.1(c)(3)(B)-(F).

Relocated from current L.R. 16.4(a); stylistic amendment.

~~**(c) Cases Under L.R. 16.2(a) and 16.3(b).** In cases proceeding under L.R. 16.2(a) or 16.3(b), witness and exhibit lists must be filed and served at the time of the final pretrial conference or, where none is held, no later than seven (7) days before trial. Witness and exhibit lists must be in the form set forth in Forms E and F.~~

This Rule is no longer necessary. Proposed L.R. 16.3(a)(2) provides for issuance of a scheduling order in "exempt" cases, and either that order or a subsequent one will set these deadlines.

~~**16.5 Final Pretrial Conference.**~~

~~**(a)** The judge will convene the final pretrial conference at the time designated.~~

Deleted as unnecessary.

(~~b~~) Counsel must have completed all of the following tasks at the time the proposed final pretrial order is filed. ~~In cases proceeding under L.R. 16.2(a) or 16.3(b), these tasks must be completed not less than seven (7) days before the final pretrial conference or, if none is held, not less than seven (7) days before trial~~:

. . .

Current L.R. 16.5(b) is relocated to proposed L.R. 16.4(b).

~~**(c) Expert Witnesses.** In any trial, before the commencement of testimony, the Court may indicate the number of expert witnesses who will be allowed each side, and no greater number may be examined unless leave is first obtained. The Court retains the authority under Fed. R. Evid. 102, 403, and 611 to limit the number of expert witnesses during trial.~~

The provisions of this Rule are covered by Fed. R. Civ. P. 16(e) and Fed. R. Evid. 102, 403, and 611. It is not necessary.

16.~~6~~ 5 Alternative Dispute Resolution.

(a) Mediation and Evaluation.

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

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

The proposed amendment is intended to clarify that the term "mediation" includes settlement conferences within the traditional practice in this District.

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

(2) The Chief Deputy Clerk of Court must annually prepare a statement for the Chief Judge regarding the District's use of ADR procedures.

A question arose as to whether this provision is necessary. 28 U.S.C. § 651(d) requires that "Each United States district court shall designate an employee, or a judicial officer, who is knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the court's alternative dispute resolution program."

This particular provision would not necessarily have to be in the Local Rules, but § 651(b) provides:

> *Each United States district court shall authorize, by local rule adopted under section 2071(a), the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter . . . . Each United States district court shall devise and implement its own alternative dispute resolution program, by local rule adopted under section 2071(a), to encourage and promote the use of alternative dispute resolution in its district.*

This is the reason L.R. 16.6 exists and the reason the reporting requirement is stated in the Local Rules.

(b) General Rules.

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

(2) All settlement proceedings are confidential. Attorneys, participants,

mediators, and evaluators must preserve the confidentiality of all communications made in the course of ADR procedures.

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

(4) *Obligation of Good Faith.*

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

(B) Failure to participate in good faith may result in the imposition of sanctions against the offending party. ~~The mediator or evaluator or a party may file a motion for sanctions in the record of the case.~~

The last sentence is unnecessary. Mediators and evaluators do not move for sanctions, and parties already know they may.

(5) Names of available mediators and evaluators are available from the Chief Deputy Clerk of Court.

(c) Motions and Orders for ADR.

~~(1) The presiding judge may, at any time, require the parties to participate in mediation or neutral evaluation.~~

~~(2) One or more parties may move the presiding judge for an order requiring mediation or neutral evaluation.~~

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

(~~3~~ 2) The presiding judge will select the mediator or evaluator and may select any person not involved in the case.

(~~4~~ 3) The presiding judge or a judicial mediator or evaluator may issue appropriate Orders to govern the proceedings. A non-judicial mediator or evaluator may set forth the governing procedures in a letter to the parties. Such letters will not be filed in the record of the case.

(d) When a case is settled, the parties must immediately notify the Court.

CIVIL RULE 17

Plaintiff and Defendant

17.1 Guardian ad Litem.

~~**(a) Procedure for Appointment.** A guardian ad litem may be appointed ex parte at any time upon the presentation to the judge assigned to the case of a sworn petition showing a proper case for the appointment. The petition must be filed with the order of appointment. The Court may appoint a guardian ad litem *sua sponte*.~~

~~**(b) Qualifications.** No person may be appointed guardian ad litem who has an interest adverse to that of the ward, or who is connected in business with the adverse party, counsel of the adverse party, or attorney, or who has not sufficient pecuniary ability to answer to the ward for any damage or injury which may be sustained by the ward as a result of negligence or misconduct in the case on the part of the guardian ad litem.~~

~~**(c) Bond.** No bond is ordinarily necessary from a guardian ad litem; provided, that no such guardian may receive any money or other property of the ward until the guardian has filed with the clerk a bond in an amount to be fixed by the judge, with sufficient surety, conditioned for the faithful performance of the guardian's duties. If the guardian does not desire to receive any such money or property, it must be paid or delivered to the Clerk of Court, or to such person as may be directed by the judge, with like effect as if paid or delivered to the guardian ad litem.~~

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

(1) has no interest adverse to the ward;

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

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

(b) Appointment.

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

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

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

Amended for clarity and style.

CIVIL RULE 24

Intervention

24.1 Motion to Intervene.

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

Counsel amendment.

CIVIL RULE 26

Discovery

26.1 Rule 26(f) Conference and Discovery Plan.

(a) Except in cases exempted by Fed. R. Civ. P. 26(a)(1)(B), or unless otherwise directed, the parties must confer at least twenty-one (21) days before the preliminary pretrial conference to consider the matters set forth in Fed. R. Civ. P. 26(f).

(b) Each party must serve initial disclosures conforming with Fed. R. Civ. P. 26(a)(1)(A) no more than fourteen (14) days after the Rule 26(f) conference. The parties are encouraged to serve initial disclosures at least seven (7) days before the Rule 26(f) conference.

(c) Initial disclosures may not be filed.

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

Relocated from current L.R. 16.2(a).

. . .

26.3 Discovery Responses and Motions.

. . .

(c) Discovery Motions.

(1) The Court will deny any discovery motion unless ~~counsel~~ the parties 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.

Counsel amendment.

CIVIL RULE 38

Jury Trial

38.1 Demand for Jury Trial.

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

Counsel amendment.

CIVIL RULE 47

Selecting Jurors

47.1 Examining Jurors.

(a) Voir Dire. Examination of jurors in civil cases will be in accordance with the Federal Rules of Civil Procedure. Unless otherwise ordered by the Court, the examination of trial jurors will be conducted by the Court. The Court may permit limited voir dire by ~~counsel for~~ the parties, following the voir dire conducted by the Court.

Counsel amendment.

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

47.2 Manner of Selection and Order of Examination.

(a) Composition of Panel.

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

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

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

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

New rule proposed by Judge Molloy to parallel the criminal rule and to allow "Arizona strike" method in civil jury trials. Current L.R. CR 24.1(c) is adapted here. Stylistic amendments are proposed to it as well.

CIVIL RULE 51

Instructions to the Jury

51.1 Requests for Instructions to Jury.

. . .

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

Counsel amendment.

CIVIL RULE 54

Costs and Fees

54.1 Taxation of Costs.

(a) Procedure.

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

(2) Any objections ~~by opposing counsel~~ to the application for costs must be filed within fourteen (14) days after the application was filed.

Counsel amendment.

(3) Within ~~seven (7)~~ fourteen (14) days after an objection is filed, the clerk must either tax the costs or, at his or her discretion, hold a hearing on the application.

(4) Removed this sentence: Any hearing must be held within seven days after an objection is filed. If a hearing is set, the date, time, and manner of the hearing must be reflected in the docket of the case. Hearings must be recorded and will generally be conducted by telephone. ~~The~~ clerk must tax the costs within seven (7) fourteen (14) days of the hearing.

Amendment requested by Clerk's Office.

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

(6) A party may appeal the clerk's decision by filing a motion for review within seven (7) days of entry of the clerk's taxation of costs. The party

must specify each objection to the decision and give reasons for its objection. The Court will consider the same documents and evidence submitted to the clerk and any pertinent docket entries.

(b) Items Taxed.

~~(1) *Depositions.* In taxing costs of depositions, the clerk will allow the fees of the court reporter at the rates specified by the Judicial Conference of the United States, or the actual fees paid by the prevailing party, whichever is less. The party seeking costs must furnish evidence that the deposition was used at trial or in support of a motion for summary judgment.~~

~~(2) *Transcripts.* In taxing costs of transcripts the clerk will allow fees of the court reporter at the rate specified by the Judicial Conference of the United States, or the actual fees paid by the prevailing party for the original or any portion of the transcript furnished to the Court unless it appears that it was not necessary to obtain the transcript for use in the case. In the absence of an objection from the adverse party, the clerk may presume that any portion of the transcript for which costs are claimed was reasonably necessary for the development of the case.~~

(1) *Transcripts and Video Depositions.*

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

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

(i) video depositions it used at trial;

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

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

Current subsections (1) and (2) seem to impose different standards on deposition transcripts and other transcripts, and they do not address video depositions. The proposed amendments impose a uniform standard and are intended to spell out more clearly how the clerk decides whether a given cost is allowable and where the burden of proof lies.

(~~3~~ 2) *Witness Fees.*

(A) ~~A party entitled to recover costs is entitled to recover the statutory fees and allowances for necessary witnesses as provided in 28 U.S.C. § 1821. Such statutory fees and allowances will be taxable costs for each day that a witness actually testifies at trial. In the case of witnesses who did not testify at trial or who were present at trial for a longer time than the days of testimony, the party seeking costs must establish that their presence was necessary.~~ Costs and fees for witnesses paid under 28 U.S.C. § 1821 are allowed for each day a witness testifies at trial. Otherwise, the moving party must establish the witness's presence was required.

The proposed amendment is intended to clarify that the moving party must have actually paid the witness fee. It also omits what 28 U.S.C. § 1821 already says and simplifies for clarity.

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

~~(C) Mileage will be allowed for all witnesses in accordance with the provisions of 28 U.S.C. § 1821.~~

Not necessary. 28 U.S.C. § 1821 covers this point.

(~~4~~ 3) *Fees for Exemplification and Copies*. ~~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.~~

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

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

Proposed amendment to simplify and clarify. In addition, prevailing parties have moved for and been awarded costs of services provided by, for example, Litigation Abstracts. To avoid any question about whether such services are "reasonably necessary," the Rule should specifically address the matter. Litigation services are increasingly common and they often make trials run more smoothly.

(~~5~~ 4) *Bond Premiums*. ~~The party entitled to recover costs will ordinarily be allowed premiums paid on undertakings, bonds or security stipulations, where the same have been furnished by reason of express requirement of the law, or an order of the Court, where the same are reasonably required to enable the party to secure some right accorded that party in the action or proceedings. In taxing costs the clerk will presume that the premiums for all bonds which are on file and of record in the case are allowable as costs.~~ Bond premiums paid pursuant to law or a Court order are presumed reasonably necessary absent objection. Otherwise, the moving party must establish the reasonable necessity of obtaining a bond.

The proposed amendment is intended to simplify and clarify.

(~~6~~ 5) *Other Costs.* ~~Items of costs not specifically mentioned in this Rule must be taxed by the clerk in accordance with the laws of the United States.~~ Other costs are allowed as provided by federal law.

Stylistic amendment.

54.2 Attorneys' Fees.

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

CIVIL RULE 56

Summary Judgment

56.1 Motion for Summary Judgment.

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

(b) Any party opposing a motion for summary judgment must also file a Statement of ~~Genuine Issues~~ Disputed Facts. . . .

(c) In the alternative, the movant and the party opposing the motion may jointly file a statement of stipulated facts if the parties agree there are no material disputed facts. ~~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) Where the parties do not file a joint stipulation, failure to file a Statement of Undisputed Facts will be deemed an admission that material facts are in dispute. Failure to file a Statement of Disputed Facts will be deemed an admission that no material facts are in dispute.

Stylistic amendment for parallelism and clarity.

~~**(d)** Upon filing of the Statement of Undisputed Facts and Statement of Genuine Issues, the factual record for the motion is deemed complete. Parties may not file further factual materials except with leave of the Court upon a showing that factual materials were reasonably omitted from the Statement of Undisputed Facts or Statement of Genuine Issues.~~

Deleted as unnecessary.

56.2 Motion Filed Against Self-Represented Prisoner.

(a) A defendant must file and serve the following "Notice and Warning to

Plaintiff," in a document separate from the motion and from the brief, at the time the defendant files and serves any motion for summary judgment against a plaintiff who is proceeding pro se and who is incarcerated or detained at any time before filing a response to the motion:

> The Court requires this Notice and Warning to be given to all pro se prisoner litigants when an opposing party files a motion for summary judgment.
>
> Defendant _____ [name defendant, or state "all defendants"] has/have moved for summary judgment by which [appropriate pronoun] seek[s] to have your remaining claims dismissed and judgment entered against you. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case [as to the following claims: _____].
>
> Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact – that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations or other sworn testimony, you cannot simply rely on what your complaint says. Instead, you must set out specific facts in the record, including depositions, documents, affidavits or declarations, stipulations, admissions, interrogatory answers, or other materials, as provided in Rule 56(c), or comply with Rule 56(d), to contradict the facts shown in the other party's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, judgment will be entered against you and there will be no trial.
>
> Additionally, a local rule of the District of Montana, D. Mont. L. R. 56.1(b), requires that "[a]ny party opposing a motion for summary judgment must file a Statement of ~~Genuine Issues~~ Disputed Facts setting forth the specific facts, if any, that establish a genuine issue of material fact precluding summary judgment in favor of the moving party."

The text of the warning was established by the Ninth Circuit in Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc). The added text was mistakenly deleted last year and is replaced this year.

CIVIL RULE 73

Magistrate Judges – Consent Procedure

73.1 Consent Election.

. . .

(c) Notice. When a civil action has been referred to a magistrate judge, the clerk will notify the parties of such referral and advise them that they may give or withhold consent to the magistrate judge's exercise of jurisdiction. In cases that are pre-screened pursuant to 28 U.S.C. § 1915(e)(2), 28 U.S.C. § 1915A(a), 42 U.S.C. § 1997e(c), or Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the clerk will mail the notice and consent election form after all parties ordered to be served have made an appearance. In all other cases, the clerk will mail the notice and consent election form within seven (7) days ~~of a party's appearance~~ after the last party has appeared. At the direction of the Court, the clerk may conduct new consent elections at any time.

The proposed amendment will allow the clerks to send out consent forms at one time rather than as each party appears. No provision is made for parties who default or against whom default judgment is entered. That situation can be dealt with, if necessary, by current L.R. 73.1(e), which provides:

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

CIVIL RULE 83

Rules Governing Attorneys and Representation

83.1 Attorney Admission and Appearance.

. . .

(b) Membership in the Bar.

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

(2) *Procedure for Admission.*

(A) Each applicant for admission must present to the Clerk:

~~(i) a written petition for admission, stating the applicant's residence and the date of admission to the State Bar of Montana;~~

~~(ii) a certificate of a member of the Bar of this Court that the applicant is of good moral character and a member in good standing of the State Bar of Montana;~~

(i) a ~~written~~ petition for admission signed by the applicant and setting forth:

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

(*b*) certification by a member of the Bar of this Court that the applicant is of good moral character and a member in good standing of the State Bar of

Montana;

(~~iii~~ ii) the current admission fee shown on the Court's website; and

(~~iv~~ iii) ~~a proposed order to be signed by a judge~~ the signed oath card.

(B) ~~Upon finding the applicant qualified for admission, a judge will sign the proposed order. The applicant must then sign the oath to be admitted as a member of the Bar.~~ Applicants will be formally admitted upon a judge's order.

The proposed amendment will streamline the admissions process so that only one order need be signed on a routine basis (probably monthly) to admit all applicants.

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

The amendment clarifies that automatic suspension for non-payment of dues or non-completion of required CLE credits is followed by automatic reinstatement. The attorney need not petition for reinstatement under Appendix B(5).

. . .

83.3 Substitution and Withdrawal of Counsel.

. . .

(b) Withdrawal of Counsel.

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

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

(A) the client's written consent to counsel's withdrawal, ...

. . .

A necessary amendment.

CRIMINAL RULE 24

Trial Jurors

CR 24.1 Impaneling a Trial Jury.

(a) Examination of Jurors.

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

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

~~(3) Unless otherwise ordered by the Court, the examination of trial jurors will be conducted by the Court. Unless otherwise ordered by the Court, counsel must submit to the Court any questions that counsel wishes the Court to ask the jurors at least one court day before trial commences.~~

(3) Unless the Court orders otherwise:

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

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

Counsel amendment and stylistic amendment.

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

~~(1) From the jury panel 12 jurors, plus the number of alternate jurors who are to be impaneled, plus a number of jurors equal to the total number of peremptory challenges which are allowed by law will be called in the first instance. These jurors constitute the initial panel. As the initial panel is called the clerk will assign numbers to the jurors in the order in~~

~~which they are called. If any juror in the initial panel is excused for cause, an additional juror must be immediately called to fill out the initial panel. A juror called to replace a juror excused for cause takes the number of the juror who has been excused. When the initial panel is filled, the parties will exercise their peremptory challenges as provided by these Rules. When peremptory challenges have all been exercised or waived, the clerk will call the names of the 12 prospective jurors having the lowest assigned numbers. These jurors constitute the trial jury.~~

~~(2) Alternate jurors, if any, must be selected pursuant to the procedures of Fed. R. Crim. P. 24(c).~~

(1) *Composition of Panel.*

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

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

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

Stylistic and organizational amendments for clarity. No change in practice is intended.

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

(A) Traditional Method. In criminal cases in which the government has six (6) and the defense ten (10) challenges, ~~they will be~~

~~exercised in the following order:~~ the first is exercised by the government, the second by the defense, the next by the Government, the next two (2) by the defense, the next by the government, the next two (2) by the defense, the next by the government, the next two (2) by the defense, the next by the government, the next two (2) by the defense, the next by the government, and the last by the defense. The passing of a peremptory challenge by either party is the equivalent of a challenge. ~~After all challenges have been taken, the jury will be sworn.~~

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

Current L.R. 24.1(b)(3) and (c) are consolidated as both address the manner of exercising peremptory challenges.

CRIMINAL RULE 32

Sentencing and Judgment

CR 32.1 Presentence Reports.

~~Within seven (7) days after sentencing, the probation office must submit the final presentence report to the Clerk's Office for filing under seal in the electronic record. The final presentence report must reflect any changes or redactions made by the sentencing judge.~~

(a) Within seven (7) days after sentencing, the Clerk of Court must file under seal in the electronic record:

(1) the final presentence report as submitted to the Court under Fed. R. Crim. P. 32(g); and

(2) one of the following:

(A) an appendix prepared by the Probation Office setting forth the sentencing judge's rulings and determinations under Fed. R. Crim. P. 32(i)(3)(B) and any other change to the guideline calculation; or

(B) if the sentencing judge so orders, the sentencing transcript.

(b) The Probation Office must provide a copy of any appendix to the parties. If a prison term is imposed, the appendix or sentencing transcript must be made available to the Bureau of Prisons with the presentence report.

The proposed amendment is identical to current Standing Order RFC-17 (Feb. 24, 2012).

CRIMINAL RULE 49

Serving and Filing Papers

CR 49.1 Filing Under Seal.

(a) When Motion to Seal Required.

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

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

(A) is submitted for in camera inspection;

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

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

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

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

(F) is or contains material from a pretrial services report, a presentence report, or a statement of reasons for the sentence and redaction is not practical; or

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

The phrase "contains material from" has allowed too much scope for sealing. The idea is to seal only when necessary, not when a line or two from a presentence report is quoted in a sentencing memorandum. The proposed reference to redaction makes filing under seal a third option, viable only when an attorney can't draft around the confidential material and can't reasonably be expected to do the additional work of redacting it.

APPENDIX B

Attorney Discipline, Suspension, and Disbarment

The issue addressed by the following proposed amendments involves where filings are directed and to whom they are addressed. Currently, the Rule provides that a grievance, for instance, is sent to the Chief Judge. The "General Provisions," however, state that "Chief Judge" may mean a judge other than the Chief Judge if another judge has been designated to exercise disciplinary functions. Further, in the current rule, documents are sent to chambers. They should instead be sent to the Clerk of Court to avoid the inevitable confusion and risk of misdirection that arises when a particular kind of document is singled out to be handled differently than everything else. The proposed amendments clarify these important practical matters.

1. General Provisions.

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

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

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

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

iv. violation of any court order; or

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

B. This Rule does not limit any inherent power of the Court, such as contempt power, and does not preclude or condition imposition of

sanctions for violation of professional standards or an order, rule, or other law.

C. An attorney subject to discipline in this or another jurisdiction may request at any time that proceedings in this Court be kept confidential.

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

i. disbarment or suspension with or without conditions;

ii. public censure or private reprimand;

iii. probation with or without conditions;

iv. restitution, fine, and/or assessment of costs;

v. referral to appropriate disciplinary authority.

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

F. Costs of all proceedings under this Rule will initially be borne by the Court, but payment of costs may be imposed on a disciplined attorney.

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

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

I. The term "attorney" does not include a federal judge. Complaints against judges must be filed in compliance with procedures established

by the Ninth Circuit Court of Appeals.

2. Reciprocal Discipline.

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

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

C. *Show-Cause Order*. Upon receiving notice of imposition of discipline in another jurisdiction, the ~~Chief Judge~~ Disciplinary Judge ~~must~~ will issue a show-cause order to the disciplined attorney. The order ~~must~~ will include:

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

ii. an opportunity to show cause in no less than ~~30 days~~ 21 days why the same discipline should not be imposed in this Court;

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

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

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

waived the right to object.

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

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

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

(a) the attorney was deprived of fair notice or a fair opportunity to be heard in the other jurisdiction;

(b) the proof establishing the misconduct was so unreliable or lacking as to make a finding of misconduct insupportable; or

(c) other substantial reasons counsel against acceptance of the other jurisdiction's conclusions.

~~ii~~ iii. If the ~~Chief~~ Disciplinary Judge declines to impose identical discipline, lesser discipline may be imposed, or the matter may be continued under subsections (3) or (4) or closed without imposition of discipline.

3. Attorneys Convicted of Crimes.

A. Upon receipt of reliable proof that an attorney has pled guilty or nolo contendere or been found guilty of a crime that may impact the attorney's fitness to practice law, the ~~Chief~~ Disciplinary Judge must immediately suspend the attorney from practice and issue an order to the attorney to show cause why suspension is inappropriate and why a lesser discipline or no discipline is appropriate.

B. When the availability of direct and discretionary appeal has been

exhausted, a criminal conviction is conclusive evidence in any disciplinary proceeding that the attorney committed the crime.

C. Upon receipt of reliable proof that a criminal conviction has been reversed, the ~~Chief~~ Disciplinary Judge must vacate any disciplinary order that is based solely on the fact of conviction.

4. Grievance Procedure. The following procedures apply when ~~any~~ a person files a grievance against an attorney.

A. *Grievances*.

i. A grievance must specify grounds for discipline under subsection (1)(A) of this Rule and must be filed under seal with the ~~Chief Judge~~ Clerk of Court. A grievance filed by any person other than a judge of this Court must be signed under penalty of perjury and enclosed in an envelope marked "Confidential Attorney Matter."

ii. The ~~Chief~~ Disciplinary Judge may decide that no action is warranted, may refer the matter to another disciplinary authority, and/or may order an investigation.

B. *Investigation*.

i. The ~~Chief~~ Disciplinary Judge may designate one or more members of the Bar of this Court to investigate a disciplinary matter.

ii. The investigation must proceed expeditiously and must recommend:

(a) dismissal of the grievance; or

(b) intervention short of discipline; or

(c) filing of a formal complaint to initiate further proceedings.

iii. Where there is more than one investigator, the report must be made jointly, but each investigator must make his or her own recommendation.

iv. Investigators are authorized to administer oaths and to issue subpoenas.

v. The attorney must be given a reasonable opportunity to submit relevant evidence or statements.

vi. The report must include copies of all witness statements, all relevant documentary evidence, and a summary of findings.

C. *Review by* ~~Chief~~ Disciplinary *Judge*. After review of the investigative report, the ~~Chief~~ Disciplinary Judge must:

i. dismiss the grievance; or

ii. refer the matter to another disciplinary authority and/or, with the attorney's consent, impose measures short of discipline; or

iii. designate one or more members of the Bar of this Court to prosecute the matter.

D. *Prosecutor*.

i. The ~~Chief~~ Disciplinary Judge may designate one or more members of the Bar of this Court to prosecute a disciplinary matter.

ii. Prosecutors are authorized to administer oaths and to issue subpoenas and may investigate the matter further before and after filing a complaint.

E. *Complaint and Hearing.*

i. The prosecutor's filing of a complaint will initiate a civil action.

The case must be assigned to an Article III judge who is not the ~~Chief~~ Disciplinary Judge and who has not filed a grievance against the attorney.

ii. The complaint must adequately inform the attorney of the alleged misconduct. It must be served pursuant to Fed. R. Civ. P. 4. A deficient complaint may be amended.

iii. The presiding judge must promptly hold a conference to set a schedule for all proceedings.

iv. The Federal Rules of Evidence apply. The presiding judge will determine whether and to what extent the Federal Rules of Civil Procedure apply.

v. Evidence must be presented in open court. Neither party has a right to a jury. Misconduct must be proved by clear and convincing evidence. The parties must be permitted to present evidence and argument as to the merits, mitigation, and appropriate discipline, if any.

vi. Within a reasonable time after the close of the evidence, the presiding judge must issue Findings of Fact and Conclusions of Law and specify the disciplinary action to be taken, if any.

F. *Decision*. Entry of an order imposing discipline is final and appealable to the United States Court of Appeals for the Ninth Circuit. If disbarment, suspension, or public censure is imposed, the Clerk of Court must notify the Clerk of the Court of Appeals for the Ninth Circuit and the disciplinary authorities in the jurisdictions in which the attorney is admitted to practice.

5. Reinstatement.

A. *Time for Petition*.

i. Any disbarred attorney may seek reinstatement at the expiration

of the term specified in the order imposing disbarment or within ten years of entry of the order, whichever comes first.

ii. Any attorney on suspension or probation may seek reinstatement after the attorney has served one-half the total term imposed.

iii. If the attorney was disbarred, suspended, or placed on probation under subsection (2) of this Rule, the attorney may seek reinstatement when the jurisdiction originating discipline recognizes a change in the attorney's status.

B. A petition for reinstatement must be filed with the ~~Chief Judge~~ Clerk of Court. The attorney must demonstrate qualification and fitness to practice law. The petition must be supported by competent evidence and the attorney may request an evidentiary hearing.

C. ~~A judge~~ The Disciplinary Judge will ~~hold a hearing~~ hear the petition. ~~The attorney must demonstrate qualification and fitness to practice law.~~ Any expenses incurred by the Court may be assessed against the attorney regardless of the ~~result of the hearing~~ decision.

D. The Disciplinary Jjudge may order full or conditional reinstatement or deny reinstatement.

E. The Clerk of Court must notify the Clerk of the Court of Appeals for the Ninth Circuit and the disciplinary authorities in the jurisdictions in which the attorney is admitted to practice of full or conditional reinstatement.