Civil Rule 1 – General Rules and Policies.
(L.R. 1 is applicable in both civil and criminal cases.)

1.2 Divisions of the Court.

(a) By Standing Order, the Chief Judge will equitably distribute the caseload of the District by allocating each Division to one or more judges. Cases involving reapportionment, voting rights, campaign finance or disclosure laws, or otherwise relating to elections will be randomly assigned regardless of the Division of filing.

To prevent judge-shopping, reassignment of political cases regardless of the Division of filing has been the practice for some time. The practice should be explicit. See Standing Order DLC-9.

1.3 Access to Court Proceedings and Records.

. . .

(d) Cameras and Personal Electronic Devices.

(1) *In Courtrooms.* No one may bring a personal electronic device into a courtroom absent leave granted by the presiding judge.

(2) *In Courthouses.*

(A) 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.

(B) Persons Excepted. The general rule does not apply to:

(i) 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;

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

(iii) federal agents or other law enforcement officers visiting the United States Attorney's Office, but solely for use inside the United States Attorney's Office; or

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

The United States Attorney's Office proposes to include law enforcement officers visiting its offices in the category of excepted persons who may bring personal devices into a courthouse. The USAO also proposed to clarify that no device is permitted in a courtroom unless authorized by a Judge. The Rule is reorganized to reflect that different terms apply to courtrooms and to courthouses.

1.4 Manner of Filing.

. . .

(f) Items Not Available in Electronic Record. . . .

(2) *Exhibits.*

~~(A) Exhibits will be kept in the Clerk's custody for the duration of trial or, as to exhibits submitted in connection with a motion, until the presiding judge directs their return to the filing party.~~

(A) If it is not practical to file an exhibit in the electronic record, the Court will not permanently retain the exhibit.

(i) At the conclusion of trial, each party is responsible for reclaiming unfiled exhibits, unless the presiding judge orders otherwise.

(ii) If an exhibit is pertinent to a motion and is not electronically filed, it must be reclaimed within seven days after the motion's termination.

(B) In the event ~~the~~ an exhibit not electronically filed is required by this or another court ~~after it has been returned~~, the ~~filing party~~ parties will be notified and must resubmit the exhibit as the Clerk directs.

The current wording of the Rule creates some confusion as to whether it applies to exhibits generally. It is intended to apply only to exhibits not filed in the electronic record; L.R. 1.4(b) provides "To the greatest extent possible, the record of each case, including exhibits, will be maintained in ECF and available to remote public access." The parties must keep custody of exhibits they want to retain in original form (e.g., a defective firearm) or exhibits that cannot be scanned. If the Court of Appeals wants to see the exhibit, its clerk's office contacts the district court clerk's office, and the district court clerk's office must obtain the exhibit. The exhibit is returned to the district court at the conclusion of the appeal. See Ninth Circuit General Order 12.7 (Nov. 2011).

1.5 Form of Documents and Citations.

(a) Unless a form provided by the Administrative Office of the United States Courts is used, ~~D~~ documents prepared for filing must be:

(1) page size 8½ x 11 inches, printed on one side only, with top, bottom, and side margins of one inch, with no background shading, and free of materially defacing erasures or interlineations;

(2) double-spaced, except for quoted material and footnotes, and typewritten in 14-point font size or neatly handwritten;

(3) consecutively numbered at the bottom of each page; and

(4) formatted as to counsel or party identification, case caption, and document title in substantial compliance with the forms in Appendix C.

(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~~ c) 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.

Subsection (a) is reorganized for easier reading. Standing Order DLC-13 establishes a uniform caption for the District except, as stated, when a standardized national form is used. The District's new caption is shown at page 20 of the package of proposed amendments. Subsection (a)(4) incorporates and amends current subsection (c). "Substantial compliance" with the Court's forms is sufficient.

Shaded background has been used in some pleadings, but it increases storage bytes as well as printing costs.

With subsection (c) moved into subsection (a)(4), current subsection (d) becomes (c).

Civil Rule 3 – Commencing an Action.

3.1 Filing a New Case.

(a) Required Items. The following items are required to file a new case:

(1) a complaint, petition, or other originating document; . . .

(b) Patent, Trademark, and Copyright Cases. In addition to the items listed above, a party filing a patent, trademark, or copyright case or claim must:

(1) complete the appropriate report using Form AO-120 or Form AO-121, available on the Court's website;

(2) after obtaining a deputy clerk's signature, file the report;

(3) deliver the report to third parties as directed by the form; and

(4) update the report and the filing as required.

The report is required by statute. See 35 U.S.C. § 290; 15 U.S.C. § 1116. Currently, it is up to the Clerk's Office to complete it, but the clerks do not know anything about the case. It is more reasonable to require the parties to complete the form. Other districts have implemented the requirement.

(c) Manner of Filing.

(~~b~~ 1) *Conventional Filing. . . .*

(~~c~~ 2) *Electronic Filing. . . .*

(d) Complaints Accompanied by Motions to Proceed In Forma Pauperis. . . .

The amendment to subsection (c) is stylistic only.

Civil Rule 5 – Serving and Filing Pleadings and Other Papers.

5.1 Filing Under Seal.

. . .

(c) Caption. Any document preauthorized to be filed under seal must include the phrase "FILED UNDER SEAL" in the case caption, followed by citation to the authority for sealing, e.g., "Per ~~Protective Order of May 27, 2011~~ Fed. R. Civ. P. 45(e)(2)(B)" or "D. Mont. L.R. 5.1(b)(1), 26.4."

The proposed amendment conforms with the proposal to amend L.R. 26.4(b) and removes a potentially misleading example. The existence of a protective order does not authorize all documents or information subject to it to be filed under seal in the Court's record. The Court's record is public. See L.R. 1.3(a), (b). The Federal Rule cited instead is the amended version of Rule 45, to be effective December 1, 2013, referring to submission of subpoenaed materials under seal for a determination of privilege. Reference to "D. Mont. L.R. 5.1(b)(1), 26.4" remains correct, as documents may be filed under seal in connection with a motion seeking a protective order.

Civil Rule 7 – Motions.

7.1 Motions.

(a) The provisions of L.R. 7 apply to motions, applications, petitions, orders to show cause, and all other proceedings (all such being included within the term "motion" as used herein) except a trial on the merits, ~~habeas petitions or motions under 28 U.S.C. § 2255~~ pleadings in proceedings under 28 U.S.C. §§ 2241, 2254, and 2255, and applications for a temporary restraining order, unless otherwise ordered by the Court or provided by statute.

The petition or motion is only the opening pleading. The exemption here should apply to all pleadings in the specified actions.

. . .

(d) Briefs.

(1) *Briefing Schedule.*

(A) A motion, if opposed, must be accompanied by a brief in support filed at the same time as the motion. Briefs in support of a motion must be filed separately from the motion. Failure to timely file a brief will result in denial of the motion, subject to refiling in compliance with the Rule.

(B) Responses. ~~Any party that opposes a motion must file a response brief.~~

(i) Responses to motions to dismiss, for judgment on the pleadings, or for summary judgment must be filed within twenty-one (21) days after the motion was filed.

(ii) Responses to all other motions must be filed within fourteen (14) days after the motion was filed. ~~Except~~ As to these motions, except where a pro se litigant files a motion for the appointment of counsel, failure to file a response brief may be deemed an admission that the

motion is well-taken.

(C) The moving party may file a reply within fourteen (14) days after the response was filed.

(D) No further briefing is permitted without prior leave. A motion is deemed ripe for ruling at the close of the time for response.

(2) *Length of Briefs*. . . .

In Heinemann v. Satterberg, __ F.3d __, No. 12-35404, slip op. at 9 (9th Cir. Sept. 24, 2013), the court held that a local rule similar to the "deemed well-taken" portion of current L.R. 7.1(d)(1)(B) conflicted with Fed. R. Civ. P. 56(e), which precludes granting summary judgment based solely on the non-moving party's failure to respond. (By contrast, a rule like current L.R. 56.1(d), which deems undisputed facts admitted for purposes of the motion, is enforceable. Slip op. at 8.) As to dispositive motions, the moving party can reasonably be required to show it is entitled to the relief it seeks. As to non-dispositive matters, however, allowing a judge simply to deem a motion well-taken when no response brief is filed is a fair means of facilitating decision.

7.2 Motion Exhibits.

(a) Exhibits must be identified and electronically filed so as to allow the Court, ~~and~~ the parties, and the public to locate easily and refer unambiguously to a specific page of a specific exhibit. Use of a short descriptive name in filing the exhibit, e.g., "Smith Aff." or "Range Rover Vehicle Registration," in the docket and in the text of the brief is required.

It is much easier to locate exhibits when the filing party calls them what they are, rather than using exhibit numbers or letters. Take a look, for instance, at Intervest -Mortgage v. Canyon Holdings, No. CV 10-25-M-DWM (9:10-cv-25), and compare the docket text for docs. 19, 20, 21, and 22, with the docket text for doc. 31. Doc. 31 is much more user-friendly.

Civil Rule 16 – Pretrial Conferences.

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:

(A) a brief factual outline of the case;

(B) 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 additional stipulations of fact not included in the Statement of Stipulated Facts, *see* L.R. 16.2(b)(3), 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 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) the substance of any insurance agreement that may cover any resulting judgment;

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

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

The word "additional" is added to subsection (G) based on proposed new L.R. 16.2(b)(3), below. Proposed subsections (J) and (K) were deleted in 2010 because they are covered in the parties' initial disclosures, Fed. R. Civ. P. 26(a)(1). Because initial disclosures are not filed, however, the deletion has made it more difficult for judges to resolve (or forestall) disputes between the parties regarding disclosure of documents and of witnesses and the information they are believed to have.

(2) *Discovery Plan. . . .*

(3) *Statement of Stipulated Facts.* Plaintiff must separately file a Statement of Stipulated Facts to which all parties agree.

With the proposed amendment to L.R. 26.1(a), this provision is designed to remove from the realm of contest those matters that no one intends to dispute. Parties' failure to reach any stipulations also alerts the presiding judge to explain what is expected of litigants in the District of Montana.

. . .

16.5 Alternative Dispute Resolution.

. . .

(b) General Rules.

. . .

(~~d~~ 5) When a case is settled, the parties must immediately notify the Court by filing a notice in the case.

(~~5~~ 6) Names of available mediators and evaluators are available from the Chief Deputy Clerk of Court.

(c) Motions and Orders for ADR. . . .

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

The amendment is requested as phone calls often fail to notify all the right people. The requirement is also moved up to subsection (b) so that it is more likely to be seen.

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) and to prepare the Statement of Stipulated Facts, *see* L.R. 16.2(b)(3), to be filed before the preliminary pretrial conference.

With proposed L.R. 16.2(b)(3), this provision is designed to identify those matters that no one intends to dispute.

. . .

26.2 Documents of Discovery.

(a) Filing Prohibited. Pursuant to Fed. R. Civ. P. 5(d)(1), initial disclosures under Fed. R. Civ. P. 26(a)(1)(A), depositions ~~upon oral examinations and,~~ interrogatories, requests for documents, requests for admissions, answers ~~and,~~ responses, and objections, expert disclosures, expert reports, notices of deposition, notices of service of subpoena, and certificates or notices indicating service of discovery documents on opposing parties are not routinely filed.

(b) Filing Required. ~~However~~ Regardless of subsection (a), when any motion is filed relating to discovery, the ~~parties~~ party filing the motion must attach as exhibits to the motion all of the documents relevant to the motion if the documents have not been previously filed.

(c) Other Motions. Discovery responses or admissions relied on as evidence relevant to another type of motion, such as summary judgment, are considered exhibits rather than discovery documents and are not governed by this Rule.

Some parties have perceived a need to file a motion for leave to file discovery relevant to a motion. The new subtitles and proposed amendments are intended (1) to clarify when filing is already either prohibited or required, and (2) to confine application of the Rule to

discovery disputes.

(c d) At trial, ~~expert reports~~ reports by retained experts and disclosures of testifying non-retained experts must be available for review by the Court.

The proposed amendment conforms with the distinction in Fed. R. Civ. P. 26(a)(2) between retained experts and experts such as treating physicians.

26.4 Protective Orders.

. . .

(b) Filing Documents That Are Subject to a Protective Order.

(1) *Sealing Not Available.* Documents constituting or containing information subject to a protective order may, if filed in the Court's record, be redacted but may not be filed under seal.

(2) *Motion for Leave to Redact.* Prior to filing in the Court's record a redacted version of a document constituting or containing information subject to a protective order, the filing party must:

(A) show that the public interest in open judicial records is outweighed by a compelling reason, based on specified facts, if the document is filed in connection with a dispositive motion; or,

(B) if the document is filed in connection with a non-dispositive motion, make a particularized showing under Fed. R. Civ. P. 26(c)(1) that good cause supports redaction.

The current rule fails to recognize that parties' protective orders do not displace public interests and fails to distinguish documents filed in connection with a dispositive motion from those filed with other motions. Ninth Circuit law makes both distinctions. E.g., Kamakana v. City and County of Honolulu, 447 F.3d 1172 (9th Cir. 2006).

Civil Rule 47 – Selecting Jurors.

47.1 Examining Jurors.

(a) Confidentiality of Juror Information. Other than use at trial, any disclosure of juror information must be limited to parties, counsel involved in the case, and persons consulted about the composition of the jury. Those persons must take reasonable steps to protect the confidentiality of the information.

(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.

(~~a~~ c) 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 will conduct voir dire. The Court may permit limited voir dire by the parties, following the voir dire conducted by the Court.

(d) The Electronic Record. The clerk's list of trial jurors' names and information must be sealed if filed in the record of the case.

This Rule is reorganized to make it clearer and to emphasize the confidentiality of the information.

47.2 Manner of Selection and Order of Examination.

. . .

Civil Rule 54 - Taxation of Costs.

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 to the application for costs must be filed~~ The opposing party may object within fourteen (14) days after the application was filed. Any objection must specify the item and/or amount objected to and give reasons for the objection.

Attorneys sometimes make blanket objections to an application for costs. This practice makes it almost impossible for the clerk to have a productive hearing.

Civil Rule 56 – Summary Judgment.

56.1 Motion for Summary Judgment.

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

(1) set forth in serial form each fact on which the party relies to support the motion;

(2) pinpoint cite to a specific pleading, deposition, answer to interrogatory, admission or affidavit before the Court to support each fact; ~~and~~

(3) be filed separately from the motion and brief; and

(4) be e-mailed in a word processing format to each party against whom summary judgment is sought.

(b) Any party opposing a motion for summary judgment must ~~also~~ file a Statement of Disputed Facts simultaneously with and separately from the response brief. Similar to the example provided in Form A, the Statement must:

(1) set forth verbatim the moving party's Statement, adding only:

(A) whether each fact in the moving party's Statement is "undisputed" or "disputed"; and,

(B) if "disputed," pinpoint cite to a specific pleading, deposition, answer to interrogatory, admission or affidavit before the Court to ~~support~~ oppose each fact; and

(2) set forth in serial form:

(A) each additional fact on which the party relies to oppose the motion; and

(B) pinpoint cite a specific pleading, deposition, answer to interrogatory, admission or affidavit before the Court to support each additional fact.

~~(3) be filed separately from the motion and brief.~~

(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. 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.

Statements of Disputed Fact often seem to be addressing an entirely separate case as compared to the Statement of Undisputed Facts. The goal is to enable the Court to see virtually at a glance what facts are and are not disputed so that the more important question – whether any factual dispute is material – can be reached more quickly. The requirement for "simultaneous" filing fills a gap spotted and exploited recently by an adroit attorney who probably just forgot to file the Statement. (For convenient reference, proposed Form A immediately follows; in the published Rules, it will be placed in the Appendix of Forms.)

FORM A
Statement of Disputed Facts
L.R. 56.1(b)

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Attorney for Defendant Thomas

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

EDWARD S. REYNOLDS, JR., Plaintiff, vs. ANDREW THOMAS and NONOM COUNTY, Defendants.	Cause No. CV 13-798-TD-XYZ DEFENDANT THOMAS'S STATEMENT OF DISPUTED FACTS

Verbatim Response to Plaintiff's Statement of Undisputed Facts:

1. Plaintiff Edward Reynolds is employed by Nonom County, Montana, in its Housing and Community Development Department. Reynolds Dep. at 3:2.

Undisputed.

2. Reynolds performed the functions associated with his formal job description of Community Development Specialist, and he took on additional supervisory responsibilities, at his superiors' request, "for a number of years with

his duties continually expanding each year." Reynolds Dep. at 53:17-59:6; Stewart Dep. at 8:12-10:14.

Disputed as to Reynolds' taking on additional supervisory responsibilities "at his superiors' request." At times he took on unnecessary tasks on his own initiative, Johnson Dep. at 48:16-25, Johnson-Smith Dep. at 13:10-23, and there is no evidence his duties continually expanded each year. Otherwise undisputed.

3. On April 6, 2007, and again on September 21, 2007, Reynolds' supervisors, Camilla Johnson-Moore and Joseph A. Johnson, Jr., respectively, asked Defendant Thomas to reclassify Reynolds' job or increase his pay to reflect the duties he was performing. Johnson Dep. at 5:3-7:8; Johnson-Moore Dep. at 6:2-24; Reynolds Dep. at 48:10-16, 54:18-56:22; County Personnel Policy 200.210.478.

Disputed. Thomas Dep. at 23:21-25; Simpson Dep. at 9:24-10:18.

4. Thomas failed to respond to their requests.

Undisputed, as they did not make any requests.

Defendant's Additional Facts in Opposition to Plaintiff's Motion:

5. In light of a growing number of oral requests for job reclassification, Thomas instructed all supervisors to put requests for job reclassification in writing. Thomas Dep. at 23:16-19; Staff Meeting Minutes, Jan. 31, 2007.

6. Thomas did not receive a written request for reclassification of Reynolds' job. Thomas Dep. at 23:20-25; Simpson Dep. at 4:7-9:24; Thomas "Reclass" File, Simpson Dep. Ex. 513.

DATED [date] .

/s/ James Doe
Attorney for Defendant Thomas

Civil Rule 73 – Magistrate Judges – Consent Procedure.

73.1 Consent Election.

. . .

(d) Return of Consent Election Forms. Parties have ~~thirty (30)~~ 14 days from service of the clerk's notice and consent election form to complete and return the form to the clerk. If any party's form is not received within ~~thirty-three~~ 17 days after service, that party is deemed to have withheld consent. The clerk will keep custody of all consent election forms. If all parties give consent, the case will be reassigned to a magistrate judge for all purposes, including trial and entry of judgment, pursuant to 28 U.S.C. § 636(c).

Rulings are sometimes delayed while the consent election is pending. Federal law does not set the time to consent. The time is reduced to avoid delay.

~~(e)~~ **73.2 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.

Renumbering only. Subsections (a)-(d) of current L.R. 73.1 all address the consent election. Current subsection (e) addresses a different matter. It should be separated from 73.1.

Civil Rule 78 – Hearing Motions; Submission on Briefs

78.1 Submission on Briefs.

Except where a hearing is ordered in the Court's discretion, a matter is submitted on the briefs without oral hearing.

78.2 Social Security Cases.

(a) In cases seeking judicial review of a decision by the Commissioner of Social Security under 42 U.S.C. § 405(g), the defendant must file the administrative record with its Answer.

(b) Special Briefing Schedule. Unless the defendant files a motion to dismiss, the clerk will issue a briefing schedule when the Answer and administrative record are filed. The clerk will set specific due dates based on the following schedule:

(1) The plaintiff's opening brief must be filed within 60 days after filing of the Answer. Failure to timely file the brief may result in summary dismissal of the case.

(2) The defendant's response brief must be filed within 30 days after the plaintiff's brief is filed;

(3) Plaintiff's reply brief, if any, must be filed within 14 days after the defendant's brief is filed and may contain no more than 3250 words.

(c) Principal briefs must contain:

(1) a statement of the issues presented for review;

(2) a concise statement of the case setting out the facts relevant to the issues submitted for review, describing the relevant procedural history, and identifying the rulings presented for

review, with appropriate references to the record;

(3) the party's contentions and the reasons for them, with citations to the authorities and parts of the record on which the party relies;

(4) a short conclusion stating the precise relief sought; and

(5) no more than 6250 words.

This Rule was suggested by the United States Attorney's Office. Briefing requirements are adapted from our L.R. 7.1(d) and CR 58.2 and Fed. R. App. P. 28(a)(5)-(6), (8)(A), and (9) (eff. Dec. 1, 2013).

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:

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

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

(ii ~~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;

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

(C ~~iii~~) the signed oath card.

~~(B) Applicants will be formally admitted upon a judge's order.~~

The proposed amendment does not prohibit an order, merely removes the requirement for one.

. . .

~~**(c) Attorneys for the United States.** A non-member attorney whose principal employment does not involve representing the United States in the District of Montana and who is an active member in good standing of the Bar of any United States Court or of the highest court of any state, or of any territory or insular possession of the United States, and who is of good moral character, may appear in this Court in any matter in which that attorney is employed or retained by the United States or its agencies and is representing the United States, a federal agency, or a current or former officer or employee.~~

(c) Attorneys for the United States and Federal Defenders. An attorney employed or retained by the United States or by the Federal Defenders of Montana may appear in this Court in any matter within the scope of the attorney's employment, provided the attorney is an active member in good standing of another federal Bar or of the Bar of the highest court of a State, territory, or insular possession of the United States.

Initially, this amendment was requested by the United States Attorney's Office. It explained:

> *The current version of 83.1(c) permits non-member lawyers representing the United States to appear in this district only if the bulk of their work is not undertaken in Montana. This proposed revision would permit non-member attorneys to appear in Montana regardless of whether their practice is based in this district. The change allow future government attorneys, including Assistant U.S. Attorneys, to practice in this district without sitting for the Montana Bar as long as they are already members in good standing of some bar. The impetus for this proposal is the fact that the Montana Bar exam is now a uniform test identical to the exam administered in most other jurisdictions. Given that there is no portion of the exam uniquely focused on Montana law, it seems unnecessary to require newly-hired government lawyers to continue to take it.*

The proposed amendment has been altered to add the Federal

Defenders and to simplify the language of the Rule.

(d) Pro Hac Vice Appearance.

. . .

(3) Local counsel must file a motion for the applicant attorney's admission pro hac vice and must attach to the motion the applicant's affidavit stating, under penalty of perjury:

(A) the ~~attorney~~ applicant's state or territory of residence and office addresses, including firm name and telephone, fax, and e-mail contact information;

(B) that the applicant has paid the admission fee, as shown on the Court's website, to the Clerk of Court;

(C) that the applicant either has completed the District of Montana's online training for electronic filing or is proficient in electronic filing in another federal district court;

(~~B~~ D) by what court(s) the ~~attorney~~ applicant has been admitted to practice, the date(s) of admission, and the date(s) of termination of admission, if any; . . . *[subsequent subsections to be relettered and "applicant" substituted for "attorney" throughout]*

Addition of firm name and contact information will facilitate processing of applications. New subsection (B) requires payment of the fee as a precondition to admission. The word "applicant" is substituted throughout. Paragraph (3) must use that term to distinguish the PHV applicant from local counsel, and the term "applicant" is used 83.1(b).

Criminal Rule 17 – Subpoena

. . .

CR 17.2 Summons and Subpoenas.

(a) Any party to a criminal proceeding requesting service of a criminal summons or subpoena by the United States Marshals Service must notify the Marshal of the request, along with all documentation necessary to effectuate service, no later than twenty-one (21) days before the desired date of service. A lesser time period may be allowed only upon motion and good cause shown. Orders issued under Fed. R. Crim. P. 17(b) and this Rule must direct the United States Marshals Service to serve the subpoena.

The amendment is proposed because the Marshals' internal policy requires specific direction. An Order citing or quoting Fed. R. Crim. P. 17(b) is not sufficient.

Counsel appointed under the CJA cannot be reimbursed for witness fees or costs of service of process. See CJA Guidelines § 230.66.50. Consequently, when an Order granting a Rule 17(b) motion fails to direct the U.S. Marshals Service to serve the subpoena(s), appointed counsel in effect assumes such expenses pro bono.

(b) Only a judge or a grand jury may direct a witness to produce designated items within a federal courthouse before trial.

Fed. R. Crim. P. 17(c)(1) provides, in part, "The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence." Because a subpoena comes from the court even when issued by counsel, one attorney recently read the federal rule to authorize him to issue a subpoena that resulted in delivery of voluminous documents to the federal courthouse weeks before trial. But warehousing a party's discovery or pretrial materials is not the responsibility of court staff.