

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA



Local Rules of Procedure

*Amendments Only
Posted for Public Comment
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via e-mail to LocalRules@mtd.uscourts.gov*

Effective December 1, 2017

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 of court. The current fee schedule is available on the court's website.

(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. A recording is not an official record of the court.~~

(3) *Verbatim Record.* The court will take the record by either stenotype reporting or electronic sound recording. The clerk may provide electronic sound recordings of hearings not attended by a court reporter. A recording is not an official record of the court.

This subsection has caused some confusion. No "recording" is ever "the record." "The record" is always a transcript. See 28 U.S.C. § 753(b) ("The transcript . . . certified by the reporter . . . shall be deemed prima facie a correct statement of the testimony taken and proceedings had."). When a court reporter takes a stenotype record, she may also make a tape recording. But that recording is the reporter's property, not the court's, and the court cannot provide it to anyone. When the record is taken by electronic sound recording, someone must still produce and certify a transcript as the record, but anyone may listen to the recording because the recording belongs to the court.

(4) *Transcripts.*

(A) Official Record. Only certified transcripts filed by ~~the clerk of court~~ the individual designated to produce the record are official records of the court.

Amended for clarification, using language from 28 U.S.C. § 753(b).

(B) Obtaining Transcripts. 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, or by contacting the clerk’s office.

(§ C) Realtime. Attorneys of record may order and receive Realtime transcription of court proceedings. A Realtime unedited transcripts may only be distributed to ordering parties, their co-counsel, experts, and staff ~~and are.~~ It is not to be made available to the public, including news organizations or other nonparticipants, and it may not be cited or used in the manner of a certified transcript.

Amended for clarification.

(5) Stricken Documents. A stricken document remains in the public record if originally filed there, unless the judge orders it sealed to protect privacy or security interests. A stricken document remains under seal if it was sealed when stricken.

(6) Items Not Available in Electronic Record. . . . [see text in clean version]

Current subsections (4) (“Transcripts”) and (5) (“Realtime”) are consolidated, as both speak to transcripts, then divided into three subsections. Amended subsections (5) and (6) are relocated here from their current positions in L.R. 1.4(f) and (g). They speak to what is and is not in the electronic record or publicly available and so belong in L.R. 1.3, “Access to Court Proceedings and Records.”

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(d) Cameras and Personal Electronic Devices.

(1) *General Rule.* . . .

(2) *Exceptions.*

. . .

(G) By written order, a judge may authorize use of personal electronic devices in administrative proceedings and photography or video-recording on special ceremonial occasions, such as naturalization or investiture proceedings.

Amended for clarity.

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The following rule, L.R. 1.4, is reorganized and amended in view of anticipated changes to Rule 5 of the Federal Rules of Civil Procedure and Rule 49 of the Federal Rules of Criminal Procedure. The federal rules will require attorneys to file electronically, so the local rule no longer needs to do so. The local rule is retitled to reflect focus on means of filing and subdivided to address general rules, rules specific to electronic filing, and rules specific to nonelectronic filing. Current subdivisions 1.4(f) and (g) are relocated to 1.3, which speaks more to the record than to means of filing.

1.4 Manner Means of Filing.

(a) General Rules.

(1) Except as otherwise provided by these rules, nothing may be filed with the court by means other than use of the court’s electronic case filing system (“ECF”), mail directed to the clerk of court’s address for postal service, or in-person delivery to the clerk’s office.

~~(b 2)~~ To the greatest extent possible, the record of each case, including exhibits, will be maintained in ECF and available to remote public access. ~~Anything filed electronically has the same force and effect as if a paper were signed, filed, and served in the traditional manner.~~ All ~~attorneys and self-represented litigants~~ filers must follow the guidance of the clerk’s office to facilitate electronic filing and to make the record legible and complete. ~~The clerk of court is authorized to require filers to take action, such as additional training, to correct habitual~~

~~filing errors.~~

The second sentence will be covered by Federal Rule of Civil Procedure 5(d)(3)(D) and Federal Rule of Criminal Procedure 49(b)(2)(A). The last sentence is relocated to new subsection (b)(2), below.

~~(e) Attorneys.~~ **(b) Electronic Filing.**

- ~~(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 Guide for Filing in the District of Montana, available on the court's website.~~
- ~~(2) Filing electronically constitutes service on registered users under Fed. R. Civ. P. 5 and Fed. R. Crim. P. 49. Registration waives the right to receive service by means other than ECF as to all documents filed in the electronic record by any party or by the clerk. The Notice of Electronic Filing is the clerk's certificate of service.~~
- ~~(3) Use of an attorney's log-in and password to obtain access to ECF is use by the attorney.~~

- (1) A Guide for Filing in the District of Montana is available on the court's website.
- (2) Use of a registered user's log-in and password to obtain access to ECF constitutes use by the registered user. The clerk is authorized to require registered users to take action, such as additional training, to correct habitual filing errors.

Much of current subsection (c)(1) and all of subsection (2) are no longer necessary in light of amended Federal Rule of Civil Procedure 5(b)(2)(E) and (d)(3)(A), which, respectively, define acceptable means of service and require attorneys to file electronically. Attorney exemption from electronic filing is relocated below to (c), Nonelectronic Filing.

(4 3) Technical Problems.

- (A) User's Problem. Technical problems on the user's end will not excuse untimely filing. Attorneys must consult the Guide for Filing in the District of Montana or call the help desk during business hours.
- (B) Court's Problem.
- (i) The clerk of court will deem the ECF filing site to be subject to a technical failure on a given day if the site is unable to accept filings for at least one hour after 10:00 a.m. that day. Known system outages will be posted on the court's website, if possible. Registered users are authorized to file ~~conventionally~~ nonelectronically, or by email to an address posted on the website, until 5:00 p.m. of any day the clerk posts notice of an outage.
- (ii) The clerk may post notice on the court's website extending filing deadlines for registered users to 9:00 a.m. the following business day. Registered users unable to meet the extended deadline ~~by filing electronically or conventionally~~ may seek appropriate relief from the presiding judge.

Amended to allow filing by email when the Court's technical problem prevents filing in ECF; to omit the word "conventionally," as electronic filing is now the convention; and, in (ii), to omit a phrase that is meaningless because it covers all forms of filing.

- ~~(5 4) Judges' Requirements. Judges may require parties to submit paper or alternative electronic forms of any filings.~~ A judge may require any filer to submit paper or another form of any filing in addition to filing in ECF.

Amended to clarify the rule does not apply only to parties and does not eliminate but adds to the requirement to file in ECF.

(c) Nonelectronic Filing.

- (1) ~~Conventional Filing~~ Unscannable Documents or Items. Documents or items that cannot be scanned ~~into the electronic record~~ must be filed in

the division of venue. If the document or item is presented to the clerk ~~for filing in the wrong venue~~ in another division, the clerk may reject filing and note in the docket the party's attempt to file it. The party must present the document or item in the correct venue within three business days.

- (2) *Self-Represented Litigants.* ~~Except where an attorney admitted to the bar of this court under L.R. 83.1(b) or (c) acts *pro se* in a pending matter, and except as provided by L.R. 83.8, a self-represented litigant may not file electronically and must file by submitting documents to the clerk by conventional mail or by in-person delivery to the clerk's office.~~ Except for attorneys admitted to the bar of this District, a self-represented litigant may not file electronically. Filing by email may be permitted under L.R. 83.8(c).
- (3) *Attorney Exemption.* An attorney may seek ~~exemption from electronic filing on a case-by-case basis~~ leave to file nonelectronically by filing Form G at the first appearance in the case. The clerk will not serve ~~by mail an attorney who is not exempt~~ an attorney by mail unless leave is granted.

Amended subsection 1.4(c)(1)–(3) replaces current subsections 1.4(d) and (e) and part of (c)(1). Apart from reorganization, changes are stylistic only. New Federal Rule of Civil Procedure 5(d)(3)(A) requires attorneys to file electronically, “unless nonelectronic filing is allowed by the court for good cause.”

The following subsections (d) and (e) are subsumed in 1.4(c)(1) and (2). Subsections (f) and (g) are relocated to Rule 1.3(b)(5) and (6).

~~(d) Self-Represented Litigants. Except where an attorney admitted to the bar of this court under L.R. 83.1(b) or (c) acts *pro se* in a pending matter, and except as provided by L.R. 83.8, a self-represented litigant may not file electronically and must file by submitting documents to the clerk by conventional mail or by in-person delivery to the clerk's office.~~

~~(e) Conventional Filing. Documents or items that cannot be scanned into the electronic record must be filed in the division of venue. If the document or item is presented to the clerk for filing in the wrong venue, the clerk may reject filing and note in the docket the party's attempt to file it. The party must present the document or item in the correct venue within three business days.~~

~~(f) Stricken Documents. A stricken document remains in the public record if originally filed there, unless the judge orders it sealed to protect privacy or security interests. A stricken document remains under seal if it was sealed when stricken.~~

~~(g) Items Not Available in Electronic Record.~~

~~(1) Documents. Documents not filed in the electronic record will be kept in the clerk's custody until archived. The docket must reflect the date of their filing, a brief description, and their location.~~

~~(2) Exhibits.~~

~~(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 a trial or hearing, each party is responsible for reclaiming any unfiled exhibits, unless the presiding judge orders otherwise.~~

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

~~(B) In the event an exhibit not electronically filed is required by this or another court, the parties will be notified and must resubmit the exhibit as the clerk directs.~~

1.5 Form of Documents and Citations.

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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;
- (2) unless the originating document is a petition for writ of habeas corpus, payment of the full amount of the filing fee or a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a); and
- (3) a civil cover sheet, unless the ~~plaintiff or petitioner~~ litigant is ~~proceeding pro se~~ self-represented.

Stylistic change.

(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.

This rule was implemented in 2014. A deputy clerk must sign the Form at judgment stage, but not before.

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Civil Rule 5. Serving and Filing Pleadings and Papers

5.1 Filing with the Clerk.

Papers not filed electronically must be delivered to the clerk. A judge's acceptance of any paper for filing does not constitute agreement to accept any other paper for filing.

Fed. R. Civ. P. 5(d) provides that a paper is filed by delivering it “(A) to the clerk,” or “(B) to a judge who agrees to accept it for filing, and who must then not the filing date on the paper and promptly send it to the clerk.” The proposed amendment is intended to clarify that judges have not “agreed” to accept papers for filing.

5.1 5.2 Filing Under Seal. . . .

5.2 5.3 Addresses for Service. . . .

Civil Rule 7. Motions and Other Papers

7.1 Motions.

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(d) Briefs.

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(2) *Length of Briefs.*

- (A) Briefs in support of a motion and response briefs are limited to 6500 words.
- (B) Reply briefs are limited to 3250 words.
- (C) Any brief of 4000 words or more must include a Table of Contents, Table of Authorities, and Exhibit Index.
- (D) Filing serial motions to avoid word limits may result in denial of all such motions.
- (E) Briefs must include a certificate of compliance with this rule stating the number of words in the brief, excluding caption, certificates of ~~service and~~ compliance, table of contents and authorities, ~~and~~ exhibit index, and any certificate of service. An attorney may rely on the word count of a word-processing system used to prepare the brief.

Amended Federal Rule of Civil Procedure 5(d)(1)(B) eliminates certificates of service when all parties are served via ECF.

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 in conventional form and must be served in conventional form on 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.~~

~~(b) Anyone moving to intervene must:~~

~~(1) comply with L.R. 7.1(c) and (d);~~

~~(2) state whether leave is sought under Fed. R. Civ. P. 24(a) or (b) and the grounds for intervention; and~~

~~(3) submit to the clerk and serve on the parties all of the following at one time:~~

~~(A) the motion and separate brief in support, stating whether leave is sought under Fed. R. Civ. P. 24(a) or (b) and the grounds for intervention;~~

~~(B) the proposed pleading;~~

~~(C) if the proposed intervenor is a corporation, a disclosure statement as provided by Fed. R. Civ. P. 7.1(a); and~~

~~(D) if counsel is not a member of the bar of this court, a complete application for leave to appear *pro hac vice* under L.R. 83.1(d), excepting only the fee.~~

~~(c) After leave to intervene is granted, the intervenor must file electronically.~~

(a) Nonelectronic Filing. No one seeking to intervene may file electronically unless and until leave to intervene is granted. A prospective intervenor must submit all documents to the clerk for filing and must serve each party that is not filing electronically.

(b) Motion and Supporting Documents.

(1) A motion to intervene must include:

- (A) the motion;
- (B) a brief in support that complies with L.R. 7.1(c) and (d), states whether leave is sought under Fed. R. Civ. P. 24(a) or (b), and states the grounds for intervention;
- (C) the proposed pleading;
- (D) if the prospective intervenor is a corporation, a disclosure statement pursuant to Fed. R. Civ. P. 7.1(a); and
- (E) if counsel is not a member of the bar of this District, a complete application for leave to appear *pro hac vice* under L.R. 83.1(d), excepting only the fee.

(2) An incomplete motion to intervene may be stricken or denied.

(c) Other Documents. Other than a timely reply brief in support of the motion to intervene, no other documents may be submitted for filing.

Stylistic amendment. No change in practice is intended.

Civil Rule 38. Jury Trial

38.1 Demand for Jury Trial.

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38.2 Matter in Bankruptcy.

Bankruptcy judges are specially designated to conduct jury trials with the express written consent of all parties.

This new rule will replace a provision of current Standing Order No. 12. 28 U.S.C. § 1957(e) authorizes bankruptcy judges to conduct jury trials “if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.” Jury trials are not matters of internal governance and allocation of business, so they should be addressed in the Local Rules.

Civil Rule 72. Magistrate Judges

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72.3 Objection and Response.

(a) An objection filed pursuant to 28 U.S.C. § 636(b)(1) must **itemize**:

- (1) **itemize** each factual finding of the magistrate judge to which objection is made, identifying the evidence in the record the party relies on to contradict that finding; and
- (2) **itemize** each recommendation of the magistrate judge to which objection is made, setting forth the authority the party relies on to contradict that recommendation; **and**
- (3) **comply with L.R. 7.1(d)(2).**

(b) An objection must be filed within 14 days of service of the magistrate judge's order or findings and recommendation. A response must be filed within 14 days of service of the objection. Objection and response are limited to 6500 words. A reply is not permitted.

Commenting on last year's proposed revisions, attorney Charles Carpenter suggested this rule.

Civil Rule 78. Hearing Motions; Submission on Briefs

78.1 Submission on Briefs.

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78.2 Social Security Cases.

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78.3 Review of Matter in Bankruptcy.

(a) Objections Under 28 U.S.C. § 157.

- (1) Objections to a bankruptcy judge's proposed findings and conclusions or other ruling subject to *de novo* review under 28 U.S.C. § 157 must be filed within 14 days of the ruling. A response may be filed within 14 days of the objection's filing. Objection and response are limited to 6500 words. A reply is not permitted.
- (2) An objecting party must itemize:
 - (A) each factual finding of the bankruptcy judge to which objection is made, identifying the evidence in the record the party relies on to contradict that finding; and
 - (B) each conclusion of the bankruptcy judge to which objection is made, setting forth the authority the party relies on to contradict that conclusion.

(b) Appeals Under 28 U.S.C. § 158. Practice in appeals to the District Court under 28 U.S.C. § 158 is governed by Part VIII of the Federal Rules of Bankruptcy Procedure.

This new rule will replace provisions in Standing Order No. 12 addressing appellate briefing requirements. Part VIII of the Federal Rules of Bankruptcy Procedure has superseded the briefing provisions of the order, but the federal rules do not address objections. Objections and appeals are not matters of allocation of business and so should be addressed in the Local Rules.

Civil Rule 83. Rules Governing Attorneys and Representation

83.1 Attorney Admission and Appearance.

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(d) *Pro Hac Vice* Appearance.

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- (2) An applicant attorney must obtain the name, address, telephone number, and written consent of local counsel who is a member of the bar of this court and with whom the court and opposing counsel may readily communicate regarding the conduct of the case, upon whom documents will be served, and who will be responsible to participate as required under subsection ~~(5)~~ (6) of this rule.

Correcting typographical error.

- (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 or declaration stating, under penalty of perjury:

Commenting on last year's proposed revisions, attorney Tim Bechtold suggested this amendment "to reflect modern practice applying 28 U.S.C. § 1746."

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83.8 Self-Represented Litigants.

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The following subsections can be simplified in view of the federal amendments and a few years' experience with the agreement procedure.

~~(e) Filing and Service by Self-Represented Litigants.~~

- ~~(1) No sooner than 30 days after the commencement of a case or *pro se* appearance, the clerk may agree to accept by email from a self-represented litigant scanned documents intended for filing in the~~

~~electronic record. The agreement must be in writing and filed in the record of the case. All documents intended for filing must be signed by hand by the self-represented litigant.~~

- ~~(2) — A self-represented litigant need not conventionally serve on any attorney filing electronically any document that is filed in the electronic record. Any document not filed in the electronic record must be conventionally served.~~
- ~~(3) — If a self-represented litigant presents to the clerk for filing a document or item that cannot be scanned or does not produce a legible electronic image, the clerk must:~~
- ~~(A) — briefly describe the document or item and note the date of its submission in the record of the case; and~~
 - ~~(B) — notify the litigant to serve the document or item by other means within three business days.~~

~~**(d) Serving Documents on Self-Represented Litigants.**~~

- ~~(1) — A self-represented litigant may agree with the clerk to receive email service of all documents filed electronically, whether filed by the clerk or by registered users. Consent must be in writing and filed in the record of the case. Documents not filed in the electronic record will be served conventionally.~~
- ~~(2) — Alternatively, or in addition, pursuant to Fed. R. Civ. P. 5(b)(2)(E), a self-represented litigant may agree with one or more other parties to receive and/or effect service by specified means. Any such agreement must be made in writing, signed by each participating party, and filed in the record of the case.~~
- ~~(3) — Where neither (d)(1) nor (d)(2) apply, attorneys filing electronically must conventionally serve a self-represented litigant.~~

~~**(e) Application of Three-Day Mailing Rule.** When a party may or must respond to a document within a specified time period, three days are added to the end of the response time when the party receives the document by conventional means but not when the party receives it via ECF.~~

(c) Agreement with Clerk's Office.

(1) A self-represented litigant and the clerk's office may agree to serve each other and file documents via email. The agreement must be in writing, signed by the litigant and a deputy clerk, and filed in the record of the case. The clerk may add terms and conditions other than those in this rule and may revoke the agreement at any time.

(2) Under the agreement:

(A) the self-represented litigant must:

(i) sign all filings by hand; and

(ii) attach a certificate of service to each document emailed to the clerk for filing, listing email to the clerk as the means of service and citing the agreement;

(B) the self-represented litigant need not serve other parties with documents emailed to the clerk for filing, because other parties will receive service via ECF when the clerk files the document; and

(C) if the agreement so provides, the self-represented litigant will receive email service of orders and documents other parties file in ECF.

(d) Agreement with Parties. Instead of or in addition to an agreement under subsection (c), a self-represented litigant and one or more other parties may agree to receive and/or effect service by means other than ECF, pursuant to Federal Rule of Civil Procedure 5(b)(2)(E) or (F). Any such agreement must be in writing, signed by each party to it, and filed in the record of the case.

CHAPTER II. CRIMINAL RULES

Criminal Rule 1. Scope

CR 1.1 Rules Incorporated from Chapter I.

Rules L.R. 1 and 83, except 83.3(b), 83.6, and 83.8(a) and (b), apply in criminal proceedings.

Subsections (a) and (b) of L.R. 83.8 might apply in criminal cases, but their application is better left up to a judge. Subsections (c) and (d) of 83.8, however, concern means of filing and service rather than the scope of a legal right. They should apply to self-represented litigants in civil and criminal cases equally. Perhaps most people who exercise the right to self-representation in a criminal matter are detained and so must file nonelectronically, but there is no reason to disallow filing by email if the litigant-defendant has access to email.

Criminal Rule 41. Search and Seizure

CR 41.1 Return of Seized Property.

Before ~~the conclusion of a case, a conviction becomes final by termination by termination in this court or in a higher court,~~ the parties must confer to identify non-contraband property in federal custody or control that may be returned to the defendant or his or her designee and to ~~accomplish~~ facilitate its return ~~of the property as soon as it is no longer needed as evidence.~~

Motions seeking return of property are timely if filed up to six years after entry of judgment. This rule is intended to ensure the parties address the issue at the end of the case rather than delaying resolution.

The current rule, however, requires attorneys to consult about and “accomplish” property’s return before the case concludes. Property subject to return may be needed as evidence after appeal if, for example, a new trial is ordered. The proposed amendment means that parties need not “accomplish” return but must plan for it.

Criminal Rule 47. Motions and Supporting Affidavits

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CR 47.2 Briefing.

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(c) Briefs must include a certificate of compliance with this rule stating the number of words in the brief, excluding the caption, ~~and certificates of service and compliance, and any certificate of service.~~ An attorney may rely on the word count of a word-processing program used to prepare the brief.

Effective Dec. 1, 2018, Federal Rule of Criminal Procedure 49(b)(1) will not require a certificate of service when all parties are served via ECF.

Criminal Rule 49. Serving and Filing Papers

CR 49.1 Filing with the Clerk.

Papers not filed electronically must be delivered to the clerk. A judge's acceptance of any paper for filing does not constitute agreement to accept any other paper for filing.

Federal Rule of Criminal Procedure 49(b)(2)(B) provides that a paper is filed by delivering it "(A) to the clerk," or "(B) to a judge who agrees to accept it for filing, and who must then not the filing date on the paper and promptly send it to the clerk." The proposed amendment is intended to clarify that judges have not "agreed" to accept papers for filing.

CR 49.2 Signature.

The provisions of L.R. 11.1(b)–(d) and 11.2 apply in criminal cases.

New rule proposed in anticipation of new Federal Rule of Criminal Procedure 49(b)(4), "Signature." The new federal rule requires the filing attorney or pro se party to sign "[e]very written motion and other paper."

~~CR 49.1~~ **49.3 Filing Under Seal. . . .**

~~CR 49.2~~ **4 Motions Under 28 U.S.C. § 2255. . . .**

CR 49.5 Non-Parties.

A non-party required or permitted to file (such as a material witness) must file electronically if represented by counsel.

New rule proposed in anticipation of new Federal Rule of Criminal Procedure 49(c), "Service and Filing by Non-Parties." The new federal rule provides that a non-party "may serve and file a paper only if doing so is required or permitted by law" and allows use of ECF "only if allowed by court order or local rule." A material witness may ask to have counsel appointed before or during trial via motion filed by the attorney seeking appointment.

Criminal Rule 55. Records

CR 55.1 Matters Held Under Seal.

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(d) Sealed Items. The following items must be filed in the electronic record under seal:

- (1) grand jury matters, if filed in a case;
- (2) pretrial services reports;
- (3) petitions for summons or warrant, until the defendant appears on the petition;
- (4) psychological or psychiatric reports;
- (5) lists of prospective or seated jurors;
- (6) transcripts of voir dire, if filed, unless jurors' names are not used;

Voir dire transcripts should be sealed "only if appropriate." 10 Guide to Judiciary Policy § 330.20(c)(2)(C) (accessed Aug. 17, 2018). Per subsection (5) of this rule, jury lists showing names and numbers are sealed. Transcripts should be publicly available so long as jurors cannot be individually identified.

- (7) presentence reports; and
- (8) the judge's statement of reasons for the sentence imposed.

Criminal Rule 59. Matters Before a Magistrate Judge

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CR 59.2 Objection to Findings and Recommendation of Magistrate Judge.

- (a) An objection filed pursuant to Fed. R. Crim. P. 59 must **itemize**:
- (1) **itemize** each factual finding of the magistrate judge to which objection is made, identifying the evidence in the record the party relies on to contradict that finding; ~~and~~
 - (2) **itemize** each recommendation of the magistrate judge to which objection is made, setting forth the authority the party relies on to contradict that recommendation; and
 - (3) comply with L.R. 7.1(d)(2).

(b) Objections must be limited to 6500 words and be filed within 14 days of service of the magistrate judge's order or findings and recommendation. Response and reply are not permitted unless ordered by the court.

Commenting on last year's proposed revisions, attorney Charles Carpenter suggested a similar amendment to L.R. 72.3. As this rule follows that one, the amendment is implemented here as well. L.R. 7.1, in the civil section, provides the cross-reference. It fits the context better than L.R. CR 47.2.

Appendix B. Attorney Discipline, Suspension, and Disbarment

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2. Reciprocal Discipline.

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

- i. *Failure to Respond or Comply.* If the Disciplinary Judge finds the attorney 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).
- ii. *Identical Discipline; Exceptions.* After considering the attorney's response, the Disciplinary Judge 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) a public censure has already been imposed and the Disciplinary Judge finds it appropriate redress for the attorney's misconduct; or
 - (e d) other substantial reasons counsel against acceptance of the other jurisdiction's conclusions.
- iii. *Other Options.* If the 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.

These amendments clarify that reciprocal discipline does not necessarily require a second public censure.