

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA



LOCAL RULES OF PROCEDURE

Effective January 1, 2012

**LOCAL RULES OF PROCEDURE  
UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
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## CHAPTER I

### CIVIL RULES

#### CIVIL RULE 1. GENERAL RULES AND POLICIES

##### 1.1 Scope of Local Rules.

(a) These are the Local Rules of Procedure of the United States District Court for the District of Montana, adopted pursuant to 28 U.S.C. § 2071, Fed. R. Civ. P. 83 and Fed. R. Crim. P. 57. They may be cited as “L.R. 1.1” or “L.R. CR 1.1.”

(b) Chapter I governs civil proceedings. Chapter II, which incorporates this Rule and portions of L.R. 83, governs criminal proceedings. Amendments become effective on the date set forth in the Order adopting the amendments.

(c) Any order within a judge’s authority supersedes any Local Rule. A judge may impose sanctions for violation of these Rules.

##### 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.

(b) The Clerk of Court maintains an office in each Division. Offices are open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except federal holidays.

(c) The Divisions are as follows:

- (1) The BILLINGS DIVISION is the Counties of Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Garfield, Golden Valley, McCone, Musselshell, Park, Petroleum, Powder River, Prairie, Richland, Rosebud, Stillwater, Sweetgrass, Treasure, Wheatland, Wibaux and Yellowstone. Court is held at the James F. Battin Courthouse, Billings, Montana.
- (2) The BUTTE DIVISION is the Counties of Beaverhead, Deer



Lodge, Gallatin, Madison and Silver Bow. Court is held at the Mike Mansfield Federal Building and United States Courthouse, Butte, Montana.

- (3) The GREAT FALLS DIVISION is the Counties of Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley. Court is held at the Missouri River Courthouse, Great Falls, Montana.
- (4) The HELENA DIVISION is the Counties of Broadwater, Jefferson, Lewis and Clark, Meagher and Powell. Court is held at the Paul G. Hatfield Courthouse, Helena, Montana.
- (5) The MISSOULA DIVISION is the Counties of Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders. Court is held at the Russell Smith Courthouse, Missoula, Montana.

### **1.3 Access to Court Proceedings and Records.**

#### **(a) Proceedings and Records Open to Public.**

- (1) All courtroom proceedings are open to the public unless the presiding judge closes the courtroom for reasons stated on the record. All persons must conduct themselves with respect for others and must rise on convening or reconvening of a session.
- (2) All documents and items in the record of a case are available to public access unless access is limited or prohibited by federal law, federal or local rule, or by an order, issued on motion or *sua sponte*, stating the reasons for sealing.
- (3) [Standing Orders](#) and Local Rules are available on the Court's website, [www.mtd.uscourts.gov](http://www.mtd.uscourts.gov).

#### **(b) Records of the Court.**

- (1) 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](http://www.mtd.uscourts.gov).

- (2) 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) 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 recording is not an official record of the Court.
- (4) 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](http://www.mtd.uscourts.gov), or by contacting the Clerk's office.

**(c) Broadcasting Prohibited.** Inside the courthouses of this District, broadcasting is prohibited, regardless of technology or medium.

**(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.

**(e) Court Staff.** All courtroom and courthouse personnel, including but not limited to marshals, deputy marshals, court clerks and office personnel, probation officers and office personnel, and the staff of a judge, are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending matter that is not part of the public records of the Court. No such personnel may divulge any information concerning arguments or hearings held in chambers or otherwise outside the presence of the public.

#### **1.4 Manner of Filing.**

**(a)** 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, or in-person delivery to the Clerk's office.

**(b)** 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 must follow the guidance of the Clerk's Office to facilitate electronic filing and to make the record legible and complete. The Clerk is authorized to require filers to take action, such as additional training, to correct habitual filing errors.

(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.
- (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) Unless the parties otherwise agree in writing, attorneys filing in ECF must conventionally serve everything, whether electronically filed or not, on any parties filing conventionally.
- (4) *Technical Problems.*
  - (A) **User's Problem.** Technical problems on the user's end will not excuse untimely filing. Attorneys must consult the [Administrative Procedures Manual](#) or call the help desk during business hours.
  - (B) **Court's Problem.** The Clerk 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, and registered users may seek appropriate relief.

- (5) *Judges' Requirements.* Judges may require parties to submit paper or alternative electronic forms of any filings.

**(d) Conventional Filing.** Non-attorneys and attorneys not filing electronically may file in the conventional manner by presenting documents or items to the Clerk for filing. However, if the document or item is presented in a division other than the division of venue and the document or item cannot be scanned, the clerk may reject filing, note in the docket the party's attempt to file the document or item, and give the party a seven-day grace period to present the document or item in the division the Clerk directs.

**(e) 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.

**(f) 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) 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.
- (B) In the event the exhibit is required by this or another Court after it has been returned, the filing party will be notified and must resubmit the exhibit as the Clerk directs.

**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.

**(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. Hyperlinking is permissible, but neither the hyperlink nor any Internet site will be considered part of the record of the case.

## 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 is proceeding pro se.

**(b) Conventional Filing.** Any attorney or party may file a new case by mailing or personally delivering to the Clerk of Court each of the required items in paper form. All required items must be received simultaneously; otherwise, items may be returned without filing or other record of submission. The filing date will be the date of the clerk's receipt of all required materials.

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

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

- (1) A complaint that is accompanied by a motion to proceed in forma pauperis is deemed lodged until the motion is decided.
- (2) When a motion to proceed in forma pauperis is granted, the complaint is deemed filed on the date the complaint was lodged, except where an earlier filing date is provided by law.

- (3) When a motion to proceed in forma pauperis is denied, the movant must be given a specified time of not less than fourteen (14) days to pay the full filing fee.
  - (A) If full payment is timely received, the complaint is deemed filed on the date the complaint was lodged, except where an earlier filing date is provided by law.
  - (B) If full payment is not timely received, the action is dismissed.
  
- (4) A prisoner, as defined by 28 U.S.C. § 1915(h), may not maintain more than two (2) concurrent non-habeas actions in forma pauperis. Before leave to proceed in forma pauperis is denied under this Rule and before lodged pleadings are screened, a prisoner must be given notice of this Rule and an opportunity:
  - (A) to show that he is in imminent danger of serious physical injury;
  - (B) to pay the full filing fee for one or more of the pending or proposed actions;
  - (C) to dismiss voluntarily, pursuant to Fed. R. Civ. P. 41(a)(1), one or more pending actions in which the prisoner is proceeding in forma pauperis; or
  - (D) to withdraw one or more of the actions for which leave to proceed in forma pauperis is sought.

**(e) Cases Filed Under Seal.** When a party files a civil action authorized to be initiated under seal, such as a qui tam action, the title of the pleading must include the phrase “TO BE FILED UNDER SEAL,” followed by pinpoint citation to the statutory or other federal authority for sealing, for instance, in a qui tam action, 31 U.S.C. § 3730(b)(2). The case will be filed and conducted under seal without further leave of court unless the judge orders otherwise.



### 3.2 Venue.

**(a) Certification by Filing Counsel.** 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.

**(b) Proper Divisional Venue.** Except as set forth below, venue is proper in any Division of the Court containing a county of proper venue under the laws of the State of Montana.

- (1) Cases alleging a tort against the United States are venued in the Division containing the county:
  - (A) where the tort occurred;
  - (B) where the plaintiff resided at the commencement of the action; or
  - (C) where any defendant other than the United States resided at the commencement of the action.
- (2) Habeas cases are venued:
  - (A) in the Division containing the county where judgment was entered, if a judgment is challenged;
  - (B) in the Helena Division, if denial or conditions of parole are challenged;
  - (C) in the Division containing the county where the petitioner is incarcerated, if pretrial detention is challenged.
- (3) Prisoner civil rights cases are venued in the Division where an alleged wrong was committed.

**(c) Motions to Change Venue Within the District.**

- (1) A defendant must file any motion for change of divisional venue with its first appearance.
- (2) A plaintiff must file any motion for change of divisional venue within fourteen (14) days of the first appearance of any party whose appearance makes existing venue improper.
- (3) Failure to file a timely motion for change of divisional venue constitutes consent to the existing venue.

**(d) Trial.** Cases are tried in the Division to which the case is assigned, unless the Court, in its discretion, orders trial in another Division.

**3.3 Removal and Remand.**

**(a) Removal.** Within seven (7) days after filing a notice of removal to this Court of any action originally filed in state court, the removing party must deliver to the state court a copy of the notice of removal. When the state court file is received in this Court, the clerk will scan into the CM/ECF system the pleadings and orders filed to date in the state court. All other documents will be scanned and attached as exhibits to the state court docket sheet. Motions and other requests directed to the state court are automatically terminated upon removal but may be refiled in this Court.

**(b) Remand.** Promptly upon receipt of an order remanding an action to state court, the clerk will produce the record in the form requested by the state court, along with a certification in like form. This Court's record and the original state court record will be delivered by certified mail with return receipt requested, by personal delivery, or by other means requested by the state court. The clerk must obtain a receipt or other confirmation of delivery and file such confirmation in this Court's record of the case. The electronic record will be retained by this Court.

**3.4 Petitions for Writ of Habeas Corpus Filed by State Prisoners.**

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the clerk will serve on the Attorney General for the State of

Montana a copy of each § 2254 habeas petition filed in this Court. This Rule does not confer an obligation on the Attorney General to make an appearance in the case.

## **CIVIL RULE 4. SUMMONS**

### **4.1 Issuance and Service of Process.**

The issuance and service of process must be in conformity with the Federal Rules of Civil Procedure. Only the clerk may issue process in all proceedings brought to quash an IRS summons. The clerk may sign, seal, and issue a summons in CM/ECF, but service must be accomplished in the conventional manner.

### **4.2 Service of Process Under State Procedure.**

In those cases where the Federal Rules of Civil Procedure authorize the service of process to be made in accordance with Montana practice, it is the serving party's duty to file the return of service of process.

### **4.3 Proof of Service of Process.**

(a) Proof of service of process must be filed promptly and in any event before action is to be taken by the Court or the parties. The proof must show the day and manner of service and may be by written acknowledgment of service, by certificate of the person who served process, or by any other proof satisfactory to the Court.

(b) Failure to prove service as required by this Rule does not affect the validity of service. The Court may at any time allow the proof of service to be amended or supplied unless it clearly appears that to do so would result in material prejudice to the substantial rights of any party.

### **4.4 Service of Subpoenas by U.S. Marshal.**

Any party to a civil proceeding requesting service of a subpoena by the United States Marshals Service must provide notice to the Marshal of the request, along with all documentation necessary to effectuate service, no later than thirty (30) days before the desired date of service. A lesser time period may be allowed only upon motion and good cause shown.

#### **4.5 Time Limit for Service.**

**(a)** For purposes of Fed. R. Civ. P. 4(m), in any case where a plaintiff applies to proceed in forma pauperis and has not been denied, the time for service to be effected begins the day after entry of an Order requiring service of the Complaint. Unless the Court orders otherwise, service must be accomplished within 120 days.

**(b)** In all other cases, service must be accomplished in accordance with the time limitations in Fed. R. Civ. P. 4(m).

## CIVIL RULE 5. SERVING AND FILING PLEADINGS AND OTHER PAPERS

### 5.1 Filing Under Seal.

**(a) Good Faith.** In addition to the certifications set forth in Fed. R. Civ. P. 11(b), any person who files a document or item under seal, with or without prior leave, certifies that sealing is appropriate to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances and with due regard to the public's right of access.

**(b) When Motion for Leave Required.** A motion for leave to file under seal is required unless the case is sealed or unless:

- (1) a protective order is sought under Fed. R. Civ. P. 26(c) and L.R. 26.4; or
- (2) filing under seal is otherwise preauthorized by state or federal law or an order already entered in the case.

**(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" or "D. Mont. L.R. 5.1(b)(1), 26.4."

**(d) Contents of Motion for Leave.** A motion for leave to file under seal must:

- (1) be filed in the public record of the case;
- (2) without disclosing confidential information, describe the document or item to be sealed and explain why inclusion in the public record is not appropriate; and
- (3) either:
  - (A) state why it is not feasible to file a redacted version of the document or item in the public record, or

(B) be accompanied by a redacted version of the document or item filed in the public record.

(e) Attorneys filing electronically must follow the [guidance of the Clerk's Office](#). Electronically filed sealed documents must be conventionally served on all other parties unless ex parte filing is authorized.

(f) Persons filing conventionally must submit to the Clerk:

- (1) the document or item to be sealed, placed in an envelope with the case number, date, and "Filing Under Seal Requested" clearly printed on the envelope; and,
- (2) if required, the motion for leave to seal and brief in support.

(g) **Response and Order.**

- (1) The Court may rule on a motion for leave to seal without awaiting a response.
- (2) If leave to file under seal is granted, the document or item will be deemed filed under seal, and the party need not refile the document.
- (3) The Court may order that a document be redacted for the public record. Until the filing party complies, the unredacted document will not be deemed filed.
- (4) If leave to file under seal is denied, the document or item will remain in the record under seal but will be deemed not filed.

## **5.2 Addresses for Service.**

(a) **Address Changes.** An attorney or a self-represented party whose e-mail, post office box or physical mailing address changes while an action is pending must promptly file with the Court and serve upon all other parties a Notice of Change of Address specifying the new address for service. E-mail addresses for attorneys and their staff must be maintained as provided in the [Administrative Procedures Manual](#).

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

- (1) a document directed to the attorney or self-represented party by the Court has been returned to the Court as not deliverable; and
- (2) the Court fails to receive within 60 days of this return a written communication from the attorney or self-represented party indicating a current address for service.



## CIVIL RULE 7. MOTIONS AND OTHER PAPERS

### 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, and applications for a temporary restraining order, unless otherwise ordered by the Court or provided by statute.

(b) All motions, unless made on the record during a hearing or trial, must be in writing and must be made sufficiently in advance of trial to comply with the time periods set forth in this Rule or other order of the Court and to avoid any delays in the trial.

#### (c) Prerequisites to Filing a Motion.

- (1) The text of the motion must state that other parties have been contacted and state whether any party objects to the motion. Parties that have not yet appeared in the action or whose default has been entered need not be contacted.
- (2) When a motion is unopposed, the word “unopposed” must appear in the title of the motion.
- (3) *Proposed Orders.* Except as otherwise provided in these Rules or by Order, a proposed order is required and permitted only with a motion for extension of time or with an unopposed motion. All proposed orders must:
  - (A) be attached to the motion **in PDF format** as an exhibit, so that the order, as proposed, is filed in the electronic record of the case;
  - (B) be e-mailed **in WordPerfect or Word format** to the judge, so that the judge may alter it;
  - (C) use 14-point font;

- (D) omit macros or special coding or formatting other than appropriate citation format;
  - (E) be e-mailed only to the judge's address for proposed orders; for example, a judge whose initials are XYZ would have an e-mail address of xyz\_propord@mtd.uscourts.gov; and
  - (F) be identified in the subject line of the e-mail by the first plaintiff's last name, the case number, and an abbreviated description of the document and the moving party, for example, Smith CV 03-289-GF p-ord gr def ext time.
- (4) Failure to comply with this Rule may result in summary denial of the motion. Denial must be without prejudice on the first occasion and the filer must be given an opportunity to refile the motion.

**(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 refile in compliance with the Rule.
- (B) Any party that opposes a motion must file a response brief. 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. Responses to all other motions must be filed within fourteen (14) days after the motion was filed. 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.*

- (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. An attorney may rely on the word count of a word-processing system used to prepare the brief.

(e) The Court may hear argument on the record in open court, by video conference, or by telephone conference call. The Court must ensure that each party's statements to the Court are audible to all other participants. A party may be directed to arrange for and/or pay the cost of any video or telephone conference.

## **7.2 Motion Exhibits.**

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

(b) Only exhibits that are directly germane to the matter under consideration by the Court may be filed.

(c) Excerpted material must be prominently identified as such.

(d) When an exhibit cannot be filed in the electronic record, the docket must reflect the date of its filing, a brief description, and its location. When the exhibit is returned to the filing party's custody, the docket must reflect the return.

### **7.3 Motion for Reconsideration.**

**(a) Leave of Court Required.** Before the entry of a judgment adjudicating all of the claims and the rights and liabilities of all the parties in a case, any party may make a motion before a Judge requesting that the Judge grant the party leave to file a motion for reconsideration of any interlocutory order made by that Judge on any ground set forth in L.R. 7.3(b)(1) or (2). No party may file a motion for reconsideration without prior leave of Court.

**(b) Form and Content of Motion for Leave.** A motion for leave to file a motion for reconsideration must be limited to seven (7) pages and must specifically meet at least one of the following two criteria:

- (1) (A) the facts or applicable law are materially different from the facts or applicable law that the parties presented to the Court before entry of the order for which reconsideration is sought, and
- (B) despite the exercise of reasonable diligence, the party applying for reconsideration did not know such fact or law before entry of the order; or
- (2) new material facts emerged or a change of law occurred after entry of the order.

**(c) Prohibition Against Repetition of Argument.** No motion for leave to file a motion for reconsideration may repeat any oral or written argument made by the applying party before entry of the order. Violation of this restriction subjects the offending party to appropriate sanctions.

**(d) Determination of Motion.** Unless otherwise ordered by the assigned judge, no response may be filed to a motion for leave to file a motion for reconsideration or to a motion for reconsideration filed without leave. If the judge decides to permit reconsideration, the judge will fix an appropriate schedule.

#### **7.4 Notice of Supplemental Authority.**

If pertinent and significant authority comes to a party's notice after the briefs have been filed but before decision, a party may promptly advise the Court by notice setting forth the citations and stating the reason the authority was not cited in the party's brief. The notice must specifically refer either to a page of the brief(s) already filed or to a point argued orally. The notice may not exceed two (2) pages and must not present a new argument. No response may be filed unless the presiding judge so authorizes.

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

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

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

## **CIVIL RULE 11. SIGNING PLEADINGS, MOTIONS, AND OTHER PAPERS**

### **11.1 Signatures in Electronic Filings.**

(a) A registered user's log-in and password serve as the user's signature on all documents electronically filed with the Court and as a signature for purposes of Fed. R. Civ. P. 11, these Rules, and any other purpose for which a signature is required in connection with proceedings before the Court.

(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 be signed "/s/ John E. Attorney."

(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, the Clerk of Court, 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.

### **11.2 Jointly Filed Documents; Multiple Signatures.**

(a) Documents requiring signatures of more than one party may be filed in one of the following ways:

- (1) Where all signers are registered users and where all consent to the filing, by using the "/s/" electronic signature as to all parties;
- (2) Where all signers use hand signatures, by scanning the document and filing it electronically without the "/s/" signature by any party;
- (3) By scanning one or more identical documents with hand

signatures and attaching each document as an exhibit to a document bearing the registered user's "/s/" electronic signature; or

(4) By using any other method prescribed by the Clerk of Court.

**(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.

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



## CIVIL RULE 12. DEFENSES AND OBJECTIONS

### 12.1 Responding to Prisoner-Plaintiffs – Waiver of Reply.

**(a) Definition of “Prisoner-Plaintiff.”** Regardless of whether the person is represented by counsel or appears pro se, any plaintiff who is incarcerated or detained in any facility, and who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program, is a “prisoner-plaintiff” within the meaning of this Rule, provided the person is so incarcerated or detained on the date of service of the Complaint.

**(b) Waiver of Reply Not Appropriate.** As to all plaintiffs not described by the terms of subsection (a), this Rule does not apply and the defendant must timely file an Answer or other appropriate motion, pursuant to Fed. R. Civ. P. 8 and 12.

**(c) Timely Filing of Waiver of Reply; Defenses Preserved.** When a prisoner-plaintiff serves the Complaint before the Court has ordered either service or a response to the Complaint, any defendant may file a Waiver of Reply, pursuant to 42 U.S.C. § 1997e(g), within the time set forth in Fed. R. Civ. P. 12(a) or 81(c)(2), in lieu of an Answer or other appropriate motion. Timely filing of a Waiver of Reply preserves the defendant’s ability to raise all defenses set forth in Fed. R. Civ. P. 12 in a subsequent Answer or motion, pursuant to the terms of that Rule.

**(d) Entry of Default and Default Judgment.** Failure to timely file a Waiver of Reply, an Answer, or other appropriate motion in response to a Complaint by a prisoner-plaintiff may result in entry of default and default judgment pursuant to Fed. R. Civ. P. 55. Pursuant to Fed. R. Civ. P. 55(b)(2), default judgment may be granted against a defendant who has filed a Waiver of Reply but fails to file an Answer or other appropriate motion when ordered to do so.

**(e) Findings Implicit in Court’s Order for Service or Response.** Regardless of whether the order so states, the Court’s ordering of service or of a response to the Complaint is deemed a finding that the plaintiff has a reasonable opportunity to prevail on the merits, within the meaning of 42 U.S.C. §

1997e(g)(2), and that the Complaint is not, on its face, frivolous or malicious, and that it does not seek solely monetary relief against a defendant who is immune from such relief, all within the meaning of 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). If the Court has ordered service, or if the Court has ordered a response to the Complaint, filing of a Waiver of Reply in lieu of an Answer or other appropriate motion is not permitted and may result in the entry of default and/or default judgment.

### **12.2 Notice of Appearance – In Forma Pauperis Case.**

In all cases proceeding under 28 U.S.C. § 1915, the defendant or respondent must file a notice of appearance at the time the first document, other than a return of the waiver of service of summons, is filed. [Form C](#), Notice of Appearance in an In Forma Pauperis Action, may be used for this purpose.

### **12.3 Notice and Warning to Self-Represented Prisoner.**

Any motion that requires the Court to consider matters outside the pleadings, such as a motion to dismiss for failure to exhaust administrative remedies, must be accompanied by the Notice and Warning to Plaintiff as set forth in L.R. 56.2(a) if the opposing party is proceeding pro se and is incarcerated or detained at any time before filing a response to the motion. Motions and briefs in support must be filed and served simultaneously with, but separately from, the Notice and Warning. Failure to comply with this Rule may result in summary denial of the motion.

## **CIVIL RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS**

### **15.1 Motion for Leave to Amend or Supplement.**

When a party moves for leave to amend or supplement a pleading, the proposed pleading must be attached to the motion as an exhibit. If leave is granted, the party must promptly file the pleading.

## CIVIL RULE 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

### 16.1 Pretrial Conference.

(a) **Authority.** At least one of the attorneys for each party participating in any conference before trial must have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate discussing. The judge assigned to the case may require the presence of lead trial counsel at any 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. Pretrial conferences will proceed as scheduled regardless of whether alternative dispute resolution is being pursued.

(c) **Status Conferences.** Status conferences may be held in any case as deemed necessary by the judge to whom the case is assigned. 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.

### 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.

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

**(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.

### **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.

**(c) Continuances.**

(1) Requests for continuances of trial must not be routinely granted. Counsel must prepare diligently for trial and are discouraged, absent extraordinary circumstances, and good cause shown, from seeking continuance of a trial. In granting 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.



**(d) Jury Cost Assessment.** Whenever any 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.

#### **16.4 Final Pretrial Order.**

**(a) Preparation and Lodging.** At least fourteen (14) days before the final pretrial order is due, Plaintiff's counsel must convene a conference of all counsel and pro se parties at a suitable time and place for the purpose of preparing a proposed final pretrial order. If any party refuses to cooperate in the preparation of the pretrial order, the opposing party may move the Court for sanctions. On or before the date established in the pretrial scheduling order, 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.

**(b) Form and Content.** The 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 jurisdiction and factual basis supporting jurisdiction and venue.
- (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) *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) *Estimate of Trial Time.* An estimate of the number of court days counsel for each party expects to be necessary for the presentation of their respective cases in chief.

**(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](#).

### **16.5 Final Pretrial Conference.**

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

**(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:

- (1) *Exchange Exhibits.* Exchange copies of all items expected to be offered as exhibits, and all schedules, summaries, diagrams, charts, etc., to be used at trial, other than for impeachment or rebuttal. The copies of the proposed exhibits must be premarked for identification. Upon request, a party must make the original or the underlying documents of any proposed exhibit available for inspection.
- (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 the parties have stipulated to the use of deposition summaries in lieu of reading a deposition transcript.

- (4) *Confer and Stipulate.* Meet to attempt to resolve objections to the proposed exhibits, designations 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, specify any remaining objections in writing set forth on the opposing party's witness list 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 list 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.

**(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.

## **16.6 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. The mediator may spend time meeting

separately and privately with any party during a settlement conference.

(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.

**(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.

(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.

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

(4) 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.

## 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.

(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;
  - (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(c), excepting only the fee.

(c) If leave to intervene is granted, the intervenor must:

- (1) file electronically; and
- (2) immediately pay any pro hac vice fees.



## **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.

### **26.2 Documents of Discovery.**

(a) 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, 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. However, when any motion is filed relating to discovery, the parties 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.

(b) If for any reason a party believes that any of the named documents should be filed, the party may move that the document be filed, stating the reasons and the authority supporting the movant's position.

(c) At trial, expert reports must be available for review by the Court.

### **26.3 Discovery Responses and Motions.**

(a) **Responses to Discovery.**

- (1) Answers and objections to interrogatories pursuant to Fed. R. Civ. P. 33 and responses and objections to requests for admissions pursuant to Fed. R. Civ. P. 36 must identify and quote each interrogatory or request for admission in full immediately preceding the statement of any answer or objection.
- (2) Each objection must be followed by a statement of reasons. When an objection is made to part of an interrogatory, the remainder of the interrogatory must be answered at the time the objection is made, or within the period of any extension of time to answer, whichever is later.
- (3) Responses to requests made pursuant to Fed. R. Civ. P. 34(a) must set forth each request in full before each response or objection. Each objection must be followed by a statement of reasons.
- (4) Failure to object to interrogatories or requests for the production of documents or things under Fed. R. Civ. P. 33 and 34, within the time fixed by the Rules, or within the time to which the parties have agreed, constitutes a waiver of any objection.
- (5) The parties, and when appropriate a non-party witness, may stipulate to alter any form or procedure for discovery or any time limit for discovery that does not extend the dates set for the close of discovery, the motions deadline, lodging the pretrial order, pretrial conferences, or trial of the case. The Court will not enforce oral stipulations.

**(b) Demand for Prior Discovery.** Whenever a party makes a written demand for discovery that took place prior to the time the party became a party to the action, each party who has previously provided responses to interrogatories or requests for admission or requests for production must furnish to the demanding party, at the demanding party's expense, a copy of the documents containing the discovery responses in question. Alternatively, each responding party must furnish to the demanding party a list identifying each responsive discovery document by title and, upon further demand and at the demanding party's expense,

a copy of any listed discovery response specified in the demand. In the case of requests for production of things, the responding party must make available for inspection by the demanding party all things previously produced. Each party who has taken a deposition must advise the demanding party of the availability of a copy of the transcript at the latter's expense by providing the name, address and telephone number of the certified court reporter who prepared the deposition transcript.

**(c) Discovery Motions.**

- (1) The Court will deny any discovery motion unless counsel 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.
- (2) All motions to compel or limit discovery must:
  - (A) set forth the basis for the motion;
  - (B) certify that the parties complied with subsection (c)(1) or a description of the moving party's attempts to comply; and
  - (C) and attach, as an exhibit:
    - (i) the full text of the discovery sought; and
    - (ii) the full text of the response.

**(d) Original Discovery.** Originals of responses to requests for admission or production and answers to interrogatories must be served upon the party who made the request or propounded the interrogatories, and that party must make such originals available for use by any other party at the time of any pretrial hearing or at trial. Likewise, the deposing party must make the original transcript of a deposition available for use by any party at the time of any pretrial hearing and at trial, or for filing with the Court if so ordered.

## 26.4 Protective Orders.

**(a) Motion for Order or Review.** When a person or party seeks a protective order under Fed. R. Civ. P. 26(c) and submits documents or items for *in camera* review:

- (1) the documents or items sought to be protected may be filed under seal, following L.R. 5.1(c), without prior leave of court;
- (2) the motion for protective order or *in camera* review and brief in support must be filed in the public record and must describe the nature of the documents or items in a manner that, without revealing information sought to be protected, enables an assessment of the propriety of a protective order; and
- (3) the party may also file under seal a more detailed supplemental brief in support of the motion for protective order.

**(b) Documents Filed Under Protective Order.** All documents containing or discussing material subject to a protective order may be filed under seal without separate or additional leave to file under seal, provided the caption reflects reliance on the protective order per L.R. 5.1(c).

## **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.

## 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.

(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.

## CIVIL RULE 48. JURORS

### 48.1 Communications with Trial Jurors.

**(a) Before or During Trial.** No person involved with the case may communicate with, or cause anyone else to communicate with, a juror, a prospective juror, or a juror's or prospective juror's family member.

**(b) After Trial.**

- (1) Neither parties nor counsel may interview jurors unless, within 28 days after entry of judgment, a party files:
  - (A) proposed written questions to be asked of the jurors;
  - (B) an affidavit showing good cause; and,
  - (C) if granted leave, a second affidavit showing the results.
- (2) Unless otherwise ordered by the Court, a juror or prospective juror may decline to communicate with anyone concerning a trial in which the juror was involved.

## **CIVIL RULE 51. INSTRUCTIONS TO THE JURY**

### **51.1 Requests for Instructions to Jury.**

(a) Requests for instructions to the jury must be filed with the Court and served upon each adverse party in accordance with the deadline set by the Court in the scheduling order. The proposed instructions to the jury must encompass all rules of law applicable to the evidence adduced. Appropriate citations should be noted following the text on each page of the charge to the jury.

(b) The Court may receive additional requests for instructions to the jury relating to questions or issues arising during the trial at any time prior to the closing arguments. The parties submitting such late proposed instructions must be prepared to explain to the Court both the need for the additional instruction and the reason for its omission from the instructions proposed before trial.

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



## 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.
- (3) Within seven (7) 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) 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) days of the hearing.
- (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.
- (3) *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.
  - (B) In the case of expert witnesses, the party seeking costs 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.

- (4) *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.
- (5) *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.
- (6) *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.

#### **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. The Statement must:

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

**(b)** Any party opposing a motion for summary judgment must also file a Statement of Genuine Issues. The Statement must:

- (1) set forth in serial form each fact on which the party relies to oppose the motion;
- (2) cite 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.

**(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 is no genuine issue of any material fact. Such stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

**(d)** Upon filing of the Statement of 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.

## **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. . . . 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 setting forth the specific facts, if any, that establish a genuine issue of material fact precluding summary judgment in favor of the moving party.”

**(b)** Failure to provide the above Notice and Warning will result in denial of the motion for summary judgment, regardless of whether the motion is fully briefed.

## **CIVIL RULE 58. ENTERING JUDGMENT**

### **58.1 Entering Judgment.**

(a) Except as to orders disposing of motions listed in Fed. R. Civ. P. 58(a), the clerk will enter judgment by separate document at the conclusion of each case.

#### **(b) Time and Manner of Entering Judgment.**

- (1) When a jury returns a general verdict without special interrogatories or denies all relief, or when the Court awards only costs or a sum certain, the clerk must promptly enter judgment, in favor of one party and against another party, without awaiting direction by the Court.
- (2) In the text of any Order on which it is appropriate for the clerk to enter judgment, the Court will direct the clerk as to the time and manner of entering judgment. If the Court finally denies all relief in the case but gives no direction as to entry of judgment, the clerk must enter judgment without awaiting the Court's direction.

(c) The Court may order the prevailing party to file a proposed judgment. Objections to the proposed judgment may be filed seven (7) days of its filing.

## **CIVIL RULE 67. DEPOSIT INTO COURT**

### **67.1 Order for Deposit; Interest Bearing Account.**

Whenever a party seeks a court order for money to be deposited by the clerk in an interest-bearing account, the party must personally deliver a proposed order to the clerk or financial deputy, who will inspect the proposed order for proper form and content and compliance with this Rule prior to signature by the judge assigned to the case.

### **67.2 Order Directing Investment of Funds by Clerk.**

(a) Any order obtained by a party or parties in an action that directs the clerk to invest in an interest-bearing account or instrument funds deposited in the registry of the Court pursuant to 28 U.S.C. § 2041 must include the following:

- (1) the amount to be invested;
- (2) the name of the depository approved by the Treasurer of the United States as a depository in which funds may be deposited;
- (3) a designation of the type of account or instrument in which the funds must be invested;
- (4) wording which directs the clerk to deduct from the income earned on the investment a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office of the United States Courts, whenever such income becomes available for deduction and without further order of the Court; and
- (5) the social security number and/or tax identification number of the depositor, which may be set forth under seal in a separate document.

(b) Information regarding the authorized fee is available from the Clerk's Office upon request.

### **67.3 Order for Disbursement of Funds.**

**(a)** Whenever a party seeks a court order for money to be disbursed, it must include the following:

- (1) the name(s) of the payee;
- (2) the address(es) of the payee;
- (3) the social security and/or tax ID number of the payee; and
- (4) the amount of principal and interest for each payee.

**(b)** The party must file a redacted version of its motion in the public record and a complete version under seal.

### **67.4 Security for Costs.**

**(a)** On a party's or its own motion, the Court may at any time order any party to file a bond for costs in such amount and so conditioned as the Court may designate.

**(b)** Whenever a security is required to be given, in unspecified form, except in bankruptcy proceedings, and except when given to secure the appearance of a defendant in a criminal case, it must be given in substance and form as provided by the Laws of Montana. The bond is deemed sufficient unless the secured party objects in writing to the sufficiency of the surety and applies to the Court for a hearing.



**CIVIL RULE 72. MAGISTRATE JUDGES – GENERAL AUTHORITY;  
MATTERS REFERRED**

**72.1 Authority of Magistrate Judge.**

Each United States Magistrate Judge appointed by this Court is authorized and designated by the Article III Judges of the Court to exercise all powers and perform all duties described by 28 U.S.C. § 636 and by Federal Rules and other federal law and may perform any additional duty that is not inconsistent with the Constitution or laws of the United States or with these Rules.

**72.2 Referral to Magistrate Judge.**

**(a) Referral on Filing of a New Case.** Except as otherwise provided by Order, and except for motions under 28 U.S.C. § 2255, actions for writs filed by federal prisoners, cases originating in the bankruptcy court, and cases governed by [Appendix A](#), the following cases will be assigned to an Article III judge and referred to a magistrate judge upon filing:

- (1) all prisoner civil rights actions, all habeas corpus actions, all social security actions, all cases in which one or more plaintiffs are self-represented, and all cases in which leave to proceed in forma pauperis is sought. A case will not be reassigned based on a party's change of status after filing; and
- (2) all cases in which a magistrate judge's name is randomly drawn.

**(b) Referral After Filing.** An active Article III judge may at any time designate a United States Magistrate Judge to exercise jurisdiction over a civil case, matter, or motion in accordance with 28 U.S.C. § 636.

**(c)** In any case referred to a Magistrate Judge under subsection (a), the District Judge may act *sua sponte* regardless of the referral.

### **72.3 Objection and Response.**

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

- (1) 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) each recommendation of the Magistrate Judge to which objection is made, setting forth the authority the party relies on to contradict that recommendation.

**(b)** An objection must be filed within fourteen (14) days of service of the Magistrate Judge's Order or Findings and Recommendation. A response must be filed within fourteen (14) days of service of the objection. Objection and response are limited to 6500 words. A reply is not permitted.

## CIVIL RULE 73. MAGISTRATE JUDGES – CONSENT PROCEDURE

### 73.1 Consent Election.

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

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

**(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. At the direction of the Court, the clerk may conduct new consent elections at any time.

**(d) Return of Consent Election Forms.** Parties have thirty (30) 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 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).

**(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 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.

## **CIVIL RULE 79. RECORDS KEPT BY THE CLERK**

### **79.1 Judgments of Bankruptcy Court.**

Judgments issued by the Bankruptcy Court must be entered in the District Court's civil judgment book.

## CIVIL RULE 83. RULES GOVERNING ATTORNEYS AND REPRESENTATION

### 83.1 Attorney Admission and Appearance.

#### (a) General Rules.

- (1) An attorney who appears in this Court is subject to its disciplinary jurisdiction. See [Appendix B](#).
- (2) Only an attorney authorized to appear under this Rule may appear on behalf of a party.
- (3) An attorney authorized to appear in this Court must promptly notify the Court of any change in the attorney's status in another jurisdiction that would make the attorney ineligible for membership or ineligible to appear under subsections (c) or (d) of this Rule.

#### (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;

- (iii) the [current admission fee](#) shown on the Court's website; and
  - (iv) a proposed order to be signed by a judge.
- (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.
- (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.

**(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.

**(d) Pro Hac Vice Appearance.**

- (1) A non-member attorney who does not reside and is not regularly employed in Montana but 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, who is of good moral character, and who has been retained to appear in this Court, may, upon motion to and in the discretion of the presiding judge, appear and participate in a particular case. A pro hac vice applicant may not file electronically unless granted leave to appear pro hac vice.
- (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) of this Rule.

- (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's state or territory of residence and office addresses;
  - (B) by what court(s) the attorney has been admitted to practice, the date(s) of admission, and the date(s) of termination of admission, if any;
  - (C) that the attorney is in good standing and eligible to practice in these courts;
  - (D) that the attorney is not currently suspended or disbarred in any other court;
  - (E) whether the attorney has ever been held in contempt, otherwise disciplined by any court for disobedience to its rules or orders, or sanctioned under Fed. R. Civ. P. 11 or 37(b), (c), (d) or (f) or their state equivalent; the name of the court before which the proceedings were conducted; the date of the proceedings; and what action was taken in connection with those proceedings. A copy of any such contempt, discipline, or sanction order must be included with the application;
  - (F) whether the attorney has concurrently or within the two years preceding the date of application made any pro hac vice application to this Court, the title and the cause number of each matter in which an application was made, the date of application, and whether the application was granted; and

- (G) that the attorney understands that pro hac vice admission in this Court is personal to the attorney only and is not admission of a law firm and that the attorney will be held fully accountable for the conduct of the litigation in this Court.
- (4) Leave to appear pro hac vice is granted or denied solely at the discretion of the presiding judge. Revocation of leave to appear pertains to the instant case only and does not automatically bar application in another case or membership in the Bar of the Court.
- (5) *Duties of Local Counsel.* Local counsel must participate actively in all phases of the case, including, but not limited to, attendance at depositions and court proceedings, preparation of briefs and discovery requests and responses, and all other activities to the extent necessary for local counsel to be prepared to go forward with the case at all times. Unless otherwise ordered, local counsel must sign all pleadings, motions and briefs. The Court, in extraordinary circumstances and on motion by local counsel, may suspend or modify local counsel's duties. If the Court alters local counsel's duties or waives this Rule – neither of which will occur routinely – all documents subsequently filed must be signed by counsel actively involved in the case.

### **83.2 Standards of Conduct.**

**(a) Professional Rules.** The standards of professional conduct of attorneys appearing in this Court include the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct. For a willful violation of any professional rules or standards in connection with any pending matter, an attorney is subject to appropriate disciplinary action and to referral of the matter to the appropriate authority for disciplinary proceedings.

#### **(b) Attorney Under Appointment of Court.**

- (1) *Compensation.* It is the duty of an attorney to act without compensation whenever the attorney is appointed by the Court

to represent an indigent person in any proceeding not covered by the provisions of 18 U.S.C. § 3006A, except as otherwise provided by statute or rule.

- (2) *Gratuities.* Attorneys appointed by the Court to represent an indigent person may not, without specific approval of the Court, accept or solicit any money for any purpose from any person on account of the representation. Any attorney violating this Rule will be disciplined by the Court. If it comes to the attention of any attorney appointed to represent an indigent that the person is in fact not indigent or has sources of money for payment of fees or costs, that fact must be presented to the Court, regardless of whether the attorney is permitted to accept or solicit money on account of the representation.

(c) Lawyers must wear appropriate professional attire for all proceedings before the Court.

### **83.3 Substitution and Withdrawal of Counsel.**

(a) **Substitution of Counsel.** When a party changes attorneys, a notice of substitution signed by the incoming and the outgoing attorney must be filed by the incoming attorney. The incoming attorney is responsible for ensuring that he or she is added to the case for the correct party or parties and is properly designated to receive notices of electronic filing. When the incoming attorney makes an appearance, the clerk must terminate electronic service on the outgoing attorney. Substitution of counsel automatically revokes any consent to fax or e-mail service under Fed. R. Civ. P. 5(b)(E)-(F) or Fed. R. Crim. P. 49(b).

#### **(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 be accompanied by either:
  - (A) the client's written consent to counsel's withdrawal, signed by the attorney and the client and acknowledging

the client's obligation immediately to retain new counsel or appear pro se; or

- (B) an affidavit of counsel showing that:
- (i) a notice of intent to file a motion to withdraw was personally served on the client at least fourteen days prior to filing the motion to withdraw;
  - (ii) the client has been advised of its obligation immediately to retain new counsel or appear pro se if the motion to withdraw is granted; and
  - (iii) facts constituting good cause support withdrawal. A showing of good cause may be made by filing an ex parte affidavit separate from the affidavit addressing subsections (i) and (ii) above. An ex parte affidavit must be served on the client but need not be served on any other party.

#### **83.4 Agreements of Attorneys.**

(a) When an attorney disputes the existence of an agreement or stipulation, the agreement is unenforceable unless:

- (1) it is in writing and signed by an attorney of record for the party against whom enforcement is sought; or
- (2) it is in an electronic communication sent by an attorney of record for the party against whom enforcement is sought; or
- (3) its existence is supported by a clerk's minutes or a court reporter's record.

(b) In open court, an agreement or stipulation made by any attorney of record for a party is enforceable against that party.

#### **83.5 Attorney as Witness.**

If an attorney representing any party is examined as a witness in a case and gives testimony on the merits, the attorney may not argue the merits of the case, either to the Court or jury, except by permission of the Court, and as limited by the Court.

### **83.6 Appointment of Counsel.**

#### **(a) Civil Pro Bono Panel.**

- (1) The Civil Pro Bono Panel is the Court's resource for identifying those members of the Bar of this Court who are willing to make a pro bono contribution to the District of Montana. Names of Panel members may not be publicly disclosed or disseminated.
- (2) An attorney may participate on the Panel by writing to the Chief Judge a letter setting forth:
  - (A) the attorney's number of years in practice, including any particularly relevant litigation background or law school preparation; and
  - (B) the attorney's preference for appointment among various types of actions (e.g., social security appeals, employment discrimination actions, civil rights actions, habeas corpus).
- (3) An attorney may, by letter, withdraw from the Panel.
- (4) Participation on the Panel is not a prerequisite to appointment. The Court's practice will be to contact counsel before appointment to determine counsel's ability and willingness to accept appointment. However, the Judge has discretion to select any member of the Bar of this Court.

#### **(b) Request for Counsel.**

- (1) Counsel may be appointed on a pro se party's motion for the appointment of counsel.

- (2) With the party's consent, counsel may be appointed on the Court's own motion. In social security disability cases, counsel may not be appointed unless the party has been advised that counsel may be entitled to obtain compensation from any award of benefits.

**(c) Factors Considered.** The Judge will consider the following factors in determining whether counsel should be appointed:

- (1) The potential merit of the claim or claims;
- (2) The nature and complexity of the action, both factual and legal, including the need for factual investigation and expert witnesses;
- (3) The likelihood of conflicting testimony calling for a lawyer's presentation of evidence and cross-examination;
- (4) The party's ability to prepare and present the case pro se;
- (5) The party's inability to obtain counsel by other means;
- (6) The extent to which the interests of justice will be served by appointment of counsel, including the benefit the Court may derive from counsel's assistance;
- (7) The extent to which counsel might be appointed for a limited purpose rather than full representation; and
- (8) Any other factors relevant to the exercise of the Court's discretion.

**(d) Selection and Appointment.**

- (1) When the Judge concludes that appointment is warranted, an attorney or firm will be selected by the Judge.
- (2) The Judge will issue an Order:

- (A) appointing an individual attorney;
  - (B) staying proceedings for at least forty-five (45) days; and
  - (C) setting a deadline for the parties to file, jointly or separately, a status report setting forth a proposed plan and schedule for disposition of the remainder of the case.
- (3) The clerk will immediately provide to appointed counsel courtesy copies of the order of appointment and all documents filed in the case prior to the date of appointment.

**(e) Scope of Appointment.** Except as the scope of representation may be expressly limited by the Judge, counsel must represent the party in the action through final judgment or other resolution of the case in the District Court. Counsel may but need not represent the party on appeal. Appointment is made only for purposes of the case in which the Order is entered.

**(f) Notice of Appearance.** Within seven (7) days of entry of the Order Appointing Counsel, the appointed attorney must file a Notice of Appearance.

**(g) Relief from Appointment.** An appointed attorney may move to be relieved of an order of appointment pursuant to Montana Rule of Professional Conduct 1.16 or on the following grounds:

- (1) conflict of interest;
- (2) personal incompatibility or a substantial disagreement on litigation strategy or tactics;
- (3) the party is proceeding for purposes of harassment or malicious injury, or that the party's claims or defenses are not warranted under existing law and cannot be supported by good faith argument for extension, modification or reversal of existing law; or
- (4) any other basis that, in the discretion of the presiding Judge, justifies withdrawal.

**(h) Expenses.**

- (1) Counsel must seek payment of costs from the adverse party if entitled to do so.
- (2) With prior approval of the Court on a properly documented motion, counsel may obtain reimbursement for expenses reasonably incurred by appointed counsel or by counsel associated by appointed counsel. Reimbursement may be made from the Non-Appropriated Funds in an amount up to \$3,000.00. Reimbursement for expenses over \$3,000.00 must be approved by the Committee on Non-Appropriated Funds.
- (3) The Court will not reimburse counsel:
  - (A) for costs personally taxed against appointed counsel or paid by the adverse party; or
  - (B) where a judgment or settlement was obtained for at least \$6,000.00.
- (4) Reimbursement will generally be made at the conclusion of the representation. Where reimbursement is made on an interlocutory basis and appointed counsel later obtains a judgment or settlement of at least \$6,000.00, counsel must reimburse the Court for costs it has already paid to counsel.

**(i) Fees.** An appointed attorney may seek fees from the adverse party as provided by law.

**83.7 Student Participation.**

**(a) Purpose.** This Rule is adopted to support clinical instruction and mentoring in litigation practice. It authorizes participation by law students in this Court on a case-by-case basis.

**(b) Participation.**

- (1) *Authorization.* After the required certifications are filed in the



record of a case, a student may participate in preparing written submissions to the Court in that case and make presentations for the client in open court. The student may not sign documents and may not be registered in the CM/ECF system.

- (2) *Presiding Judge.* At any time, the presiding judge may limit, condition, or disallow a student's participation.
- (3) *Withdrawal or Termination of Required Certification.* Any person required to provide certification or consent may withdraw it at any time by written notice to the Clerk of Court. All required certifications will terminate upon announcement of the results of the first bar exam taken by the student.

**(c) Student Eligibility.** To participate under this Rule, a student must:

- (1) (A) be enrolled at an ABA-accredited law school and complete at least two-thirds of the credits required to graduate; or  
(B) be a recent graduate who has not yet taken a bar exam or who is awaiting the results;
- (2) be familiar with the Federal Rules of Civil Procedure, of Criminal Procedure, and of Evidence, the Model Rules of Professional Conduct, the Montana Rules of Professional Conduct, and the Local Rules;
- (3) provide personal certification using [Form K](#) in the Appendix; and
- (4) obtain certification from the dean of his or her law school, using Form L, and from a supervising attorney, using [Form M](#).

**(d) Supervising Attorney.** A supervising attorney must:

- (1) explain to the client the terms of the student's participation in each case and obtain the client's written consent to the student's participation, using [Form J](#);

- (A) Where the client is the United States, the consent of the United States Attorney for the District of Montana is required;
- (B) Where the client is the State of Montana, the consent of the Attorney General is required;
- (2) file [Form M](#) in the record of the case, attaching [Forms J, K, and L](#);
- (3) assist and counsel the student and accept full personal and professional responsibility for all work performed by the student;
- (4) ensure that at least one supervising attorney:
  - (A) is present in person throughout the student's presentations in open court;
  - (B) signs all written submissions in which the student participates and briefly notes the student's participation; and
- (5) at the student's first presentation in open court, introduce the student to the presiding judge.

### **83.8 Self-Represented Litigants.**

(a) Any individual acting without an attorney must appear personally and may not delegate that duty to any other person who is not a member of the bar of this Court. A self-represented person is bound by the Federal Rules and all applicable local rules. Sanctions, including but not limited to entry of default judgment or dismissal with prejudice, may be imposed for failure to comply with local rules.

(b) Any entity other than an individual, including but not limited to a corporation, an unincorporated association, a partnership, or a union, may appear only by an attorney.

## **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, apply in criminal proceedings.

## **CRIMINAL RULE 6. THE GRAND JURY**

### **CR 6.1 When and Where Impaneled.**

Grand juries are summoned when the public interest requires and convene where and when the Court deems appropriate.

### **CR 6.2 Secrecy.**

Unless a judge directs disclosure, all matters associated with grand jury are sealed with access provided only to designated court staff. Indictments are sealed until all named defendants have appeared or are in custody.

## **CRIMINAL RULE 11. PLEAS**

### **CR 11.1 Sealed Plea Agreements.**

No plea agreement may be filed under seal unless a party moves for leave to seal under L.R. CR 49.1.

## CRIMINAL RULE 16. DISCOVERY

### CR 16.1 Production by the Government.

**(a) Time.** Upon request by the defendant, and unless otherwise ordered by the Court, the government must provide all discovery required by Fed. R. Crim. P. 16(a)(1)(A), (B), (C), (D), (E), and (G) no later than fourteen (14) days after the date of arraignment. Upon request by the defendant, the government must provide all discovery required by Fed. R. Crim. P. 16(a)(1)(F) as soon as reasonably possible, but in no event shall such production occur later than seven (7) days before trial. The government must disclose in a timely manner all exculpatory information in its possession, but in no event shall such production occur later than seven (7) days before trial.

**(b) Exculpatory Information Defined.** Exculpatory information is all information that is favorable to the defendant because it:

- (1) casts doubt on the defendant's guilt as to an essential element in any count in the indictment or information;
- (2) casts doubt on the admissibility of evidence that the government anticipates offering in its case-in-chief;
- (3) casts doubt on the credibility or accuracy of any evidence or testimony that the government anticipates offering in its case-in-chief; or
- (4) may be relied upon to support an argument for a lesser punishment at sentencing.

**(c) Rule 16(a)(2).** The government's obligation to disclose exculpatory information extends to information covered under Fed. R. Crim. P. 16(a)(2). Exculpatory information need not be admissible so long as it is reasonably likely to lead to the discovery of admissible evidence.

**(d) In Camera Inspection.** Questions as to whether information in the possession of the prosecution is exculpatory should be resolved in favor of the defendant. The government may voluntarily submit information to the Court for

in camera inspection to determine whether it constitutes exculpatory information that must be produced. Upon submitting such information, the government shall file in the record a written notice of submission describing in general terms that information being submitted for inspection.

### **CR 16.2 Production by the Defendant.**

Upon request by the government, and unless otherwise ordered by the Court, the defendant shall provide all discovery required by Fed. R. Crim. P. 16(b) within twenty-one (21) days from the date of the request.

### **CR 16.3 Expert Witnesses.**

An expert witness disclosure under Fed. R. Crim. P. 16(a)(1)(G) or 16(b)(1)(C) must include the following information:

(a) Identification of all documents or other information reviewed by the expert;

(b) A summary of the results of any studies, examinations, or tests performed by the expert regarding the subject matter of the testimony;

(c) The expert's qualifications; and

(d) A written summary of the expert's testimony describing the expert's opinions and the bases and reasons for those opinions.

### **CR 16.4 Sensitive Material.**

(a) When disclosing information that is of a sensitive nature because it contains personal information, personal identifiers, or financial information, a party may make the disclosure subject to protections contained in this rule by including with the disclosure a written notice explicitly referencing this rule and setting forth the reasons why such protections are warranted. Upon disclosure the party must include the designation "SENSITIVE MATERIAL - SUBJECT TO L.R. CR 16.4."

(b) Upon written notice and designation of sensitive material in accordance with this rule, the following restrictions shall apply to the designated material:

- (1) Access to documents shall be limited to:
  - (A) attorneys representing the defendant or the government;
  - (B) expert witnesses whose review of that material is necessary for the presentation of defendant's or government's case;
  - (C) such law clerks, investigative agents, paralegals, and secretaries employed by defendant or the government, whose review of the material is required for the preparation and presentation of defendant's or the government's case; and
  - (D) the defendant. Documents shall not be left in the defendant's possession without defense counsel present.
- (2) Documents shall be used in connection with a matter pending before this Court and for no other purpose. Attorneys shall expressly advise every authorized person who reviews the documents as to this limitation on lawful use.
- (3) It shall be the responsibility of the attorneys of record in this action to employ, consistent with this rule, reasonable measures to control duplication of, access to, and distribution of the documents.

(c) Failure of any party to comply with the terms of this rule will be subject to punishment to the full extent of the Local Rules, the Federal Rules of Criminal Procedure, and the Court's inherent authority.

### **CR 16.5 Continuing Duty to Disclose.**

Any party that discovers additional information subject to disclosure under this rule after the deadline for such disclosure shall promptly disclose the information to the other party or the court.



## **CRIMINAL RULE 17. SUBPOENA**

### **CR 17.1 Obtaining Presence of Incarcerated Person.**

A party to a criminal proceeding requesting production of a prisoner by the United States Marshals Service for any court proceeding, by writ of habeas corpus ad testificandum or otherwise, must obtain a court order directing such production no later than twenty-one (21) days before the date of the proceeding. A lesser time period may be allowed only upon motion and good cause shown.

### **CR 17.2 Summons and Subpoenas.**

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.

## CRIMINAL RULE 17.1 PRETRIAL CONFERENCES

### CR 17.1.1 When Pretrial Conference Held.

When deemed advisable by the Court, a pretrial conference will be held in criminal cases pursuant to Fed. R. Crim. P. 17.1.

### CR 17.1.2 Settlement Conferences in Complex Criminal Cases.

It is the policy of the Court to facilitate the parties' efforts to dispose of criminal cases without trial. It is also the policy of the Court that the trial judge will not participate in facilitating settlement. Participation in settlement conferences under this Rule is completely voluntary. The Court anticipates that this Rule will be invoked by the parties primarily in complex cases.

For purposes of this Rule only, a "complex case" is a criminal case in which the government estimates that the presentation of evidence in its case-in-chief will require more than sixteen trial days.

**(a) Request for Conference.** A settlement conference can be requested only by the attorney for the government and the attorney for the defendant acting jointly. In a multi-defendant case, any or all defendant(s) may join in the request.

**(b) Time of Request.** A settlement conference may be requested at anytime up to the settlement conference cutoff date established by the trial judge. If no cutoff date is established, a settlement conference request may be made at anytime up to 14 days before the commencement of trial, unless a later request is permitted by the trial judge.

**(c) Form of Request.** The request for a settlement conference must be in writing and signed by the attorney for the government, the attorney for the defendant, and the defendant personally. It must list the dates on which counsel are available for the conference and may, but need not, suggest a judge or judges to preside over the conference. It must be filed in the case.

**(d) Response to Request.** Upon a timely request for a settlement conference in a complex case, the trial judge will designate a settlement judge in accordance with the rule set out in subsection (f) below. In all other cases,

whether or not to conduct settlement proceedings with judicial assistance will be at the discretion of the trial judge.

**(e) Withdrawal of Request.** A request for a settlement conference may unilaterally be withdrawn at any time. A withdrawal must be in writing, signed by the attorney, and filed in the case.

**(f) Settlement Judge.** The trial judge will designate another Article III judge to preside over the settlement conference. No settlement judge may be designated without his or her consent. If requested by the trial judge, the Chief Judge will assist the trial judge in the selection of a settlement judge. The designation must be filed.

**(g) Conduct of Conference.**

- (1) *Availability of Defendant.* The defendant may not be present during settlement discussions, unless otherwise ordered by the settlement judge. However, the defendant must be available (A) in the courtroom of the settlement judge, if the defendant is on pretrial release, or (B) in the Marshal's lock-up, if the defendant is under pretrial detention, unless the defendant's availability is waived by the settlement judge.
- (2) *Criminal History.* If so requested by either counsel at least fourteen (14) days before the settlement conference, the probation officer, without order of the Court, must provide a summary of the defendant's criminal history to both counsel within seven (7) days of the request.
- (3) *Non-Recordation.* The settlement conference may not be reported, unless requested by the defendant and consented to by the settlement judge. If the defendant requests that the conference be reported and the settlement judge does not concur, the conference must be terminated.
- (4) *Written Agreement.* If a settlement is agreed to by both counsel and approved by the defendant, the plea agreement must be reduced to writing and executed by the parties within 24 hours of the settlement conference.

**(h) Restrictions on Participants.**

- (1) *Settlement Judge.* The settlement judge may not conduct any other proceedings in the case and must not communicate any of the substance of the settlement discussions to the trial judge, except as provided in paragraph (3)(D) below.
- (2) *Statements Inadmissible at Trial.* No statement made by any participant at the settlement conference is admissible at the trial of any defendant in the case.
- (3) *Counsel.* Neither counsel may disclose the substance of the settlement discussions or the comments and recommendations of the settlement judge to the trial judge, except as provided for by this Rule.
  - (A) If a plea agreement is reached, either counsel may make such disclosures to the trial judge as are expressly permitted by the terms of a written plea agreement.
  - (B) At sentencing, whether after a plea of guilty or after trial, and whether or not any plea agreement so provides, the attorney for the defendant may bring to the trial judge's attention any comments or recommendations made by the settlement judge.
  - (C) In the event the defendant exercises the option under subparagraph (B) above, the attorney for the government may also bring to the trial judge's attention at sentencing any comments or recommendations made by the settlement judge.
  - (D) In the event of a disagreement between counsel as to the substance of the settlement judge's comments or recommendations on any particular issue, the trial judge may either (a) refer the matter back to the settlement judge for a finding of fact on the disputed issue, or (b) not consider such disputed comment or recommendation as a factor in sentencing and so state on the record.

**(i) Discretion of Trial Judge.** Nothing in this Rule may be construed to limit in any way the discretion of the trial judge under Fed. R. Crim. P. 11(c)(3).

**CR 17.1.3 Continuances.**

No extension of time or continuance may be granted except upon order of a judge or a full-time magistrate judge. Enlargements are to be sparingly granted and only in a manner consistent with the Speedy Trial Act.

## **CRIMINAL RULE 18. PLACE OF PROSECUTION AND TRIAL**

### **CR 18.1 Divisional Venue.**

Criminal cases are venued in the Division containing a county where a crime allegedly occurred, unless the Court orders a change of venue.

## **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.

#### **(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).

- (3) 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 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) Arizona Strike Method.** In the discretion of the presiding judge the “Arizona Strike” method of exercising peremptory challenges may be used. If the “Arizona Strike” method is used, each side must exercise its peremptory challenges simultaneously and in secret. The Court will then designate as the trial jury the persons whose names appear first from the list of prospective jurors. If there is more than one defendant the Court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly in accordance with this Rule and with Fed. R. Crim. P. 24.

#### **CR 24.2 Communications with Trial Jurors.**

**(a) Before or During Trial.** No person involved with the case may communicate with, or cause anyone else to communicate with, a juror, a prospective juror, or a juror’s or prospective juror’s family member.

**(b) After Trial.**

- (1) Unless a different time applies under Fed. R. Crim. P. 33(b)(1), neither parties nor counsel may interview jurors unless, within 14 days after the jury returns its verdict, a party files:
  - (A) proposed written questions to be asked of the jurors;
  - (B) an affidavit showing good cause; and,



- (C) if granted leave, a second affidavit showing the results.
- (2) Unless otherwise ordered by the Court, any juror or prospective juror may decline to communicate with anyone concerning a trial in which the juror was involved.

## **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.

## **CRIMINAL RULE 44. RIGHT TO AND APPOINTMENT OF COUNSEL**

### **CR 44.1. Submissions by Defendant Personally.**

If a defendant is represented by counsel, documents received from the defendant personally must be filed and sealed from public view pending the Court's review. When the right to counsel no longer applies in this Court, pro se filings may not be dismissed or stricken on the grounds that the filer was represented by counsel.

## **CRIMINAL RULE 46. RELEASE FROM CUSTODY**

### **CR 46.1 Security.**

(a) All bonds in non-capital criminal cases for appearance before a magistrate judge taken by a magistrate judge or other officer acting as a committing magistrate judge pursuant to 18 U.S.C. § 3041 must be endorsed with his/her approval and immediately forwarded to the Clerk of Court, together with any money or negotiable bonds or notes of the United States deposited as security. Any money deposited may be forwarded to the Clerk of Court by cashier's check or certified check.

(b) A receipt will be given by the magistrate judge for any money, bonds or notes deposited with him/her and a copy forwarded to the Clerk of Court. The clerk must deposit such monies received from the magistrate judge into the registry of the Court.

(c) Magistrate judges do not have the authority to order funds withdrawn from the Court's registry. When a bond is exonerated, disbursement from the registry of the Court or release of bonds or notes may only be made on order of the Court.

### **CR 46.2 Persons Not to Act as Sureties.**

(a) No officer of the Court, nor any member of the Bar, nor his/her office associates or employees may act as surety.

(b) In lieu of surety in any criminal case there may be deposited with the Clerk of Court lawful money or negotiable bonds or notes of the United States.

## CRIMINAL RULE 47. MOTIONS AND SUPPORTING AFFIDAVITS

### CR 47.1 Prerequisites to Filing a Motion.

(a) The text of the motion must state that all other parties have been contacted and state whether any party objects to the motion. Defendants who have not yet been arraigned by a judge of this Court need not be contacted.

(b) When a motion is unopposed, the word “unopposed” must appear in the title of the motion.

(c) *Proposed Orders.* Except as otherwise provided in these Rules or by Order, a proposed order is required and permitted only with a motion for extension of time or with an unopposed motion. All proposed orders must:

- (1) be attached to the motion **in PDF format** as an exhibit, so that the order, as proposed, is filed in the electronic record of the case;
- (2) be e-mailed **in WordPerfect or Word format** to the judge, so that the judge may alter it;
- (3) use 14-point font;
- (4) omit macros or special coding or formatting other than appropriate citation format;
- (5) be e-mailed only to the judge’s address for proposed orders; for example, a judge whose initials are XYZ would have an e-mail address of xyz\_propord@mtd.uscourts.gov; and
- (6) be identified in the subject line of the e-mail by the first plaintiff’s last name, the case number, and an abbreviated description of the document and the moving party, for example, Smith CR 08-29-GF p-ord gr def ext time.

(d) Failure to comply with this Rule may result in summary denial of the motion. Denial must be without prejudice on the first occasion and the filer must be given an opportunity to refile the motion.

## **CR 47.2 Briefing.**

(a) A motion must be accompanied by a brief in support filed separately and at the same time as the motion. A motion is deemed ripe for ruling after the response is filed. Briefing will proceed as follows:

[Filing Date]	Motion and Supporting Brief	6500 words maximum
+14 days	Response Brief	6500 words maximum
+ 7 days	Reply	3250 words maximum

(b) Failure to file briefs within the prescribed time may subject any motion to summary ruling and may be deemed an admission that the non-filing party's position lacks merit.

(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. An attorney may rely on the word count of a word-processing program used to prepare the brief.

(d) Where leave to file a longer brief is granted, the brief must include a table of contents and a table of authorities with page references.

(e) Oral argument may be ordered *sua sponte* or on a party's motion.

## **CR 47.3 Motion Exhibits.**

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

(b) Only exhibits that are directly germane to the matter under consideration by the Court may be filed.

(c) Excerpted material must be prominently identified as such.

(d) When an exhibit cannot be filed in the electronic record, the docket must reflect the date of its filing, a brief description, and its location. When the exhibit is returned to the filing party's custody, the docket must reflect the return.

#### **CR 47.4 Notice of Supplemental Authority.**

If pertinent and significant authority comes to a party's notice after the briefs have been filed but before decision, a party may promptly advise the Court by notice setting forth the citations and stating the reason the authority was not cited in the party's brief. The notice must specifically refer either to a page of the brief(s) already filed or to a point argued orally. The notice may not exceed two (2) pages and must not present a new argument. No response may be filed unless the presiding judge so authorizes.

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

**(b) Caption.** Any document preauthorized to be filed under seal or *ex*



*parte* must include the phrase “FILED UNDER SEAL” or “EX PARTE” in the case caption, followed by citation to the authority for sealing, e.g., “Fed. R. Crim. P. 17(b)” or “D. Mont. L.R. CR 49.1(a)(2).”

**(c) Contents of Motion for Leave.** A motion for leave to file under seal must:

- (1) be filed in the public record of the case;
- (2) without disclosing confidential information, describe the document or item to be sealed and explain why inclusion in the public record is not appropriate; and
- (3) either:
  - (A) state why it is not feasible to file a redacted version of the document or item in the public record, or
  - (B) be accompanied by a redacted version of the document or item filed in the public record.

**(d)** Attorneys filing electronically must follow the [guidance of the Clerk’s Office](#). Electronically filed sealed documents must be conventionally served on all other parties unless *ex parte* filing is authorized.

**(e)** Persons filing conventionally must submit to the Clerk:

- (1) the document or item to be sealed, placed in an envelope with the case number, date, and “Filing Under Seal Requested” clearly printed on the envelope; and,
- (2) if required, the motion for leave to seal and brief in support.

**(f) Response and Order.**

- (1) The Court may rule on a motion for leave to seal without awaiting a response.
- (2) If leave to file under seal is granted, the document or item will

be deemed filed under seal, and the party need not refile the document.

- (3) The Court may order that a document be redacted for the public record. Until the filing party complies, the unredacted document will not be deemed filed.
- (4) If leave to file under seal is denied, the document or item will remain in the record under seal but will be deemed not filed.

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

Except as otherwise ordered by the presiding judge, documents filed in connection with proceedings under 28 U.S.C. § 2255 need not be served on other defendants or defense counsel. Where a movant appears pro se, movant's trial and appellate counsel need not be served.

## **CRIMINAL RULE 55. RECORDS**

### **CR 55.1 Matters Held Under Seal.**

(a) Delinquency proceedings against juveniles are confidential and must be conducted entirely under seal with access provided only to court staff.

(b) The following items must be filed in the electronic record under seal with access provided only to court staff:

- (1) grand jury matters, if ordered filed in a case;
- (2) pretrial services reports;
- (3) petitions for summons or warrant, until defendant appears on the petition;
- (4) psychological or psychiatric reports;
- (5) lists of prospective or seated jurors;
- (6) transcripts of voir dire, if filed;
- (7) final presentence reports; and
- (8) the judge's statement of reasons for the sentence imposed.

(c) Parties aware of matters or items under seal must employ reasonable measures to control access to them. Counsel may not release a jury list or a transcript of voir dire to a defendant without a written order.

## CRIMINAL RULE 57. DISTRICT COURT RULES

### CR 57.1 Pretrial Publicity.

**(a) Investigative Phase.** When an investigation or grand jury proceeding is pending, an attorney and his or her agent must not, outside judicial proceedings, make a statement that a reasonable person would expect to be publicly disseminated, unless the statement is:

- (1) limited to informing the public that an investigation is underway or describing its scope; or
- (2) necessary to warn the public of danger or to obtain assistance in locating evidence or a suspect.

**(b) Judicial Phase.** From the initiation of a prosecution to disposition, and outside judicial proceedings, an investigative agency, attorney, or agent of either, if involved in the prosecution or defense:

- (1) must not release, comment on, or authorize release of or comment on:
  - (A) the defendant's character, reputation, or criminal record, including arrests or other charges;
  - (B) the fact or content of any statement by the defendant;
  - (C) the fact or content of the defendant's decision not to make a statement;
  - (D) the performance or result of an examination or test or the defendant's decision not to submit to an examination or test;
  - (E) the identity, testimony, or credibility of a prospective witness;
  - (F) the possibility of a guilty plea to the offense charged or a

lesser offense; or

(G) an opinion about the defendant's guilt or innocence or the merits of the case; and

(2) may quote or refer without comment to public records of the Court and may publicly announce:

(A) the charge and a brief description of the offense;

(B) the defendant's name, age, city of residence, and occupation;

(C) information necessary to warn the public of any danger or to obtain assistance in locating evidence or a suspect;

(D) the time, place, and circumstances of an arrest, the identity of the investigating officer or agency, and the length of the investigation;

(E) without further comment, the fact that the defendant denies guilt;

(F) a brief description of physical evidence, excluding any reference to statements or testimony;

(G) the identity of the victim, if not otherwise prohibited; and

(H) the schedule or result of any stage in the judicial process.

(c) The Court, on motion or *sua sponte*, may issue different or additional orders governing the conduct of persons involved in a case to ensure a fair trial by an impartial jury.

## **CRIMINAL RULE 58. PETTY OFFENSES AND OTHER MISDEMEANORS**

### **CR 58.1 Fixed Sums Payable in Lieu of Appearance.**

In criminal cases with petty offense charges at issue, defendants must be permitted to pay a fixed sum in lieu of appearance. Acceptance and payment of such fixed sum terminates the action. However, if payment of the fixed sum is not timely made, a Magistrate Judge may, in his or her discretion, fix a higher amount so long as the fixed sum does not exceed the maximum fine which could be imposed.

### **CR 58.2 Appeal from Judgment of United States Magistrate Judge.**

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

- (1) The official transcript must be ordered seven (14) days after the notice of appeal is filed;
- (2) The official transcript must be filed twenty-one (21) days after the notice of appeal is filed;
- (3) The appellant's brief must be filed within fourteen (14) days after the official transcript is filed;
- (4) The appellee's brief must be filed within fourteen (14) days after the appellant's brief is filed;
- (5) The reply brief must be filed seven (7) days after the appellee's brief is filed.

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

## **CRIMINAL RULE 59. MATTERS BEFORE A MAGISTRATE JUDGE**

### **CR 59.1 Authority of Magistrate Judge.**

Each United States Magistrate Judge appointed by this Court is authorized and designated by the Article III Judges of the Court to exercise all powers and perform all duties described by 28 U.S.C. § 636 and by Federal Rules and other federal law and may perform any additional duty that is not inconsistent with the Constitution or laws of the United States or with these Rules.

### **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) 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) each recommendation of the Magistrate Judge to which objection is made, setting forth the authority the party relies on to contradict that recommendation.

(b) Objections must be limited to 6500 words and be filed within fourteen (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.

## APPENDIX A

### Imminent Execution of Death Sentence – Pre-Filing Requirements

1. This Rule applies when:
  - A. any party intends to file an action challenging the validity or manner of execution of any death sentence imposed by a court of the State of Montana;
  - B. the action may, at any stage, result in temporary or permanent stay of execution; and
  - C. any person's execution is set for a date less than ninety (90) days from the date of the intended filing.
  
2. Before filing any document to initiate an action described above:
  - A. an attorney who is a member of the Bar of this Court and any attorney intending to apply for leave to appear pro hac vice must speak with the Clerk of Court or designee during regular business hours; and
  - B. counsel must:
    - i. briefly explain the nature of the intended filing;
    - ii. state what relief will be sought and what relief will not be sought;
    - iii. state approximately when the filing will be made; and
    - iv. follow any further instructions of court staff.
  - C. Counsel would comply with this Rule if, for instance, she telephoned the Clerk's Office at 4:45 p.m. and told the Clerk or designee that she intended to file an action under 42 U.S.C. § 1983 challenging the method of execution, along with a motion for stay of execution, at



about 7:00 a.m. the next day, but no challenge would be made to the underlying conviction or sentence.

- D. Failure to comply with this requirement may result in the unavailability of a judge to review the filing when it is made.

3. Counsel must be familiar with the applicable Federal Rules of Appellate Procedure and Ninth Circuit Rules 22-1 to 22-6. The Clerk must advise counsel regarding lodging of documents filed in this Court in the Ninth Circuit Court of Appeals.

4. If a stay of execution is denied, the Clerk or designee will immediately notify the Clerk of the Ninth Circuit Court of Appeals by telephone of the filing of any notice of appeal and forward copies of the notice of appeal, this Court's docket, the death warrant, and all orders issued in the case by electronic mail in PDF format to the Ninth Circuit Clerk or designee, pursuant to Ninth Circuit Rule 22-6(a).

**APPENDIX B**  
**Attorney Discipline, Suspension, and Disbarment**

**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.
  
- 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 marked "Confidential Attorney Matter."
- H. "Chief Judge" means the Chief Judge of the district or another district judge designated by the Chief Judge.

## **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 of the matter and provide copies of documents issued in that action.
- B. *Duty to Notify of Discipline Imposed in Another Jurisdiction.* Upon notice of the imposition of discipline in any jurisdiction, an attorney must promptly notify the Chief Judge of the matter and provide copies of documents imposing discipline.
- C. *Show-Cause Order.* Upon receiving notice of imposition of discipline in another jurisdiction, the Chief Judge must issue a show-cause order to the disciplined attorney. The order must 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 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.

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

- i. After considering the attorney's response, the Chief Judge must 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. If the Chief 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.
- iii. *Failure to Respond.* If the attorney does not respond, the identical discipline will be imposed, and the matter may be continued under subsections (3) or (4).

### 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 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 Judge must vacate any disciplinary order that is based solely on the fact of conviction.

### 4. **Grievance Procedure.** The following procedures apply when any 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. A grievance filed by any person other than a judge of this Court must be signed under penalty of perjury.
- ii. The Chief 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 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 Judge.* After review of the investigative report, the Chief 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 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 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.

C. A judge will hold a hearing. 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.

D. The judge 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.



## APPENDIX C

### Sample Forms

*Additional [forms](#) may be available on the Court's website.*

**FORM C**  
**Notice of Appearance**  
**L.R. 12.2**

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

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

---

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

---

The undersigned attorney hereby enters this Notice of Appearance on behalf  
of Defendant Jennifer Jones.

DATED [date].

/s/ James Doe  
Attorney for Defendant Jones

**FORM D**  
**Proposed Final Pretrial Order**  
**L.R. 16.4**

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

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

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

---

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

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

**I. Nature of Action.**

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

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

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

## **II. Jurisdiction and Venue.**

Mary Jones is a citizen of the State of Montana. Westbest Nursing Home is a corporation organized under the laws of Oregon having its principal place of business in Oregon. Subject matter jurisdiction is based upon Diversity of Citizenship, 28 U.S.C. § 1332. Personal jurisdiction is not questioned. Venue is proper in the Missoula Division as the incident occurred in Polson, Montana. L.R. 1.9(e), 1.11(a)(2).

## **III. Jury.**

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

## **IV. Agreed Facts.**

The following facts are agreed upon and require no proof:

- (a) Mary Jones was born on July 4, 1914.
- (b) Mary Jones was a patient at Westbest Nursing Home in Polson, Montana from April 15, 2000 until May 23, 2000.
- (c) Mary Jones died at 1:30 p.m. on May 23, 2000.
- (d) The cause of Mary Jones's death was asphyxiation.
- (e) Mary Jones is survived by her daughter Anna Jones Murphy and her son Thomas Jones.
- (f) The reasonable funeral expenses incurred are \$7,640.00.

**V. Elements of Liability.**

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

- (a) A duty owed by the nursing home to the patient. Plaintiff contends that under the provisions of the Nursing Home Patients' Bill of Rights Westbest had a duty to keep Plaintiff free from chemical and physical restraints unless authorized by a physician.
- (b) The breach of that duty by the nursing home, either by omitting to perform or by performing wrongly, its duty to the patient. Plaintiff contends she was restrained for the convenience of the Westbest staff

without authorization by her treating physician.

- (c) Injury to or death of the nursing home patient. Plaintiff died of asphyxiation from the restraints placed on her by Westbest staff.
- (d) Causation. Westbest Nursing Home's breach of duty caused the Plaintiff's injury or death.

**VI. Defense Elements.**

The following are elements of defenses asserted by Defendant:

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

**VI. Relief Sought.**

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



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

**VII. Legal Issues.**

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

**IX. Dismissals.**

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

**X. Witnesses.**

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

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

**XI. Exhibits.**

Attached to this pretrial order are the following *separate* Exhibit Lists.

Objections not disclosed on the Exhibit Lists, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, are waived unless excused by the Court for good cause.

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

**XII. Discovery Documents.**

Plaintiff will offer the following discovery documents:

- (a) Defendant's Answers to Interrogatories
  - No. 1
  - No. 13
  - No. 20(a), (b)
- (b) Defendant's Responses to Requests for Admission
  - No. 3
  - No. 9
  - No. 15
- (c) Defendant's Responses to Requests for Production
  - No. 7 (with attached documents)

Defendant will offer the following discovery documents:

(a) Plaintiff's Answers to Interrogatories

No. 17

No. 23

(b) Plaintiff's Responses to Requests for Admission

No. 10

No. 11

**XIII. Deposition Excerpts and Summaries.**

Defendant will show an excerpt from the video deposition of Harmon Highline, *see* Highline Dep. at 6:35-15:57. Plaintiff objects under Fed. R. Evid. 601 and 602. No summaries will be used.

**XIV. Estimate of Trial Time.**

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

This Order supersedes the pleadings in this matter.

DATED [date].

---

Xavier Yanni Zanthopoulos  
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

/s/ Jane Doe  
Attorney for Plaintiff Brown

/s/ James Doe  
Attorney for Defendant Jones

**FORM E**  
**One Party's Witness Lists**  
**L.R. 16.4(b)(10)**

**DEFENDANT'S WITNESS LIST - WILL CALL**

Case Name: Jones v. Westbest Nursing Home

Case Number: CV 00-001-TD-XYZ

<b>Name</b>	<b>City &amp; State</b>	<b>Manner of Presentation</b>	<b>Expert?/ Date of Report</b>	<b>Designated Excerpt</b>	<b>Objections</b>
John Appleseed	Westbest Nursing Home Polson, Montana	in person	yes; 1-17-02		
Billy Bathgate	Brooklyn, NY	live video conference	no		
Harmon Highline Highline Experts, Inc.	Fort Sumter, SC	video deposition	yes; 1-29-02 supp. 3-01-02 supp. 6-07-02	6:35-15:57	601, 602

**DEFENDANT'S WITNESS LIST - MAY CALL**

Case Name: Jones v. Westbest Nursing Home

Case Number: CV 00-001-TD-XYZ

<b>Name</b>	<b>City &amp; State</b>	<b>Manner of Presentation</b>	<b>Expert?/ Date of Report</b>	<b>Designated Excerpt</b>	<b>Objections</b>
Patricia Pattern, R.N.	Westbest Nursing Home Polson, Montana	in person	no		
Daniel Ork, M.D.	Westbest Nursing Home Polson, Montana	in person	no		
Ralph Runcible	Purity Janitorial Services Polson, Montana	in person	no		

**FORM F**  
**One Party's Exhibit Lists**  
**L.R. 16.4(b)(11)**



**PLAINTIFF'S EXHIBITS – WILL OFFER**

Case Name: Jones v. Westbest Nursing Home

Case Number: CV 00-001-TD-XYZ

#	Description	Δ's Objection	Date Offered	Date Admitted	Date Refused	Date Reserved
1	Incident Report No. 389789, Officer Ruffian					
24	Video: nursing home room, without narrative	Rule 401				
107	Photograph of Plaintiff's bed and restraints					
329	Video: A Day in the Life of Westbest Residents	Rule 403; Rule 801; Rule 802; Rule 26(a)(2) (B)&(C)				
507	Westbest employee's handbook, pages 2-16 through 2-30	Rule 401; Rule 402; <i>Yaeger v. Deane</i>				
---	Impeachment & Rebuttal Exhibits					

**PLAINTIFF’S EXHIBITS – MAY OFFER**

Case Name: Jones v. Westbest Nursing Home

Case Number: CV 00-001-TD-XYZ

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

**FORM G**  
**Motion by Attorney for Leave to File Conventionally**  
**L.R. 1.4(c)(1)**

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

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

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

---

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

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

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

\_\_\_\_\_ of the following special circumstances: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_.

DATED [date].

[conventional hand signature]  
Clarence Darrow  
Attorney for Defendant Webster

**FORM I**  
**Witness Information Sheet**

## WITNESS INFORMATION SHEET

Thomas Q. Testifier  
Polson, Montana

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

**Date of statement:** 02-16-2002

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

514  
515  
519  
521  
533

**FORM J**  
**Client's Consent to Student Participation**  
**L.R. 83.7**



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

***Client's Consent to Student Participation***

I, [Client's Name], state the following:

1. [Supervising Attorney] has explained to me the terms under which [Student's Name] will participate in the handling of my case.
2. I understand that [Student's Name] is not an attorney.
3. [Supervising Attorney] will remain fully responsible for my case and for all of the student's work.
4. I understand that this consent form will be filed in the record of my case.
5. I consent to the student's participation in my case on these terms.

DATED [date].

---

Client's Signature

**FORM K**  
**Student's Certification**  
**L.R. 83.7**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

*Student Certification*

I, [Student's Name], certify the following:

1. I am of good character and competent legal ability and am adequately trained to perform as a legal intern.
2. I am:
  - enrolled at [Law School] and have completed at least two-thirds of the credits required to graduate; or
  - a recent graduate of [Law School], but I have not yet taken a bar exam or I am awaiting the results.
3. I am familiar with the Federal Rules of Civil Procedure, of Criminal Procedure, and of Evidence, the Model Rules of Professional Conduct, the Montana Rules of Professional Conduct, and the Local Rules. I understand that I am bound by these Rules.
4. I understand that this certification will be filed in the record of each case in which I participate.

DATED [date].

---

Student's Signature

**FORM L**  
**Dean's Certification**  
**L.R. 83.7**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

*Dean's Certification*

I, [Dean's Name], Dean, or [Authorized Representative], authorized representative of the Dean of [Law School], certify the following:

1. [Student's Name] is:
  - enrolled at this law school and has completed at least two-thirds of the credits required to graduate; or
  - is a recent graduate of this law school who has not yet taken a bar exam or who is awaiting the results.
2. [Student's Name] is of good character and competent legal ability and is adequately trained to perform as a legal intern.
3. [Law School] is accredited by the American Bar Association.
4. I understand that this certification will be filed in the record of each case in which [Student's Name] participates.
5. I understand that I may withdraw this certification at any time in writing directed to the Clerk of Court.

DATED [date].

---

Signature of Dean or Authorized Representative  
[Law School]

**FORM M**  
**Supervising Attorney's Certification**  
**L.R. 83.7**

[Attorney Name]  
[Firm]  
[Street Address]  
[City, State ZIP]  
[Telephone]  
[Fax]  
[E-Mail]  
Attorney for [Plaintiff/Defendant Name]

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

[Division] DIVISION

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,	)	Case No. [CV/CR _____]
	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF STUDENT
	)	PARTICIPATION AND
,	)	SUPERVISING ATTORNEY'S
	)	CERTIFICATION
Defendants.	)	

---

I, [Supervising Attorney], notify the Court that [Student's Name] will participate in this case under D. Mont. L.R. 83.14. I certify as follows:

1. I will assist and counsel [Student's Name] in all work performed in this case.

2. I accept full personal and professional responsibility for all work performed by the student.

3. I have explained to the client the terms under which [Student's Name] will participate in this case.

4. I will ensure that at least one supervising attorney is present in person throughout the student's presentations in open court.

5. I will ensure that at least one supervising attorney signs all written submissions in which the student participates and briefly notes the student's participation.

6. Forms J, K, and L are attached to this Notice as exhibits.

DATED [date].

---

Supervising Attorney's Signature



**APPENDIX D**  
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Hearings. . . . . [7.1\(e\)](#), [78.1](#), [CR 47.2\(e\)](#)

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