IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

Friday, September 1, 1995

Pursuant to the authority with which this court is vested under Federal Rule of Civil Procedure 83,

IT IS HEREBY ORDERED:

1. That the RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA be, and they hereby are amended by including therein amendments to Civil Rules 105, 110, 120, 125, 130, 135, 200, 205, 210, 220, 225, 226, 235, 240, 245, 265, 290, and 400; and amendment to Criminal Rules 325, 326, and 340.

[See infra., pp. 2, 5, 10, 12, 14, 16, 17, 21, 22, 23, 26, 28, 29, 35, 36, 38, 40, 41, 44, 46, 47.]

2. That the foregoing amendments to the RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA shall take effect on September 1, 1995, and shall govern all proceedings in civil and criminal cases thereafter

commenced and, insofar as just and practicable, all proceedings in civil and criminal cases then pending.

PAUL G. HATFIELD, CHIEF JUDGE
UNITED STATES DISTRICT COURT

CHARLES C. LOVELL
UNITED STATES DISTRICT JUDGE

JACK D. SHANSTROM
UNITED STATES DISTRICT JUDGE

RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA

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CHAPTER I. GENERAL RULES

RULE 100

EFFECTIVE DATE--DECORUM

100-1 EFFECTIVE DATE

These Revised Rules of Procedure of the United States District Court for the District of Montana supplement the Federal Rules of Civil Procedure, Title 28 U.S.C., and the Federal Rules of Criminal Procedure, Title 18 U.S.C., and will be effective September 1, 1995.

Subsequent amendments to these Rules shall be effective on the date of filing.

100-2 DECORUM

(a) Opening Court. When the Court first convenes in the morning and after the noon recess, the Court Crier shall, in an appropriate manner, announce the opening of Court, and all persons in attendance in the courtroom shall rise until the Judge has taken the bench.

(b) The Judges of the Court shall, when presiding in open Court, wear judicial robes.

RULE 105

DIVISIONS--ASSIGNMENT OF DIVISIONS--VENUE--TERMS OF THE COURT AND CALENDAR

105-1 DIVISIONS WITHIN DISTRICT

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

The BILLINGS DIVISION shall be comprised of the Counties of Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Golden Valley, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Stillwater, Sweetgrass, Treasure, Valley, Wheatland, Wibaux and Yellowstone. Court shall be held in the Billings Division at the Courtroom in the U.S. Courthouse, Billings, Montana.

The BUTTE DIVISION shall be comprised of the Counties of Beaverhead, Deer Lodge, Gallatin, Madison and Silver Bow. Court shall be held in the Butte Division at the Courtroom in the Federal Building, Butte, Montana.

The GREAT FALLS DIVISION shall be comprised of the Counties of Blaine, Cascade, Chouteau, Fergus, Glacier, Hill, Judith Basin, Liberty, Pondera, Teton and Toole. Court shall be held in the Great Falls Division at the Courtroom in the Post Office Building, Great Falls, Montana.

The HELENA DIVISION shall be comprised of the Counties of Broadwater, Jefferson, Lewis and Clark, Meagher and Powell. Court shall be held in the Helena Division at the Courtroom in the Federal Building, Helena, Montana.

The MISSOULA DIVISION shall be comprised of the Counties of Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders. Court shall be held in the Missoula Division at the Courtroom in the Federal Building, Missoula, Montana.

105-2 ASSIGNMENT OF CASES

(a) Jurisdiction. All of the Article III Judges of the District of Montana, including the Senior Judges designated to serve in Montana by the Chief Judge of the Circuit, shall have jurisdiction over all criminal and civil cases filed in the District of Montana, and may make and sign any orders, decrees or judgments.

(b) Assignment of Division Workload. For the purpose of allocating the work of the Judges, however, the Chief Judge of the District shall by order, assign each of the Divisions of the Court to one of the Judges thereof. All applications for orders in cases pending in any Division shall be made to the Judge to whom the Division is assigned unless by order of the Chief Judge, a particular cause is specifically assigned to a judicial officer other than the one regularly assigned, in which case application for orders shall be to the judicial officer so specifically assigned.

(c) Assignment of Cases to Magistrate Judges. The Judge to whom the work of a particular division is assigned may direct that any civil case filed within that division be assigned to any Magistrate Judge of the District of Montana in accordance with 28 U.S.C. § 636, and Rule 400-1 of the RULES OF PROCEDURE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MONTANA.

(d) Consent to Proceed Before a Magistrate Judge. The right to have all civil proceedings conducted by a United States District

Judge appointed pursuant to Article III of the United States Constitution shall be preserved to the parties inviolate.

Any party to a civil action that has been assigned to a Magistrate Judge pursuant to subsection (c) of the present rule may demand that all pretrial matters excepted from the jurisdiction of the Magistrate Judge by 28 U.S.C. § 636(b)(1)(A) be heard and determined, and all trial proceedings conducted and judgment entered, by an Article III Judge, by serving upon the other parties a demand therefor in writing at anytime after the commencement of the action and not later than twenty (20) days from the date notification of assignment to the Magistrate Judge is filed by the Clerk of Court. Such demand may be endorsed upon a pleading of the party. The failure of a party to serve a demand as required by this rule and to file it as required by Fed.R.Civ.P. 5(d) constitutes a waiver by the party to have any pretrial matter heard and determined, or trial proceedings conducted and judgment entered, by an Article III Judge, and a consent by the party to have the Magistrate Judge hear and determine any pretrial matter and to conduct any or all trial proceedings and order the entry of judgment in the case.

105-3 VENUE

(a) Civil Cases. All civil cases are assignable to that Division of the District in which they properly belong by conformity as near as may be possible to the laws of the State of Montana governing the place of trial and the trial of all such cases shall be at the place where court is held within the Division to which the cause is so assigned, unless by agreement of the parties and with the consent of the Court, or by order of the Court in its discretion, or for good cause shown, such trial is ordered elsewhere.

The designation by counsel of a Division in the complaint constitutes a certification by counsel filing the complaint that the Division so designated is the proper venue of the case under the foregoing provisions of this Rule. If no designation of a Division is made by counsel,

the Clerk shall assign the cause to the proper Division under the provisions of this Rule.

At the time of appearance, any defendant who believes that the cause is improperly assigned, may in addition to any other motions made, move that the cause be assigned to the proper Division of the Court. Within ten (10) days after the first appearance of any defendant, any plaintiff may serve and file a motion for proper assignment. Failure by any party to make such motion for proper assignment within the time provided shall constitute consent to the assignment made, but the Court may of its own motion reassign the case at any time prior to trial.

(b) Criminal Cases. Venue in criminal cases is in accordance with the Federal Rules of Criminal Procedure.

(c) Appeal from Judgment of a Magistrate Judge. Appeal to the District Court from a judgment of conviction by a United States Magistrate Judge under 18 U.S.C. § 3402, shall be taken to that Division of the District Court wherein the offense was committed.

105-4 TERMS OF COURT AND CALENDAR

(a) When Set, By Whom. Terms of Court shall be set for the trial of civil and criminal cases in each Division of the Court by the Judge to whom the Division is assigned, at such times, as in the discretion of the Judge, the matters pending in the Division are sufficient to warrant such a term.

(b) Grand Jury, When and Where Impaneled. Grand juries shall be impaneled and be in attendance at such times and places in each year as, in the discretion of the Court, the business of the court requires or permits. Any active District Judge, or Senior Judge, is authorized to impanel a grand jury, take the returns, and discharge the grand jury upon completion of its service. A full-time Magistrate Judge of the district may,

upon designation by a District Judge, impanel a grand jury, take the returns, and discharge the grand jury upon completion of its service.

The Grand Jury matters, praecipes, subpoenas and returns will not be disclosed nor the records thereof be subject to inspection without an order of Court.

Any Judge in the District, including Senior Judges designated by the Chief Judge of the Court of Appeals for the Ninth Circuit, shall have full power to act in all matters pertaining to the Grand Jury.

(c) Law and Motion Calendar, How Set. The law and motion calendar shall be set as provided in Rule 220-4.

RULE 110

ATTORNEYS

110-1 ADMISSION TO AND PRACTICE IN THIS COURT

(a) Admission to the Bar of this Court. Admission to the Bar of this Court is limited to attorneys of good moral character who are members in good standing of the State Bar of Montana.

(b) Procedure for admission. Each applicant for admission shall present to the clerk a written petition for admission, stating the applicant's residence and the date of admission to the State Bar of Montana. The petition shall be accompanied by 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.

Upon qualification, the applicant may be admitted, upon oral motion or without appearing, as determined by the Court, by signing the prescribed oath and paying the prescribed fee.

(c) Practice in this Court. Except as herein otherwise provided, only members of the Bar of this Court shall practice in this Court.

(d) Attorneys for the United States. An attorney who is not eligible for admission under Rule 110-1(a), but who is a member in good standing of, and eligible to practice before 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 practice 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 or any of its officers. Attorneys so permitted to practice in this Court are subject to the jurisdiction of the court with respect to their conduct to the same extent as members of the Bar of this Court.

(e) Special Assistants for the United States. Special Assistant United States Attorneys whose practice before this Court is restricted to prosecution of misdemeanors and petty offenses before the several United States Magistrate Judges shall not be required to be admitted to the State Bar of Montana as otherwise specified in Rule 110-1(d). Attorneys so permitted to practice in this Court are subject to the jurisdiction of the Court with respect to their conduct to the same extent as members of the Bar of this Court.

(f) Pro hac vice. An attorney not eligible for admission under Rule 110(a) hereof, but who is a member in good standing of, and eligible to practice before, 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 written application and in the discretion of the presiding judicial officer, be permitted to appear and participate in a particular case. Unless authorized by the Constitution of the United States or acts of Congress, an attorney is not eligible to practice pursuant to Rule 110-1(f) if any one or more of the following apply to the attorney: (i) the attorney resides in Montana, (ii) the attorney is regularly employed in Montana, or (iii) the attorney is regularly engaged in business, professional, or other activities in Montana. The pro hac vice application shall be presented to the clerk and shall state under penalty of perjury (i) the attorneys' residence and office addresses, (ii) by what court(s) the attorney has been admitted to practice and the date(s) of admission, (iii) that the attorney is in good standing and eligible to practice in these courts, (iv) that the attorney is not currently suspended or disbarred in any other court, and (v) if the attorney has concurrently or within the year preceding the date of application made any pro hac vice application to this Court, the title and the number of each matter in which an application was made, the date of application, and whether or not the application was granted. The attorney shall also designate in the application a member of the Bar of this Court with whom the Court and opposing counsel may readily communicate regarding the conduct of the case and upon whom papers shall be served.

The applicant shall file with such application the address, telephone number and written consent of such designee.

(g) Designation of local counsel. The judicial officer to whom a case is assigned may in that case, in his or her discretion and upon notice, require an attorney appearing in this Court pursuant to the provisions of this rule and who maintains an office outside of this district to designate a member of the Bar of this Court who does maintain an office within this district as co-counsel with the authority to act as attorney of record for all purposes. The attorney shall file with such designation the address, telephone number and written consent of such designee.

110-2 NOTICE OF CHANGE OF STATUS

An attorney who is a member of the Bar of this Court or who has been permitted to practice in this Court under Rule 110 hereof shall promptly notify the Court of any change in the attorney's status in another jurisdiction which would make the attorney ineligible for membership in the Bar of this Court under Rule 110 hereof or ineligible to practice in this Court under Rule 110 hereof. In the event the attorney is no longer eligible to practice in another jurisdiction by reason of the attorney's suspension for nonpayment of fees or enrollment as an inactive member, the attorney shall forthwith be suspended from practice before this Court without any order of Court and until the attorney becomes eligible to practice in such other jurisdiction.

110-3 STANDARDS OF PROFESSIONAL CONDUCT

(a) Professional Conduct and Ethics. The standards of professional conduct of attorneys practicing in this Court shall include The American Bar Association's Model Rules of Professional Conduct. For a willful violation of any of these Canons in connection with any matter

pending before this Court an attorney may be subjected to appropriate disciplinary action by the Court. In addition, the Court may refer the matter to the Montana Commission on Practice for such disciplinary proceedings as the latter may deem appropriate.

110-4 WITHDRAWAL FROM CASE

(a) Leave of Court and Notice. No attorney may withdraw from any case, civil or criminal, except by leave of Court after notice is served on both the attorney's client(s) and opposing counsel.

(b) Responsibility of Attorney on Withdrawal. When an attorney of record for any reason ceases to act for a party, such party should immediately appoint another attorney or appear in person, and may be required to do so on motion and notice to such party. Until this is done, the authority and the responsibility of the attorney shall continue for all proper purposes.

110-5 SUSPENSION AND DISBARMENT

(a) Disbarment and Discipline. For good cause and after an opportunity to be heard, any member of the Bar of this Court may be disbarred, suspended for a definite time, reprimanded, or disciplined as the Court may deem proper, except that where it is shown that any member of the Bar of this Court has been disbarred from practice in any State, District, Commonwealth or Possession, or any Court of the United States, the attorney will be forthwith suspended from practice before this Court. The attorney will thereupon be afforded the opportunity to show good cause, within forty (40) days, why the attorney should not be disbarred.

(b) Reinstatement. Any attorney who has been disbarred by this Court may petition for reinstatement.

(c) Advisory Committee. The Court may appoint a committee of the Bar to assist it in matters involving the professional conduct of attorneys arising in or connected with any matter pending before the Court, whether such conduct occurred before or after the Court acquired jurisdiction of the cause. The committee shall, upon order of the Court, conduct such investigations as the Court may direct and report the results of their investigation to the Court and their recommendations. The report and recommendations shall be advisory only.

110-6 ATTORNEY AS A WITNESS

If an attorney representing any party is examined as a witness in a case, and gives testimony on the merits, the attorney shall 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, in that case.

110-7 AGREEMENTS OF ATTORNEYS

No executory agreement or stipulation by an attorney, not made in open court, the existence of which is not conceded, will be enforced, unless the same was in writing and signed by the attorney of record; and no executory agreement by an attorney in open court, the existence of which is not conceded, will be enforced unless the same be either made as above provided, or appear from the minutes of the Clerk, or from the minutes of the notes of the Reporter, or be within the clear recollection of the judicial officer. Agreements during a trial or hearing in open court may be made by the counsel conducting the trial, though the attorney be only one of the attorneys of record.

110-8 ATTORNEY UNDER APPOINTMENT OF COURT

(a) Compensation. It shall be the duty of an attorney to act as such without compensation whenever the attorney is appointed by the Court to represent an indigent person in any proceeding not covered by the provisions of the Criminal Justice Act of 1964 as amended.

(b) Gratuities. Attorneys appointed by the Court to represent an indigent person shall not, without specific approval of the Court, accept from or solicit any money for any purpose from any person on account of the representation of the indigent. 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 an indigent or has sources of money for payment of fees or costs, that fact shall be presented to the Court.

110-9 COMMUNICATIONS TO COURT AND EX PARTE APPLICATIONS

The Court will not receive letters or other communications from counsel that do not indicate on their face that copies have been sent to opposing counsel.

Ex parte applications for orders, made either by mail or by telephone, will not be granted unless it is indicated that the adverse party has been advised of the request.

110-10 STUDENT PRACTICE RULE

(a) Purpose. The Bench and the Bar are responsible for providing competent legal services. This Rule is adopted to assist practicing attorneys in providing legal services and to encourage law schools to provide clinical instruction in trial work of varying kinds.

(b) Activities.

(1) An eligible law student may appear in this Court or before a United States Magistrate Judge for the District of Montana on behalf of any person in any civil or criminal proceedings if:

(i) the person on whose behalf the student is appearing has indicated in writing that person's consent to the appearance and the supervising attorney has also indicated in writing approval of that appearance;

(ii) the supervising attorney is personally present throughout the proceedings and is fully responsible for the manner in which they are conducted.

(2) In each case the written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the presiding judicial officer.

(c) Requirements and Limitations. In order to make an appearance pursuant to this Rule the law student must:

(1) be duly enrolled in a law school approved by the American Bar Association;

(2) have completed legal studies amounting to at least two-thirds of the total credit hours required for graduation;

(3) be certified by the Dean of the student's law school as being of good character and competent legal ability and as being adequately trained to perform as a legal intern;

(4) be introduced to the Court by a member of the Bar of this Court;

(5) neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf the student renders services; but this shall not prevent an attorney, legal aid bureau, law school or public defender agency from paying compensation to the eligible law student, nor shall it prevent any of the foregoing from making such charges for its services as it may otherwise properly require;

(6) certify in writing that the student has read and is familiar with and will abide by the Code of Professional Responsibility.

(d) Certification. The certification of a student by the Law School Dean:

(1) shall be filed with the Clerk of the Court, and, unless it is sooner withdrawn, it shall remain in effect until the expiration of 12 months after it is filed, or admission to the bar, whichever occurs first. Upon exceptional circumstances shown, the Dean may renew the certification for one more 12-month period. Law school graduates who must take the bar examination are eligible until the results of the first bar examination after their certification under this Rule are announced;

(2) may be withdrawn by the Dean at any time by mailing a notice to that effect to the Clerk of the Court, who shall forthwith mail copies thereof to the student and the supervising attorney;

(3) may be terminated by the Court at any time without notice or hearing and without any showing of cause.

(e) Supervision. The attorney under whose supervision an eligible law student participates in any of the activities permitted by this Rule shall:

(1) be a member in good standing of the Bar of this Court;

(2) assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work;

(3) assist and counsel the law student in the activities mentioned in these Rules and review such activities with such student, all to the extent required for the proper practical training of the student and the protection of the client;

(4) have supervision over no more than one law student at any one time; however, in the case of recognized legal aid, legal assistance, public defender, and similar programs furnishing legal assistance to indigents, the supervising attorney may supervise two law students at one time.

This restriction shall not apply to any clinical legal education program conducted as a part of the curriculum of any law school approved by the American Bar Association.

(f) Pro Se Representation. Nothing contained in this Rule shall affect the right of any person who is not admitted to practice law to do anything that person might lawfully do prior to the adoption of this Rule.

RULE 120

FILE AND FILINGS

120-1 FORM OF PAPERS

(a) All papers shall be filed flat and firmly bound together and be pre-punched to accommodate a 2 3/4 inch two-prong fastener centered at the top of the page.

(b) All papers shall be typewritten, printed or reproduced in at least 11 point type, without erasures or interlineations materially defacing them, on white opaque paper of good quality. Use of line-numbered paper is optional, although preferred.

(c) Matter shall appear on one side of the page only, and shall be double spaced, except quoted material. Names shall be typed or printed under all signatures. Pages shall be numbered at the bottom.

(d) Size of Paper Accepted. Effective January 1, 1983, the use of legal size paper throughout the Federal Judiciary is eliminated, and the 8½ x 11 inch size paper will be the only size accepted in this Court.

120-2 COUNSEL IDENTIFICATION, CAPTION AND TITLE

The first page of all documents presented for filing shall be in the following form:

(a) In the space commencing with Line 1, to the left of the center of the page, single spaced, the name, the office address, or if none, the residence address, and telephone number of the attorney for the party in whose behalf the paper is presented, or of the party if the party is appearing in propria persona. Should a party be without an address or telephone, the document shall set forth an address or telephone number where the party may be contacted.

(b) The space between lines 1 and 7 on the right of the center of the page shall be left blank for the use of the Clerk.

(c) On or below line 8, place the court heading.

(d) On the left half of the page, below the court heading, place the case caption.

(e) To the right of, and opposite the case caption, place the docket number of the case and the document title. If the document being filed is in support of or in opposition to any matter which is calendared for hearing, the hearing date shall be placed immediately below the case number on the first page.

(f) Where documents are filed that are not in the required form, the Clerk shall advise the judicial officer to whom the case is assigned of the irregularity.

120-3 TIME

The time within which an act is required to be done by these Rules shall be computed as provided in Rule 6 of the Federal Rules of Civil Procedure. Where service is by mail, the time shall be extended as provided in Rule 6(e) of the Federal Rules of Civil Procedure.

120-4 COPIES TO BE FURNISHED TO CLERK

Parties shall promptly furnish to the Clerk all necessary copies of any pleading, judgment or order, or other matter filed of record in a cause so as to permit the Clerk to comply with the notice and service

provisions of any applicable statute or rule, and the provisions of Rule 79(b) of the Federal Rules of Civil Procedure with reference to final judgment, appealable orders, or order affecting title to or lien upon real or personal property. All copies so furnished shall be legible copies.

120-5 CITATION FORM

(a) All documents filed with the Court shall follow the citation form described in the current edition of "A Uniform System of Citation," published by The Harvard Law Review Association (commonly referred to as the "Harvard Citator"). The use of internal citations, referring to a particular page of a cited authority, is strongly encouraged.

(b) All citations to federal acts, such as the various Securities Acts, Bankruptcy Act, Fair Standards Act, Clayton Act, Sherman Act, etc., must be accompanied by a parallel citation to the United States Code, United States Code Service or the United States Code Annotated. Reference to a United States Code citation, without reference to any section within an Act, is acceptable.

(c) For any violation of the rules stated in (a) or (b) above, the Court in its discretion may return the document for correction.

120-6 FAX FILINGS PROHIBITED

Documents may not be transmitted by use of telefacsimile ("fax") equipment for filing with the Court.

RULE 125

THE CLERK

125-1 LOCATION AND HOURS

Offices of the Clerk shall be maintained in the cities of Billings, Butte, Great Falls, Helena, and Missoula, and shall be open between the hours of 8:30 A.M. and 5:00 P.M. Monday through Friday. All papers in causes assignable to any Division may be filed with the Clerk in any divisional office.

125-2 FILING BY THE CLERK

The Clerk shall file all papers presented for filing upon payment of proper fees. It shall be the duty of the Clerk to forward all papers to the Clerk's office of the assignable Division, and if there is no Clerk's office in the assignable Division, then to the office handling matters for such Division.

All original papers shall be filed with the Clerk and not with the judicial officer to whom the case is assigned.

125-3 FILES AND RECORDS, WHERE MAINTAINED

The files and records in cases arising in a particular division will be maintained in the Clerk's Office at that division unless otherwise ordered by the Court.

125-4 CUSTODY OF RECORDS AND RELEASE

No record or paper belonging to the files of the court shall be taken from the custody of the Clerk except with the permission of the judicial officer to whom the case is assigned, and a receipt given by the party obtaining it, specifying the record or paper, the date of its receipt, and the date it is to be returned. In the event the presiding judicial officer is not available or cannot be reached to give permission, then the Clerk or deputy in charge of the office is vested with the discretion to release any record or paper.

However, if it is necessary for a Judge, Magistrate Judge, Master, Examiner, or Court Reporter to use any record or paper in connection with their official duties at places other than the Clerk's offices, courtroom or Chambers of a judicial officer, the record or paper may be taken from the Clerk's office upon the delivery to the Clerk or deputy in charge of a receipt signed by the officer who desires the use of the record or paper.

125-5 CUSTODY OF EXHIBITS AND RELEASE

(a) Custody. Every exhibit placed on file shall be held in the custody of the Clerk; but unless there is good reason why the original should be retained, upon application, the Court may order a copy filed in its place.

(b) Disposal. Upon filing of a stipulation waiving the right to an appeal, and to a rehearing or a new trial, or after judgment has become final, any party may withdraw any exhibit which the party has filed, unless some other party or witness files notice with the Clerk that the party is entitled to the exhibit, in which case the Clerk shall not deliver the exhibit, except with the consent of both the party who files it and the claimant, until the Court has determined the person entitled to it. If exhibits are not withdrawn within thirty (30) days after the judgment has become final, the

Clerk may dispose of them within a reasonable time after notice to the party offering the exhibit of the Clerk's intention to do so.

125-6 ORDERS THAT MAY BE GRANTED BY THE CLERK

In addition to those powers conferred by Rule 77(c) Federal Rules of Civil Procedure, the Clerk of this Court is authorized to grant, sign and enter the following orders without further direction by the Court:

(a) Extending Time to Plead. Orders, on written stipulation, extending the time to plead or otherwise defend or to make any motion except a motion for a new trial or a motion to stay judgment, may be granted by the Clerk if the time originally prescribed to plead, defend or modify has not expired. Any extension granted by the Clerk shall not exceed fifteen (15) days. (See, Rule 220-3.)

(b) Substitution of Attorneys. Orders, on written consent, for the substitution of attorneys;

(c) Satisfying Judgments, etc. Orders, on written consent satisfying a judgment or for the payment of money, or annulling bonds and exonerating surety.

Any order granted by the Clerk under this section may be suspended, altered or rescinded by the Court for good cause shown.

125-7 WAIVING CLERK'S NOTICE OF ENTRY OF STIPULATED ORDERS

When an order is made upon stipulation, if no request is made that notice of the entry of the order be mailed by the Clerk, the mailing of notice as required by Rule 77(d), Federal Rules of Civil Procedure, shall be deemed waived.

RULE 130

FAIR TRIAL--FREE PRESS

130-1 PHOTOGRAPHING, TELEVISING, BROADCASTING

(a) Pursuant to the direction of the Judicial Conference of the United States, the taking of photographs in the Courtroom or its environs in connection with any judicial proceeding, including any person participating in a judicial proceeding, or the broadcasting of judicial proceedings by radio, television or other means is prohibited.

As used herein, "judicial proceeding" means:

(1) any trial, hearing, naturalization, proceeding or ceremonial occasion in any United States District Court;

(2) any proceeding before any Bankruptcy Judge or United States Magistrate Judge;

(3) sessions of the Grand Jury and Petit Jury.

"Courtroom" of a United States District Court means the foyer, witness room, and all space behind the double doors containing the Courtroom number.

"Courtroom" of a United States Magistrate Judge or Bankruptcy Judge means any place where a judicial proceeding is conducted.

The "environs" of the Courtroom of the United States District Court for the District of Montana and its Magistrate Judges and Bankruptcy Judges include the building or physical structure wherein judicial proceedings are conducted.

(b) It is the duty of the attorney or law firm not to release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent civil or criminal litigation with which an attorney or a law firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

(c) With respect to a grand jury or other pending investigation of any criminal matter, an attorney participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication that goes beyond the public record, or that is not necessary to either inform the public that the investigation is underway, or to describe the general scope of the investigation, or to obtain assistance in the apprehension of a suspect, or to warn the public of any dangers, or otherwise to aid in the investigation.

(d) From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information or indictment in any criminal matter until the commencement of trial or disposition without trial, any attorney or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication relating to that matter and concerning:

(1) the prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the attorney or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, an attorney or law firm associated with the prosecution may release any information necessary to aid in the apprehension of the accused or to warn the public of any dangers the accused may present;

(2) the existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) the performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) the identity, testimony, or credibility of prospective witnesses, except that the attorney or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) the possibility of a plea of guilty to the offense charged or a lesser offense;

(6) any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the attorney or law firm during this period, in the proper discharge of official or professional obligations, from the following:

(i) announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating officer or agency, and the length of the investigation;

(ii) making an announcement at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized;

(iii) disclosing the nature, substance, or text of the charge, including a brief description of the offense charged;

(iv) quoting from or referring without comment to public records of the court in the case;

(v) announcing the scheduling or result of any stage in the judicial process;

(vi) requesting assistance in obtaining evidence;

(vii) announcing without further comment that the accused denies having committed the offense charged.

(e) During a jury trial of any criminal matter, including the period of selection of the jury, no attorney or law firm associated with the prosecution or defense shall give or authorize any extra-judicial statement or interview, relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by any means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the attorney or law firm may quote from or refer without comment to public records of the court in the case.

(f) Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any attorney from replying to charges of misconduct that have been made publicly against the attorney.

(g) 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 personnel of a judicial officer, are hereby prohibited from disclosing to any person, without authorization by the Court, information relating to a pending criminal case that is not part of the public records of the court. Particularly, all such personnel shall not divulge any information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

(h) In a case that evidently will be greatly publicized, the Court, on motion of either party, or in its own discretion, may issue a

special order governing any activity or conduct the trial Judge believes appropriate for regulation to ensure a fair trial by an impartial jury.

RULE 135

EQUAL ACCESS TO JUSTICE

135-1 APPLICATION FOR FEES AND EXPENSES 28 U.S.C. § 2412(d)(1)(B)

(a) A party applying for an award of fees and expenses shall submit the required information on the prescribed forms, available from the Clerk of Court.

(b) A party applying for fees and expenses shall identify the specific position of the government which the party alleges was not substantially justified.

135-2 PETITIONS FOR LEAVE TO APPEAL 5 U.S.C. § 504(c)(2)

(a) Petitions for leave to appeal an agency fee determination shall be filed within thirty (30) days after the entry of the agency's order, with proof of service on all other parties to the agency's proceedings.

(b) The petition shall contain a copy of the order to be reviewed and any findings of fact, conclusions of law and opinion relating thereto, a statement of the facts necessary to an understanding of the petition and a memorandum showing why the petition for permission to appeal should be granted. An answer may be filed within thirty (30) days after service of the petition, unless otherwise directed by the Court. The application and any answer shall be submitted without further briefing and oral argument unless otherwise ordered.

135-3 APPEALS TO REVIEW FEE DETERMINATIONS

Appeals to review fee determinations otherwise contemplated by the Equal Access to Justice Act must be filed pursuant to the applicable statutes and rules of the Court.

RULE 200

CIVIL PROCEEDINGS

200-1 CIVIL COVER SHEET

(a) The Clerk is authorized and instructed to require a complete and executed AO Form JS 44(c), Civil Cover Sheet, which shall accompany each civil case to be filed.

(b) The Clerk is authorized to reject for filing any civil case which is not accompanied by a complete and executed Civil Cover Sheet.

(c) Persons filing civil cases, who are at the time of such filing in the custody of Civil, State or Federal institutions, and persons filing civil cases *pro se* are exempted from the foregoing requirements.

200-2 FILING OF PLEADINGS REQUIRING LEAVE OF COURT

Upon the filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or other pleading requiring leave of court to file, the movant shall file with the motion a copy of the proposed pleading or amendments and lodge the original with the Clerk of the Court. If leave to file is granted, the Clerk shall promptly file the original.

200-3 DOCUMENTS OF DISCOVERY

(a) Depositions upon oral examinations and interrogatories, requests for documents, requests for admissions, and answers and responses shall not be routinely filed (See F.R.Civ.P. 5(d)), however, when any motion is filed relating to discovery, the parties filing the motion shall at the same time attach to the motion all of the documents relevant to the

motion if the documents have not been previously filed. Certificates or notices indicating service of discovery documents on opposing parties shall not be filed.

(b) If for any reason a party or concerned citizen believes that any of the named documents should be filed, other than as provided in Rule 235-6(b)(7), the party may make an ex parte request that the document be filed, stating the reasons for filing.

(c) Proof of service of a notice to take a deposition shall continue to be filed in conformance with Rule 45(d)(1), Federal Rules of Civil Procedure.

200-4 FILING OF BRIEFS

(a) All briefs shall be filed with Clerk of Court, with an additional copy for the court's use.

200-5 DISCOVERY AND DISCOVERY RESPONSES

(a) Pre-Discovery Disclosure

(1) Except with leave of Court, a party may not seek discovery from any source before making an appropriate pre-discovery disclosure and may not seek discovery from another party before serving that party with an appropriate disclosure. A party may serve written interrogatories upon a party simultaneously with service of the required disclosure statement upon that party. Every party shall serve and file an appropriate disclosure not later than fifteen (15) days in advance of the preliminary pretrial conference.

The disclosure shall contain the following information:

(i) the factual basis of every claim or defense advanced by the disclosing party. In the event of multiple claims or defenses, the factual basis for each claim or defense;

(ii) the legal theory upon which each claim or defense is based including, where necessary for a reasonable understanding of the claim or defense, citations or pertinent legal or case authorities;

(iii) the name, and, if known, the address and telephone number of each individual known or believed to have discoverable information about the claims or defenses, and a summary of that information;

(iv) a copy of, or a description, including the location and custodian, of documents or data compilations, and tangible things and relevant documents reasonably likely to bear on the claims or defenses;

(v) a computation of any damages claimed; and

(vi) the substance of any insurance agreement that may cover any resulting judgment.

(2) Supplementation of Disclosure -- The disclosure obligation is reciprocal and continues throughout the case. A party who has made a pre-discovery disclosure is under a duty to seasonably supplement or correct the disclosure if the party learns that the information disclosed is not complete and correct or is no longer complete and correct.

(3) Signing of Disclosure -- Every mandatory disclosure or supplement made by a party represented by an attorney shall be signed by

at least one attorney of record. A party who is not represented by an attorney shall sign the disclosure. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after reasonable inquiry, the disclosure is complete as of the time it was made.

(4) Sanctions -- A sanction may be imposed for violation of Rule 200-5(a). A sanction for violation of the rule shall be imposed in accordance with the prescriptions of Fed.R.Civ.P. 11 and 37.

(b) Responses to Discovery

(1) Answers and objections to interrogatories pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and responses and objections to requests for admissions pursuant to Rule 36 of the Federal Rules of Civil Procedure shall identify and quote each interrogatory or request for admission in full immediately preceding the statement of any answer or objection.

(2) Each objection shall be followed by a statement of reasons. When an objection is made to part of an interrogatory, the remainder of the interrogatory shall 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) shall set forth each request in full before each response or objection. Each objection shall 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 which does not extend the dates set for lodging the pretrial order, pretrial conferences, or trial of the case. The Court will not enforce oral stipulations.

(c) Excessive Interrogatories

A party upon whom interrogatories have been served may seek relief from responding to interrogatories which are excessive in number. For the purpose of this rule, more than fifty (50) interrogatories, including subparts, shall be considered excessive, unless the party propounding them can establish that the interrogatories are not unduly burdensome, have been propounded in good faith, have been tailored to the needs of the particular case, and are necessary because of the complexity or other unique circumstances of the case.

(d) Demand for Prior Discovery

Whenever a party makes a written demand for discovery which took place prior to the time that party became a party to the action, each party who has previously provided responses to interrogatories, requests for admission or requests for production shall furnish to the demanding party the documents in which the discovery responses in question are contained, for inspecting and copying, or a list identifying each such document by title, and upon further demand shall furnish to the demanding party, and at the expense of the demanding party, a copy of any listed discovery response specified in the demand; or, in the case of request for production, shall make available for inspection by the demanding party all documents and things previously produced. Furthermore, each party who has taken a deposition shall advise the demanding party of the availability of a copy of the transcript at the latter's expense.

(e) Discovery Motions

(1) All motions to compel or limit discovery shall set forth, in full, the text of the discovery originally sought and the response made thereto, if any, and identify the reason why the proposed discovery is objectionable or should be limited.

(2) The Court will deny any motion pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure, unless counsel shall have conferred concerning all disputed issues before the motion is filed. If counsel for the moving party seeks to arrange such a conference, and opposing counsel wilfully refuses or fails to confer, the Judge may order the payment of reasonable expenses, including attorney's fees, pursuant to Fed.R.Civ.P. 37(a)(4). Counsel for the moving party shall include in the motion a certificate of compliance with this rule.

(f) Filing Discovery Papers

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

200-6 DEMAND FOR JURY TRIAL

When a demand for a jury trial is incorporated in a pleading, counsel are requested to so indicate in the title of the pleading.

200-7 STATUTORY THREE-JUDGE COURT

Any party drawing into question the constitutionality of the apportionment of Congressional Districts within the State of Montana or the apportionment of the Montana State Legislature, or when otherwise required by Act of Congress to request the convening of a District Court of three Judges, shall notify the Chief Judge of the District in writing stating the title and docket number of the action, the statute or the order in question, and specifying the respects in which relief is claimed.

In Statutory Three-Judge cases, all pleadings, depositions, affidavits, briefs and papers for submission to the Court so convened, shall be filed in triplicate.

200-8 DEPOSIT OF FUNDS IN CUSTODY OF COURT

(a) 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 shall 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 judicial officer for whom the order is prepared.

(b) Orders Directing Investment of Funds by Clerk. 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 shall 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 shall 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 at equal to the first forty-five (45) days' income earned on the investment, whenever such income becomes available for deduction in the investment so held and without further order of the Court.

RULE 205

REMOVAL–REMAND

205-1 REMOVAL OF ACTIONS FROM STATE COURT

In any action, civil or criminal, removed to this Court from a state court, the removing party shall file in this Court at the time the notice of, or petition for, removal is filed, or within ten (10) days thereafter, either the original file in the State Court action, or copies of all papers on file in the action in the State Court at the time of its removal, including copies of all returns on the service of summons or other process.

205-2 REMAND OF ACTIONS TO STATE COURT

Upon remand of an action to a State Court, immediately upon receipt of the order of remand, the Clerk of this Court shall forward by certified mail with return receipt requested, or deliver in person and obtain a receipt, to the Clerk of the State Court to which the action is remanded, the original file in the action together with a certified copy of the order of remand, and note such mailing or delivery on the docket sheet in the case. The original order of remand will be retained in the files of this Court.

RULE 210

SERVICE OF PROCESS AND PAPERS

210-1 ISSUANCE AND SERVICE OF PROCESS

The issuance and service of process shall be in conformity with the Federal Rules of Civil Procedure. The Clerk of Court shall issue process in all proceedings brought to quash an IRS summons.

210-2 SERVICE OF PROCESS UNDER STATE PROCEDURES

In those cases where the Federal Rules of Civil Procedure authorize the service of process to be made in accordance with Montana State practice, it is the duty of counsel for the party seeking service to file or cause to be filed with the Clerk of Court, the return on service of process.

210-3 PROOF OF SERVICE

Proof of service of all papers required or permitted to be served, other than those discovery documents and those for which a particular method of proof is prescribed in the Federal Rules of Civil Procedure, shall be filed in the Clerk's office promptly and in any event before action is to be taken by the Court or the parties. The proof shall show the day and manner of service and may be by written acknowledgement of service, by certificate of the person who served the papers, or by any other proof satisfactory to the Court.

If an affidavit of mailing or of service is attached to the original pleading, it shall be attached underneath the affidavit so the character of the pleading is easily discernible.

Failure to make the proof of service required by this subdivision 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.

210-4 SERVICE OF SUBPOENAS BY U.S. MARSHAL

Any party to a civil proceeding requesting service of a subpoena by the United States Marshal Service shall provide notice to the Marshal of the request, along with all documentation necessary to effectuate service, no later than ten (10) days prior to the desired date of service, excluding weekends and legal holidays. A lesser time period may be allowed only upon motion and good cause shown.

RULE 220

MOTIONS -- NOTICE AND OBJECTIONS -- EXTENSIONS

220-1 MOTIONS

(a) The provisions of this rule (220-1 through 220-6) shall apply to motions, applications, petitions, orders to show cause, and all other proceedings except a trial on the merits and applications for a temporary restraining order (all such being included within the term "motion" as used herein) unless otherwise ordered by the Court or provided by statute.

(b) All motions, unless made during a hearing or trial, shall be in writing and shall 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) Upon serving and filing a motion, or within five (5) days thereafter, the moving party shall serve and file a brief. Briefs on motions shall contain an accurate statement of the questions to be decided, set forth succinctly the relevant facts and the argument of the party with supporting authorities, and not be longer than twenty (20) pages (exclusive of exhibits, table of contents, and cover) without leave of Court. Briefs exceeding twenty (20) pages shall have a table of contents and a table of cases with page references. If a party files a brief in excess of the 20-page limitation without having obtained leave to do so, the Clerk shall immediately advise the judicial officer to whom the case is assigned of the irregularity.

(d) Within eleven (11) days after service of such brief, any party opposing a motion shall file affidavits or declarations where appropriate and a memorandum or brief.

(e) A reply to the opposition shall be served and filed by the moving party within eleven (11) days after service of the opposition's statement.

(f) No further briefing shall be allowed without leave of Court. Upon the filing of briefs, the motion shall be deemed made and submitted and taken under advisement by the Court

(g) The Court may, in its discretion, order oral argument on its own motion, or upon an application contained in the brief of either party.

(h) The Court may, in its discretion, order or allow oral argument on any motion or other proceeding by telephone conference call, provided that all conversations of all parties are audible to each participant and the Judge. Upon request of any party, such oral argument may be recorded by court reporter or other lawful method under such conditions as the Judge shall deem practicable. Counsel shall schedule such calls at a time convenient to all parties and the Judge. The Judge may direct which party shall pay the cost of the call.

(i) Failure to file briefs within the prescribed time may subject any motion to summary ruling. Failure to file a brief by the moving party shall be deemed an admission that, in the opinion of counsel, the motion is without merit, and, failure to file a brief by the adverse party shall be deemed an admission that, in the opinion of counsel, the motion is well taken.

(j) Within the text of each motion submitted to the Court for its consideration counsel shall note that opposing counsel has been contacted concerning the motion, and whether opposing counsel objects to the motion.

(k) Unless the Court indicates by notice to the parties that the court prefers to decide the question on briefs, subject to the rules on discovery disputes, all objections provided for in connection with discovery proceedings in the Federal Rules of Civil Procedure shall be noticed for

hearing at the next day convenient for counsel for all parties and the court of the Division in which the action is pending, and shall be heard at that time unless otherwise set by the court.

220-2 EXTENSIONS OF TIME

(a) Extensions of time to further plead, file briefs or continue a hearing on a motion may be granted by order of the Court upon written application which shall note that opposing counsel has been contacted concerning the extension or continuance, and whether opposing counsel objects to the motion.

(b) All requests for extension of time or continuance shall be accompanied by an appropriate form of order (which shall be a separate document from the motion) with sufficient copies for the Clerk to mail to adverse parties.

(c) Unless the order for continuance shall specify otherwise, the entry of an order continuing the hearing of a motion automatically extends the time for filing and serving opposing papers and reply papers to ten (10) days and five (5) days, respectively, preceding the new hearing date. The proposed order shall provide the date the opposing and reply papers are due to be filed with the Court.

220-3 MOTIONS FOR SUMMARY JUDGMENT

(a) Any party filing a motion for summary judgment shall also file a "Statement of Uncontroverted Facts" which shall set forth separately from the memorandum of law, and in full, the specific facts on which that party relies in support of the motion. The specific facts shall be set forth in serial fashion and not in narrative form. As to each fact, the statement shall

refer to a specific portion of the record where the fact may be found (e.g., affidavit, deposition, etc.).

Any party opposing a motion for summary judgment must file a "Statement of Genuine Issues", setting forth the specific facts, which the opposing party asserts establishes a genuine issue of material fact precluding summary judgment in favor of the moving party.

In the alternative, the movant and the party opposing the motion shall jointly file a stipulation setting forth a statement of the 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.

220-4 HEARING ON MOTIONS

Within the respective divisions, hearings on motions shall be set at such time and place as has been approved by the court. The court may order or conduct a hearing on a motion if the court believes a hearing would be beneficial, or upon a timely written request of either party.

220-5 REMINDER TO THE COURT OF PENDING MATTERS

(a) In any civil case where a motion has been pending for determination for a period in excess of sixty (60) days, the Clerk of Court shall, in writing, advise the judicial officer to whom the case is assigned of the pendency of the motion.

(b) If the judicial officer does not render his decision within thirty (30) days of the date of the clerk's advisement, the judicial officer shall immediately issue a written report as to the status of the pending matter. A copy of the written report from the judicial officer shall be provided to the Chief Judge of the District.

(c) As long as the matter remains under advisement, a similar advisement, as mandated by subsection (a), shall be made to the judicial officer at intervals of forty-five (45) days. A similar report, as mandated by subsection (b), shall be issued by the judicial officer.

RULE 225

RECEIVERS

225-1 APPOINTMENT OF RECEIVERS

Application for the appointment of a receiver shall be made after a complaint has been filed and summons issued.

(a) Temporary Receivers. A temporary receiver may be appointed by the Court without notice for good cause shown by verified affidavit or pleading.

(b) Permanent Receivers. A permanent receiver shall be appointed after notice and hearing on an order to show cause why such appointment should not be made. The order to show cause shall be issued by the Court concurrently with the appointment of a temporary receiver or, if no temporary receiver is appointed, upon application by the plaintiff. The temporary receiver, or, if there is none, the plaintiff securing the order, shall immediately serve a copy on all parties. Within 10 days thereafter, the receiver shall be furnished by the defendant with a list of the defendant's creditors, their addresses, and the amounts due them, and, at least 5 days before the hearing, shall mail them notice of the hearing, and file proof of mailing.

(c) Bond. Either a temporary receiver or a permanent receiver, appointed by the Court under the provision of this Rule, shall furnish bond in such sum as the Court may order.

225-2 EMPLOYMENT OF ATTORNEYS, ACCOUNTANTS, OR INVESTIGATORS

A receiver shall not employ an attorney, accountant, or investigator without obtaining an order of the Court. The compensation of such persons shall be fixed by the Court.

225-3 APPLICATION FOR FEES

All applications for fees for services rendered in connection with a receivership proceeding shall be made upon petition setting forth in reasonable detail the nature of the services and shall be heard in open court.

If an applicant is a party in interest, whether as a debtor, creditor, receiver, trustee or representative of any of them, or is an attorney for such party, the applicant shall state under oath in the petition that the applicant has not entered into any agreement, written or oral, express or implied, with any other party in interest, or any attorney for such party for the purpose of fixing any compensation to be paid from the assets of the estate.

225-4 DEPOSIT OF FUNDS BY RECEIVER

All funds received by a receiver shall be deposited in a depository designated by the Court, titling the account with the name and number of the action. At the end of each month the receiver shall deliver the statement of account and cancelled checks to the Clerk. All checks drawn by the receiver shall be countersigned by the Clerk or a designated deputy.

225-5 REPORTS

Every permanent receiver shall, within 30 days after appointment, file with the Court a verified report and petition for instructions, which shall be heard upon ten (10) days notice by mail to all known creditors and parties. The report shall contain a summary of the operations of the receiver, an inventory of the assets and their appraised value, a schedule of all receipts and disbursements, and a list of all creditors, with their addresses and the amount of their claims. The petition for instructions shall set forth the receiver's recommendation as to the propriety of continuing or discontinuing the receivership and the reasons therefor. At the hearing, the Court shall determine whether the receivership shall be continued, and if so, shall fix the time for future reports by the receiver.

225-6 NOTICE TO BE GIVEN OF HEARINGS

The receiver shall give all interested parties at least ten (10) days notice by mail of the time and place of hearings for:

(a) all petitions for the payment of dividends to creditors;

(b) all petitions for confirmation of sales of real and personal property, unless the Court, for good cause, orders otherwise;

(c) all reports of the receiver;

(d) all applications for fees of the receiver, or of any attorney, accountant or investigator; the notice shall state the services performed and the fee requested;

(e) all applications for the discharge of receivers.

RULE 226

GUARDIAN AD LITEM

226-1 PROCEDURE FOR THE APPOINTMENT OF GUARDIAN AD LITEM

Guardians ad litem may be appointed ex parte, at any time upon the presentation to the Court or judicial officer of a sworn petition showing a proper case for the appointment. The petition shall be filed with the order of appointment.

226-2 WHO MAY BE GUARDIAN AD LITEM

No person shall 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 or with the attorney, or counsel of the adverse party, or who has not sufficient pecuniary ability to answer to the ward for any damage or injury which may be sustained by the infant as a result of negligence or misconduct in the case on the part of the guardian ad litem.

226-3 BOND OF GUARDIAN AD LITEM

No bond shall ordinarily be necessary from a guardian ad litem; provided, that no such guardian shall 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 judicial officer, with at least two sureties, to be approved by the judicial officer, conditioned for the faithful performance of the guardian's duties. If the guardian shall not desire to receive any such money or property, it shall be paid or delivered to the Clerk of Court, or to such person as may be directed by the Court or Judge, with like effect as if paid or delivered to the guardian ad litem.

RULE 227

DEPOSITIONS FOR USE IN FOREIGN JUDICIAL PROCEEDINGS

227-1 APPLICATION AND PROCEDURE

Application may be made ex parte for the designation, pursuant to 28 U.S.C. § 1782, of a Commissioner to take the deposition of a person within this District for use in a judicial proceeding pending in the Court of a foreign country. If the Court in which the proceeding is pending has appointed a person to take the deposition, that person will be designated, unless there be good cause for refusing such designation.

The Commissioner shall certify and mail the deposition to the foreign Court in accordance with the provisions of Rule 30(f) or 31(b), Federal Rules of Civil Procedure, and file proof of mailing with the Clerk of this Court.

RULE 235

PRETRIAL PROCEEDINGS--CIVIL

235-1 PRELIMINARY PRETRIAL CONFERENCE

(a) Not later than forty-five (45) days after a case is at issue, or one hundred twenty (120) days after filing of the complaint, whichever comes first, the judicial officer to whom the case is assigned shall hold a preliminary pretrial conference to discuss the matters included in the preliminary pretrial statements and discuss and schedule the following matters:

(1) joinder of additional parties;

(2) amendment of pleadings;

(3) filing and hearing motions;

(4) identification of expert witnesses;

(5) completion of discovery; sufficiency of the Pre-Discovery Disclosure Statement required by Rule 200-5(a).

(6) filing of proposed final pretrial order;

(7) final pretrial order conference;

(8) a trial date, if applicable;

(9) any other dates necessary for appropriate case management.

All parties receiving notice of the conference shall attend in person or by counsel, prepared to discuss the implementation of a pretrial

scheduling order conducive to the efficient and expeditious determination of the case. All cases are exempted from the pre-conference meeting requirement of Fed.R.Civ.P. 26(f).

(b) Every party shall serve a Pre-Discovery Disclosure Statement required by Rule 200-5(a) not later than fifteen (15) days prior to the date set for the preliminary pretrial conference.

(c) Every party shall file a Preliminary Pretrial Statement no later than seven (7) days prior to the date set for the conference. The statement shall include a brief factual outline of the case. The statement shall also address:

(1) issues concerning jurisdiction;

(2) identifying, defining and clarifying issues of fact and law genuinely in dispute;

(3) making stipulations of fact and law and otherwise narrowing the scope of the action to eliminate superfluous issues;

(4) deadlines relating to joinder of other parties and amendments to pleadings;

(5) the pendency or disposition of related litigation;

(6) propriety of special procedures including reference to a master or a Magistrate Judge;

(7) controlling issues of law which the party anticipates presenting for pretrial disposition;

(8) anticipated course of discovery, and time frame for completion, including procedure for management of expert witnesses;

(9) propriety of modifying standard pretrial procedure established by Rule 235;

(10) advisability of the case being considered for placement upon the Court's expedited trial docket in accordance with Rule 235-4(a); and

(11) prospect for compromise of case and feasibility of initiating settlement negotiations or invoking alternate dispute resolution procedures.

(d) The following cases shall be excepted from the requirements of the present rule:

(1) Appeals from proceedings of an administrative body of the United States of America.

(2) Petitions for a Writ of Habeas Corpus.

(3) Proceedings under the Bankruptcy Code, Title 11, United States Code.

(4) Actions prosecuted by the United States of America to collect upon a debt.

(5) Forfeiture actions prosecuted by the United States of America.

(6) Any case which the judicial officer to whom the case is assigned orders to be excepted from the requirements of the present rule.

In those cases excepted from the requirement of the present rule, the assigned judicial officer shall, not later than forty-five (45) days from the date the case is at issue, or one hundred twenty (120) days after filing of the initial pleading, establish a schedule for final disposition of the case.

235-2 PRETRIAL SCHEDULING ORDER

After the Preliminary Pretrial Conference, the presiding judicial officer shall immediately enter an order summarizing the matters discussed and action taken, setting a schedule limiting the time for those matters referred to in Rule 235-1(a) and covering such other matters as are necessary to effectuate the agreements made at the conference.

The scheduling order shall specifically designate whether the case has been placed upon the Court's expedited trial docket pursuant to Rule 235-4(a).

235-3 STATUS CONFERENCES

Status conferences may be held in any case as deemed necessary by the judicial officer to whom the case is assigned. A party may move the assigned judicial officer to convene a status conference by filing an appropriate motion advising the judicial officer of the necessity for a conference.

235-4 TRIAL SETTING

(a) Expedited Trial Docket

(1) The Court shall establish an expedited trial docket. A case placed upon the expedited trial docket shall be set on the Court's trial calendar for a date not later than six (6) months from the date of the preliminary pretrial conference.

(2) A party may, at the time of the preliminary pretrial conference, request placement of the case upon the expedited trial docket. With the consensus of the parties, the assigned judicial officer may place the case upon the expedited trial docket, establishing a date certain for trial in the pretrial scheduling order. By consenting to placement upon the expedited trial docket, the parties agree the trial shall not be continued absent a showing that a continuance is necessary to prevent manifest injustice.

(b) General Trial Docket

Unless a trial date has been established by previous order, the judicial officer to whom the case is assigned shall, within thirty (30) days of the submission of a proposed final pretrial order, convene a status conference for the purpose of determining the readiness of the case for trial and establishing a trial date.

Pursuant to the status conference, the judicial officer to whom the case is assigned shall immediately enter a final scheduling order which establishes date for the following:

(1) a final pretrial conference, unless deemed unnecessary by the judicial officer;

(2) filing of each party's proposed charge to the jury, or, where appropriate, proposed findings of fact and conclusions of law; and

(3) trial; the date established shall not be more than sixty (60) calendar days from the date of the status conference, unless the assigned judicial officer's trial docket precludes accomplishment of trial within that time frame, in which event the case shall be given priority on the next trial calendar. In the event the trial established is beyond eighteen (18) months from the date the complaint was filed, the judicial officer to whom the case is assigned shall enter an order certifying that (i) the demands of the case and its complexity render a trial date within the eighteen-month period incompatible with serving the ends of justice; or (ii) the trial cannot be reasonably held within the eighteen-month period because of the status of the judicial officer's trial docket.

235-5 SETTLEMENT CONFERENCE

(a) The judicial officer to whom a civil case is assigned may, upon written request of any party filed in the record, or upon the judicial officer's own initiative, order the parties to participate in a settlement conference to be convened by the Court. Each party, or a representative of each party with authority to participate in settlement negotiations and effect a complete compromise of the case, shall be required to attend the settlement conference. The judicial officer may, in his or her discretion, preside over the settlement conference.

(b) Failure to comply with the conditions of this Rule, including the appearance in person of all persons necessary to effect a full

settlement, or failure to negotiate in good faith, may result in the imposition of costs of the conference by the assigned judicial officer upon the recommendation of the settlement Judge or Magistrate Judge.

(c) Prior to the commencement of the settlement conference, a confidential settlement brochure, no more than ten (10) pages in length (including exhibits or appendix) shall be submitted to the settlement judicial officer, and shall not be exchanged among the parties. The information contained in the confidential settlement brochure shall not become a part of the court record and shall be returned at the close of the conference to the submitting party.

235-6 FINAL PRETRIAL ORDER

(a) Procedure

Counsel for the parties shall prepare and sign a proposed consolidated final pretrial order to be lodged with the Clerk of the Court by the date established in the pretrial scheduling order. It shall be the responsibility of counsel for the plaintiff(s) to convene a conference of all counsel at a suitable time and place. The purpose of the conference is to arrive at stipulations and agreements conducive to simplification of the triable issues and to otherwise jointly prepare a proposed final pretrial order. If counsel for any party is unreasonably refusing to cooperate in the preparation of the pretrial order, the opposing party shall move the Court to enter an appropriate order.

(b) Form and Content

(1) Nature of Action. A plain, concise statement of the nature of the action.

(2) Jurisdiction. The statutory basis of jurisdiction and factual basis supporting jurisdiction.

(3) Jury; 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) Disputed Factual Issues. A concise narrative statement of each material issue of fact in dispute. This statement shall include a concise narrative of each party's contentions to each material issue of fact in dispute.

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

(7) Points of Law. A concise statement of each disputed point of law with respect to liability and relief, with reference to pertinent statutory and decisional law. Extended legal argument shall not be included.

(8) Amendments; Dismissals. A statement of requested or proposed amendments to the pleadings, or dismissals of parties, claims or defenses.

(9) Witnesses. Each party shall identify by name and address all prospective witnesses, and specifically designate those who are expected to be called as an expert witness.

(10) Exhibits; Schedule, and Summaries. An exhibit list furnished by the Clerk of the Court shall be completed by each party and appended to the

proposed pretrial order. The list shall include all documents or other items that the party expects to offer as an exhibit at trial, except for impeachment or rebuttal.

(11) Discovery Documents. A list of all answers to interrogatories and responses to requests for admissions that a party expects to offer at trial.

(12) Bifurcation, Separate Trial or Issues. A statement whether bifurcation or separate trial of specific issues is feasible and advisable.

(13) 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.

235-7 FINAL PRETRIAL CONFERENCE

The final pretrial conference shall be convened by the assigned judicial officer at the time designated, and shall be attended by the attorneys who will be trying the case.

Unless otherwise ordered, counsel for the parties shall, not less than seven (7) days prior to the day on which the final pretrial conference is scheduled, accomplish the following:

(a) Exchange of 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 shall be premarked for identification, with the plaintiff's proposed exhibits being identified by numbers 1 to 500 and the defendant's by numbers 501 to 1000. Upon request, a party shall make the original or the underlying documents of any proposed exhibit available for inspection.

(b) Objections to Proposed Exhibits. Within five (5) days after the proposed exhibits are exchanged, counsel for the parties shall confer for the purpose of resolving the objections any party may have with respect to the exhibits proposed by an opposing party.

Thereafter counsel for each party shall specify, in writing set forth on a copy of the opposing party's exhibit list, their objections to any proposed exhibit. Objections not specified on the exhibit list will be deemed waived. The list so prepared shall be served and filed at the time of the final pretrial conference or at the time trial is scheduled to commence where no final pretrial conference has been held.

(c) Deposition Testimony. Serve and file statements designating excerpts from depositions (specified by witness, page and line reference) proposed to be offered at trial other than for impeachment and rebuttal.

The opposing party shall, at the time of the final pretrial conference, serve and file a statement which sets forth both (1) any objection to the excerpts of each deposition identified; and (2) any additions to the excerpts of each deposition (specified by witness, page and line reference) that the party proposes to offer.

(d) Deposition Summary. Serve and file a copy of any summary of deposition testimony that a party proposes to offer at trial. Counsel for each opposing party shall, at the time of the final pretrial conference, serve and file any objection to a proposed summary.

In those cases where a final pretrial conference is not scheduled, counsel for the parties shall accomplish those duties identified in subparts

(a), (b), (c), and (d) of this Rule not less than seven (7) calendar days prior to the day on which the trial is scheduled to commence.

235-8 REPRESENTATION AT PRETRIAL CONFERENCES

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

RULE 240

SETTLEMENT OF ORDERS--JUDGMENTS--FINDINGS AND CONCLUSIONS

240-1 JUDGMENTS PREPARED BY CLERK

Unless the Court otherwise directs, and subject to the provision of Rule 54(b) of the Federal Rules of Civil Procedure, judgment upon the verdict of a jury (except those verdicts mentioned in Rule 240-2) shall be promptly prepared, signed and entered by the Clerk. When the Court directs that a party recover only money or costs, or that all relief be denied, the Clerk shall prepare, sign, and enter judgment upon receipt of the direction. No other judgment shall be entered in the cases provided for in this Rule.

240-2 JUDGMENTS ENTERED ONLY ON DIRECTION OF COURT

Upon a special verdict or on a general verdict accompanied by interrogatories returned by a jury pursuant to Rule 49 of the Federal Rules of Civil Procedure, and in all cases tried by the Court without a jury, except when the Court directs that a party recover only money or costs or that all relief be denied, the Court will give direction as to the entry of judgment, and no judgment shall be entered by the Clerk until such directions are given. In the cases provided for by this Rule, the prevailing party shall within ten (10) days, unless additional time is granted by the Court, prepare and submit to the Clerk of the Court a draft of the judgment and serve a copy upon each other party. Each other party shall then have ten (10) days within which to serve and file objections to the form of the proposed judgment. When the time for objections has expired, the Clerk shall deliver the proposed judgment, together with all objections to the presiding judicial officer.

240-3 PROPOSED FINDINGS AND CONCLUSIONS, WHEN SUBMITTED AND SERVED

In all cases tried to the Court without a jury, or with a jury which is advisory only, each party shall, if ordered by the Court, submit within the time permitted for the filing of briefs, proposed findings of fact and conclusions of law, and serve a copy on each other party.

240-4 FINDINGS AND CONCLUSIONS, PREPARATION AFTER DECISION

The Court may, after decision, request the prevailing party to prepare findings of fact and conclusions of law in accordance with the decision. The findings, unless otherwise ordered, shall be submitted, served and objected to within the schedule provided in Rule 240-2.

240-5 PREPARATION OF JUDGMENT OR FINDINGS AND CONCLUSIONS UPON FAILURE OF PREVAILING PARTY TO DO SO

If a prevailing party fails within ten (10) days, or any additional time granted, to prepare the order or judgment required by Rule 240-2, or the findings of fact and conclusions of law required by Rule 240-4, any other party may do so.

RULE 245

TRIAL

245-1 IMPANELING A TRIAL JURY

(a) Number of Jurors. The court shall seat a jury of six (6) members for the trial of civil cases. The Court may, however, seat additional jurors as deemed necessary by the presiding judicial officer.

(b) Examination of Jurors. Examination of jurors in civil cases shall be in accordance with the Federal Rules of Civil Procedure. Unless otherwise ordered by the Court, the examination of trial jurors will be conducted by the Court. The Court may permit limited voir dire by counsel for the parties, following the voir dire conducted by the Court. Counsel shall submit any questions they desire to be propounded to the jurors when they submit their proposed jury instructions in accordance with the scheduling Order in effect in the cause of action.

245-2 REQUESTS FOR INSTRUCTIONS TO JURY

Requests for instructions to the jury shall be presented to the Court and served upon each adverse party in accordance with the deadline set by the Court in the scheduling Order in effect in the case. Such requests shall be submitted in duplicate so that the Court has an extra copy for its own use in the preparation of the final charge to the jury. The proposed instructions to the jury must encompass all rules of law applicable to the evidence adduced. Appropriate citations should be noted by way of footnote following the text on each page of the charge to the jury.

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 shall be prepared to explain to the Court both the need for the

additional instruction and the reason for its delay (the development at trial necessitating the late instruction).

Proposed instructions to the jury shall be served upon opposing counsel when they are filed with the Court, in accordance with the scheduling Order in effect.

245-3 CONTINUANCES

In granting an application for continuance, the Court may impose costs and conditions.

A motion to postpone or continue a trial on the grounds of absence of a witness or evidence shall be made upon affidavit showing the nature and materiality of the expected testimony or evidence, and 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 shall be considered as actually given during the trial, there shall 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.

245-4 JURY COST ASSESSMENT

Whenever any civil action scheduled for jury trial is settled or otherwise disposed of in advance of the actual trial, then except for good cause shown, all jury costs, Marshal's fees, mileage, and per diem, shall be assessed equally against the parties and their counsel, or otherwise assessed as directed by the Court unless the Clerk is notified before three (3) business days prior to the time when the action is scheduled for trial, in time to advise the jurors that it will not be necessary for them to attend.

245-5 COMMUNICATIONS WITH TRIAL JURORS

(a) Before or During Trial. Absent an order of the Court, and except in the course of in-court proceedings, no one shall directly or indirectly communicate with or cause another to communicate with a juror or prospective juror or his family before or during a trial.

(b) After Trial. Interviews with jurors after trial by or on behalf of parties involved in the trial are prohibited except on condition that the attorney or party involved desiring such an interview file with the Court written interrogatories proposed to be submitted to the juror(s), together with an affidavit setting forth the reasons for such proposed interrogatories, within the time granted for a motion for a new trial. Approval for the interview of jurors in accordance with the interrogatories and affidavit so filed will be granted only upon the showing of good cause. See, Fed.R.Evid. 606(b). Following the interview, a second affidavit must be filed indicating the scope and results of the interviews with jurors and setting out the answers given to the interrogatories.

(c) Juror's Rights. Except in response to a Court order, no juror is compelled to communicate with anyone concerning any trial in which the juror has been a participant.

RULE 265

COSTS

265-1 TAXATION OF COSTS

(a) Application to the Clerk. Within ten (10) days after the entry of a judgment allowing costs, the prevailing party shall serve on the attorney for the adverse party and file with the Clerk an application for the taxation of costs. The application shall be on a Bill of Costs form prescribed by the Court which shall be furnished by the Clerk. If an application for costs is received that is not on the appropriate form, the Clerk shall promptly notify the party seeking costs, forward the form, and extend the time for filing the amended claim form not to exceed ten (10) days. The application shall contain an itemized schedule of the costs in a statement signed by the attorney for the applicant that the schedule is correct and that the costs were necessarily incurred. The application shall be heard by the Clerk not less than five (5) nor more than ten (10) days after it is served, and notice of the time of hearing shall be endorsed upon it.

Upon failure to comply with this Rule, all costs, other than the Clerk's costs, which may be inserted in the judgment without application, shall be waived. At the option of the Clerk the hearing may be held by telephone conference call.

(b) Depositions. In taxing costs of depositions, the Clerk shall allow the fees of the Court Reporter at the rates specified by the Judicial Conference of the Ninth Circuit, or the actual fees paid by the prevailing party, whichever is less, for the originals of any depositions which were taken in the case at the instance of the prevailing party. The party seeking costs shall furnish evidence that the deposition was reasonably necessary to the development of the case when taken, and does not contain unreasonably prolonged or irrelevant examination.

In any case in which a judicial officer has entered a special protective order, the Clerk, using the rate specified in the preceding paragraph, shall tax costs for the original of any deposition taken by the prevailing party by reason of entry of such protective order.

The Clerk may refuse to tax the cost of transcribing a deposition that is unreasonably prolonged or irrelevant. In the absence of any objection from the adverse party, the Clerk may presume that any deposition for which costs are claimed was reasonably necessary for the development of the case, and considered in its entirety does not contain unreasonably prolonged or irrelevant examination.

(c) Transcripts.

In taxing costs of transcripts the Clerk shall allow fees of the Court Reporter at the rate specified by the Judicial Council of the Ninth Circuit, 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 the transcript was not necessarily obtained 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.

(d) Fees and Disbursement for Witnesses. A party entitled to recover costs shall be 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. The party seeking costs bears the burden of establishing by affidavit or otherwise, that the presence of witnesses, who did not actually testify, or were present at trial for a longer time than the days of actual testimony, was necessary.

In the case of expert witnesses the party seeking costs will be entitled to recover only the statutory fees and mileage for such witnesses unless the presiding judicial officer orders otherwise prior to the time costs are sought.

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

(e) Fees for Exemplification, and Copies of Papers Necessarily Obtained for Use in the Case. Reasonable fees for exemplification and copies of exhibit evidence such as charts, drawings, maps, photographs, movies, 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 that was actually used at trial was reasonably necessary to the presentation of the case, and that exhibit evidence not so used was not reasonably necessary to the presentation of the case.

(f) Bond Premiums. The party entitled to recover costs shall 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.

(g) Other Costs. Items of costs not specifically mentioned in this Rule shall be taxed by the Clerk in accordance with the laws of the United States.

(h) Objections. Upon the hearing, specific objections supported by affidavits or other written evidence, may be made to any item of costs. The Clerk shall thereupon tax the costs, and if there is no appeal,

shall insert the amount of costs taxed in the blank left in the judgment, and also in the docket.

(i) **Review**. A dissatisfied party may appeal upon written motion served within five (5) days of the Clerk's decision, as provided in Rule 54(d) Federal Rules of Civil Procedure. The motion shall specify all objections to the Clerk's decision and the reasons for the objections. Appeals shall be heard upon the same papers and evidence submitted to the Clerk.

RULE 290

BONDS--SURETIES

290-1 SECURITY FOR COSTS

On motion, or of its own initiation, the Court may at anytime order any party to file a bond for costs in such amount and so conditioned as the Court may designate.

290-2 FORM OF SECURITY

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 shall be given in substance and form as provided by the Laws of Montana. The bond shall be deemed sufficient unless the secured party shall object in writing to the sufficiency of the surety and apply to the Court for a hearing. Corporate sureties must comply with 6 U.S.C. §§ 6-13.

290-3 PERSONS NOT TO ACT AS SURETIES

No officer of the Court, nor any member of the Bar, or that member's office associates or employees shall act as surety.

290-4 JUDGMENT AGAINST SURETIES

Regardless of what may be provided in any security judgment, every surety who enters a security judgment submits to the jurisdiction of the Court and irrevocably appoints the Clerk as the agent of the surety upon whom any papers affecting the surety's liability on the instrument may

be served. The surety's liability shall be joint and several and may be enforced summarily on motion without an independent action. The motion may be served upon the Clerk who shall promptly mail a copy to the surety. Such motion shall be heard as provided in Rule 220-4.

290-5 DEPOSIT OF MONEY OR UNITED STATES OBLIGATIONS IN LIEU OF SURETY

In lieu of surety in any civil case, there may be deposited with the Clerk of the Court lawful money or negotiable bonds or notes of the United States. The depositor shall execute a suitable bond, and, if negotiable bonds or notes of the United States are deposited, shall also execute the agreement required by 6 U.S.C. § 15, authorizing the Clerk of Court to collect or sell the bonds or notes in the event of default.

CHAPTER III. CRIMINAL RULES

RULE 300

MINOR OFFENSES

300-1 APPEAL FROM JUDGMENT OF UNITED STATES MAGISTRATE JUDGE

An appeal from a judgment of a United States Magistrate Judge having been certified to this Court in accordance with Rules of Procedure for Trials before Magistrate Judges (18 U.S.C. § 3402), the appellant shall, within 15 days, serve and file a brief, which may be typewritten. The United States Attorney shall serve and file a brief, which may be typewritten, within 15 days after receipt of a copy of the appellant's brief. The appellant may serve and file a reply brief within 5 days after receipt of the appellee's brief.

Forty days after the filing of the Magistrate Judge's certificate, the appeal shall be placed by the Clerk of Court upon the calendar to be set for hearing.

Venue in such appeals is in accordance with Rule 105-3(b) of these Rules.

RULE 305

BAIL

305-1 SECURITY

(a) Taking of Bonds to Secure Appearance in Criminal Cases. All bonds in non-capital criminal cases for appearance before the Court of a United States Magistrate Judge taken by a United States Magistrate Judge or other officer acting as a committing Magistrate Judge pursuant to 18 U.S.C. § 3041, shall 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.

A receipt shall 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 of Court shall deposit such monies received from the Magistrate Judge into the Registry of the court.

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.

305-2 PERSONS NOT TO ACT AS SURETIES

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

305-3 JUDGMENT AGAINST SURETIES

Regardless of what may be provided in any security judgment, every surety by entering into it submits himself/herself to the jurisdiction of the Court and irrevocably appoints the Clerk of Court as his/her agent upon whom any papers affecting his/her liability on the instrument may be served. His/her liability shall be joint and several and may be enforced summarily on motion without an independent action. The motion may be served upon the Clerk of Court who shall promptly mail a copy to the surety if his/her address is known. The motion shall be heard as provided in Rule 220-4.

305-4 DEPOSIT OF MONEY OR UNITED STATES OBLIGATIONS IN LIEU OF SURETY

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. The depositor shall execute a suitable bond, and, if negotiable bonds or notes of the United States are deposited, shall also execute the agreement required by 6 U.S.C. § 15 authorizing the Clerk of Court to collect or sell the bonds or notes in the event of default.

305-5 CONSENT OF COURT REQUIRED BEFORE DEFENDANT MAY LEAVE DISTRICT

Bonds may be granted in criminal cases to secure the appearance of a defendant before this Court, or after judgment before the Court of Appeals, where a condition of release on bond is that the defendant obtain consent of the Court before leaving the District.

RULE 320

MOTIONS--NOTICE AND OBJECTIONS

320-1 MOTIONS

Upon serving and filing a motion, or within 5 days thereafter, the moving party shall serve and file a brief. The adverse party shall have 10 days thereafter within which to serve and file an answer brief. A reply brief may be served and filed within 10 days thereafter. Upon the filing of briefs, the motion shall be deemed made and submitted and taken under advisement by the Court, unless the Court orders oral argument on the motion. The Court may, in its discretion, order oral argument on its own motion, or upon an application contained in the brief of either party.

Failure to file briefs within the prescribed time may subject any motion to summary ruling. Failure to file a brief by the moving party shall be deemed an admission that, in the opinion of counsel, the motion is without merit, and, failure to file a brief by the adverse party shall be deemed an admission that, in the opinion of counsel, the motion is well taken.

320-2 NOTICE TO OPPOSING COUNSEL, AND OBJECTIONS

Within the text of each motion submitted to the Court for its consideration, counsel shall note that opposing counsel has been contacted concerning the motion, and whether opposing counsel objects to the motion. All objections provided for in connection with discovery proceedings in the Federal Rules of Criminal Procedure shall be noticed for hearing at the next date convenient for counsel for all parties and the Court of the Division in which the action is pending, and shall be heard at that time unless otherwise set by the Court.

RULE 325

PRETRIAL CONFERENCES

325-1 WHEN PRETRIAL CONFERENCE HELD

When deemed advisable by the Court, a Pretrial Conference will be held in criminal cases pursuant to the provisions of Rule 17.1 of the Federal Rules of Criminal Procedure. It is contemplated that one or more conferences will be held in all cases in which a protracted trial is anticipated and in other cases which involve complicated fact or law problems.

325-2 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 Judge assigned to preside over a criminal case (the trial Judge) shall not participate in facilitating settlement. Participation in settlement conferences under this rule shall be completely voluntary. The Court anticipates that this rule will be invoked by the parties primarily in complex cases.

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 16 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. (This rule does not require that all defendants in a multi-defendant case 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 date scheduled for the commencement of trial, unless a later request is permitted by the trial Judge.

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

(d) Response to Request. Upon a timely request for a settlement conference in a complex case, the trial Judge shall designate a settlement Judge in accordance with the rule set out in paragraph 6 below. In all other cases, whether or not to conduct settlement proceedings with judicial assistance shall be at the discretion of the trial Judge.

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

(f) Presiding Officer. The settlement conference shall be presided over by a settlement Judge, other than the trial Judge, who shall be an Article III Judge, designated by the trial Judge. The designation shall be filed in the case.

No settlement Judge shall be designated without his or her consent. If requested by the trial Judge, the Chief Judge shall assist the trial Judge in the selection of a settlement Judge.

(g) Conduct of Conference.

(1) Availability of Defendant. The defendant shall not be present during settlement discussions, unless otherwise ordered by the settlement Judge. However, the defendant shall be available (i) in the

courtroom of the settlement Judge, if the defendant is on pretrial release, or (ii) 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 ten (10) days before the settlement conference, the probation officer, without order of the Court, shall 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 shall 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 shall be terminated.

(4) **Written Agreement.** If a settlement is agreed to by both counsel and approved by the defendant, the plea agreement shall 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 shall not take a guilty plea from nor sentence any defendant in the case, and shall not communicate any of the substance of the settlement discussions to the trial Judge, except as provided in paragraph C(iv)(a) below.

(2) **Statements Inadmissible at Trial.** No statement made by any participant at the settlement conference shall be admissible at the trial of any defendant in the case.

(3) **Counsel.** Neither counsel shall 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.

(i) 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.

(ii) 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.

(iii) In the event the defendant exercises his, her or its option under subparagraph (ii) 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.

(iv) 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 shall be construed to limit in any way the discretion of the trial Judge under Fed.R.Crim.P. 11(e).

RULE 326

TRIAL

326-1 IMPANELING A TRIAL JURY

(a) Examination of Jurors. Examination of jurors in criminal cases shall be in accordance with the Federal Rules of Criminal Procedure.

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.

Unless otherwise ordered by the Court the examination of trial jurors will be conducted by the Court. At least one (1) day before the date set for trial, counsel shall submit to the Court any questions that counsel wishes the Court to ask the jurors.

(b) Manner of Selection and Order of Examination of Jurors. From the jury panel 12 jurors, plus a number of jurors equal to the total number of peremptory challenges which are allowed by law, plus the number of alternate jurors who are to be impaneled, shall be called in the first instance. These jurors constitute the initial panel. As the initial panel is called the Clerk shall 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 shall be immediately called to fill out the initial panel. A juror called to replace a juror excused for cause shall take the number of the juror who has been excused. When the initial panel is filled the parties shall exercise their peremptory challenges as provided by these Rules. When peremptory challenges have all been exercised or waived, the Clerk shall call the names of the 12 prospective jurors having the lowest assigned numbers. These jurors shall constitute the trial jury. If alternate jurors are to be used, they shall be those with the next lowest assigned numbers, the

alternate jurors to be placed on the trial jury, if needed, in the order of their assigned number.

In criminal cases in which the government has six (6) and the defense ten (10) challenges, they shall 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 constitutes a waiver of the right thereafter to exercise the remaining challenges against any juror, unless both parties pass successive challenges. The box shall be filled from time to time, in the discretion of the Court. After all peremptory challenges have been taken, or the parties are satisfied, the jury will be sworn as a body.

326-2 REQUESTS FOR INSTRUCTIONS TO JURY

Requests for instructions to the jury shall be presented to the Court, and served upon each adverse party, at the opening of the trial before the taking of evidence, but the Court may receive additional requests relating to questions arising during the trial at any time prior to the closing argument. Each requested instruction shall be numbered and written on a separate page, together with a citation of authorities supporting the proposition of law stated in the instruction. Each party shall provide one original and two copies of each instruction.

326-3 NUMBER OF 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 shall be examined unless leave is first obtained.

RULE 327

SERVICE

327-1 COPIES TO BE FURNISHED TO CLERK

The Court or any party to a criminal proceeding requesting production of a prisoner by the United States Marshal Service for any court proceeding, by Writ of *Habeas Corpus Ad Testificandum* or otherwise, shall obtain a court order directing such production no later than 15 days prior to the date of the court proceeding, excluding weekends and legal holidays. A lesser time period may be allowed only upon motion and good cause shown.

327-2 COPIES TO BE FURNISHED TO CLERK

Any party to a criminal proceeding requesting service of a criminal summons or subpoena by the United States Marshal Service shall provide notice to the Marshal of the request, along with all documentation necessary to effectuate service, no later than 10 days prior to the desired date of service, excluding weekends and legal holidays. A lesser time period may be allowed only upon motion and good cause shown.

RULE 340

TIME

340-1 ENLARGEMENT

No enlargement of time or continuance may be granted except upon order of a Judge or a full-time Magistrate Judge. Enlargements shall be sparingly granted and only in a manner consistent with the Speedy Trial Plan for Criminal Cases incorporated in the General Orders of this Court. Except as herein provided, the procedure under Local Rule 220-3 shall govern.

340-2 EXCLUDABLE TIME UNDER SPEEDY TRIAL ACT

All motions and other papers filed in any criminal action or proceeding shall show on the first page beneath the file number which, if any, of the exclusions under 18 U.S.C. § 3161 may be applicable to the action sought or opposed by the motion or other paper, and the amount of resulting excludable time.

CHAPTER IV. MAGISTRATE JUDGE RULES

RULE 400

AUTHORITY OF MAGISTRATE JUDGES

400-1 DUTIES AND POWERS OF A FULL-TIME MAGISTRATE JUDGE

Each full-time United States Magistrate Judge appointed by this Court is authorized to perform all the duties prescribed by 28 U.S.C. § 636, including the duties of a part-time Magistrate Judge with additional authority.

400-2 DUTIES AND POWERS OF A PART-TIME MAGISTRATE JUDGE

Each part-time United States Magistrate Judge appointed by this Court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a), and shall:

(a) exercise all the powers and duties conferred or imposed upon United States Commissioners by law or the Federal Rules of Criminal Procedure;

(b) administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, and take acknowledgments, affidavits and depositions;

(c) conduct trials in conformity with and subject to the limitations of 18 U.S.C. § 3401, order a presentence investigation of any person who is convicted or pleads guilty or nolo contendere, and sentence such persons;

(d) conduct removal proceedings and issue warrants of removal in accordance with Rule 40, Federal Rules of Criminal Procedure;

(e) conduct extradition proceedings, in accordance with 18 U.S.C. § 3184;

(f) supervise proceedings conducted pursuant to letters rogatory, in accordance with 28 U.S.C. § 1782.

400-3 ADDITIONAL AUTHORITY FOR A PART-TIME MAGISTRATE JUDGE

Upon reference to him/her by a Judge of this Court, any part-time Magistrate Judge is additionally authorized to:

(a) conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings;

(b) conduct arraignments in cases not triable by the Magistrate Judge to the extent of taking a not guilty plea or noting a defendant's intention to plead guilty or nolo contendere, and ordering a presentence report in appropriate cases;

(c) receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;

(d) accept petit jury verdicts in civil cases in the absence of a Judge;

(e) conduct necessary proceedings leading to the potential revocation of probation;

(f) issue subpoenas, writs of habeas corpus (*ad testificandum*) or habeas corpus (*ad prosequendum*), or other orders necessary to obtain

the presence of parties or witnesses or evidence needed for court proceedings;

(g) order the exoneration or forfeiture of bonds;

(h) conduct examination of judgment debtors in accordance with Rule 69 of the Federal Rules of Civil Procedure;

(i) perform any additional duty as is not inconsistent with the Constitution and laws of the United States;

(j) perform those duties detailed in 400-4 and 400-5 of this Rule.

400-4 PRISONER CASES

(a) In accordance with 28 U.S.C. § 636(b)(1)(B) and (C), Magistrate Judges are authorized to hear and conduct such evidentiary hearings as are necessary or appropriate, and submit to a Judge proposed findings of fact and recommendations for the disposition of:

(1) applications for post-trial relief made by individuals convicted of criminal offenses;

(2) prisoner petitions challenging conditions of confinement.

(b) Any party may object to the Magistrate Judge's proposed findings issued under this section within ten (10) days after being served with a copy. Such party shall file with the Clerk of Court, and serve on all parties, written objections that shall specifically identify the portions of the proposed findings to which objection is made and the basis for such objection. A Judge shall make a *de novo* determination of those portions to which objection is made, and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge.

The Judge, however, need not conduct a new hearing, and may consider the record developed before the Magistrate Judge, making his/her own determination on the basis of that record.

(c) A Magistrate Judge may exercise the powers enumerated in Rules 5, 8, 9 and 10 of the Rules Governing 28 U.S.C. § 2254 and § 2255 cases, in accordance with the standards established by 28 U.S.C. § 636(b)(1).

400-5 CRIMINAL CASES

Upon the return of an indictment or the filing of an information, all criminal cases may be assigned by a Judge of this Court to a Magistrate Judge for arraignment and appointment of counsel to the extent authorized by law. The Magistrate Judge shall conduct such pretrial conferences as are necessary and shall hear and determine all pretrial procedural and discovery motions, in accordance with Section 400-4 of this Rule. In conducting such proceedings the Magistrate Judge shall conform to the general procedural rules of this Court and the instructions of the Judge to whom the case is assigned.

400-6 DISABILITY BENEFITS CASES

(a) In accordance with 28 U.S.C. § 636(b)(1)(B) and (C), each full-time United States Magistrate Judge is authorized to hear and conduct such evidentiary hearings as are necessary or appropriate, and submit to a Judge proposed findings of fact and recommendations for the disposition of cases submitted to this Court for review of a final decision of the Secretary of Health and Human Services in Social Security disability benefit cases.

(b) Any party may object to the Magistrate Judge's proposed findings issued under this section within 10 days after being served with a copy. Such party shall file with the Clerk of Court, and serve on all parties, written objections that shall specifically identify the portions of the

proposed findings to which objection is made and the basis for such objection. A Judge shall make a *de novo* determination of those portions to which objection is made, and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. The Judge, however, need not conduct a new hearing, and may consider the record developed before the Magistrate Judge, making his/her own determination on the basis of that record.