PCD

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

IN THE MATTER OF REVISIONS TO THE LOCAL RULES OF PROCEDURE OF THE DISTRICT OF MONTANA	General Order No. 37

Following the recommendations of the Local Rules Committee for the District of Montana and a 30-day period for public comment, **IT IS HEREBY ORDERED** as follows:

1. The attached Revisions to the Local Rules of Procedure for the United States District Court for the District of Montana are ADOPTED, effective December 1, 2004;
2. The revisions shall apply in all cases filed on or after December 1, 2004;
3. Pursuant to D. Mont. L. R. 1.5, the revisions shall apply in all pending matters unless, in the opinion of the presiding judge, their application in a particular

case is not feasible or would work an injustice, in which case the former Rules shall govern; and

4. These Rules supersede all previous inconsistent Rules promulgated by this District or any judge of this Court.

DATED this 15th day of January, 2005.

Donald W. Molloy, Chief Judge
United States District Court

Richard F. Cebull
United States District Judge

Sam E. Haddon
United States District Judge

3.2 ASSIGNMENT OF CASES.

(a) Jurisdiction. All Article III judges of the District of Montana, including 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, the Chief Judge of the District shall, by order, assign each of the Divisions of the Court to one or more of the judges. All applications for orders in cases pending in any Division shall be made to the judge to whom the case is assigned for pretrial proceedings or for trial.

(c) Right to an Article III 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 inviolate.

(d) Assignment of Civil Cases to Magistrate Judges.

(1) *The full-time United States Magistrate Judges of the District of Montana are designated to hear all prisoner civil rights actions, all habeas corpus actions (excluding motions filed under 28 U.S.C. § 2255), all cases in which one or more plaintiffs are proceeding pro se, and all cases in which leave to proceed in forma pauperis is sought. Except as otherwise provided by order, all such cases shall be assigned to a magistrate judge upon filing. A case will not be reassigned based on a party's change of status after filing.*

(2) Any active Article III judge may designate a United States Magistrate Judge to exercise jurisdiction over ~~a~~ *any other* civil case in accordance *with* 28 U.S.C. § 636 and ~~L.R. 73~~ *Chapter IV of these Rules.*

(3) ~~The magistrate judge so designated~~ *A magistrate judge designated to hear a matter* shall be assigned to preside over the case *for all purposes, including trial and entry of judgment,* only if each party *not in default* consents in writing within thirty (30) days after service of *a notice of assignment as set forth in L.R. 73.2.* ~~notification of the magistrate judge's designation~~.

Commentary: This rule is at pages 9-10 of the current Rules.

Subsection (b) of the current rule refers to the Court's general order that designates magistrate judges to preside over pretrial matters in certain Divisions. Cases in the various Divisions are randomly assigned to either Article III or magistrate judges. Under proposed subsection (d)(1), all cases falling into the listed categories will be assigned to a magistrate judge for pretrial purposes, and random assignment will not occur. The phrase "[e]xcept as otherwise

provided by order" refers to those types of cases that logically require at least initial assignment to an Article III judge, for example, bankruptcy appeals and applications for a temporary restraining order.

Subsection (d)(2) provides that any active Article III judge may choose to designate a magistrate judge to preside over any civil matter for pretrial purposes.

In all cases in which a magistrate judge is designated for pretrial purposes, an Article III judge will be assigned for purposes of trial and entry of judgment, unless, as subsection (d)(3) says, all parties consent to magistrate jurisdiction. *See* 28 U.S.C. § 636(c). Subsection (d)(3) also provides that the failure of a party in default to give consent will not vitiate magistrate jurisdiction if all undefaulted parties consent to magistrate jurisdiction.

3.3 VENUE.

(a) Civil Cases.

(1) Except ~~in habeas cases~~ *as otherwise provided in this Rule,* all civil cases are assignable to any Division containing a county in which venue would be proper under the laws of the State of Montana. Cases shall be tried within the Division to which the case is assigned, unless by agreement of the parties and with the consent of the Court, or in the Court's discretion, or for good cause shown, such trial is ordered elsewhere.

(2) Habeas cases ~~under 28 U.S.C. § 2254~~ shall be venued in the Division containing the county in which the conviction being challenged was obtained or, in cases involving the denial of parole, in the Helena Division. Venue in cases under 28 U.S.C. § 2255 shall be as prescribed by Rule 4(a) of the Rules Governing ~~Cases Under 28 U.S.C. § 2255~~ *Section 2255 Proceedings* for the United States District Courts. Venue in all other habeas cases shall be in the Division containing the county where the petitioner is incarcerated or, if the petitioner is not incarcerated, in the Division containing the entity whose conviction or decision the petitioner challenges. If such entity is not found within the District of Montana, venue shall be in the Division of the petitioner's residence, subject to transfer for good cause.

(3) Prisoner civil rights cases shall be venued ~~according to the residence of one or more of the Defendants~~ *in the Division where the alleged wrong was committed.*

(4) . . .

(5) At the time of appearance, any defendant who believes that the case is *venued* in an improper Division in this District may, in addition to any other motions, move for a change of venue to the proper Division. . . .

Commentary. This Rule is currently at pages 10-11.

Subdivision (a)(3) is revised to assign prisoner civil rights cases to the Division where the alleged wrong was committed, rather than to a Division where one or more of the Defendants resides. Keeping prisoner cases within the Division where the facility is located is the best way to balance the prisoner workload among Divisions. The revision in subsection (a)(1) conforms that subsection to the revision in subsection (a)(3).

The revisions in subsections (a)(2) and (5) are stylistic only; no substantive change is intended.

3.6 PRE-FILING REQUIREMENTS.

(a) . . .

(c) *Except for habeas petitions*, any complaint or petition not submitted simultaneously with either the full filing fee, pursuant to subsection (b), or an affidavit or Application to Proceed In Forma Pauperis, pursuant to subsection (a), may be returned without filing or other record of its submission. Filing fees, affidavits, or Applications received after a complaint has been returned shall be promptly returned to the plaintiff or other sending authority.

Commentary. The Rule is currently located at page 12.

The revision in subsection (c) is made necessary by a revision in an applicable federal rule. New Rule 3(b) of the Rules Governing Section 2254 Cases (effective December 1, 2004, absent Congressional action) specifically requires the clerk to file any habeas petition, regardless of whether it is accompanied by a filing fee or a *forma pauperis* application. *See* Proposed Rule 3(b) advisory committee's note.

6.2 EXTENSIONS OF TIME.

(a) . . .

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

Commentary. The proposed revision in subsection (b) deletes the requirement for copies of proposed orders. A proposed order must still be submitted, but the original alone is sufficient.

7.1 MOTIONS.

(a)

. . .

(e) Within twenty (20) days after service of ~~such~~ *a* brief *in support of a motion to dismiss or a motion for summary judgment,* unless the Court orders a shorter time, any party opposing a motion shall file a response brief not to exceed twenty (20) pages. *Response briefs shall be filed within eleven (11) days after service of a brief in support of any other motion.*

(f) A reply to the response brief, not to exceed ten (10) pages, may be served and filed by the moving party within eleven (11) days after service of the opposition's statement. *Reply briefs in excess of ten (10) pages will not be accepted and shall not be filed by the clerk if the party has not obtained prior leave of Court.*

(g) . . .

(j) Within the text of each motion submitted to the Court, the moving party shall note that other parties have been contacted concerning the motion and whether other parties object to the motion. *Unopposed motions shall be accompanied by an appropriate Order, separate from the motion.*

. . .

Commentary. The current Rule is located at pages 19 and 20.

The proposed change in subdivision (e) reduces the time allowed for briefing of non-dispositive motions. Twenty days are still allowed for responses to briefs in support of motions to dismiss or motions for summary judgment. However, responses to other motions must be made in eleven days. Time for mailing is unaffected.

The proposed revision in subdivision (f) makes clear that a reply brief in excess of the twenty-page limit will not be accepted. The revision reflects the restriction set forth in current subdivision (d).

The addition to subsection (j) requires that a proposed order be submitted with all unopposed motions.

10.1 FORM OF PAPERS.

(a) . . .

(f) The signature on each original pleading or motion must be an original.

Commentary. Rule 10.1 is located at page 22 of the current Rules.

The addition of subsection (f) to Rule 10.1 clarifies that there must be an original signature on each pleading or motion. Facsimile signatures, copied signatures, etc., are not permitted.

10.3 COPIES TO BE FURNISHED TO CLERK.

(a) 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 Federal Rule of Civil Procedure 79(b) 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.

(b) At the time of filing, parties must provide to the clerk an original and two (2) copies of the complaint, and an original and one copy of answers, pretrial statements, motions, and briefs. No complimentary copies shall be provided directly to the presiding judge. ~~Persons applying to proceed *in forma pauperis* must provide one original proposed complaint with the application.~~ If *in forma pauperis* status is granted, the plaintiff must provide one original of each exhibit and one original and one copy of all pleadings, motions, and briefs presented for filing.

Commentary. Rule 10.3 is located at page 23 of the current Rules.

The third sentence of subdivision (b) in Rule 10.3 is deleted as unnecessary. Requiring persons applying to proceed *in forma pauperis* is not unduly burdensome, and new forms available to pro se litigants state the number of copies required.

10.5 SANCTIONS.

If any filings do not comply with L.R. 10, the clerk shall bring the failure to comply to the attention of the filing party and to the presiding judge. The Court may sanction a violation of L.R. 10. *The sanction will include a $50.00 assessment and up to $5.00 per page for each nonconforming page.*

Commentary. The Rule is located at page 24.

Persistent failure on the part of some lawyers or firms to provide the clerks with what is required under these rules creates unnecessary extra work and expense for the Court.

26.2 DOCUMENTS OF DISCOVERY.

(a) Initial disclosures under Federal Rule of Civil Procedure 26(a)(1), depositions upon oral examinations and interrogatories, requests for documents, requests for admissions, ~~and~~ answers and responses, *and expert reports* shall not be routinely filed (*see* Federal Rule of Civil Procedure 5(d)). However, when any motion is filed relating to discovery, the parties filing the motion shall 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 believes that any of the named documents should be filed, the party may move that the document be filed, stating the reasons and the authority supporting the movant's position.

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

Commentary. The Rule is located at page 43.

The proposed revision to subsection (a) makes clear that expert reports, like other discovery, are not to be routinely filed.

New subsection (c) provides that expert reports must be available for use at trial. They are not filed unless the Court so orders.

67.2 ORDERS DIRECTING INVESTMENT OF FUNDS BY CLERK.

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

(1) . . .

(4) wording which directs the clerk to deduct from the income earned on the investment a fee, not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office *of the United States Courts,* ~~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; and

(5) the social security number and/or tax identification number of the depositor, *which may be set forth under seal in a separate document.*

(b) Information regarding the authorized fee shall be made available by the Clerk's Office upon request.

Commentary. The Rule is located at page 56.

Subdivision (4) of the current Rule (subdivision (a)(4) of the proposed Rule) misstated the fee authorized to be assessed against income earned on funds deposited with the clerk. The Administrative Office periodically amends the fees that are authorized. Proposed subdivision (a)(4) makes clear that orders directing the clerk to invest funds on deposit with the court must authorize the deduction of the authorized fee.

The revision in subdivision (a)(5) is necessary in light of L.R. 3.7.

New subdivision (b) provides that information regarding the authorized fee is available from the Clerk of Court.

73.2 ~~CONSENT TO ASSIGNMENT OF CIVIL CASES TO A MAGISTRATE JUDGE~~ *CONSENT ELECTION WHERE CASE IS ASSIGNED TO MAGISTRATE JUDGE.*

(a) Notice. When a civil action has been conditionally assigned to a magistrate judge, the Clerk of Court shall notify the parties of such ~~designation~~ *assignment* and advise them that they may *give or withhold* consent ~~or withhold consent~~ to the magistrate's exercise of jurisdiction. *In cases that are pre-screened pursuant to 28 U.S.C. § 1915(e)(2), 28 U.S.C. § 1915A(a), 42 U.S.C. § 1997e(c), or Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the clerk shall mail a notice of assignment and consent election form after all parties ordered to be served have made an appearance. In all other cases, the* ~~The~~ clerk shall mail *the notice and consent election form* ~~a notice and form for election to proceed before the magistrate judge~~ within ten (10) days of a party's appearance.

(b) Return of *consent* election forms. Parties shall have thirty (30) days from service of ~~notification of the magistrate judge's designation~~ *the notice of assignment* to complete and return to the Clerk of Court the ~~election-to-proceed form~~ *consent election form* indicating whether they do or do not consent to a magistrate judge's exercise of jurisdiction over the case for any and all proceedings including trial and entry of judgment, pursuant to 28 U.S.C. § 636(c). The Clerk will keep custody of all ~~election-to-proceed forms~~ *consent election forms. If* ~~and if~~ all parties ~~so~~ *give* consent, the case will continue before or be reassigned to a magistrate judge. In the event any party ~~does not~~ *withholds* consent to the magistrate judge's jurisdiction, the case will be reassigned to an Article III judge.

(c) Anonymity. Parties are free to *give or* withhold their consent. ~~and n~~ *No* judge will be notified as to the identity of any party *giving or* withholding ~~or giving~~ consent to the exercise of jurisdiction by a magistrate judge, *except when all parties consent. No case will be reassigned to an Article III judge based on any party's withholding of consent until all undefaulted parties have returned their consent election forms.*

Commentary. This Rule is currently at page 95.

Subsection (a) provides that consent election forms will not be immediately mailed to plaintiffs in cases that are pre-screened. Up to sixty percent of such cases are recommended for dismissal before opposing parties are served. Mailing consent election forms in such cases is pointless. Therefore, the proposed rule provides that a notice of assignment and consent election form will not be mailed out until all parties required to appear have appeared.

All other changes are stylistic only; no substantive change is intended.

RULE 79

BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

79.1. JUDGMENTS OF BANKRUPTCY COURT.

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

State law requires that a judgment of the federal district court may become a lien against real property upon the filing of a "transcript of judgment" in the state district court where the property is located. See Mont. Code Ann. § 25-9-303(1) (2003); Miller v. Snavely (In re Snavely), 314 B.R. 808 (B.A.P. 9th Cir. 2004) (citing Gaines v. Van Demark, 74 P.2d 454, 456 (Mont. 1937)). The statute does not appear to permit filing a transcript of judgment with respect to a judgment issued by the bankruptcy court. To facilitate parties' procurement of a transcript of judgment based on a bankruptcy court judgment, the proposed Rule provides that all bankruptcy court judgments will be recorded in the District Court's civil judgment book.

83.3 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.

. . .

(c) Practice in this Court. Except as otherwise provided in this Rule, only members of the Bar of this Court *who are classified as active members in good standing by the State Bar of Montana* shall practice in this Court.

. . .

(e) Pro hac vice.

(1) . . .

(3) ~~Application to appear pro hac vice shall be filed and served on all parties, and shall state, under penalty of perjury~~ *An attorney applying to appear pro hac vice shall file and serve on all parties an application stating, under penalty of perjury*:

(A) the attorney's state or territory of residence and office addresses;

. . .

(4) Permission to appear pro hac vice is granted or denied solely at the discretion of the presiding judge. Revocation of permission to appear pro hac vice pertains to the instant case only and does not constitute disbarment from the Bar of this Court.

Commentary. The Rule is currently located at pages 61-62.

The proposed change in subdivision (c) clarifies that persons admitted to the Federal Bar may not practice in federal court if they are on inactive status with the State Bar of Montana.

The change in subdivision (e)(4) clarifies that it is the attorney applying for admission *pro hac vice*, not local counsel, who must make the application to appear.

New subdivision (e)(4) clarifies that denial or revocation of permission to appear *pro hac vice* does not constitute disbarment from the Federal Bar and is limited to the instant case.

CR12.1 MOTIONS.

(a) Time. Upon serving and filing a motion, or within five (5) days thereafter, the moving party shall serve and file a brief. The adverse party shall have ten (10) days thereafter within which to serve and file a response brief. A reply brief may be served and filed within five (5) days thereafter. Upon filing of the brief in support and the brief in response, 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.

(b) Length. Briefs in excess of twenty (20) pages will not be accepted and shall not be filed by the clerk if the party has not obtained prior leave of Court. Briefs exceeding twenty (20) pages shall have a table of contents and a table of cases with page references.

(c) Failure to file. 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. 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.

(d) Submission by Fax. *Documents may not be transmitted by use of telefacsimile ("fax") equipment or any other electronic means for filing with the Court.*

Commentary. The Rule is located at page 84.

Proposed new subdivision (d) clarifies that the prohibition in Chapter II Rule 5.2 applies in criminal cases as well. Only original documents may be filed.

CR12.2 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~~ *all parties have* been contacted concerning the motion, and whether ~~opposing counsel~~ *any party* objects to the motion.

Commentary. The Rule is located at page 84.

Fed. R. Crim. P. 49(a) provides that "[a] party must serve on every other party any written motion (other than one to be heard ex parte), written notice, designation of the record on appeal, or similar paper." The proposed change to the current Rule 12.2 requires that all parties be served so that in a case involving multiple defendants, one defendant's motion must be served on all other defendants.

Local Rules of Procedure

United States District Court
for the District of Montana

Effective December 1, 2004

Local Rules of Procedure

United States District Court

for the District of Montana

Table of Contents

CHAPTER I. GENERAL RULES

CHAPTER II. CIVIL CASES

CHAPTER III. CRIMINAL RULES

CHAPTER IV. MAGISTRATE JUDGE RULES

APPENDIX A

CHAPTER I.
GENERAL RULES

RULE 1

SCOPE OF RULES

1.1 TITLE AND CITATION.

These are the Local Rules of Procedure of the United States District Court for the District of Montana. They may be cited as "L. R. ___."

1.2 EFFECTIVE DATE.

These Rules become effective on January 1, 2002. Subsequent amendments to these Rules become effective on the date of filing.

1.3 SCOPE OF RULES.

These Rules supplement the Federal Rules of Civil Procedure, Title 28 U.S.C., and the Federal Rules of Criminal Procedure, Title 18 U.S.C. These Rules apply in all proceedings in the United States District Court for the District of Montana.

1.4 NUMBERING.

These Local Rules have been numbered in accordance with a directive from the Judicial Conference of the United States. The numbering is based on the most relevant Federal Rule of Civil and Criminal Procedure.

1.5 RELATIONSHIP TO PRIOR RULES & ACTIONS PENDING.

These Rules govern all proceedings in this District, including all proceedings pending at the time they take effect. If, in the opinion of the presiding judge, their application in a particular case is not feasible or would work an injustice, the former Rules shall govern. These Rules supersede all previous inconsistent Rules promulgated by this District or any judge of this Court.

RULE 3

COMMENCEMENT OF ACTION

3.1 DIVISIONS WITHIN DISTRICT.

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

(a) Civil Cases.

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

(2) The BUTTE DIVISION is comprised of the Counties of Beaverhead, Deer Lodge, Gallatin, Madison and Silver Bow. Court shall be held at the Mike Mansfield Federal Building and United States Courthouse, Butte, Montana.

(3) The GREAT FALLS DIVISION is comprised of the Counties of Blaine, Cascade, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley. Court shall be held at the Post Office Building, Great Falls, Montana.

(4) The HELENA DIVISION is comprised of the Counties of Broadwater, Jefferson, Lewis and Clark, Meagher and Powell. Court shall be held at the Paul G. Hatfield Courthouse, Helena, Montana.

(5) The MISSOULA DIVISION is comprised of the Counties of Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders. Court shall be held at the Russell Smith Courthouse, Missoula, Montana.

(b) Criminal Cases. The composition of Divisions for Criminal Cases is the same as that for Civil Cases.

3.2 ASSIGNMENT OF CASES.

(a) Jurisdiction. All Article III judges of the District of Montana, including 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, the Chief Judge of the District shall, by order, assign each of the Divisions of the Court to one or more of the judges. All applications for orders in cases pending in any Division shall be made to the judge to whom the case is assigned for pretrial proceedings or for trial.

(c) Right to an Article III 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 inviolate.

(d) Assignment of Civil Cases to Magistrate Judges.

(1) The full-time United States Magistrate Judges of the District of Montana are designated to hear all prisoner civil rights actions, all habeas corpus actions (excluding motions filed under 28 U.S.C. § 2255), all cases in which one or more plaintiffs are proceeding pro se, and all cases in which leave to proceed in forma pauperis is sought. Except as otherwise provided by order, all such cases shall be assigned to a magistrate judge upon filing. A case will not be reassigned based on a party's change of status after filing.

(2) Any active Article III judge may designate a United States Magistrate Judge to exercise jurisdiction over any other civil case in accordance with 28 U.S.C. § 636 and Chapter IV of these Rules.

(3) A magistrate judge designated to hear a matter shall be assigned to preside over the case for all purposes, including trial and entry of judgment, only if each party not in default consents in writing within thirty (30) days after service of a notice of assignment as set forth in L.R. 73.2.

3.3 VENUE.

(a) Civil Cases.

(1) Except as otherwise provided in this Rule, all civil cases are assignable to any Division containing a county in which venue would be proper under the laws of the State of Montana. Cases shall be tried within the Division to which the case is assigned, unless by agreement of the parties and with the consent of the Court, or in the Court's discretion, or for good cause shown, such trial is ordered elsewhere.

(2) Habeas cases shall be venued in the Division containing the county in which the conviction being challenged was obtained or, in cases involving the denial of parole, in the Helena Division. Venue in cases under 28 U.S.C. § 2255 shall be as prescribed

by Rule 4(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts. Venue in all other habeas cases shall be in the Division containing the county where the petitioner is incarcerated or, if the petitioner is not incarcerated, in the Division containing the entity whose conviction or decision the petitioner challenges. If such entity is not found within the District of Montana, venue shall be in the Division of the petitioner's residence, subject to transfer for good cause.

(3) Prisoner civil rights cases shall be venued in the Division where the alleged wrong was committed.

(4) A Complaint's designation of a Division constitutes a certification by counsel that the Division so designated is the proper venue of the case. If no Division is designated, the clerk shall assign the case to the proper Division.

(5) At the time of appearance, any defendant who believes that the case is venued in an improper Division in this District may, in addition to any other motions, move for a change of venue to the proper Division. Within ten (10) days after the first appearance of any defendant, any plaintiff may serve and file a motion to change venue. Failure by any party to make such motion for proper assignment within the time provided shall constitute consent to venue, but the Court may of its own motion transfer 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 and L.R. 3.1(b).

(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 in accordance with the Federal Rules of Criminal Procedure and L.R. 3.1(b).

3.4 REMOVAL AND REMAND.

(a) Removal. In any action removed to this Court from a state court, the removing party shall file in this Court, at the time the notice of 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 of the service of summons or other process.

(b) Remand. Immediately upon receipt of an order remanding an action to state court, the clerk shall forward 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. Delivery shall be by certified mail with return receipt requested or by personal delivery, for which the clerk shall obtain a receipt 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.

3.5 TERMS OF COURT.

Terms of court shall be set for the trial of civil cases in each Division of the Court by the judge to whom the case is assigned.

3.6 PRE-FILING REQUIREMENTS.

(a) Pursuant to 28 U.S.C. § 1915, a party may apply to proceed *in forma pauperis* by submitting a proposed complaint or petition simultaneously with an affidavit that includes a statement of all assets the applicant possesses and that the person is unable to pay the filing fee required by 28 U.S.C. § 1914 or give security therefor. The affidavit shall state the nature of the action, defense or appeal and the applicant's belief that he or she is entitled to redress. The Court's standard Application to Proceed *In Forma Pauperis* may serve as the required affidavit, if completed by the party. A prisoner may, but is not initially required to, submit a trust account statement in support of the affidavit or Application.

(b) In all other cases, the filing fee required by 28 U.S.C. § 1914(a) shall be prepaid in full prior to the institution of any civil action, suit, or proceeding.

(c) Except for habeas petitions, any complaint or petition not submitted simultaneously with either the full filing fee, pursuant to subsection (b), or an affidavit or Application to Proceed *In Forma Pauperis*, pursuant to subsection (a), may be returned without filing or other record of its submission. Filing fees, affidavits, or Applications received after a complaint has been returned shall be promptly returned to the plaintiff or other sending authority.

3.7 PRIVACY POLICY.

(a) In compliance with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the Court.

(1) *Social Security Numbers.* If an individual's social security number must be included in a document, only the last four digits of that number should be used.

(2) *Names of Minor Children.* If the involvement of a minor child must be mentioned, only the initials of that child should be used.

(3) *Dates of Birth.* If an individual's date of birth must be included in a document, only the year should be used.

(4) *Financial Account Numbers.* If financial account numbers are relevant, only the last four digits of these numbers should be used.

(b) In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal. This document shall be retained by the court as part of the record. The court may, however, still require the party to file a redacted copy for the public file.

(c) The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review each document for compliance with this rule.

CHAPTER II.
CIVIL CASES

RULE 4

SERVICE OF PROCESS AND PAPERS

4.1 ISSUANCE AND SERVICE OF PROCESS.

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

4.2 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 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 of service of process.

4.3 PROOF OF SERVICE.

(a) Proof of service of all papers required or permitted to be served, other than 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 acknowledgment of service, by certificate of the person who served the papers, or by any other proof satisfactory to the Court.

(b) Failure to prove service as 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.

4.4 SERVICE OF SUBPOENAS BY U.S. MARSHAL.

Any party to a civil proceeding requesting service of a subpoena by the United States Marshals Service shall provide notice to the Marshal of the request, along with all documentation necessary to effectuate service, no later than twenty (20) 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.

4.5 TIME LIMIT FOR SERVICE.

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

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

RULE 5

SERVICE AND FILING

5.1 CIVIL COVER SHEET.

(a) The clerk shall require a completed and executed Civil Cover Sheet (AO Form JS 44(c)), which shall accompany each civil case filed.

(b) Institutionalized persons filing civil cases pro se are exempt from the foregoing requirement.

5.2 ELECTRONIC FILINGS.

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

5.3 ELECTRONIC SERVICE.

In its first appearance in any action, each represented party shall file with the Court and serve on all other parties a Notice Regarding Electronic Service. Electronic service is only permitted when the party being served, whether represented by counsel or acting pro se, has executed the following or similar notice on or prior to the date the document is electronically served. If a party wishes to revoke such consent, the party shall file written notification with the Court. Substitution of counsel operates as a revocation of consent.

MARY JONES, Plaintiff, vs. WESTBEST NURSING HOME, Defendant.	CV 00-000-XX-XXX **NOTICE REGARDING ELECTRONIC SERVICE PURSUANT TO L.R. 5.3**

_____ I agree that all other parties to this litigation may electronically serve me with copies of all documents filed with the Court.

Electronic service shall be accomplished by *(include all that apply)*:

___ facsimile transmission to [facsimile number].

___ electronic mail at [electronic mail address] limited to documents created in the following document and word processing formats:_____.

___ both facsimile transmission to [facsimile number] and electronic mail at [electronic mail address] limited to documents created in the following document and word processing formats:_____.

___ Electronic service must be accompanied by simultaneous service by mail or commercial carrier of a paper copy of the electronically filed document.

OR

_____ I do not agree that other parties to this litigation may electronically serve me with copies of all documents filed with the Court.

[Signed]_____
Attorney for _____[name of party]

5.4. ADDRESS CHANGES.

(a) Duty to Notify. An attorney or a party proceeding *pro se* whose address changes while an action is pending must promptly file with the Court and serve upon all opposing parties a Notice of Change of Address specifying the new address.

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

(1) mail directed to the attorney or *pro se* party by the Court has been returned to the Court as not deliverable; and

(2) the Court fails to receive within 60 days of this return a written communication from the attorney or *pro se* party indicating a current address.

RULE 6

TIME

6.1 COMPUTATION.

Time for filing shall be computed according to Federal Rule of Civil Procedure 6. Where service is via mail or electronically transmitted, time shall be extended as provided in Federal Rule of Civil Procedure 6(e).

6.2 EXTENSIONS OF TIME.

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

(b) All requests for extension of time or continuance shall be accompanied by an appropriate form of order, separate from the motion.

RULE 7

MOTION PRACTICE

7.1 MOTIONS.

(a) The provisions of L.R. 7 shall apply to motions, applications, petitions, orders to show cause, and all other proceedings (all such being included within the term "motion" as used herein) except a trial on the merits and applications for a temporary restraining order, unless otherwise ordered by the Court or provided by statute.

(b) All motions, unless made on the record during a hearing or trial, 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. The five-day grace period does not apply in proceedings under L.R. 56.2. 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 be not longer than twenty (20) pages, exclusive of exhibits, table of contents, and certificate of service.

(d) Briefs in excess of twenty (20) pages will not be accepted and shall not be filed by the clerk if the party has not obtained prior leave of Court. Briefs exceeding twenty (20) pages shall have a table of contents and a table of cases with page references.

(e) Within twenty (20) days after service of a brief in support of a motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment, unless the Court orders a shorter time, any party opposing a motion shall file a response brief not to exceed twenty (20) pages. Response briefs shall be filed within eleven (11) days after service of a brief in support of any other motion.

(f) A reply to the response brief, not to exceed ten (10) pages, may be served and filed by the moving party within eleven (11) days after service of the opposition's statement. Reply briefs in excess of ten (10) pages will not be accepted and shall not be filed by the clerk if the party has not obtained prior leave of Court.

(g) No further briefing shall be allowed without leave of Court. Upon the filing of a brief in support and a response brief, the motion shall be deemed submitted and taken under advisement by the Court.

(h) The Court may, in its discretion, order or allow oral argument on any motion or other proceeding in open court or by video conference or telephone conference call, provided that all

conversations of all parties are audible to each participant and the Court. The Court 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. The moving party's failure to file a brief shall be deemed an admission that the motion is without merit. Failure to file a brief by the adverse party shall be deemed an admission that the motion is well taken. The practice of filing motions to dismiss without a brief in support in order to gain additional time to respond is discouraged.

(j) Within the text of each motion submitted to the Court, the moving party shall note that other parties have been contacted concerning the motion and whether other parties object to the motion. Unopposed motions shall be accompanied by an appropriate Order, separate from the motion.

(k) Each exhibit attached to each motion or brief must be labeled by number or letter. If an exhibit contains more than one page, each page of the exhibit must be numbered. References to exhibits must include specific page numbers.

(l) Where the Court denies a motion "subject to renewal," the renewed motion must be accompanied by an original brief and any exhibits referred to therein, in addition to the number of copies prescribed by L.R. 10. Previously filed briefs may not be incorporated by reference. If the Court specifically authorizes the party to rely on the briefs and/or exhibits already filed, one copy of the original brief and exhibits must be submitted with the renewed motion.

7.2 MOTIONS FOR RECONSIDERATION.

(a) Leave of Court Required. Before the entry of a judgment adjudicating all of the claims and the rights and liabilities of all the parties in a case, any party may make a motion before a Judge requesting that the Judge grant the party leave to file a motion for reconsideration of any interlocutory order made by that Judge on any ground set forth in Rule 7.2(b). No party may file a motion for reconsideration without prior leave of Court.

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

(1) (A) the facts or applicable law are materially different from the facts or applicable law that the parties presented to the Court before entry of the order for which reconsideration is sought, and

(B) despite the exercise of reasonable diligence, the party applying for reconsideration did not know such fact or law before entry of the order; or

(2) new material facts emerged or a change of law occurred after entry of the order.

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

(d) Determination of Motion. Unless otherwise ordered by the assigned judge, no response may be filed to a motion for leave to file a motion to reconsider. If the judge decides to permit reconsideration, the judge will fix an appropriate schedule.

RULE 10

FILINGS

10.1 FORM OF PAPERS.

(a) All original papers presented for filing and copies as provided in L.R. 10.3 shall be on 8½ x11 inch uncolored opaque paper of good quality, flat and unfolded, without back or cover, and shall be firmly bound together and pre-punched to accommodate a 2¾ inch two-prong fastener centered at the top of the page. Original papers presented by prisoners may be folded and need not be bound or pre-punched.

(b) The content of all papers shall be typewritten, printed, or prepared on one side of the paper only, and must be in true double-spacing, except for quoted material and footnotes, in at least 12 point font without erasures or materially defacing interlineations. Spacing mechanisms such as "Exactly 24" are not acceptable.

(c) Each page shall be numbered consecutively at the bottom.

(d) The top, bottom and side margins must be at least one inch.

(e) Names shall be printed or typed under all signatures.

(f) The signature on each original pleading or motion must be an original.

10.2 FORM OF FILINGS.

(a) Counsel or Party Identification. The following information must appear in the upper left-hand corner of the first page of each paper other than proposed orders presented for filing, except that in multi-party or multi-attorney actions or proceedings, reference may be made to the signature page for the complete list of attorneys and parties represented:

(1) name of the attorney (or party, if appearing pro se);

(2) mailing and physical address;

(3) telephone number, or, if none, a telephone number where the party may be contacted;

(4) facsimile number, if available;

(5) e-mail address, if the parties have consented to electronic service; and

(6) the party's name and interest in the litigation (i.e. plaintiff, defendant, etc.).

(b) Caption And Title. The caption must begin four inches from the top of the page and must contain the name and division of the Court, the parties' names, the cause number, and a title describing the paper filed and identifying the filing party, in the following format:

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

_____ DIVISION

PARTY NAME, Plaintiff, vs. PARTY NAME, Defendant.	)	Cause No. CV 00-000-XX-XXX PARTY & TITLE DESCRIBING THE DOCUMENT OR ACTION (e.g., Answer, Motion, etc.)

(c) Court Use. The top four inches on the right of the center of the first page shall be left blank for the use of the Clerk of Court.

10.3 COPIES TO BE FURNISHED TO CLERK.

(a) 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 Federal Rule of Civil Procedure 79(b) 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.

(b) At the time of filing, parties must provide to the clerk an original and two (2) copies of the complaint, and an original and one copy of answers, pretrial statements, motions, and briefs. No complimentary copies shall be provided directly to the presiding judge. If *forma pauperis* status is granted, the plaintiff must provide one original of each exhibit and one original and one copy of all pleadings, motions, and briefs presented for filing.

10.4 CITATION FORM.

(a) All documents filed with the Court shall follow the citation form described in the current edition of the Association of Legal Writing Directors (ALWD) Citation Manual or the most recent edition of The Bluebook. The use of internal citations that refer to a particular page or paragraph of a cited authority is required.

(b) All citations to federal acts, such as the Miller Act, Federal Employers Liability Act, Indian Child Welfare Act, etc., must be accompanied by a parallel citation to the United States Code, United States Code Service, or United States Code Annotated. Reference to a Code section, without reference to any section within an Act, is acceptable.

(c) For any violation of L.R. 10.4, the Court in its discretion may return the document for correction.

10.5 SANCTIONS.

If any filings do not comply with L.R. 10, the clerk shall bring the failure to comply to the attention of the filing party and to the presiding judge. The Court may sanction a violation of L.R. 10. The sanction will include a $50.00 assessment and up to $5.00 per page for each nonconforming page.

RULE 12

DEFENSES AND OBJECTIONS

12.1 RESPONDING TO PRISONER-PLAINTIFFS -- WAIVER OF REPLY.

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

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

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

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

(e) Findings Implicit in Court's Order for Service or Response. Regardless of whether the order so states, the Court's ordering of service or of a response to the Complaint is deemed a finding that the plaintiff has a reasonable opportunity to prevail on the merits, within the meaning of 42 U.S.C. § 1997e(g)(2), and that the Complaint is not, on its face, frivolous or malicious, and that it does not seek solely monetary relief against a defendant who is immune from such relief, all within the meaning of 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). If the Court has ordered service, or if the Court has ordered a response to the Complaint, filing of a Waiver of Reply in lieu of an Answer or other appropriate motion is not permitted and may result in the entry of default and/or default judgment.

RULE 15

AMENDED PLEADINGS

15.1 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. If leave to file is granted, the clerk shall promptly file the original.

RULE 16

PRETRIAL PROCEEDINGS

16.1 PRETRIAL CONFERENCE.

(a) Authority. At least one of the attorneys for each party participating in any conference before trial must have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate discussing. The judge assigned to the case may require the presence of lead trial counsel at any conference or hearing.

(b) Preliminary and Final Pretrial Conferences. All parties receiving notice of a preliminary or final pretrial conference must attend in person or by lead counsel, unless excused by the Court, and must be prepared to discuss the implementation of orders conducive to the efficient and expeditious determination of the case. The attorneys who will serve as lead counsel in trying the case must attend. Pretrial conferences will proceed as scheduled regardless of whether a case is referred for early neutral evaluation.

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

(d) Settlement Conferences.

(1) The judge to whom a civil case is assigned may, upon the motion of any party or upon the judge's own motion, order the parties to participate in a settlement conference to be convened by the Court. Unless ordered otherwise, each party, or a representative of each party with authority to participate in settlement negotiations and to effect a complete compromise of the case, is required to attend the settlement conference. The judge may, in his or her discretion, preside over the settlement conference.

(2) Prior to the commencement of the settlement conference, a confidential settlement brochure, no more than ten (10) double-spaced pages in length (excluding exhibits or appendices) must be submitted to the settlement judge. The brochure will not be exchanged among the parties, unless the parties agree otherwise. The information contained in the confidential settlement brochure shall not become a part of the court record.

(3) Failure to comply with the conditions of L.R. 16.1(d) (1) and (2) or failure to negotiate in good faith may result in the imposition of sanctions and/or costs of the conference by the settlement judge.

16.2 PRELIMINARY PRETRIAL CONFERENCE.

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

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

(2) petitions for writs of habeas corpus;

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

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

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

(6) forfeiture actions prosecuted by the United States;

(7) actions to enforce arbitration awards;

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

(9) any case which the judge to whom the case is assigned orders to be excepted from the requirements of the present Rule.

In exempt cases, the assigned judge shall, not later than forty-five (45) days from the date the case is at issue, establish a schedule for final disposition of the case.

(b) Filings Before Preliminary Pretrial Conference. Each of the following documents must be filed no later than seven (7) calendar days before the preliminary pretrial conference:

(1) ***Preliminary Pretrial Statement.*** A statement must be filed by each party and must include:

(A) a brief factual outline of the case;

(B) issues concerning jurisdiction and venue;

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

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

(E) a computation of damages;

(F) the party's report on early neutral evaluation, as required by L.R. 16.6(B)(1);

(G) the pendency or disposition of any related state or federal litigation;

(H) proposed stipulations of fact and law;

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

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

(K) the name and, if known, the address and telephone number of each individual known or believed to have information that may be used in proving or denying any party's claims or defenses, and a summary of that information;

(L) a copy or description of documents, data compilations, or tangible things that may be used in proving or denying any party's claims or defenses;

(M) the substance of any insurance agreement that may cover any resulting judgment;

(N) prospects for compromise of the case and the feasibility of settlement; and

(O) suitability of special procedures.

(2) ***Discovery Plan.*** *See* L.R. 26.1 and Federal Rule of Civil Procedure 26(f). Plaintiff shall file on behalf of all parties the discovery plan resulting from the Rule 26(f) conference.

(c) Conduct of Conference. Not later than ninety (90) days after a case is at issue, or one hundred twenty (120) days after filing of the complaint, whichever comes first, the judge to whom the case is assigned shall hold a preliminary pretrial conference to discuss the matters included in the discovery plan and the preliminary pretrial statements and to discuss and schedule the following matters:

(1) joinder of additional parties;

(2) amendment of pleadings;

(3) stipulations of fact and law;

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

(5) feasibility of settlement;

(6) filing and hearing of motions;

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

(8) completion of discovery and sufficiency of the initial disclosures required by Federal Rule of Civil Procedure 26(a)(1);

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

(10) final pretrial conference;

(11) a trial date; and

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

16.3 SCHEDULING ORDER.

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

(b) Procedure When No Trial Set.

(1) When a trial date is not set in the Pretrial Scheduling Order, the judge to whom the case is assigned shall, within thirty (30) days of the submission of a proposed final pretrial order, convene a status conference to determine the readiness of the case for trial and to establish a trial date. Pursuant to the status conference, the judge shall immediately enter a final scheduling order that establishes dates for:

(A) a final pretrial conference, unless deemed unnecessary;

(B) filing of each party's proposed voir dire questions and jury instructions or proposed findings of fact and conclusions of law (each filed both in paper form and on disk); and

(C) trial.

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

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

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

(c) Continuances.

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

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

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

16.4 FINAL PRETRIAL ORDER.

(a) Preparation and Lodging. At least two weeks before the final pretrial order is due, Plaintiff's counsel shall convene a conference of all counsel at a suitable time and place for the purpose of preparing the order. If counsel for any party refuses to cooperate in the preparation of the pretrial order, the opposing party may move the Court for sanctions. On or before the date established in the pretrial scheduling order, counsel for the parties shall lodge with the Clerk of Court a proposed final pretrial order signed by all counsel.

(b) Form and Content. The final pretrial order shall address the following matters:

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

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

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

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

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

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

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

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

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

(10) ***Witnesses.*** Each party must identify in **separate witness lists** each witness who **will be called**, and each witness who **may be called**. A witness on either list must be identified by name and address and subject area of expected testimony. Witness lists must be in the form set forth in Appendix A.

(11) ***Exhibits.*** Each party must identify in **separate exhibit lists** each document, photograph or other item that the party **will offer** as an exhibit at trial, and each document, photograph or other item that the party **may offer** as an exhibit at trial. Documents intended for impeachment or rebuttal need not be identified on either exhibit list except by reference to purpose, *i.e.* "impeachment" or "rebuttal." Exhibit lists must be in the form set forth in Appendix A.

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

(13) ***Estimate of Trial Time.*** An estimate of the number of court days counsel for each

party expects to be necessary for the presentation of their respective cases in chief.

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

16.5 FINAL PRETRIAL CONFERENCE.

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

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

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

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

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

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

(5) ***Specify Outstanding Objections on Exhibit List.*** With respect to unresolved objections, specify any remaining objections in writing set forth on the opposing party's exhibit list. Objections not specified on the exhibit list will be deemed waived. The list so prepared must be served and filed with the final pretrial order. In cases proceeding under L.R. 16.2(a) or 16.3(b), exhibit and witness lists must be filed and served at the time of the final pretrial conference or, where none is held, no

later than seven (7) days before trial.

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

16.6 NEUTRAL EVALUATION.

(A) GENERAL RULES.

(1) Pursuant to the findings and directives of Congress in 28 U.S.C. § 651 et seq., this Rule provides parties to civil cases in the District of Montana with an opportunity to use neutral evaluation. This Rule is intended to reduce the financial and emotional burdens of litigation and to enhance the Court's ability to timely provide traditional litigation services.

(2) Neutral evaluation is a procedure in which the parties and their counsel, in a confidential session, present summaries of their cases to an experienced and impartial lawyer, judge, retired judge, or other qualified person who evaluates the parties' legal positions and provides the parties and their counsel with a non-binding evaluation of the case. The evaluator may also help the parties identify areas of agreement, provide case-planning guidance, and, if requested by all parties, assist in negotiating a settlement of the dispute.

(3) Except for cases exempted by L.R. 16.6(A)(4), all parties must consider early neutral evaluation, pursuant to L.R. 16.6(B). Any of the parties may jointly request neutral evaluation of any or all claims or defenses at any time. It is unnecessary that all parties agree to neutral evaluation of all claims or defenses for neutral evaluation to occur in a case. For instance, co-defendants may choose to submit cross-claims between them to neutral evaluation, or a plaintiff and one defendant may choose to submit the claims between them to neutral evaluation. However, it is recommended, to the extent possible, that all claims and defenses in a case be submitted to neutral evaluation at one time. All motions for neutral evaluation must conform to the provisions of L.R. 16.6(B)(5).

(4) This Rule applies to all civil cases pending before any district judge or magistrate judge in this District except the following actions or claims:

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

(b) foreclosure;

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

(d) debt collections by the United States (e.g., student loans);

(e) requests for temporary restraining orders or preliminary injunctions, including fraud injunctions under 18 U.S.C. § 1345;

(f) any case in which one or more parties appear pro se;

(g) petitions for writs of habeas corpus or prisoner civil rights actions;

(h) cases challenging the constitutionality of a statute;

(i) civil rights claims against federal employees; and

(j) Freedom of Information and Privacy Act matters.

The preceding actions or claims may be submitted to early neutral evaluation if the parties so agree. The judge assigned to the case may compel early neutral evaluation or neutral evaluation at any stage of the proceedings in all cases and for all claims.

(5) The parties may seek alternative dispute resolution services outside the Court's program. The enforcement, immunity, and other provisions of this Rule will not apply to outside services.

(6) Confidentiality.

(a) Except as provided in this Rule, and except as otherwise required by law or as stipulated in writing by all parties and the neutral, all communications made in connection with any evaluation proceeding under this Rule shall be confidential.

(b) Except as provided in this Rule, and except as otherwise required by law or as stipulated in writing by all parties and the neutral, no person may disclose to the assigned judge any communication made, position taken, or opinion formed by any party or neutral in connection with any proceeding under this Rule.

(c) Participants and neutrals may respond to an appropriate request for information by persons authorized by the Court to monitor or evaluate any aspect of the Court's program or to enforce any provision of this Rule. The identity of the sources of such information shall be protected.

(B) MANDATORY CONSIDERATION OF EARLY NEUTRAL EVALUATION.

(1) Conference and Report.

(a) At the Rule 26(f) conference, or as otherwise directed by the presiding judge, the

parties must consider whether they might benefit from participating in early neutral evaluation.

(b) If the parties agree that early neutral evaluation is appropriate, they shall also discuss when the evaluation should occur and who should be appointed as a neutral. The parties must attempt in good faith to jointly nominate a neutral.

(c) Within ten (10) days after their conference, or in the preliminary pretrial statement, the parties shall report, jointly or separately, their views about early neutral evaluation, scheduling, and nomination of an evaluator. Counsel who decline early neutral evaluation must certify that they understand the early neutral evaluation procedure, have explained it to their clients, and have carefully considered it with their clients. Counsel who recommend early neutral evaluation must include a motion for evaluation with their report.

(2) If all parties agree that early neutral evaluation is appropriate, the assigned judge shall order early neutral evaluation. If the parties disagree, the judge may order early neutral evaluation. The preliminary pretrial conference will proceed as scheduled regardless of whether a case is referred for early neutral evaluation.

(3) The judge assigned to the case will ensure that referral to neutral evaluation does not impose an unfair or unreasonable economic burden on any party.

(4) Assigned Judge's Continuing Responsibility for Case Management. Neither the parties' agreement to participate in neutral evaluation nor referral of an action shall reduce the assigned judge's power and responsibility to maintain control of a case before, during, and after the evaluation process.

(5) Motions and Orders for Evaluation.

(a) A motion for evaluation must:

(1) identify by name and organizational affiliation the available neutral nominated to serve in the case;

(2) state the proposed rate of compensation for the neutral, terms of reimbursement of the neutral's expenses, and any proposed limitations on compensation or expense reimbursement;

(3) specify the time frame within which neutral evaluation will be completed and the specific date by which the neutral must file written confirmation of that completion;

(4) specify the date by which the parties must notify the Court and any non-participating parties, in a jointly filed statement, whether all or part of the case has been resolved; and

(5) suggest and explain any minor modifications or additions to the case management plan that would be advisable because of the reference to Early Neutral Evaluation.

(b) Every order granting a motion for evaluation must specify:

(1) the identity of the neutral who will serve in the case;

(2) the rate of compensation for the neutral, terms for reimbursement of the neutral's expenses, and any limitations on compensation or expense reimbursement;

(3) the date by which the proceedings must be completed and by which the neutral must file a confirmation of that completion;

(4) the date by which the parties must notify the Court, in a jointly filed statement, whether all or part of the case has been resolved; and

(5) any pretrial activity, e.g., specified discovery or motions, that must be completed before the evaluation session is held or that is stayed until the session is concluded.

(c) In fixing deadlines in its Order of Reference, the assigned judge will assure that the time allotted for completing the process is no more than is appropriate and that the referral does not delay case development, motions, or trial.

(C) NOMINATION AND APPOINTMENT OF NEUTRALS.

(1) Unless otherwise directed by the assigned judge, the parties may nominate a neutral who is not on the panel. The parties shall submit with their report on neutral evaluation written agreements, signed by counsel for each participating party and the nominee, stating that neutral evaluation shall occur within a specified time frame. Faxed documents may be attached to the report if paper copies are simultaneously mailed to the Clerk of Court for filing.

(2) If the parties agree on a neutral, the assigned judge will appoint the parties' nominee unless the nominee is disqualified or otherwise precluded from serving.

(3) If the parties cannot agree on a neutral, the assigned judge will appoint an available neutral from the panel.

(4) The Clerk of Court shall serve orders of appointment on all counsel in the case and on the appointed neutral.

(5) Within seven (7) calendar days after the neutral is appointed, the participating party whose name appears first in the caption of the case shall provide the neutral with a copy of:

(a) the order of reference;

(b) each party's most recent pleading; and

(c) any other order or document from the court file that sets forth requirements or stipulations related to the evaluation.

(D) PROCEDURE FOR EVALUATION SESSIONS.

(1) Telephone Conference with Neutral. Promptly after being appointed to serve in a case, the neutral shall hold a brief joint telephone conference with all participating counsel to discuss:

(a) a date and place for the session;

(b) the procedures that will be followed during the session;

(c) the identity of those who will attend on behalf of each party;

(d) what material or exhibits should be provided to the neutral before the session or brought by the parties to the session;

(e) any issues or matters that it would be especially helpful to have the parties address in their written pre-session statements;

(f) page limitations for the pre-session statements; and

(g) any other matters that might enhance the utility of the evaluation.

(2) Pre-Session Statements.

(a) No later than ten (10) calendar days before the first evaluation session, each party must serve on all other participating parties and deliver directly to the neutral a written pre-session statement.

(b) The parties' written statements must not be filed and the assigned judge shall not have access to them.

(c) Unless otherwise approved by the neutral during the telephone conference under subparagraph (1), each statement must:

(1) identify by name and title or position:

(i) the person(s) with decision-making authority who, in addition to counsel, will attend the session on behalf of the party; and

(ii) person(s) connected with a party opponent, if known, whose presence at the session might substantially improve the productivity of the proceeding;

(2) describe briefly the substance of the litigation, addressing key liability and damages issues and discussing the most significant evidence;

(3) identify any discovery or motion activity that is likely either to significantly affect the scope of the litigation or to enhance the parties' ability to assess the case's settlement value or, for other reasons, to improve prospects for settlement;

(4) describe the history and current status of any settlement negotiations; and

(5) identify any other considerations, and set forth any additional information that the party believes might enhance the utility of the session.

(3) Attendance at the Evaluation Session.

(a) Unless excused under subparagraph (c), the following persons must attend the evaluation session in person:

(1) lead counsel;

(2) persons having authority to settle the case and to pay the last written demand for settlement; and

(3) all persons whose agreement is necessary to settle the case.

(b) Additionally, corporations or other nongovernmental entities must be represented by at least one person, other than outside counsel, who is knowledgeable about the facts of the case.

(c) Government personnel who are described in subparagraph (3)(a)(2) and (3) of this Rule may petition the judge assigned to the case to participate telephonically or to be

excused from the session. Subparagraphs(3)(d) and (e) do not apply to such government personnel.

(d) All requests to be excused from participation in person must be discussed at the telephonic conference with all participating parties and the neutral. Excuses may be granted by the neutral only upon a showing that personal attendance would impose a serious and unjustifiable hardship. All excuses granted by the neutral must be submitted by the neutral to the assigned judge for approval.

(e) Every person who is excused from attending a session in person must participate by telephone or video, unless otherwise directed by the neutral.

(4) Neutral's Report. No more than seven (7) calendar days after the evaluation session has been completed, and by the deadline fixed in the Order of Reference, the neutral must present to the Clerk of Court a report stating only the date on which the parties completed the process. The Clerk of Court shall file the report and serve a copy on all parties to the case.

(5) Parties' Report. By the deadline fixed in the Order of Reference, the parties must jointly file a statement in which they report to the assigned judge:

(a) whether they have settled all or part of the case; and

(b) any proposals in which all parties join for case development, or further exploration of settlement.

(E) RULES GOVERNING NEUTRALS.

(1) Criteria for Inclusion on the Panel of Neutrals. In order to qualify for appointment to the Court's panel of neutrals, an applicant must certify that he or she:

(a) has been a member in good standing of the State Bar of Montana or other state bar association, or has practical experience in and knowledge of a specified subject matter;

(b) has taken the oath in 28 U.S.C. § 453;

(c) agrees to abide by the disqualification rules of 28 U.S.C. § 455;

(d) agrees to permit participants to inform the Court about the conduct of the process; and

(e) agrees to respond appropriately to questions and suggestions from the Court.

(2) Disqualification of Neutrals.

(a) No person may serve as a neutral in proceedings under this Rule in violation of:

(1) the standards set forth in 28 U.S.C. § 455;

(2) the Montana Rules of Professional Conduct; or

(3) any additional standards adopted by the Court or the assigned judge.

(b) A neutral who discovers a circumstance requiring disqualification shall immediately submit to the parties and to the assigned judge a written notice of recusal. The parties may not waive a basis for disqualification that is described in 28 U.S.C. § 455(b).

(c) If a neutral discovers a circumstance that might be covered by 28 U.S.C. § 455(a) (impartiality might reasonably be questioned), the neutral must promptly disclose that circumstance in writing to all counsel and to the assigned judge. A party may waive a possible basis for disqualification that is premised only on 28 U.S.C. § 455(a). Any such waiver must be in writing and must be served on counsel for participating parties and filed within ten (10) calendar days of the neutral's notice of a possible basis for disqualification.

(d) ***Objections Not Based on Disclosures by Neutral.***

(1) Peremptory Strike. Where the parties did not agree on a neutral, each party may strike one appointed neutral. The party need not state a basis for its strike. A strike must be served on participating parties and filed, under seal, within seven (7) days of the neutral's appointment.

(2) Objections for Cause. Within seven days of a neutral's appointment, a party who objects for cause to service by that neutral must serve on participating parties and file, under seal, an objection stating why the appointed neutral should not serve. Any participating party may respond, under seal, to the objection within seven (7) calendar days thereafter. Promptly after the close of the period for responses, the assigned judge shall either order that the proposed neutral will serve or shall appoint another neutral.

(3) Compensation of Neutrals. Neutrals shall be compensated by the parties at a rate to which all parties agree. The neutral must disclose in writing to the assigned judge, before the evaluation session is held, all the fee, expense, and reimbursement terms and limitations that will apply to the service by that neutral. Actual transportation expenses reasonably incurred by neutrals must be reimbursed by the parties. Any neutral may voluntarily serve on a pro bono basis.

(4) Immunity of Neutrals. All persons serving as neutrals under this Rule are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

(F) VIOLATIONS.

(1) Allegations. An allegation that any person or party has materially violated this Rule must be presented in writing, under seal, directly to the Chief District Judge. Copies of any such allegation must be sent to all counsel of participating parties and the neutral at the time they are presented under seal to the Chief Judge. Any such allegation must be accompanied by a competent declaration and must not be filed. If the case is assigned to the Chief District Judge, then the allegation must be presented to the next most senior full-time district judge, or, if none, to the most senior magistrate judge who has not been involved in the case.

(2) Proceedings to Respond to Allegation. Upon receipt of an appropriately presented and supported allegation of material violation, the judge presiding over the allegation shall determine whether the matter warrants further proceedings. If further proceedings are warranted, the presiding judge shall issue an order to show cause why sanctions should not be imposed. Any such proceedings and orders shall become part of the record of the case but shall be kept under seal. The presiding judge shall afford all interested persons an opportunity to be heard before deciding whether to impose a sanction. The confidentiality provisions of L.R. 16.6(A)(6) apply to all such proceedings.

RULE 26

DISCOVERY

26.1 RULE 26(f) CONFERENCE AND DISCOVERY PLAN.

(a) Except in cases exempted by Federal Rule of Civil Procedure 26(a)(1)(E), or unless otherwise directed, the parties shall confer at least twenty-one (21) days before the preliminary pretrial conference to consider the matters set forth in Federal Rule of Civil Procedure 26(f) and L.R. 16.6(B)(1).

(b) Each party shall serve initial disclosures conforming with Federal Rule of Civil Procedure 26(a)(1) no more than fourteen (14) days after the Rule 26(f) conference. The parties are encouraged to serve initial disclosures at least seven (7) days before the Rule 26(f) conference.

(c) Initial disclosures shall not be filed.

26.2 DOCUMENTS OF DISCOVERY.

(a) Initial disclosures under Federal Rule of Civil Procedure 26(a)(1), depositions upon oral examinations and interrogatories, requests for documents, requests for admissions, answers and responses, and expert reports shall not be routinely filed (*see* Federal Rule of Civil Procedure 5(d)). However, when any motion is filed relating to discovery, the parties filing the motion shall 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 believes that any of the named documents should be filed, the party may move that the document be filed, stating the reasons and the authority supporting the movant's position.

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

26.3 DISCOVERY AND DISCOVERY RESPONSES.

(a) Responses to Discovery.

(1) Answers and objections to interrogatories pursuant to Federal Rule of Civil Procedure 33 and responses and objections to requests for admissions pursuant to Federal Rule of Civil Procedure 36 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 Federal Rule of Civil Procedure 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 Federal Rules of Civil Procedure 33 and 34, within the time fixed by the Rules, or within the time to which the parties have agreed, constitutes a waiver of any objection.

(5) The parties, and when appropriate a non-party witness, may stipulate to alter any form or procedure for discovery or any time limit for discovery that does not extend the dates set for the close of discovery, the motions deadline, lodging the pretrial order, pretrial conferences, or trial of the case. The Court will not enforce oral stipulations.

(b) Demand for Prior Discovery. Whenever a party makes a written demand for discovery that took place prior to the time the party became a party to the action, each party who has previously provided responses to interrogatories or requests for admission or requests for production shall furnish to the demanding party, at the demanding party's expense, a copy of the documents containing the discovery responses in question. Alternatively, each responding party shall furnish to the demanding party a list identifying each responsive discovery document by title and, upon further demand and at the demanding party's expense, a copy of any listed discovery response specified in the demand. In the case of requests for production of things, the responding party shall make available for inspection by the demanding party all things previously produced. 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 by providing the name, address and telephone number of the certified court reporter who prepared the deposition transcript.

(c) 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 and shall identify the basis for the motion.

(2) The Court will deny any discovery motion 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 refuses or fails to confer, the judge may order the payment of reasonable expenses, including attorney's fees, pursuant to Federal Rule of Civil Procedure 37(a)(4). Counsel for the moving party shall include in the motion a certificate of compliance with this Rule.

(d) Original Discovery. 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 for filing with the Court if so ordered.

RULE 38

JURY TRIAL

38.1 DEMAND FOR JURY TRIAL.

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

RULE 47

SELECTION OF JURORS

47.1 EXAMINATION OF JURORS.

(a) Voir dire. 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.

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

RULE 48

JURORS & PARTICIPATION IN VERDICT

48.1 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 judge.

48.2 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, unless the attorney or party involved desiring such an interview files proposed written interrogatories with the Court, 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* Federal Rule of Evidence 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 51

INSTRUCTIONS TO THE JURY

51.1 REQUESTS FOR INSTRUCTIONS TO JURY.

(a) 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. The proposed instructions to the jury must encompass all rules of law applicable to the evidence adduced. Appropriate citations should be noted following the text on each page of the charge to the jury.

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

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

RULE 52

FINDINGS BY THE COURT

52.1 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 L.R. 54.2.

52.2 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 L.R. 54.2, or the findings of fact and conclusions of law required by L.R. 52.1, any other party may do so.

RULE 54

JUDGMENTS & COSTS

54.1 JUDGMENTS PREPARED BY CLERK.

Unless the Court otherwise directs, and subject to the provision of Federal Rule of Civil Procedure 54(b), judgment upon the verdict of a jury (except those verdicts mentioned in L.R. 54.2) 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 Court's direction. No other judgment shall be entered in the cases provided for in this Rule.

54.2 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 Federal Rule of Civil Procedure 49, 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 entry of judgment, and no judgment shall be entered by the clerk until such direction is 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 a draft of the judgment and serve a copy upon the 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 judge.

54.3 TAXATION OF COSTS.

(a) Application to the Clerk.

(1) Within ten (10) days after the entry of a judgment allowing costs, the prevailing party shall serve and file an application for the taxation of costs. The application shall be on a Bill of Costs form, 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 no more than ten (10) days.

(2) 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 filed, and notice of the time of hearing shall be endorsed upon it.

(3) Any objections by opposing counsel to the application for costs must be filed at least twenty-four (24) hours prior to the time set for the hearing.

(4) 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 United States, or the actual fees paid by the prevailing party, whichever is less. The party seeking costs shall furnish evidence that the deposition was used at trial or in support of a motion for summary judgment.

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

(d) Fees and Disbursement for Witnesses.

(1) 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. In the case of witnesses who did not testify at trial or who were present at trial for a longer time than the days of testimony, the party seeking costs must establish that their presence was necessary.

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

(3) 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 digitally produced exhibits, charts, drawings, maps, photographs, movies, videotapes, and models, etc., which were reasonably necessary to the presentation of the prevailing party's case will be allowed as costs. In taxing costs the clerk will presume that exhibit evidence used at trial was reasonably necessary to

the presentation of the case and that exhibit evidence not used was not reasonably necessary to the presentation of the case.

(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, record the amount of costs taxed 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 Federal Rule of Civil Procedure 54(d). 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.

54.4 ATTORNEY'S FEES.

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

RULE 56

SUMMARY JUDGMENT

56.1 MOTIONS FOR SUMMARY JUDGMENT.

(a) Any party filing a motion for summary judgment shall also file a Statement of Uncontroverted Facts setting 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.).

(b) Any party opposing a motion for summary judgment must file a Statement of Genuine Issues setting forth the specific facts, if any, that establish a genuine issue of material fact precluding summary judgment in favor of the moving party. 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.).

(c) In the alternative, the movant and the party opposing the motion shall jointly file a statement of stipulated facts if the parties agree there is no genuine issue of any material fact. Such stipulations are entered into only for the purposes of the motion for summary judgment and are not intended to be otherwise binding.

(d) Upon filing of the Statement of Uncontroverted Facts and Statement of Genuine Issues, the factual record for the motion shall be deemed complete. Parties shall file no further factual materials except with leave of the Court upon a showing that factual materials were reasonably omitted in the Statement of Uncontroverted Facts and Statement of Genuine Issues.

56.2 MOTIONS FILED AGAINST *PRO SE* PRISONER-PLAINTIFFS IN CIVIL ACTIONS.

(a) For purposes of proceedings described in this Rule 56.2 only, Rule 7.1(c), allowing a party to file a brief in support within five (5) days of filing a motion, does not apply. Motions and briefs in support of summary judgment must be filed and served simultaneously.

(b) In any action brought by a prisoner-plaintiff acting *pro se*, a defendant must file and serve the following "Notice and Warning to Plaintiff," in a document separate from the motion and from the brief, at the time the defendant files and serves any motion for summary judgment:

> The Court requires this Notice and Warning to be given to all *pro se* prisoner litigants when an opposing party files a motion for summary judgment.

Defendant _____ [name defendant, or state "all defendants"] has/have moved for summary judgment by which [appropriate pronoun] seek[s] to have your remaining claims dismissed and judgment entered against you. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case [as to the following claims: _____].

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact – that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations or other sworn testimony, you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the other party's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, judgment will be entered against you and there will be no trial.

Additionally, a local rule of the District of Montana, D. Mont. L. R. 56.1(b), requires that "[a]ny party opposing a motion for summary judgment must file a Statement of Genuine Issues setting forth the specific facts, if any, that establish a genuine issue of material fact precluding summary judgment in favor of the moving party."

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

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

RULE 67

DEPOSIT OF FUNDS IN CUSTODY OF COURT.

67.1 ORDER FOR DEPOSIT; INTEREST BEARING ACCOUNT.

Whenever a party seeks a court order for money to be deposited by the clerk in an interest-bearing account, the party 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 judge assigned to the case.

67.2 ORDERS DIRECTING INVESTMENT OF FUNDS BY CLERK.

(a) Any order obtained by a party or parties in an action that directs the clerk to invest in an interest-bearing account or instrument funds deposited in the registry of the Court pursuant to 28 U.S.C. § 2041 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 of the United States Courts, whenever such income becomes available for deduction and without further order of the Court; and

(5) the social security number and/or tax identification number of the depositor, which may be set forth under seal in a separate document.

(b) Information regarding the authorized fee shall be made available by the Clerk's Office upon request.

67.3 ORDER FOR DISBURSEMENT OF FUNDS.

Whenever a party seeks a court order for money to be disbursed it shall include the following:

(1) the name(s) of the payee;

(2) the address(es) of the payee;

(3) the social security and/or tax ID number of the payee; and

(4) the amount of principal and interest for each payee.

67.4 SECURITY FOR COSTS.

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

(b) Whenever a security is required to be given, in unspecified form, except in bankruptcy proceedings, and except when given to secure the appearance of a defendant in a criminal case, it 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.

RULE 77

CLERK OF COURT

77.1 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 may be filed with the clerk in any Divisional office.

77.2 FILING BY THE CLERK.

(a) Except as otherwise provided by these Rules, the clerk shall file all papers presented for filing upon payment of proper fees or upon receipt of an affidavit or Application described in Rule 3.6(a). It shall be the duty of the clerk to immediately forward all papers to the clerk's office of the appropriate Division when papers are filed in a division other that of the division in which the case is pending.

(b) All original papers shall be filed with the clerk and not with any judge.

77.3 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.

77.4 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 judge 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 judge 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.

77.5 CUSTODY OF EXHIBITS AND RELEASE.

(a) Custody. Every exhibit placed on file shall be held in the custody of the clerk. Unless there is good reason why the original should be retained, upon application or on its own motion, the

Court may order a copy filed in its place.

(b) Disposal. Any party may withdraw any exhibit the party has filed upon filing a waiver of the right to an appeal and to new trial. If another party or witness files notice within five days thereafter that that party or witness is entitled to the exhibit, the clerk shall keep the exhibit in custody until the Court has determined who is entitled to it or until all interested persons consent to its release. 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.

77.6 FILING UNDER SEAL.

Unless otherwise provided by statute or rule, no case or document shall be filed under seal without prior approval by the Court. If a filing under seal is requested, a written application and a proposed order shall be presented to the judge along with the document submitted for filing under seal. Unless otherwise ordered by the Court, the application and proposed order and document shall not be served on opposing parties. The original and judge's copy of the document shall be sealed in separate envelopes with a copy of the title page attached to the front of each envelope. Conformed copies need not be placed in sealed envelopes.

RULE 79

BOOKS AND RECORDS KEPT BY THE CLERK AND ENTRIES THEREIN

79.1 JUDGMENTS OF BANKRUPTCY COURT.

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

RULE 83

DISTRICT COURT RULES AND DIRECTIVES

83.1 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) Robes. Judges of this Court shall wear judicial robes when presiding in open court.

83.2 ATTIRE

Lawyers shall wear appropriate professional attire for all proceedings before the Court.

83.3 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 otherwise provided in this Rule, only members of the Bar of this Court who are classified as active members in good standing by the State Bar of Montana shall practice in this Court.

(d) Attorneys for the United States. An attorney who is not eligible for admission under L.R. 83.3(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) Pro hac vice.

(1) An attorney not eligible for admission under L.R. 83.3(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, who is of good moral character, and who has been retained to appear in this Court, may, upon written application to and in the discretion of the presiding judge, be permitted to appear and participate in a particular case.

(2) Unless authorized by the Constitution of the United States or acts of Congress, an attorney is not eligible to practice pursuant to this subsection if (A) the attorney resides in Montana, or (B) the attorney is regularly employed in Montana.

(3) An attorney applying to appear pro hac vice shall file and serve on all parties an application stating, under penalty of perjury:

(A) the attorney's state or territory of residence and office addresses;

(B) by what court(s) the attorney has been admitted to practice, the date(s) of admission, and the date(s) of termination of admission, if any;

(C) that the attorney is in good standing and eligible to practice in these courts;

(D) that the attorney is not currently suspended or disbarred in any other court,

(E) whether the attorney has ever been held in contempt, otherwise disciplined by any court for disobedience to its rules or orders, or sanctioned under Federal Rules of Civil Procedure 11 or 37(b), (c), (d) or (g) or their state equivalent; the name of the court before which the proceedings were conducted; the date of the proceedings; and what action was taken in connection with those proceedings. A copy of any such contempt, discipline, or sanction order must be attached to the application;

(F) 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 cause number of each matter in which an application was made, the date of application, and whether or not the application was granted; and

(G) the name, address, telephone number, and written consent of local counsel who is a member of the Bar of this Court and with whom the Court and opposing counsel may readily communicate regarding the conduct of the case, upon whom papers shall be served, and who will be responsible to participate as required under subsection (f) of this Rule.

(4) Permission to appear pro hac vice is granted or denied solely at the discretion of the presiding judge. Revocation of permission to appear pro hac vice pertains to the instant case only and does not constitute disbarment from the Bar of this Court.

(f) Duties of local counsel. Unless otherwise ordered, local counsel designated pursuant to this Rule shall sign all pleadings, motions and briefs. In all cases, local counsel shall participate actively in all phases of the case, including, but not limited to, attendance at depositions and court proceedings, preparation of discovery responses and briefs, and all other activities to the extent necessary for local counsel to be prepared to go forward with the case at all times. The Court, upon motion by local counsel, may waive this Rule on a showing of extraordinary circumstances. Upon waiver of this Rule by the Court, all papers subsequently filed shall be signed by counsel actively involved in the case. Such a waiver is not to be routinely granted.

83.4 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 L.R. 83.3(a), (d), or (e) 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 L.R. 83.3 or ineligible to practice in this Court under L.R. 83.3.

83.5 ATTORNEY UNDER APPOINTMENT OF COURT.

(a) Compensation. It shall be the duty of an attorney to act without compensation whenever the attorney is appointed by the Court to represent an indigent person in any proceeding not covered by the provisions of 18 U.S.C. § 3006A, except as otherwise provided by statute or rule.

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

83.6 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 the District Court or before a United States Magistrate Judge on behalf of any person in any civil or criminal proceedings if:

(A) the person on whose behalf the student is appearing has consented in writing to the appearance and the supervising attorney has approved the appearance in writing; and

(B) 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 judge.

(c) Requirements and Limitations. To proceed under this Rule, the law student must:

(1) be duly enrolled in a law school accredited 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 or designate 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 employer, legal aid bureau, law school or governmental 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; and

(6) certify in writing that the student has read and is familiar with and will abide by the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct.

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

(1) shall be filed with the Clerk of Court, and, unless it is sooner withdrawn, shall remain in effect for 12 months after it is filed, or until the student's admission to any bar, whichever occurs first. In exceptional circumstances, the Dean may renew the

certification for one more 12-month period. Law school graduates are eligible to practice under this Rule until the results of the first Montana 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 Court, who shall immediately mail copies of the notice to the student and the supervising attorney; and

(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; and

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

(3) assist and counsel the law student in the activities mentioned in these Rules and review such activities with the student to ensure the proper practical training of the student and the protection of the client.

83.7 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.

83.8 AGREEMENTS OF ATTORNEYS.

No disputed 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. No disputed agreement by an attorney made in open court, the existence of which is not conceded, will be enforced unless the same was either in writing and signed by the attorney of record, or appears from the minutes of the clerk or the record of the court reporter. Agreements during a trial or hearing in open court may be made by counsel, though the attorney be only one of the attorneys of record.

83.9 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:

(1) notice is served on both the attorney's client(s) and opposing counsel, or

(2) consent to the withdrawal is signed by the attorney and the client(s) and filed with the Court.

(b) Responsibility of Attorney. When an attorney of record for any reason ceases to act for a party, the party must immediately appoint another attorney or appear in person. Until the Court authorizes withdrawal, the authority and the responsibility of the attorney shall continue for all proper purposes.

83.10 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.

(b) Definitions.

(1) As used herein, "judicial proceeding" means:

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

(B) any proceeding before any bankruptcy judge or magistrate judge;

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

(2) "Courtroom" of a United States District Court means the foyer, witness room, and all space behind the first set of double doors leading into the gallery. A courtroom of a magistrate judge or bankruptcy judge means any place where a judicial proceeding is conducted.

(3) 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.

(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 that 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, law firm or governmental agency associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement that 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; or

(6) any opinion about the accused's guilt or innocence or about the merits of the case.

(e) Nothing in subsection (d) of this Rule shall be construed to preclude the attorney, law firm or governmental agency, during this period and in the proper discharge of official or professional obligations, from the following:

(1) 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;

(2) 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:

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

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

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

(6) requesting assistance in obtaining evidence;

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

(f) Nothing in L.R. 83.10 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 of a judge, are 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. No such personnel shall divulge any information concerning arguments or hearings held in chambers or otherwise outside the presence of the public.

(h) In a case that is likely to be 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.

83.11 STATUTORY THREE-JUDGE COURT.

(a) Any party challenging the apportionment of Congressional districts within the State of Montana or the apportionment of the Montana State Legislature, or 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.

(b) In statutory three-judge cases, filings directed to all three judges shall be made in triplicate.

83.12 GUARDIANS AD LITEM.

(a) Procedure for the Appointment of Guardian Ad Litem. Guardians ad litem may be appointed ex parte at any time upon the presentation to the judge assigned to the case of a sworn petition showing a proper case for the appointment. The petition shall be filed with the order of appointment.

(b) Qualifications. 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, counsel of the adverse party, or attorney, or who has not sufficient pecuniary ability to answer to the ward for any damage or injury which may be sustained by the ward as a result of negligence or misconduct in the case on the part of the guardian ad litem.

(c) Bond. No bond 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 judge, with sufficient surety, conditioned for the faithful performance of the guardian's duties. If the guardian does not desire to receive any such money or property, it shall be paid or delivered to the Clerk of Court, or to such person as may be directed by the judge, with like effect as if paid or delivered to the guardian ad litem.

83.13 STANDARDS OF PROFESSIONAL CONDUCT.

The standards of professional conduct of attorneys practicing in this Court shall include the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct. For a willful violation of any of these Professional Rules or of L.R. 83 in connection with any matter pending before this Court, an attorney may be subjected to appropriate disciplinary action by the Court or by any judge of the Court. In addition, the Court may refer the matter to the appropriate Commission on Practice for disciplinary proceedings.

83.14 SUSPENSION, DISBARMENT AND DISCIPLINE OF ATTORNEYS.

(a) Jurisdiction. Any attorney admitted to practice before this Court, any attorney admitted for a particular proceeding, or any attorney otherwise authorized to appear before this Court is subject to the disciplinary jurisdiction of this Court.

"Chief Judge," as used in this Rule, means the Chief Judge of the district or another district judge designated by the Chief Judge.

Nothing contained in this Rule shall be construed to limit or deny the Court such powers as are necessary to maintain control over proceedings before it, such as contempt power.

(b) Grounds for Discipline. An attorney may be subject to disciplinary action as set forth in this Rule for any of the following:

(1) suspension, disbarment or other disciplinary sanction by a competent authority in any state, federal, territory, commonwealth or foreign jurisdiction;

(2) conviction any crime of which the elements or underlying facts may impact the attorney's fitness to practice law;

(3) any act or omission, including incompetency or incapacity, which violates the standards of this Court as set forth in L.R. 83.13;

(4) violation of any court order; or

(5) misrepresentation or concealment of a material fact made in an application for admission to the Bar of this Court or in a pro hac vice or reinstatement application.

Nothing in this section precludes the Court or any judge of the Court from assessing sanctions for violations of local practice and procedure rules or other applicable statutes and rules.

(c) Types of Discipline. Discipline may consist of one or more of the following:

(1) disbarment;

(2) suspension;

(3) public censure;

(4) private reprimand;

(5) probation with or without conditions;

(6) restitution;

(7) fines and/or assessment of costs; and

(8) referral to appropriate disciplinary authority.

(d) Reciprocal Discipline.

(c)

(1) An attorney subject to this Court's disciplinary jurisdiction shall, upon being notified of pending formal professional disciplinary action in any jurisdiction, promptly inform the Chief Judge of such action and provide the Chief Judge with a copy of any disciplinary letter, notice, order, or other paper received by the attorney.

(2) An attorney subject to this Court's disciplinary jurisdiction shall, upon receipt of a copy of an order or other official notification indicating that he or she has been subjected to discipline in another jurisdiction, provide the Chief Judge a copy of said order.

(3) Upon receipt of an order or other official notification concerning discipline either from the disciplined attorney or from another jurisdiction, the Chief Judge shall forthwith issue a show cause order to the subject attorney containing:

(A) a copy of the order or other official notification from the other jurisdiction;

(B) an order directing the attorney to show cause within 30 days why the identical discipline in this Court is unwarranted;

(C) an order directing that the attorney produce a certified copy of the entire record from the other jurisdiction, or bear the burden of persuading the Court that less than the entire record will suffice; and

(D) notification that failure by the attorney to respond to the order may be deemed acquiescence to reciprocal discipline.

(4) If no response is timely filed, the Chief Judge shall impose identical discipline no less than 30 days after service of the show cause order.

(5) If a response is timely filed, the Chief Judge shall impose identical discipline unless one or more of the following elements clearly appears from the record on which the discipline is predicated:

(A) the procedure in the other jurisdiction was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(B) there was such an infirmity of proof establishing the misconduct as to give rise to a clear conviction that the Court should not accept as final the other jurisdiction's conclusion on that subject; or

(C) other substantial reasons exist so as to justify not accepting the other jurisdiction's conclusions.

(6) Where the Chief Judge finds one or more of the three elements set forth in subsection (5), the Chief Judge shall enter any order deemed appropriate.

(7) The subject attorney may petition the Chief Judge at any time to keep disciplinary proceedings confidential.

(e) Attorneys Convicted of Crimes.

(1) Upon the Chief Judge's receipt of reliable proof that an attorney has been convicted of a crime the elements or underlying facts of which may impact the attorney's fitness to practice law, the Chief Judge shall enter an order suspending the attorney from engaging in the practice of law in this District pending further order. This shall be done whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial, and regardless of the pendency of an appeal. Upon good cause shown, the Chief Judge may set aside such suspension where it appears to be in the interest of justice to do so.

(2) The Chief Judge shall forthwith issue an order to the subject attorney directing the attorney to show cause why the criminal conviction or underlying facts do not impact the attorney's fitness to practice law.

(3) Final conviction of a crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding. For the purposes of this Rule, a judgment of conviction is deemed final when the availability of appeal has been exhausted.

(4) Immediately upon the Chief Judge's receipt of reliable proof demonstrating that the underlying conviction for a crime has been reversed, any suspension order entered under subsection (e)(1) and any other discipline imposed as a result of the conviction shall be vacated.

(5) Notwithstanding the reversal of a conviction, the Court retains the authority to proceed with disciplinary action based on the conduct underlying the reversed conviction.

(f) Grievances; Confidentiality. Grievances alleging grounds for discipline under subsection (b), including grievances initiated by judges other than the Chief Judge, shall be filed with the Chief Judge, and shall remain under seal throughout investigation unless and until the Chief Judge determines that the matter is referred for filing of a formal complaint. Grievances submitted by persons other than a judge of the District shall be verified.

(g) Designation of Investigators. Upon determination that a grievance alleging violation of subsection (b) merits investigation, the Chief Judge shall designate one or more members of this Court's Bar to investigate the allegations of misconduct.

(h) Investigation Procedure.

(1) The designated investigators shall conduct such investigation as is warranted by the circumstances and shall report to the Chief Judge on the merits as soon as practicable. Investigators are authorized to administer oaths and affirmations, to issue subpoenas to compel attendance by witnesses and responding attorneys, and to compel production of documents. The costs of these activities will initially be borne by the Court, with the authority to impose costs if the attorney is disciplined.

(2) The report shall include copies of statements of witnesses, all documentary evidence relative to the complaint, and a summary of findings.

(3) No report shall be submitted until the respondent attorney has had a reasonable opportunity to submit to the investigators any evidence or statements relative to the complaint. Such evidence or statements shall be attached to the investigation report.

(4) The report, or the investigators if they disagree, shall recommend one of the following courses of action:

(A) if the grievance warrants discipline, filing of a formal complaint and a hearing;

(B) if the conduct complained of does not warrant a formal complaint and hearing, but does require intervention, an appropriate disposition of the grievance;

(C) if neither a formal complaint and hearing nor intervention is warranted, dismissal of the grievance.

(i) Report and Disposition.

(1) If, after review of the investigation report, the Chief Judge determines the complaint is unfounded or of a trivial nature, the grievance shall be dismissed.

(2) If, after review of the investigation report, the Chief Judge determines the matter warrants further consideration, the Chief Judge shall then either delegate a prosecutor to file a complaint pursuant to subsection (j) or refer the matter to the appropriate state or other disciplinary body.

(j) Prosecuting Counsel.

(1) Counsel selected by the Chief Judge is authorized to prosecute allegations of

misconduct. Any person delegated by the Court to prosecute any matter is authorized to administer oaths and affirmations, to issue subpoenas to compel attendance by witnesses and responding attorneys, and to compel production of documents. The costs of these activities will initially be borne by the Court, with the authority to impose costs if the attorney is disciplined.

(2) Promptly after designation, counsel shall prepare a formal complaint. The complaint will be filed with the Court as a civil action and an Article III judge (excluding the Chief Judge and any judge who initiated the grievance) shall be randomly assigned.

(3) Counsel is authorized to conduct further investigation as necessary regarding the alleged misconduct of the respondent attorney and shall be responsible for presenting to the Court evidence relative to the complaint.

(k) Immunity. The investigation, prosecution, and determination of a disciplinary matter are inherently judicial functions and involve the exercise of discretionary judgment. As delegates of the Court performing those judicial functions, investigating counsel and prosecuting counsel, and all other investigators and staff are immune from civil suit and liability for any conduct in the course of their official duties to the maximum extent allowed by law. Such immunity extends to all cases, whether previously decided, currently pending, or to be investigated and prosecuted.

(l) Notice and Hearing.

(1) ***Complaint.*** Formal disciplinary proceedings before the Court shall be instituted by the filing of a complaint, which shall be sufficiently clear and specific to inform the respondent attorney of the alleged misconduct. A copy of the complaint shall be served, in conformity with Federal Rule of Civil Procedure 4, upon the respondent attorney.

(2) ***Case Management.*** After the complaint is filed and a judge assigned, the Court shall schedule a case management conference at the earliest opportunity to determine the extent to which the case should be expedited and whether and to what extent the Federal Rules of Civil Procedure should be applied or modified for the proceeding.

(3) ***Applicable Rules.*** The Federal Rules of Civil Procedure may be modified by the Court. The Federal Rules of Evidence will apply.

(4) ***Standard of Proof.*** Proof of the alleged conduct shall be by clear and convincing evidence.

(5) ***Jury.*** There is no right to a jury at the disciplinary hearing.

(6) ***Findings and Conclusions.*** Within a reasonable time after the hearing, the Court

shall make findings of fact and conclusions of law and specify the disciplinary action, if any, to be taken. If discipline is to be ordered by the Court, the respondent shall have the opportunity to present evidence or argument in mitigation. If the Court gives notice before the hearing, mitigating evidence may be required to be presented at the disciplinary hearing.

(7) ***Final Order.*** Entry of an order imposing discipline is final and appealable to the United States Court of Appeals for the Ninth Circuit.

(8) ***Notice of Discipline Imposed.*** The Court shall cause copies of orders and notices of public censure, suspension, disbarment, and reinstatement to be given to the Clerk of the District Court for the District of Montana, the Clerk of the Circuit Court of Appeals for the Ninth Circuit, and the appropriate disciplinary bodies in the jurisdictions in which the disciplined attorney is admitted to practice.

(m) Reinstatement.

(1) No suspended or disbarred attorney may resume practice before the Court until reinstated by order of the Court.

(2) Any attorney who has been disbarred following a hearing conducted pursuant to subsection (l), or by consent, may not apply for reinstatement until the expiration of such a period of time as the Court specifies in the order of disbarment.

(3) Any attorney suspended from practice following a hearing conducted pursuant to subsection (l) may not apply for reinstatement until the expiration of at least one-half the period of suspension.

(4) Any attorney who has been disbarred or suspended from practice pursuant to the provisions of subsection (d) may apply for reinstatement based upon a change of the attorney's status in the jurisdiction whose imposition of discipline upon the attorney was the basis for imposing discipline by the Court.

(5) Petitions for reinstatement by disbarred or suspended attorneys shall be filed with the Chief Judge. Upon receipt of a petition, the Chief Judge shall set the matter for hearing by the Chief Judge or other designated judge. At such hearing, the petitioner shall have the burden of demonstrating that he or she is qualified to practice law in the District. Following the conclusion of the hearing, the Court shall enter an appropriate order.

(6) Expenses incurred in the investigation and proceedings for reinstatement may be assessed by the Court against the petitioner, regardless of the outcome of the proceedings.

83.15 *PRO SE* LITIGANTS.

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

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

83.16 APPOINTMENT OF COUNSEL IN CIVIL ACTIONS.

(a) The following procedures shall govern the appointment of attorneys from the District of Montana Civil Pro Bono Panel to represent pro se parties in civil actions when such parties lack the resources to retain counsel by any other means. For each civil action duly commenced in the District of Montana, by or against such a pro se party, a District Judge or Magistrate Judge may issue an order of appointment and other orders relating to representation by the appointed attorney in accordance with these Rules.

(b) Civil Pro Bono Panel. All Attorneys admitted to practice in the United States District Court for the District of Montana are requested to accept appointment to represent *pro se* parties in civil actions when such parties lack the resources to retain counsel.

(1) To assist the court in determining availability, attorneys who are willing to accept appointment shall apply for designation to the Civil Pro Bono Panel on appropriate forms available from the Clerk of Court. Each application shall set forth, among other things:

(A) the attorney's prior civil trial experience, including the approximate number of trials and areas of trial experience; and

(B) the attorney's preference for appointment among various types of actions (e.g., Social Security Appeals, Employment Discrimination Actions, Civil Rights Actions, Habeas Corpus).

(2) A law firm may apply to participate in the Panel as a firm by completing the appropriate form available from the Clerk. In its application, the law firm shall set forth, among other things:

(A) the number of appointed cases per calendar year the firm is willing to accept;

(B) the firm's specialty, if any, and preference for appointment among various types of actions; and

(C) the name of the firm's managing partner or member of the firm to be designated as Panel Liaison.

Where an action is assigned to a participating firm, the order of appointment may be directed to the firm and the assignment of a firm attorney to the action may be made by the managing partner or Panel Liaison. The attorney assigned shall then enter his or her appearance as counsel for the party.

(3) Information on an application may be amended at any time by letter. An attorney or firm may, by letter, withdraw from the Panel at any time. The letters shall be addressed to the Clerk of Court for the Division in which application was originally made.

(c) Appointment Procedure.

(1) A *pro se* party who is able to demonstrate to the court a lack of sufficient resources to retain counsel in the action for which the party seeks appointment of counsel, and that he or she is not otherwise able to obtain counsel, is eligible to make application for appointment of counsel.

(2) A *pro se* party who is eligible to make application for appointment of counsel may file a written application for such appointment at any time during the course of the civil action. The application shall be filed with the Clerk of Court for the Division in which the party's action is pending and shall include a form of affidavit stating:

(A) the party's efforts to obtain counsel by means other than appointment, and

(B) any prior appointments of counsel to represent the party in any civil case in Montana, including both currently pending and previously terminated cases in state and federal courts.

(3) If the Court denies an application for appointment of counsel the *pro se* party may re-apply for such appointment within a reasonable time after a change in circumstances has occurred, if such change either makes the party eligible to apply for appointment of counsel or provides support for the factors described below warranting appointment of counsel.

(4) Upon the written application for the appointment of counsel, the Judge will determine whether a Panel Attorney, or any other attorney, is to be appointed to represent the *pro se* party pursuant to 28 U.S.C. § 1915(e)(1) or any other applicable authority. The following factors will be taken into account in making the determination:

(A) the potential merit of the claims as set forth in the pleadings;

(B) the nature and complexity of the action, both factual and legal, including the need for factual investigation;

(C) the presence of conflicting testimony calling for a lawyer's presentation of evidence and cross-examination;

(D) the capability of the *pro se* party to present the case;

(E) the inability of the *pro se* party to retain counsel by other means;

(F) whether counsel is mandated by law;

(G) the degree to which the interests of justice will be served by appointment of counsel, including the benefit the Court may derive from the assistance of appointed counsel; and

(H) any other factors deemed appropriate by the Judge.

(5) Failure of the *pro se* party to make a written application for appointed counsel shall not preclude appointment with the consent of the *pro se* party.

(6) Whenever the Judge concludes that appointment of counsel is warranted, the Judge shall issue an order, pursuant to 28 U.S.C. § 1915(e)(1) or other appointment authority, directing appointment of an attorney from the Civil Pro Bono Panel to represent the *pro se* party. The Judge may direct appointment of an attorney not on the Panel or a specific attorney on the Panel who is especially qualified by interest or otherwise to undertake the representation. It shall be the practice of the Court to contact counsel in advance of appointment to determine counsel's willingness to accept a particular appointment. However, the Judge shall have discretion to select involuntarily anyone who is a member of the federal bar for the District of Montana. The order of appointment shall be transmitted forthwith to the office of the Clerk in the Division in which the action is pending.

(7) When the action involves a petition for habeas corpus filed by a *pro se* party, the appointment, if any, may be made from either the Pro Bono Panel, the Federal

Defenders of Montana, or the Criminal Justice Act Panel of Attorneys.

(8) Before selecting an attorney to represent a *pro se* litigant, the Court shall determine whether the litigant has any other case pending before the Court and whether an attorney has been appointed in such case. Where an appointed attorney is already representing the litigant in prior action, such attorney is encouraged, but not required, to represent the litigant in the new action. The Court shall inquire of the appointed counsel whether he or she will accept appointment in the new action. If the appointed counsel declines, the Court shall appoint an attorney in accordance with this Rule.

(9) The Clerk shall immediately send written notice of the appointment to the selected attorney. Copies of the order of appointment, these rules governing procedures for appointment, the pleadings filed to date, and other documents as may appear relevant shall accompany such notice. Upon receiving such notice, the appointed attorney shall forthwith enter an appearance in the action or apply for relief from appointment, as provided below.

(10) The Clerk shall maintain a record of all appointments. If a notice of appearance is not entered within thirty (30) days of receipt of the notice of appointment, the Clerk shall contact the attorney to clarify the status of the appointment and to reiterate the attorney's obligation to file an appearance or to file an application for relief from appointment. The attorney shall thereafter have ten (10) days from the date of contact by the Clerk to comply.

(d) Relief from Appointment.

(1) An appointed attorney may apply to be relieved of an order of appointment pursuant to Montana Rules of Professional Conduct Rule 1.16, or on the following grounds:

(A) a conflict of interest precludes the attorney from accepting the responsibilities of representing the party in the action;

(B) the attorney believes that he or she is not competent to represent the party in the particular type of action assigned;

(C) a personal incompatibility exists between the attorney and the party, or a substantial disagreement exists between the attorney and the party on litigation strategy;

(D) the attorney lacks the time necessary to represent the plaintiff in the action because of the temporary burden of other professional commitments involved in the practice of law; or,

(E) the attorney believes that the party is proceeding for purposes of harassment or malicious injury, or that the party's claims or defenses are not warranted under existing law and cannot be supported by good faith argument for extension, modification or reversal of existing law.

(2) Where an order of appointment has been directed to a participating law firm, the action shall remain the responsibility of the firm notwithstanding the firm's assignment of the case to one of its attorneys. Accordingly, a firm attorney ordinarily shall not seek relief from appointment from the Court on any of the grounds enumerated in subsection (d)(1)(B) through (D), absent a showing that the other members of the firm are under the same disability.

(3) An application by an appointed attorney for relief from an order of appointment on any of the grounds set forth in subsection (d)(1)(A) through (D) must be made to the Judge within thirty (30) days after the attorney's receipt of the order of appointment, or within such additional period as may be permitted by the Judge for good cause shown.

(4) If the appointed attorney, after reviewing the file and consulting with the client, reasonably anticipates a need to request relief from appointment on any of the grounds enumerated in subsection (d)(1)(E), the attorney shall, before discussing the merits of the case with the client, advise the client that a procedure for such relief exists. Where the attorney did not reasonably anticipate the need for such relief prior to discussing the merits of the case with the client, at any time the need for such relief becomes apparent, the attorney should request that the client execute a limited waiver of the attorney-client privilege permitting the attorney to disclose under seal to the Court the attorney's reasons for seeking to be relieved of the appointment. The waiver should indicate that the application for relief will be a privileged court document and may not be used in the litigation. The client's refusal to execute a waiver shall not preclude the attorney from applying for relief.

(5) Whenever an attorney seeks to be relieved of an order of appointment on any of the grounds set forth in subsection (d)(1)(E), he or she shall file an application for relief with the Clerk within thirty (30) days after receiving an order of appointment or within a reasonable period of time not to exceed thirty (30) days after learning of the facts warranting such relief. The application shall set forth in full the factual and legal basis for the request for relief. The application shall be a privileged court document kept under seal and shall not be available in discovery or otherwise used in the litigation. The Clerk shall thereupon submit the application for relief of the appointed attorney to the Judge for review. The Judge shall either (i) deny the application of the attorney and direct the attorney to proceed with the representation, or (ii) grant the application and permit the party to prosecute or defend the action *pro se*. In the latter case, the Clerk shall inform the party that no further appointments

shall be made and that, upon request of the *pro se* party, the Judge shall recuse himself.

(6) If an application for relief from an order of appointment is granted for any reason, the Judge may issue an order directing appointment of another attorney to represent the party. The Judge shall have discretion not to issue a further order of appointment, in which case the party shall be permitted to prosecute or defend the action *pro se*.

(e) Discharge.

(1) A party for whom an attorney has been appointed shall be permitted to request the Judge to discharge the attorney from the representation and to appoint another attorney. Such a request must be made within thirty (30) days after the party's initial consultation with the appointed attorney, or within such additional period permitted by the Judge.

(2) When such a request is supported by good cause (e.g., substantial disagreement between the party and the appointed attorney on litigation strategy), the Judge shall forthwith issue an order discharging the appointed attorney from further representation of the party in the action. In such cases, the Judge may issue a further order directing appointment of another attorney to undertake the representation, in accordance with the provisions of Rule 2. The Judge shall have discretion not to issue a further order of appointment in such cases. Where a party requests discharge of a second appointed attorney, no additional appointments shall be made.

(3) In actions where (i) the party's request for discharge is not supported by good cause, or (ii) the party seeks discharge of a second appointed attorney, the party shall be permitted to prosecute or defend the action *pro se*. In either case, the appointed attorney shall be discharged from the representation.

(f) Expenses. Attorneys who are appointed pursuant to subsection (b) may seek reimbursement for expenses incident to representation of indigent clients by application to the Court. Reimbursement or advances shall be permitted to the extent possible in light of available resources, including Non-appropriated Funds as provided in General Order No. PGH-4. Requests for reimbursement should be filed *ex parte* with the Court and must be accompanied by detailed documentation. All reimbursements made shall require the approval of the Chief Judge or a judge designated by the Chief Judge to authorize such reimbursements. To the extent that appointed counsel seeks reimbursement for expenses that are recoverable as costs to a prevailing party under Fed. R. Civ. P. 54, the appointed attorney must first exhaust the party's remedies for recovery of costs under Rule 54.

(g) Compensation for Services.

(1) In social security disability cases in which compensation for legal services may become available to the appointed attorney out of any award of benefits, the Clerk shall so inform the *pro se* party at the time the application for appointed counsel is made and at the time the order of appointment is issued.

(2) Upon appropriate application by the appointed attorney, the Judge may award attorney's fees to the appointed attorney for services rendered in the action, as authorized by applicable statute, regulation, rule or other provision of law.

(3) If, after appointment, the appointed attorney discovers that the party is able to pay for legal services, the attorney shall bring this information to the attention of the Judge unless precluded from doing so by the attorney-client privilege. The Judge may thereupon (i) approve a fee arrangement between the party and the attorney, or (ii) relieve the attorney from the responsibilities of the order of appointment and permit the party to retain another attorney or to proceed *pro se*.

(h) Duration of Representation.

(1) An appointed attorney shall represent the party in the action in the trial court from the date he or she enters an appearance until he or she has been relieved from appointment by the Court according to the provisions of subsections (d) or (e), or until a final judgment is entered in the action.

(2) If the party desires to take an appeal from a final judgment or appealable interlocutory order, or if the matter is remanded to an administrative forum, the appointed attorney is encouraged but not required to represent the party on the appeal, or in any proceeding, judicial or administrative, which may ensue upon an order of remand. However, if another party appeals from a final judgment or appealable interlocutory order, the appointed attorney is obligated to continue representation through such appeal, unless relieved from appointment in accordance with the provisions of subsection (d).

(3) Where the appointed attorney elects not to represent the party on an appeal or in a proceeding upon remand, the attorney shall advise the party of all required steps to be taken in perfecting the appeal or appearing in the proceeding on remand. Such advice shall include available sources of appointed counsel. Upon request of the *pro se* party, the attorney shall file the Notice of Appeal.

(i) Educational Panels.

(1) The Court shall authorize the establishment of panels of attorneys and others

experienced in the preparation and trial of the most common types of civil actions involving *pro se* parties brought before the Court (e.g., Social Security Appeals, Employment Discrimination Actions, Civil Rights Actions, Habeas Corpus Actions).

(2) The Educational Panels are authorized to conduct educational programs for attorneys on the Civil Pro Bono Panel to train and assist said attorneys in the preparation and trial of the most common types of civil actions involving *pro se* parties brought before the Court.

(3) The Clerk is authorized to maintain a list of attorneys experienced in the preparation and trial of the most common types of civil actions involving *pro se* parties brought before the Court, whether or not such attorneys serve on an educational panel or the Pro Bono Panel. The Clerk shall obtain the prior consent of the attorneys to their inclusion on such lists. Such attorneys may be consulted by attorneys on the Civil Pro Bono Panel as necessary and appropriate.

CHAPTER III.
CRIMINAL RULES

RULE CR6

GRAND JURY

CR6.1 WHEN AND WHERE IMPANELED; SECRECY.

(a) 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 district judge or designated full-time magistrate judge is authorized to impanel a grand jury, take the returns, and discharge the grand jury upon completion of its service.

(b) 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.

(c) Any district judge shall have full power to act in all matters pertaining to the Grand Jury.

RULE CR12

MOTIONS – NOTICE AND OBJECTIONS

CR12.1 MOTIONS.

(a) Time. Upon serving and filing a motion, or within five (5) days thereafter, the moving party shall serve and file a brief. The adverse party shall have ten (10) days thereafter within which to serve and file a response brief. A reply brief may be served and filed within five (5) days thereafter. Upon filing of the brief in support and the brief in response, 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.

(b) Length. Briefs in excess of twenty (20) pages will not be accepted and shall not be filed by the clerk if the party has not obtained prior leave of Court. Briefs exceeding twenty (20) pages shall have a table of contents and a table of cases with page references.

(c) Failure to file. 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. 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.

(d) Submission by Fax. Documents may not be transmitted by use of telefacsimile ("fax") equipment or any other electronic means for filing with the Court.

CR12.2 NOTICE TO OPPOSING COUNSEL AND OBJECTIONS.

Within the text of each motion submitted to the Court for its consideration, counsel shall note that all parties have been contacted concerning the motion, and whether any party objects to the motion.

RULE CR17

SUBPOENAS AND WRITS

CR17.1 OBTAINING PRESENCE OF INCARCERATED PERSON.

The Court or any party to a criminal proceeding requesting production of a prisoner by the United States Marshals Service for any court proceeding, by writ of habeas corpus ad testificandum or otherwise, shall obtain a court order directing such production no later than fifteen (15) court days prior to the date of the proceeding. A lesser time period may be allowed only upon motion and good cause shown.

CR17.2 SUMMONS AND SUBPOENAS.

Any party to a criminal proceeding requesting service of a criminal summons or subpoena by the United States Marshals Service shall notify the Marshal of the request, along with all documentation necessary to effectuate service, no later than 10 court days for a subpoena and 20 court days for a criminal summons prior to the desired date of service. A lesser time period may be allowed only upon motion and good cause shown.

RULE CR17.1

PRETRIAL CONFERENCES

CR17.1.1 WHEN PRETRIAL CONFERENCE HELD.

When deemed advisable by the Court, a pretrial conference will be held in criminal cases pursuant to Federal Rule of Criminal Procedure 17.1.

CR17.1.2 SETTLEMENT CONFERENCES IN COMPLEX CRIMINAL CASES.

It is the policy of the Court to facilitate the parties' efforts to dispose of criminal cases without trial. It is also the policy of the Court that the trial judge 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.

For purposes of this Rule only, a "complex case" is a criminal case in which the government estimates that the presentation of evidence in its case-in-chief will require more than 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. In a multi-defendant case, any or all defendant(s) may join in the request.

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

(c) Form of Request. The request for a settlement conference shall be in writing and shall be signed by the attorney for the government, 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 judge or judges 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 subsection (f) 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 at any time. A withdrawal shall be in writing, shall be signed by the attorney, and shall be filed in the case.

(f) Settlement Judge. The trial judge shall designate another Article III judge to preside over the settlement conference. 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. The designation shall be filed.

(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 (A) in the courtroom of the settlement judge, if the defendant is on pretrial release, or (B) in the Marshal's lock-up, if the defendant is under pretrial detention, unless the defendant's availability is waived by the settlement judge.

(2) Criminal History. If so requested by either counsel at least 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 conduct any other proceedings in the case and shall not communicate any of the substance of the settlement discussions to the trial judge, except as provided in paragraph (3)(D) below.

(2) Statements Inadmissible at Trial. No statement made by any participant at the settlement conference 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.

(A) If a plea agreement is reached, either counsel may make such disclosures to the trial judge as are expressly permitted by the terms of a written plea agreement.

(B) At sentencing, whether after a plea of guilty or after trial, and whether or not any plea agreement so provides, the attorney for the defendant may bring to the trial judge's attention any comments or recommendations made by the settlement judge.

(C) In the event the defendant exercises the option under subparagraph (B) above, the attorney for the government may also bring to the trial judge's attention at sentencing any comments or recommendations made by the settlement judge.

(D) In the event of a disagreement between counsel as to the substance of the settlement judge's comments or recommendations on any particular issue, the trial judge may either (a) refer the matter back to the settlement judge for a finding of fact on the disputed issue, or (b) not consider such disputed comment or recommendation as a factor in sentencing and so state on the record.

(i) Discretion of Trial Judge. Nothing in this Rule shall be construed to limit in any way the discretion of the trial judge under Federal Rule of Criminal Procedure 11(e).

CR17.1.3 CONTINUANCES.

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

RULE CR24

TRIAL JURORS

CR24.1 IMPANELING A TRIAL JURY.

(a) Examination of Jurors.

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

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

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

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

(1) From the jury panel 12 jurors, plus the number of alternate jurors who are to be impaneled, plus a number of jurors equal to the total number of peremptory challenges which are allowed by law 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.

(2) Alternate jurors, if any, shall be selected pursuant to the procedures of Federal Rule of Criminal Procedure 24(c).

(3) 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, and the last by the defense. The

passing of a peremptory challenge by either party is the equivalent of a challenge. After all challenges have been taken, the jury will be sworn.

(c) Arizona Strike Method. In the discretion of the presiding judge the "Arizona Strike" method of exercising peremptory challenges may be used. If the "Arizona Strike" method is used, each side shall exercise its peremptory challenges simultaneously and in secret. The Court shall then designate as the trial jury the persons whose names appear first from the list of prospective jurors. If there is more than one defendant the Court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly in accordance with this Rule and Federal Rule of Criminal Procedure 24.

RULE CR26

TRIAL

CR26.1 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. The Court retains the authority under Federal Rules of Evidence 102, 403, and 611 to limit the number of expert witnesses during trial.

RULE CR30

INSTRUCTIONS

CR30.1 REQUESTS FOR INSTRUCTIONS TO JURY.

Jury instructions shall be submitted in accordance with the terms of the Scheduling Order entered in the case.

RULE CR46

BAIL

CR46.1 SECURITY.

(a) All bonds in non-capital criminal cases for appearance before a magistrate judge taken by a magistrate judge or other officer acting as a committing magistrate judge pursuant to 18 U.S.C. § 3041 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.

(b) 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 shall deposit such monies received from the magistrate judge into the registry of the Court.

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

CR46.2 PERSONS NOT TO ACT AS SURETIES.

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

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

RULE CR58

MISDEMEANORS

CR58.1 FIXED SUMS PAYABLE IN LIEU OF APPEARANCE.

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

CR58.2 APPEAL FROM JUDGMENT OF UNITED STATES MAGISTRATE JUDGE.

(a) An appeal from a judgment of a United States Magistrate Judge shall lie pursuant to Federal Rule of Criminal Procedure 58 and 18 U.S.C. § 3402.

(b) In processing the appeal, the clerk shall issue an Order setting the schedule for filing of the official transcript, appellant's brief, appellee's response brief, and appellant's optional reply brief.

CHAPTER IV.
MAGISTRATE JUDGE RULES

RULE 73

AUTHORITY OF MAGISTRATE JUDGES

73.1 DUTIES AND POWERS OF MAGISTRATE JUDGES.

Each United States Magistrate Judge appointed by this Court is authorized to exercise such jurisdiction and perform all the duties prescribed by 28 U.S.C. § 636 and may be assigned any additional duty by this Court that is not inconsistent with the Constitution or the laws of the United States.

73.2 CONSENT ELECTION WHERE CASE IS ASSIGNED TO MAGISTRATE JUDGE.

(a) Notice. When a civil action has been conditionally assigned to a magistrate judge, the Clerk of Court shall notify the parties of such assignment and advise them that they may give or withhold consent to the magistrate's exercise of jurisdiction. In cases that are pre-screened pursuant to 28 U.S.C. § 1915(e)(2), 28 U.S.C. § 1915A(a), 42 U.S.C. § 1997e(c), or Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the clerk shall mail the notice and consent election form after all parties ordered to be served have made an appearance. In all other cases, the clerk shall mail the notice and consent election form within ten (10) days of a party's appearance.

(b) Return of consent election forms. Parties shall have thirty (30) days from service of the notice of assignment to complete and return to the Clerk of Court the consent election form indicating whether they do or do not consent to a magistrate judge's exercise of jurisdiction over the case for any and all proceedings including trial and entry of judgment, pursuant to 28 U.S.C. § 636(c). The Clerk will keep custody of all consent election forms. If all parties give consent, the case will continue before or be reassigned to a magistrate judge. In the event any party withholds consent to the magistrate judge's jurisdiction, the case will be reassigned to an Article III judge.

(c) Anonymity. Parties are free to give or withhold their consent. No judge will be notified as to the identity of any party giving or withholding consent to the exercise of jurisdiction by a magistrate judge, except when all parties consent.

APPENDIX A
SAMPLE FORMS

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

_____ DIVISION

MARY JONES, Plaintiff, vs. WESTBEST NURSING HOME, Defendant.	)	CV 00-000-XX-XXX **FINAL PRETRIAL ORDER**

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

I. Nature of Action.

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

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

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

II. Jurisdiction and Venue.

Mary Jones is a citizen of the State of Montana. Westbest Nursing Home is a corporation organized under the laws of Oregon having its principle place of business in Oregon. Subject matter jurisdiction is based upon Diversity of Citizenship, 28 U.S.C. § 1332. Personal Jurisdiction is not questioned. Venue is proper in the Missoula Division as the incident occurred in Polson, Montana. L.R. 3.1(a)(1).

III. Jury.

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

IV. Agreed Facts.

The following facts are agreed upon and require no proof:

(a) Mary Jones was born on July 4, 1914.

(b) Mary Jones was a patient at Westbest Nursing Home in Polson, Montana from April 15, 2000 until May 23, 2000.

(c) Mary Jones died at 1:30 p.m. on May 23, 2000.

(d) The cause of Mary Jones' death was asphyxiation.

(e) Mary Jones is survived by her daughter Anna Jones Murphy and her son Thomas Jones.

(f) The reasonable funeral expenses incurred are $7,640.00.

V. Elements of Liability.

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

(a) A duty owed by the nursing home to the patient. Plaintiff contends that under the provisions of the Nursing Home Patients' Bill of Rights Westbest had a duty to keep Plaintiff free from chemical and physical restraints unless authorized by a physician.

(b) The breach of that duty by the nursing home, either by omitting to perform or by performing wrongly, its duty to the patient. Plaintiff contends she was restrained for the convenience of the Westbest staff without authorization by her treating physician.

(c) Injury to or death of the nursing home patient. Plaintiff died of asphyxiation from the restraints placed on her by Westbest staff.

(d) Causation. Westbest Nursing Home's breach of duty caused the Plaintiff's injury or death.

VI. Defense Elements.

The following are elements of defenses asserted by Defendant:

(a) The nursing home conformed to the applicable standard of care.

(b) There is no causal relationship between the alleged negligent conduct and Mary Jones' injury or death.

(c) Mary Jones was comparatively at fault for her own injuries because she was negligent in failing to follow instructions. The sub-elements of this defense are:

(1) Mary Jones had a duty to follow medical advice;

(2) Mary Jones breached that duty by failing to follow specific instructions given to her by nurses and doctors;

(3) Mary Jones' injuries were caused by her own actions.

VI. Relief Sought.

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

(a) Funeral expenses in the amount of $7,640.00.

(b) Medical expenses after injury and before death $5,200.00.

(c) Mental and physical pain and suffering $150,000.00.

(d) Wrongful death $150,000.00.

(e) Survivorship $75,000.00.

VII. Legal Issues.

The issue of causation will be disputed at the time of jury instruction. *See Busta v. Columbus Hosp. Corp.*, 276 MT 342 (Mont. 1996); *Hunsaker v Bozeman Deaconess Found.*, 179 MT 305 (Mont. 1978).

IX. Dismissals.

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

Nurse Patricia Pattern.

X. Witnesses.

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

(a) Plaintiff's will-call witnesses;

(b) Plaintiff's may-call witnesses;

(c) Defendant's will-call witnesses;

(d) Defendant's may-call witnesses.

XI. Exhibits.

Attached to this pretrial order are the following *separate* Exhibit Lists. Objections not disclosed on the Exhibit Lists, other than objections under Rules 402 and 403 of the Federal Rules of Evidence, are waived unless excused by the Court for good cause.

(a) Plaintiff's will-offer exhibits;

(b) Plaintiff's may-offer exhibits;

(c) Defendant's will-offer exhibits;

(d) Defendant's may-offer exhibits.

XII. Discovery Documents.

Plaintiff will offer the following discovery documents:

(a) Defendant's answers to Interrogatories

No. 1

No. 13

No. 20 (a), (b)

(b) Defendant's responses to Requests for Admission

No. 3

No. 9

No. 15

(c) Defendant's responses to Requests for Production

No. 7 (with attached documents)

Defendant will offer the following discovery documents:

(a) Plaintiff's answers to Interrogatories

No. 17

No. 23

(b) Plaintiff's responses to Requests for Admission

No. 10

No. 11

XIII. Estimate of Trial Time.

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

This Order supplements and supersedes the pleadings in this matter.

Dated this ____ day of November, 2000.

_____

[NAME OF PRESIDING JUDGE]
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

Jane Doe, Lead Counsel for Plaintiff

James Doe, Lead Counsel for Defendant

PLAINTIFF'S EXHIBITS – WILL OFFER

Case Name: **Jones v. Westbest Nursing Home**
Case Number: **CV 00-000-XX-XXX**
Presiding Judge: **Honorable Donald W. Molloy**
Courtroom Deputy: **Mary Nieblas**
Court Reporter: **Daina Hodges**
Plaintiffs' Attorney: **Jane Doe**
Defendants' Attorney: **James Doe**

#	Description	Δ's Objection	Date Offered	Date Admitted	Date Refused	Date Reserved
500	Incident Report No. 389789, Officer Ruffian					
504	Video: nursing home room, without narrative	Rule 401				
505	Photograph of Plaintiff's bed and restraints					
507	Westbest employee's handbook, pages 2-16 through 2-30	Rule 401; Rule 402; *Yaeger v. Deane*				
514	Video: A Day in the Life of Westbest residents	Rule 403; Rule 801; Rule 802; Rule 26(a)(2) (B)&(C)				

PLAINTIFF'S EXHIBITS – MAY OFFER

Case Name: **Jones v. Westbest Nursing Home**
Case Number: **CV 00-000-XX-XXX**
Presiding Judge: **Honorable Donald W. Molloy**
Courtroom Deputy: **Mary Nieblas**
Court Reporter: **Daina Hodges**
Plaintiffs' Attorney: **Jane Doe**
Defendants' Attorney: **James Doe**

#	Description	Δ's Objection	Date Offered	Date Admitted	Date Refused	Date Reserved
501	Hospital records of Plaintiff					
506	Restraining deviees					
508	Photograph of Plaintiff immediately after death	Rule 401				
511	Medication usc records of Westbest in 2001	Rule 401; Rule 402;				

DEFENDANT'S WITNESS LIST - WILL CALL

Case Name: **Jones v. Westbest Nursing Home**
Case Number: **CV 00-000-XX-XXX**
Presiding Judge: **Honorable Donald W. Molloy**
Courtroom Deputy: **Mary Nieblas**
Court Reporter: **Daina Hodges**
Plaintiffs' Attorney: **Jane Doe**
Defendants' Attorney: **James Doe**

Name	Address & Telephone	Manner of Presentation	Expert?/ Date of Report	Designated Excerpt
John Appleseed	Westbest Nursing Home 1935 3rd Avenue East, Polson, Montana 59845, (406) 694-5200	in person	yes; 1-17-02	
Billy Bathgate	9999 Bronx Ave Brooklyn, NY 10101	read deposition	no	page 16, line 1 to page 20, line 15
Harmon Highline Highline Experts, Inc.	669 Killebrew Court P.O. Box 9999 Fort Sumter, SC 30303	video deposition	yes; 1/29/02 supp. 03/01/02 2nd supp. 06/07/02	6' 35" to 15' 57"
Sam Surgeon, M.D.	Surgeon, Inc. 1111 Boxx St. San Francisco, CA 94122	live video conference	yes; 02/28/02	

DEFENDANT'S WITNESS LIST - MAY CALL

Case Name: **Jones v. Westbest Nursing Home**
Case Number: **CV 00-000-XX-XXX**
Presiding Judge: **Honorable Donald W. Molloy**
Courtroom Deputy: **Mary Nieblas**
Court Reporter: **Daina Hodges**
Plaintiffs' Attorney: **Jane Doe**
Defendants' Attorney: **James Doe**

Name	Address & Telephone	Manner of Presentation	Expert?/ Date of Report	Designated Excerpt
Patricia Pattern, R.N.	Westbest Nursing Home 1935 3rd Avenue East Polson, Montana 59845 (406) 694-5200	in person	no	
Daniel Ork, M.D.	Westbest Nursing Home 1935 3rd Avenue East Polson, Montana 59845 (406) 694-5200	in person	no	
Ralph Runcible	Purity Janitorial Services 121 East Avenue Polson, Montana 59845	in person	no	

WITNESS INFORMATION SHEET

Case Name:	**Jones v. Westbest Nursing Home**
Case Number:	**CV 00-000-XX-XXX**
Presiding Judge:	**Honorable Donald W. Molloy**
Courtroom Deputy:	**Mary Nieblas**
Court Reporter:	**Daina Hodges**
Plaintiffs' Attorney:	**Jane Doe**
Defendants' Attorney:	**James Doe**

Thomas Q. Testifier
1936 3rd Avenue East
Polson, Montana 59845

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

Date of statement: 02-16-2002

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

514
515
519
521
533