UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

Local Rules of Procedure

Effective December 1, 2009

Local Rules of Procedure

United States District Court
for the District of Montana

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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.

Amendments to these Rules become effective on the date set forth in the Order adopting the amendments.

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 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 AND PENDING ACTIONS.

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

1.6 ELECTRONIC FILING GENERALLY.

(a) Authorization. The Case Management/Electronic Case Files ("CM/ECF") system is used in this Court. The Court establishes procedures for filing in the CM/ECF system. The CM/ECF Administrative Procedures Manual on the Court's website, www.mtd.uscourts.gov, provides guidance in using the system.

(b) Definitions. The word "conventional" refers to the traditional means of presenting papers to the clerk for filing or mailing copies of documents to opposing parties. The term "registered user" refers to an attorney who is duly registered in Pacer and in this Court's CM/ECF system and who is using CM/ECF.

(c) Pacer Registration and Registration in This Court's CM/ECF System. All attorneys appearing in this Court are required to register in and to use CM/ECF unless good cause, such as the unavailability of high-speed internet service, can be shown. To meet this requirement, an attorney must have both a log-in and password from the national PACER system, www.pacer.psc.uscourts.gov, and a separate log-in and password from this Court, www.mtd.uscourts.gov. Attorneys must complete and submit the ECF User Registration Form found on the Court's website. Registration in this Court's CM/ECF system waives the registrant's right to service by means other than CM/ECF as to all documents uploaded into the system.

(d) Conventional Filers. Non-attorneys may file conventionally without seeking prior leave of Court. Attorneys may seek exemption from registration in CM/ECF on a case-by-case basis by filing a motion for leave to file conventionally at their first appearance in the case. Form G, Motion by Attorney for Leave to File Conventionally In This Case, must be used for this purpose.

(e) Record of the Case. The official record of each case consists of all documents that are available in electronic form, whether scanned or originally filed in electronic form, and all documents or items that are available only in conventional form. When a higher court or a state court requires a paper version of the record, the clerk will produce and certify the paper record as a true and correct copy of the Court's official record.

(f) Disposal or Retention of Paper Documents. Paper documents that are submitted to the clerk for filing will be discarded after they are filed in the CM/ECF system. Documents that are too large to scan, that are required to be retained in paper form, or that do not produce a legible image will be retained in paper form and the existence of a paper document must be noted in the docket. Except where non-electronic filing is required, Form A, Notice of Conventional Filing of Document or Item, must be filed when a document or item is submitted to the clerk to be retained in non-electronic form.

(g) Correction of Filing or Docketing Errors in CM/ECF. Any registered user who erroneously files or dockets a document must immediately contact the clerk and take direction from the clerk in correcting the error. No one but the clerk may attempt to undo or change an electronic filing.

(h) Court's Technical Failures. The Clerk's Office will deem the CM/ECF site to be subject to a technical failure on a given day if the site is unable to accept filings for at least one hour after 10:00 a.m. that day. Known

system outages will be posted on the Court's website, if possible, and registered users may seek appropriate relief from the Court.

(i) User's Technical Failures. The Clerk of Court establishes procedures to be followed by registered users experiencing technical problems. Technical problems on the user's end will not excuse untimely filing. Registered users are directed to consult the Court's website or call the help desk. Assistance is available from the Clerk's Office only during regular business hours and on regular business days.

(j) Judges' Requirements. Judges may require parties to submit to chambers a paper copy and/or a Word or WordPerfect copy of any document electronically filed.

1.7 COURT REPORTERS AND TRANSCRIPTS.

Policies regarding compensation to court reporters and the availability of transcripts are established by the Administrative Office of the United States Courts and/or the Clerk of this Court. Counsel and parties are directed to contact the Clerk's Office or consult the Court's website, www.mtd.uscourts.gov, for further information, copies of such policies, and forms for requesting transcripts.

1.8 PUBLIC ACCESS, PRIVACY, AND SEALING.

(a) Sealed and Stricken Documents.

(1) *Sealed Documents*. A sealed document is any document not available to public access. A sealed document may not be filed by any party unless:

(A) the presiding judge grants the filing party's motion, filed in

compliance with subsection (b), for leave to file under seal; or

(B) the presiding judge or a clerk seals the document *sua sponte*; or

(C) the document is one of the following:

(i) a document specifically authorized to be filed ex parte by statute, rule, order, or other law, including but not limited to requests for authorization of investigative, expert or other services pursuant to the Criminal Justice Act and motions for subpoena under Fed. R. Crim. P. 17(b);

(ii) a motion filed by the United States under Fed. R. Crim. P. 35 or U.S.S.G. § 5K1.1 or a plea agreement that acknowledges a defendant is entitled to such a motion;

(iii) minutes and transcripts from sealed court proceedings;

(iv) a document specifically authorized by statute, rule, or order to be filed under seal. When a party files a document in this category, the authority for sealing must be cited in the title of the document.

(2) *Cases Under Seal*. No case may be initiated or conducted under seal unless expressly authorized by statute, such as a *qui tam* action, or unless the Court grants leave to seal the case or seals the case *sua sponte*. Parties to a sealed case need not seek leave to file

conventionally or leave to file under seal.

(3) *Stricken Documents*. No party may rely on a stricken document. A stricken document, whether filed electronically or in other form:

(A) remains in the public record if originally filed there, unless the presiding judge orders it sealed to protect legitimate privacy or security interests; or

(B) remains under seal if it was lodged or filed under seal before it was stricken.

(b) Filing and Serving Sealed Documents.

(1) No attorney may file a document under seal, with or without leave, unless the attorney believes in good faith, pursuant to Fed. R. Civ. P. 11, Mont. R. Professional Conduct 3.3, and other applicable law, that sealing is appropriate.

(2) *Service of Sealed or Ex Parte Documents*. A sealed document or item filed by a party must be conventionally served on all other parties to the case unless:

(A) the document is described in subsection (a)(1)(C)(i);

(B) the document is described in subsection (a)(1)(C)(ii) and has been conventionally served on the appropriate defendant; or

(C) leave to serve the document on fewer than all parties to the case is requested in a motion under subsection (3) below for

leave to file under seal.

(3) *Motion for Leave to File Under Seal: When Required.* Documents described in subsection (a)(1)(C) may be filed under seal as a matter of course. A motion for leave to file under seal is required only:

(A) where any party wants to file under seal a document that is not described in subsection (a)(1)(C); or

(B) where a document is described in subsection (a)(1)(C)(iii) or (iv) and the filing party requests leave to serve the document on fewer than all other parties to the case.

(4) *Motion for Leave to File Under Seal and Lodged Sealed Documents: How Filed*.

(A) *Registered Users.* Where a motion for leave to file under seal is required, a registered user may:

(i) file in the public record a motion for leave to file under seal, setting forth the reason(s) the sealed document should not be accessible to the public and specifying which parties should have access to the sealed document; and

(ii) file the proposed sealed document as the next document in the case, using the "Lodged Sealed Document L.R. 1.8" event and linking it to the motion for leave to file under seal.

(B) *Conventional Filers*. A document or item requested to be

filed under seal must be submitted to the clerk in a sealed envelope with the case number, date, and "Filing Under Seal Requested" clearly printed on the envelope. The envelope must be accompanied by a motion for leave to file under seal. Regardless of whether the document requested to be sealed is accompanied by a motion, the clerk must file the document under seal and must not provide electronic access to any party.

(5) *Failure to Move for Leave to File Under Seal*. If the filing party must but does not move for leave to file under seal, the sealed document will remain lodged but not filed. The Court may strike any other document purporting to rely on the lodged sealed document.

(6) *Order on Motion for Leave to File Under Seal*.

(A) If leave to file under seal is granted, the lodged document will be deemed filed under seal.

(B) The Court may order that a document be redacted rather than sealed. In that event, the filing party must file a redacted version of the document. When it does so, the unredacted document will be deemed filed under seal.

(C) If leave to file under seal is denied, the lodged sealed document will remain under seal but will not be deemed filed. The filing party may refile the document without sealing it.

1.9 DIVISIONS WITHIN DISTRICT.

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

(a) 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 is held at the James F. Battin Courthouse, Billings, Montana.

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

(c) 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 is held at the Post Office Building, Great Falls, Montana.

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

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

1.10 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, 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) Allocation of Division Workload. For the purpose of allocating the work of the judges, the Chief Judge of the District will, by order, allocate each of the Divisions of the Court to one or more of the judges.

(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 is preserved inviolate.

(d) 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 given any additional duty by this Court that is not inconsistent with the Constitution or the laws of the United States.

1.11 VENUE.

(a) Civil Cases.

(1) *Certification by Filing Counsel.* The caption of an initial pleading constitutes certification by counsel that venue conforms with this Rule. If the caption of any initial pleading does not name a division, the clerk will assign venue.

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

(A) Cases alleging a tort against the United States are venued in the Division containing the county:

(i) where the tort occurred;

(ii) where the plaintiff resided at the commencement of the action; or

(iii) where any defendant other than the United States resided at the commencement of the action.

(B) Habeas cases are venued:

(i) in the Division containing the county where judgment was entered, if a judgment is challenged;

(ii) in the Helena Division, if denial or conditions of parole are challenged;

(iii) in the Division containing the county where the petitioner is incarcerated, if pretrial detention is challenged.

(C) Prisoner civil rights cases are venued in the Division where an alleged wrong was committed.

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

(A) A defendant must file any motion for change of divisional venue with its first appearance.

(B) A plaintiff must file any motion for change of divisional venue within fourteen (14) days of the first appearance of any party whose appearance makes existing venue improper.

(C) Failure to file a timely motion for change of divisional venue constitutes consent to the existing venue.

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

(b) Criminal Cases. Criminal cases are venued in the Division containing the county where a crime allegedly occurred, unless the Court, in its discretion, orders a change of venue.

1.12 JUDGES' AUTHORITY.

An order that is within a judge's inherent authority supersedes any Local Rule.

CHAPTER II.
CIVIL CASES

RULE 3

COMMENCEMENT OF ACTION

3.1 FILING A NEW CASE.

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

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

(2) unless the originating document is a petition for writ of habeas corpus, payment of the full amount of the filing fee or a motion to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a); and

(3) a civil cover sheet, unless the plaintiff or petitioner is proceeding pro se.

(b) Conventional Filing. Any attorney or party may file a new case by mailing or personally delivering to the Clerk of Court each of the required items. All required items must be received simultaneously; otherwise, one or more items may be returned without filing or other record of submission. Documents may be submitted either in paper form or in PDF form on disk or CD-ROM. The filing date will be the date of the clerk's receipt of the required materials. A Notice of Electronic Filing will be electronically issued to registered users and mailed or otherwise delivered to counsel or parties who are not registered users. For purposes of commencing a new action pursuant to this Rule, an attorney need not move for leave to file the complaint

conventionally and need not file a notice of conventional filing.

(c) Electronic Filing. Any attorney or party who is authorized to file documents with the Court electronically may file a new case by:

(1) Faxing or e-mailing a completed civil cover sheet to the clerk;

(2) Obtaining a case number from the clerk;

(3) Paying the filing fee or stating that a motion to proceed in forma pauperis will be filed; and

(4) Electronically filing the complaint, petition, or other originating pleading within one business day of receipt of the case number. The filer must attach the civil cover sheet to the complaint as an exhibit. Failure to timely file the complaint may result in deletion of the case and the filer may be required to start the process over.

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

(1) A complaint that is accompanied by a motion to proceed in forma pauperis is deemed lodged until the motion is decided.

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

(3) When a motion to proceed in forma pauperis is denied, the movant must be given a specified time of not less than fourteen (14) days to pay the full filing fee.

(A) If full payment is timely received, the complaint is deemed filed on the date the complaint was lodged, except where an earlier filing date is provided by law.

(B) If full payment is not timely received, the action is dismissed.

3.2 REMOVAL AND REMAND.

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

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

3.3 PETITIONS FOR WRIT OF HABEAS CORPUS FILED BY STATE PRISONERS.

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

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

RULE 4

SUMMONS AND SERVICE OF PROCESS

4.1 ISSUANCE AND SERVICE OF PROCESS.

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

4.2 SERVICE OF PROCESS UNDER STATE 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 serving party's duty to file the return of service of process.

4.3 PROOF OF SERVICE OF PROCESS.

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

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

4.4 SERVICE OF SUBPOENAS BY U.S. MARSHAL.

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

4.5 TIME LIMIT FOR SERVICE.

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

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

RULE 5

SERVICE AND FILING OF PLEADINGS AND OTHER DOCUMENTS

5.1 CONSEQUENCES OF ELECTRONIC FILING.

(a) Orders. All orders, decrees, judgments, and proceedings of the Court will be electronically filed. Such filing constitutes entry on the clerk's docket. A judge may also issue an Order solely by making an entry on the docket. Transmission of the Notice of Electronic Filing constitutes the notice and service required by the Federal Rules of Civil Procedure. The clerk will print the Notice of Electronic Filing and attach it to any document that is conventionally served. Any order, decree, judgment, or other proceeding of the Court that is filed electronically without the original signature of the judge or clerk has the same force and effect as if the judge or clerk had signed a paper document that was filed and served in the conventional manner.

(b) Other Documents. Filing of any document in the Court's CM/ECF system, together with transmission of a Notice of Electronic Filing, constitutes entry of the document on the clerk's docket and filing of the document for all purposes. As between registered users, transmission of the Notice of Electronic Filing constitutes the service required by the Federal Rules of Civil Procedure, and a certificate of service is moot.

5.2 ACTIONS INVOLVING CONVENTIONAL FILERS.

(a) Both registered users and conventional filers must serve conventional filers by one of the methods set forth in Fed. R. Civ. P. 5(b)(2). A conventional filer may consent to accept service by e-mail or fax from other parties by serving and filing Form B, Notice Regarding Electronic Service. The Court will serve conventional filers by mail.

(b) A certificate of service is required with any document that is not served via CM/ECF. Form H, Certificate of Service, may be used for this purpose.

(c) Substitution of counsel automatically revokes consent to fax or e-mail service. Consent to fax or e-mail service may also be revoked by serving and filing Form B, Notice Regarding Electronic Service.

5.3 DOCUMENTS SERVED BUT NOT FILED.

Documents that are served but not filed, such as discovery, must be served by one of the methods set forth in Fed. R. Civ. P. 5(b)(2), except that CM/ECF may not be used. A certificate of service must accompany each such document.

5.4 FAX AND E-MAIL FILINGS PROHIBITED.

Except as otherwise provided in these Rules or by specific direction of the Court, documents may not be transmitted by fax, e-mail, or any electronic means other than the CM/ECF system for filing with the Court.

5.5 ADDRESS CHANGES.

(a) Duty to Notify. An attorney or a party proceeding pro se whose address for service 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 for service.

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

(1) a document directed to the attorney or 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 for service.

RULE 6

TIME

6.1 FILING DEADLINE.

The filing deadline is 5:00 p.m. Mountain time on the due date. A document filed after 5:00 p.m. on the due date is not timely filed.

6.2 EXCEPTIONS.

(a) For purposes of applying a statute of limitations, the filing deadline is midnight Mountain time on the due date.

(b) Where the time for filing is expressed in hours, the filing deadline is the applicable hour.

RULE 7

MOTION PRACTICE

7.1 MOTIONS.

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

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

(c) Prerequisites to Filing a Motion.

(1) The text of the motion must state that other parties have been contacted and state whether any party objects to the motion. Parties that have not yet appeared in the action or whose default has been entered need not be contacted.

(2) When a motion is unopposed, the word "unopposed" must appear in the title of the motion.

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

proposed orders must:

(A) be attached to the motion **in PDF format** as an exhibit, so that the order, as proposed, is filed in the electronic record of the case;

(B) be e-mailed **in WordPerfect or Word format** to the judge, so that the judge may alter it;

(C) use 14-point font;

(D) omit macros or special coding or formatting other than appropriate citation format;

(E) be e-mailed only to the judge's address for proposed orders; for example, a judge whose initials are XYZ would have an e-mail address of xyz_propord@mtd.uscourts.gov; and

(F) be identified in the subject line of the e-mail by the first plaintiff's last name, the case number, and an abbreviated description of the document and the moving party, for example, Smith CV 03-289-GF p-ord gr def ext time.

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

(d) Briefs.

(1) *Briefing Schedule.*

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

(B) Any party that opposes a motion must file a response brief. Responses to motions to dismiss, for judgment on the pleadings, or for summary judgment must be filed within twenty-one (21) days after the motion was filed. Responses to all other motions must be filed within fourteen (14) days after the motion was filed. Except where a pro se litigant files a motion for the appointment of counsel, failure to file a response brief may be deemed an admission that the motion is well-taken.

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

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

(2) *Length of Briefs.*

(A) Briefs in support of a motion and response briefs are limited to 6500 words, excluding caption and certificates of service and compliance.

(B) Reply briefs are limited to 3250 words, excluding caption and certificates of service and compliance.

(C) A party may not exceed these word limits without prior leave. Any brief that exceeds standard limits must include a table of contents and a table of cases with page references.

(D) Filing serial motions to avoid word limits may result in denial of all such motions.

(E) Briefs must include a certificate of compliance that the brief complies with the word limits of this rule. The certificate must state the number of words in the brief, excluding caption and certificates of service and compliance. The signer of the certificate may rely on the word count of a word-processing system used to prepare the brief.

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

7.2 EXHIBITS TO MOTIONS.

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

(1) Exhibits must be attached to a brief or to a Statement as described in L.R. 56.1.

(2) If all exhibits total five pages or less, they may be filed together as one attachment to the brief or Statement.

(3) If all exhibits total more than five pages, the first page of each exhibit must be labeled by number or letter, and each exhibit must be filed as a separate attachment to the brief or Statement. Each attached exhibit must be named by label (letter or number) and/or by a short description.

(4) Because CM/ECF automatically numbers each page of a document filed electronically, parties need not number each page of an exhibit that is scanned or filed electronically. However, all references to exhibits must include specific and correct page numbers. For example, if Exhibit B is filed as a separate attachment, CM/ECF will necessarily number the third page of it as page 3. The party may then refer in its brief to "Exhibit B at 3" without manually numbering each page of Exhibit B. Where there are five or fewer pages of exhibits and each exhibit is not a separate attachment, that will not be the case. The filing party must modify references in its brief accordingly.

(5) Only those exhibits that are directly germane to the matter under consideration by the Court may be attached to a motion or Statement.

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

(b) Registered Users. Exhibits must be filed electronically whenever possible.

(1) Except as provided by L.R. 1.6(d) for cases under seal, a registered user must electronically file Form A, Notice of Conventional Filing of Document or Item, whenever an exhibit is filed conventionally, and the exhibit must be conventionally served on all parties.

(2) The following exhibits may be filed conventionally without prior leave of Court:

(A) exhibits that are too lengthy to file or scan, as defined by the Clerk's Office Administrative Manual;

(B) exhibits that are oversized, such as blueprints or maps;

(C) administrative records;

(D) photographic or videotape exhibits; or

(E) trial exhibits.

(3) A registered user must obtain leave to file conventionally any exhibit not described in subsection (b)(2). The motion must describe the exhibit and the form in which it will be filed (paper, CD-ROM, etc.) and must explain why it cannot be filed electronically. Form A may be adapted for this purpose.

(c) Voluminous Exhibits. The filing party must serially number each page of an exhibit or set of exhibits that is too voluminous to file electronically.

7.3 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 L.R. 7.3(b)(1) or (2). No party may file a motion for reconsideration without prior leave of Court.

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

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

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

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

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

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

7.4 NOTICE OF SUPPLEMENTAL AUTHORITY.

If pertinent and significant authority comes to a party's notice after the briefs have been filed but before decision, a party may promptly advise the Court by notice setting forth the citations and stating the reason the authority was

not cited in the party's brief. The notice must specifically refer either to a page of the brief(s) already filed or to a point argued orally. The notice may not exceed two (2) pages and must not present a new argument. No response may be filed unless the presiding judge so authorizes.

RULE 10

FILINGS

10.1 FORMAT OF ALL DOCUMENTS.

(a) All documents must be typewritten or neatly handwritten and double-spaced, except for quoted material and footnotes, in at least 14-point font size without erasures or materially defacing interlineations. Page size must be 8½x11 inches.

(b) Each page must be numbered consecutively at the bottom.

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

(d) When any hand signature is used, the name of the signer must be printed or typed under the signature line.

(e) Counsel or Party Identification. The following information must appear in the upper left-hand corner of the first page of each document, except orders or proposed orders. The required information may extend no farther than four inches from the left edge of the document:

(1) name of the attorney(s) filing the document and the firm name(s) (or name of the party, if appearing pro se);

(2) conventional mailing and physical address;

(3) telephone number where the filer may be contacted;

(4) fax number, if available;

(5) e-mail address, if available; and

(6) the filing party's name and role in the litigation (e.g., Plaintiff Pro Se, Attorney for the Defendant, etc.).

(f) Caption And Title. The caption must contain the name and division of the Court, the parties' names, the cause number, and a title describing the document filed and identifying the filing party, in the format exemplified in the Appendix of Forms.

10.2 PRESENTATION OF PAPER DOCUMENTS FOR FILING.

All paper documents presented for filing must be on 8½ x11-inch uncolored, unlined opaque paper of good quality, flat and unfolded, without back or cover and typewritten, printed, or prepared on one side of the paper only and **not** hole-punched. Documents must be paper-clipped or clamped together but **not** stapled or bound. Original papers presented by prisoners may be folded.

10.3 CITATION FORM.

(a) All documents filed with the Court must 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) A party may, but is not required to, hyperlink a document to a cited authority at an Internet site. Neither the hyperlink nor the Internet site will be considered part of the record of the case.

(d) For any violation of L.R. 10.3, the Court in its discretion may return the document for correction.

10.4 SANCTIONS.

If any filings do not comply with L.R. 10, the clerk may 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.

RULE 11

SIGNING OF PLEADINGS, MOTIONS, AND OTHER PAPERS; REPRESENTATIONS TO THE COURT; SANCTIONS

11.1 SIGNATURES IN ELECTRONIC FILINGS.

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

(b) Except as provided by L.R. 11.2, where a hand signature would otherwise appear, each document filed electronically by a registered user must be signed "/s/ John E. Attorney."

(c) A registered user must not knowingly permit or cause his or her log-in and password to be used by anyone other than an authorized agent of the registered user. If a registered user has reason to suspect that the security of his or her log-in and password have been compromised, the clerk must be contacted immediately.

(d) Only a judge, an attorney, the Clerk of Court, or deputy clerks of court may use the "/s/" signature form, and, except as provided by L.R. 11.2(a)(1), only when signing the document as the filer. All other signatures, including those on any affidavit, must be hand signatures.

11.2 ELECTRONIC FILING OF JOINTLY FILED DOCUMENTS OR DOCUMENTS REQUIRING MULTIPLE SIGNATURES.

(a) Documents requiring signatures of more than one party may be

filed in one of the following ways:

(1) Where all signers are registered users and where all consent to the filing, by using the "/s/" electronic signature as to all parties;

(2) Where all signers use hand signatures, by scanning the document and filing it electronically without the "/s/" signature by any party;

(3) By scanning one or more identical documents with hand signatures and attaching each document as an exhibit to a document bearing the registered user's "/s/" electronic signature; or

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

(b) For purposes of filing documents requiring more than one signature, any registered user may choose to use a hand signature rather than the "/s/" form.

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

RULE 12

DEFENSES AND OBJECTIONS

12.1 RESPONDING TO PRISONER-PLAINTIFFS – WAIVER OF REPLY.

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

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

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

(d) Entry of Default and Default Judgment. Failure to timely file a Waiver of Reply, an Answer, or other appropriate motion in response to a

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

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

12.2 NOTICE OF APPEARANCE – IN FORMA PAUPERIS CASE.

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

12.3 NOTICE AND WARNING TO PRO SE PRISONER-PLAINTIFF.

In all cases where a prisoner-plaintiff, as defined in L.R. 12.1(a), is proceeding pro se, any motion that requires the Court to consider matters outside the pleadings, such as a motion to dismiss for failure to exhaust administrative remedies, must be accompanied by the Notice and Warning to Plaintiff as set forth in L.R. 56.2(a). Motions and briefs in support must be filed and served

simultaneously with, but separately from, the Notice and Warning. Failure to comply with this Rule may result in summary denial of the motion.

RULE 15

AMENDED PLEADINGS

15.1 FILING OF PLEADINGS REQUIRING LEAVE OF COURT.

(a) Registered Users. When moving for leave to file pleadings that require leave of Court to file, a registered user must attach the proposed pleading as an exhibit to the motion. If leave to file is granted, the party must promptly file the pleading.

(b) Conventional Filers. When a conventional filer moves for leave to file a pleading that requires leave of Court to file, the clerk must file the proposed pleading as an exhibit to the motion. If leave to file is granted, the clerk must promptly file the pleading.

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 alternative dispute resolution is being pursued.

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

(d) Settlement Conferences. The judge to whom a civil case is assigned or referred may, upon the motion of any party or upon the judge's own motion, order the parties to participate in a settlement conference.

16.2 PRELIMINARY PRETRIAL CONFERENCE.

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

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

(2) petitions for writ of habeas corpus;

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

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

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

(6) forfeiture actions prosecuted by the United States;

(7) actions to enforce arbitration awards;

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

(9) any case which the judge to whom the case is assigned or referred orders to be excepted from the requirements of L.R. 16.2(b) and (c).

In exempt cases, the assigned judge will, no later than forty-five (45) days from the date the case is at issue, establish a schedule for final disposition of

the case. In actions brought without counsel, no party may begin discovery until a Scheduling Order has been issued.

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

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

(A) a brief factual outline of the case;

(B) issues concerning jurisdiction and venue;

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

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

(E) a computation of damages;

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

(G) proposed stipulations of fact and the parties' understanding as to what law applies;

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

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

(J) the name and city and state of current residence of each individual known or believed to have information that may be used in proving or denying any party's claims or defenses, and a summary of that information. If known, the address and telephone number of the individual must be provided to all counsel on request;

(K) 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;

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

(M) the status of any settlement discussions and prospects for compromise of the case; and

(N) suitability of special procedures.

(2) *Discovery Plan.* See L.R. 26.1 and Fed. R. Civ. P. 26(f). Plaintiff must file on behalf of all parties the discovery plan resulting from the Rule 26(f) conference.

(c) Conduct of Conference. No later than ninety (90) days after a case is at issue, or one hundred twenty (120) days after filing of the complaint, whichever comes first, the judge to whom the case is assigned will hold a preliminary pretrial conference to discuss the matters included in the discovery plan and the preliminary pretrial statements and to discuss and schedule the following matters:

(1) joinder of additional parties;

(2) amendment of pleadings;

(3) stipulations of fact and the parties' and the Court's understanding as to what law applies;

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

(5) feasibility of settlement;

(6) filing and hearing of motions;

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

(8) completion of discovery and sufficiency of the initial disclosures required by Fed. R. Civ. P. 26(a)(1);

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

(10) final pretrial conference;

(11) a trial date; and

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

16.3 SCHEDULING ORDER.

(a) Order. After the preliminary pretrial conference, the assigned judge will immediately enter an order summarizing the matters discussed and action taken, setting a schedule limiting the time for those matters referred to

in L.R. 16.2(c), and covering such other matters as are necessary to effectuate the agreements made at the conference.

(b) Procedure When No Trial Set.

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

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

(B) filing of each party's proposed voir dire questions and jury instructions or proposed findings of fact and conclusions of law; and

(C) trial.

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

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

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

(c) Continuances.

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

(2) A motion to postpone or continue a trial on the grounds of absence of a witness or evidence may be made upon affidavit showing the nature and materiality of the expected testimony or evidence. The affidavit must also state that diligent effort was timely made to secure the witness or the evidence and that reasonable grounds exist for the production of the witness or evidence if postponement or continuance is granted. If the testimony or the evidence would be admissible during the trial, and the adverse party stipulates that it will be considered as actually given during the trial, there will be no postponement or continuance unless, in the opinion of the Court, a trial without the witness or evidence would work an injustice on the moving party.

(d) Jury Cost Assessment. Whenever any civil action scheduled for jury trial is settled or otherwise disposed of less than seven (7) days before trial, all jury costs, Marshal's fees, mileage, and per diem, may, except for good cause, be assessed equally against the parties and their counsel, or otherwise assessed as directed by the Court.

16.4 FINAL PRETRIAL ORDER.

(a) Preparation and Lodging. At least fourteen (14) days before the final pretrial order is due, Plaintiff's counsel must convene a conference of all counsel and pro se parties at a suitable time and place for the purpose of

preparing a proposed final pretrial order. If any party refuses to cooperate in the preparation of the pretrial order, the opposing party may move the Court for sanctions. On or before the date established in the pretrial scheduling order, a registered user involved in the trial and selected by all parties must file a proposed final pretrial order signed by all counsel and pro se parties.

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

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

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

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

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

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

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

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

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

defense, citations to authority.

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

(10) *Witnesses.* Each party must identify in separate witness lists each witness who will be called, and each witness who may be called. A witness on either list must be identified by name and city and state of current residence. Witness lists must be in the form set forth in Form E and must be attached as exhibits to the proposed final pretrial order.

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

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

(13) *Deposition Excerpts and Summaries.* The witness lists should reflect any designated deposition excerpts that either party intends to offer at trial, except for impeachment or rebuttal, and any party's objections to designated deposition excerpts, as well as an indication whether the parties have stipulated to the use of any deposition summary in lieu of reading a deposition transcript.

(14) *Estimate of Trial Time.* An estimate of the number of court days counsel for each party expects to be necessary for the presentation of their respective cases in chief.

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

16.5 FINAL PRETRIAL CONFERENCE.

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

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

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

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

specify witness, page numbers, and line numbers.

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

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

(5) *Specify Outstanding Evidentiary Objections.* With respect to unresolved objections, specify any remaining objections in writing set forth on the opposing party's witness list and exhibit list. Objections not specified on the exhibit list and any objections to deposition excerpts or summaries that are not shown on the witness list will be deemed waived. The lists so prepared must be served and filed with the proposed final pretrial order. In cases proceeding under L.R. 16.2(a) or 16.3(b), exhibit and witness lists must be filed and served at the time of the final pretrial conference or, where none is held, no later than seven (7) days before trial.

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

16.6 ALTERNATIVE DISPUTE RESOLUTION.

(a) Mediation and Evaluation.

(1) Pursuant to 28 U.S.C. § 651 et seq., the Court encourages mediation and neutral evaluation as alternative dispute resolution ("ADR") procedures. Parties must consider using ADR procedures at an appropriate point in the litigation. Parties may engage in ADR with or without the assistance of the Court.

(A) Mediation is a non-binding process in which an impartial third party assists the parties in reaching an agreed settlement. The mediator may spend time meeting separately and privately with any party during a settlement conference.

(B) Neutral evaluation is a non-binding process in which the parties present summaries of their cases to an evaluator, who assesses the parties' legal positions and provides them with an impartial evaluation of the case. The evaluator may help the parties identify areas of agreement, provide case planning guidance, and assist in negotiating a settlement.

(2) The Chief Deputy Clerk of Court must annually prepare a statement for the Chief Judge regarding the District's use of ADR procedures.

(b) General Rules.

(1) The presiding judge retains case management responsibility at all times. Where a case is referred to a magistrate judge for all pretrial proceedings, the magistrate judge is the presiding judge.

(2) Attorneys, participants, mediators, and evaluators must preserve the confidentiality of all communications made in the course of ADR procedures.

(3) All persons serving as mediators or evaluators under this Rule are performing quasi-judicial functions and are entitled to the immunities and protections accorded by law to persons serving in such capacity.

(4) *Obligation of Good Faith.*

(A) Each party must ensure that a person with ultimate settlement authority attends and participates in any ADR procedure ordered by the presiding judge. A unit or agency of government satisfies this attendance requirement if represented by a person who has, to the greatest extent feasible, authority to settle and who is knowledgeable about the facts of the case, the governmental unit's position, and the procedures and policies under which the governmental unit decides whether to accept proposed settlements.

(B) Failure to participate in good faith may result in the imposition of sanctions against the offending party. The mediator or evaluator or a party may file a motion for sanctions in the record of the case.

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

(c) Motions and Orders for ADR.

(1) The presiding judge may, at any time, require the parties to

participate in mediation or neutral evaluation.

(2) One or more parties may move the presiding judge for an order requiring mediation or neutral evaluation.

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

(4) The presiding judge or a judicial mediator or evaluator may issue appropriate Orders to govern the proceedings. A non-judicial mediator or evaluator may set forth the governing procedures in a letter to the parties. Such letters will not be filed in the record of the case.

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

RULE 26

DISCOVERY

26.1 RULE 26(f) CONFERENCE AND DISCOVERY PLAN.

(a) Except in cases exempted by Fed. R. Civ. P. 26(a)(1)(B), or unless otherwise directed, the parties must confer at least twenty-one (21) days before the preliminary pretrial conference to consider the matters set forth in Fed. R. Civ. P. 26(f).

(b) Each party must serve initial disclosures conforming with Fed. R. Civ. P. 26(a)(1)(A) no more than fourteen (14) days after the Rule 26(f) conference. The parties are encouraged to serve initial disclosures at least seven (7) days before the Rule 26(f) conference.

(c) Initial disclosures may not be filed.

26.2 DOCUMENTS OF DISCOVERY.

(a) Pursuant to Fed. R. Civ. P. 5(d)(1), initial disclosures under Fed. R. Civ. P. 26(a)(1)(A), depositions upon oral examinations and interrogatories, requests for documents, requests for admissions, answers and responses, expert disclosures, expert reports, notices of deposition, notices of service of subpoena, and certificates or notices indicating service of discovery documents on opposing parties are not routinely filed. However, when any motion is filed relating to discovery, the parties filing the motion must attach as exhibits to the motion all of the documents relevant to the motion if the documents have not been previously filed.

(b) If for any reason a party believes that any of the named documents

should be filed, the party may move that the document be filed, stating the reasons and the authority supporting the movant's position.

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

26.3 DISCOVERY AND DISCOVERY RESPONSES.

(a) Responses to Discovery.

(1) Answers and objections to interrogatories pursuant to Fed. R. Civ. P. 33 and responses and objections to requests for admissions pursuant to Fed. R. Civ. P. 36 must identify and quote each interrogatory or request for admission in full immediately preceding the statement of any answer or objection.

(2) Each objection must be followed by a statement of reasons. When an objection is made to part of an interrogatory, the remainder of the interrogatory must be answered at the time the objection is made, or within the period of any extension of time to answer, whichever is later.

(3) Responses to requests made pursuant to Fed. R. Civ. P. 34(a) must set forth each request in full before each response or objection. Each objection must be followed by a statement of reasons.

(4) Failure to object to interrogatories or requests for the production of documents or things under Fed. R. Civ. P. 33 and 34, within the time fixed by the Rules, or within the time to which the parties have agreed, constitutes a waiver of any objection.

(5) The parties, and when appropriate a non-party witness, may stipulate to alter any form or procedure for discovery or any time

limit for discovery that does not extend the dates set for the close of discovery, the motions deadline, lodging the pretrial order, pretrial conferences, or trial of the case. The Court will not enforce oral stipulations.

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

(c) Discovery Motions.

(1) All motions to compel or limit discovery must set forth, in full, the text of the discovery originally sought and the response made and must identify the basis for the motion.

(2) The Court will deny any discovery motion unless counsel have conferred concerning all disputed issues before the motion is filed. The mere sending of a written, electronic, or voice-mail communication does not satisfy this requirement. Rather, this requirement can be satisfied only through direct dialogue and

discussion in a face to face meeting, in a telephone conversation, or in detailed, comprehensive correspondence.

(3) If counsel for the moving party seeks to arrange a conference described in subsection (2), and opposing counsel refuses or fails to confer, the judge may order the payment of reasonable expenses, including attorney's fees, pursuant to Fed. R. Civ. P. 37(a)(5). Counsel for the moving party must 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 must be served upon the party who made the request or propounded the interrogatories, and that party must make such originals available for use by any other party at the time of any pretrial hearing or at trial. Likewise, the deposing party must make the original transcript of a deposition available for use by any party at the time of any pretrial hearing and at trial, or for filing with the Court if so ordered.

RULE 38

JURY TRIAL

38.1 DEMAND FOR JURY TRIAL.

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

RULE 47

SELECTION OF JURORS

47.1 EXAMINATION OF JURORS.

(a) Voir Dire. Examination of jurors in civil cases will be in accordance with the Federal Rules of Civil Procedure. Unless otherwise ordered by the Court, the examination of trial jurors will be conducted by the Court. The Court may permit limited voir dire by counsel for the parties, following the voir dire conducted by the Court.

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

RULE 48

JURORS & PARTICIPATION IN VERDICT

48.1 NUMBER OF JURORS.

The Court will 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 may 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 Fed. R. Evid. 606(b). Following the interview, a second affidavit must be filed indicating the scope and results of the interviews with jurors and setting out the answers given to the interrogatories.

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

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

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

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, must be filed, served and objected to within the schedule provided by L.R. 52.2 and 58.1(c).

52.2 PREPARATION OF JUDGMENT OR FINDINGS AND CONCLUSIONS UPON FAILURE OF PREVAILING PARTY TO DO SO.

If a prevailing party fails within fourteen (14) days, or any additional time granted, to prepare an order or judgment pursuant to L.R. 58.1(c), or findings of fact and conclusions of law pursuant to L.R. 52.1, any other party may do so.

RULE 54

COSTS AND FEES

54.1 TAXATION OF COSTS.

(a) Procedure.

(1) Within fourteen (14) days after the entry of a judgment allowing costs, the prevailing party may serve and file an application for the taxation of costs. The application must be made on Form AO-133, Bill of Costs, available on the Court's website. Failure to comply with any provision of this subsection will be deemed a waiver of all costs except clerk's costs.

(2) Any objections by opposing counsel to the application for costs must be filed within fourteen (14) days after the application was filed.

(3) Within seven (7) days after an objection is filed, the clerk must either tax the costs or, at his or her discretion, hold a hearing on the application.

(4) Any hearing must be held within seven days after an objection is filed. If a hearing is set, the date, time, and manner of the hearing must be reflected in the docket of the case. Hearings must be recorded and will generally be conducted by telephone. The clerk must tax the costs within seven (7) days of the hearing.

(5) Clerk's costs may be inserted in the judgment without application.

(6) A party may appeal the clerk's decision by filing a motion for review within seven (7) days of entry of the clerk's taxation of costs. The party must specify each objection to the decision and give reasons for its objection. The Court will consider the same documents and evidence submitted to the clerk and any pertinent docket entries.

(b) Items Taxed.

(1) *Depositions.* In taxing costs of depositions, the clerk will allow the fees of the court reporter at the rates specified by the Judicial Conference of the United States, or the actual fees paid by the prevailing party, whichever is less. The party seeking costs must furnish evidence that the deposition was used at trial or in support of a motion for summary judgment.

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

(3) *Witness Fees.*

(A) A party entitled to recover costs is entitled to recover the statutory fees and allowances for necessary witnesses as provided in 28 U.S.C. § 1821. Such statutory fees and allowances will be taxable costs for each day that a witness

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

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

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

(4) *Fees for Exemplification and Copies*. Reasonable fees for exemplification and copies of exhibit evidence such as digitally produced exhibits, charts, drawings, maps, photographs, movies, videotapes, and models, etc., which were reasonably necessary to the presentation of the prevailing party's case will be allowed as costs. In taxing costs the clerk will presume that exhibit evidence used at trial was reasonably necessary to the presentation of the case and that exhibit evidence not used was not reasonably necessary to the presentation of the case.

(5) *Bond Premiums.* The party entitled to recover costs will ordinarily be allowed premiums paid on undertakings, bonds or security stipulations, where the same have been furnished by reason of express requirement of the law, or an order of the Court, where the same are reasonably required to enable the party to secure some right accorded that party in the action or proceedings. In taxing costs the clerk will presume that the premiums for all bonds which are on file and of record in the case are allowable as costs.

(6) *Other Costs.* Items of costs not specifically mentioned in this Rule must be taxed by the clerk in accordance with the laws of the United States.

54.2 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 must also file a Statement of Undisputed Facts. The Statement must:

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

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

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

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

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

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

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

(c) In the alternative, the movant and the party opposing the motion may jointly file a statement of stipulated facts if the parties agree there is no genuine issue of any material fact. Such stipulations are entered into only for

the purposes of the motion for summary judgment and are not intended to be otherwise binding.

(d) Upon filing of the Statement of Undisputed Facts and Statement of Genuine Issues, the factual record for the motion is deemed complete. Parties may not file further factual materials except with leave of the Court upon a showing that factual materials were reasonably omitted from the Statement of Undisputed Facts or Statement of Genuine Issues.

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

(a) 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."

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

(c) 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 58

ENTRY OF JUDGMENT

58.1 ENTRY OF JUDGMENT.

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

(b) Time and Manner of Entering Judgment.

(1) When a jury returns a general verdict without special interrogatories or denies all relief, or when the Court awards only costs or a sum certain, the clerk must promptly enter judgment, in favor of one party and against another party, without awaiting direction by the Court.

(2) In the text of any Order on which it is appropriate for the clerk to enter judgment, the Court will direct the clerk as to the time and manner of entering judgment. If the Court finally denies all relief in the case but gives no direction as to entry of judgment, the clerk must enter judgment without awaiting the Court's direction.

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

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 must personally deliver a proposed order to the clerk or financial deputy, who will inspect the proposed order for proper form and content and compliance with this Rule prior to signature by the judge assigned to the case.

67.2 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 must include the following:

(1) the amount to be invested;

(2) the name of the depository approved by the Treasurer of the United States as a depository in which funds may be deposited;

(3) a designation of the type of account or instrument in which the funds must be invested;

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

such income becomes available for deduction and without further order of the Court; and

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

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

67.3 ORDER FOR DISBURSEMENT OF FUNDS.

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

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

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

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

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

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

67.4 SECURITY FOR COSTS.

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

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

RULE 73

AUTHORITY OF MAGISTRATE JUDGES

73.1 REFERRAL AND ASSIGNMENT OF CIVIL CASES TO MAGISTRATE JUDGES.

(a) Referral on Filing of a New Case. Except as otherwise provided by Order, the following cases will be assigned to an Article III judge and referred to a magistrate judge upon filing. The full-time United States Magistrate Judges of the District of Montana are designated to hear:

(1) all prisoner civil rights actions, all habeas corpus actions (excluding motions filed under 28 U.S.C. § 2255 or actions for writs filed by federal prisoners), all social security actions, 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. A case will not be reassigned based on a party's change of status after filing; and

(2) all cases in which a magistrate judge's name is randomly drawn.

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

(c) Assignment. A magistrate judge designated to hear a matter will 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 after service of a notice of assignment. Only an Article III judge may enter a default judgment against a nonconsenting party.

73.2 CONSENT ELECTION WHERE CASE IS REFERRED TO A MAGISTRATE JUDGE.

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

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

(c) Notice. When a civil action has been referred to a magistrate judge, the clerk will notify the parties of such referral and advise them that they may give or withhold consent to the magistrate judge's exercise of jurisdiction. In cases that are pre-screened pursuant to 28 U.S.C. § 1915(e)(2), 28 U.S.C. § 1915A(a), 42 U.S.C. § 1997e(c), or Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the clerk will mail the notice and consent election form after all parties ordered to be served have made an appearance. In all other cases, the clerk will mail the notice and consent election form within seven (7) days of a party's appearance. At the direction of the Court, the clerk may conduct new consent elections at any time.

(d) Return of Consent Election Forms. Parties have thirty (30) days from service of the clerk's notice and consent election form to complete and return the form to the clerk. If any party's form is not received within thirty-three days after service, that party is deemed to have withheld consent. The clerk will keep custody of all consent election forms. If all parties give

consent, the case will be reassigned to a magistrate judge for all purposes, including trial and entry of judgment, pursuant to 28 U.S.C. § 636(c).

(e) Motion for Reassignment. All parties may jointly move for reassignment from an active Article III judge to a magistrate judge, based on each party's written consent as shown in the motion. The Court may, in its discretion, grant or deny such a motion.

RULE 77

CLERK OF COURT

77.1 LOCATION AND HOURS.

Offices of the Clerk of Court are maintained in the cities of Billings, Butte, Great Falls, Helena, and Missoula, and are open between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday. Except as provided in L.R. 77.2(b), all papers may be conventionally filed with the clerk in any Divisional office.

77.2 CONVENTIONAL FILING BY THE CLERK.

(a) Except as otherwise provided by these Rules, the clerk will file all papers presented for conventional filing by promptly scanning and making the documents accessible to the Clerk's Office of the Division where the case is venued.

(b) Voluminous Exhibits or Documents that Cannot Be Scanned or Filed Electronically.

(1) In a habeas or § 2255 case, any party represented by counsel must deliver one copy of voluminous exhibits to the Division where the presiding judge sits and one copy to the Missoula Division, marked to the attention of the Pro Se Unit. For purposes of this Rule, where the case has been referred to a magistrate judge, the magistrate judge is the presiding judge.

(2) In any other case, when the clerk is presented with a document or item that cannot be scanned and that is required to be filed in

another Division, the clerk will enter a notice of the party's attempt to file the document or item in the docket and the party will have a grace period of seven (7) days to deliver the document or item to the Division of venue or to another Division as directed by the clerk.

(c) Papers presented for conventional filing must be presented to the clerk and not to any judge.

77.3 NON-ELECTRONIC FILES AND RECORDS, WHERE MAINTAINED.

Non-electronic files and records in cases arising in a particular division will be maintained in the clerk's office at that division unless otherwise directed by a judge or removed to long-term storage.

77.4 CUSTODY OF NON-ELECTRONIC RECORDS AND RELEASE.

A non-electronic record or paper belonging to the files of the Court may not 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 non-electronic record or paper.

77.5 CUSTODY OF EXHIBITS AND RELEASE.

The clerk will keep custody of exhibits that are not available in CM/ECF for the duration of trial or, as to exhibits submitted in connection with a motion, until the presiding judge directs their return to the filing party. Otherwise, exhibits that are not available in CM/ECF are kept in the custody of the filing

party. In the event the exhibit is required by this or another Court after it has been returned, the filing party will be so notified.

RULE 78

HEARING MOTIONS; SUBMISSION ON BRIEFS

78.1 SUBMISSION ON BRIEFS.

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

RULE 79

RECORDS KEPT BY THE CLERK

79.1 JUDGMENTS OF BANKRUPTCY COURT.

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

79.2 AUDIO RECORDINGS OF COURT PROCEEDINGS.

If a proceeding has been recorded electronically, any person may request a copy of the recording. The person must make arrangements acceptable to the Clerk of Court to pay costs associated with copying. A recording may not be quoted or cited.

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 must, in an appropriate manner, announce the opening of court, and all persons in attendance in the courtroom must rise until the judge has taken the bench.

(b) Robes. Judges of this Court will wear judicial robes when presiding in open court.

83.2 ATTIRE.

Lawyers must 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 must 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 must 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.

(1) 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 may practice in this Court. An attorney's continued registration in the Court's CM/ECF system is not evidence of good standing.

(2) When the clerk receives notice that a member of the Bar of this Court is not in good standing, the clerk will so notify the attorney. The attorney may not thereafter practice in this Court until proof of reinstatement to good standing is filed with the clerk.

(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. Effective December 1, 2006, attorneys whose new principal employment is to represent the United States in the District of Montana are not permitted to practice under this Rule and must be members of the Bar of the State of Montana.

(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 motion to and in the discretion of the presiding judge, be permitted to appear and participate in a particular case. A pro hac vice applicant may not register in the Court's CM/ECF system until granted permission to appear pro hac vice.

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

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

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

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

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

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

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

(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.

(5) 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. Revocation of a CM/ECF log-in or password does not constitute disbarment

from the Bar of this Court or bar future registration.

(f) Duties of local counsel. Unless otherwise ordered, local counsel designated pursuant to L.R. 83.3(e) must sign all pleadings, motions and briefs. In all cases, local counsel must 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 suspend or modify the duties of local counsel, but only on a showing of extraordinary circumstances. Upon waiver of this Rule by the Court, all documents subsequently filed must be signed by counsel actively involved in the case. Upon such suspension or modification, the Court will clearly set forth the duties of local counsel. Suspension or modification 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) must 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 is the duty of an attorney to act without compensation whenever the attorney is appointed by the Court to represent an indigent person in any proceeding not covered by the provisions of 18 U.S.C. § 3006A, except as otherwise provided by statute or rule.

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

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

must be filed in the record of the case and brought to the attention of the presiding judge.

(3) A law student permitted to practice under this Rule may not be registered in the CM/ECF system.

(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 does not prevent an attorney employer, legal aid bureau, law school or governmental agency from paying compensation to the eligible law student, nor does 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) must be filed with the Clerk of Court, and, unless it is sooner withdrawn, will 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 must 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 must:

(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 may not argue the merits of the case, either to the Court or jury, except by permission of the Court, and as limited by the Court.

83.8 AGREEMENTS OF ATTORNEYS.

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

(1) it is in writing and signed by an attorney of record for the party against whom enforcement is sought; or

(2) it is in an electronic communication sent by an attorney of record for the party against whom enforcement is sought; or

(3) its existence is supported by a clerk's minutes or a court reporter's record.

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

83.9 SUBSTITUTION AND WITHDRAWAL OF COUNSEL.

(a) Substitution of Counsel. When a party changes attorneys, a notice of substitution signed by the incoming and the outgoing attorney must be

filed by the incoming attorney. The incoming attorney is responsible for ensuring that he or she is added to the case for the correct party or parties and is properly designated to receive notices of electronic filing. When the incoming attorney makes an appearance, the clerk must terminate electronic service on the outgoing attorney.

(b) Withdrawal of Counsel.

(1) When an attorney's withdrawal will leave any party without counsel for any period of time, the attorney may withdraw only by leave of Court.

(2) A motion for leave to withdraw must be accompanied by either:

(A) the client's written consent to counsel's withdrawal, signed by the attorney and the client and acknowledging the client's obligation immediately to retain new counsel or appear pro se; or

(B) an affidavit of counsel showing that:

(i) a notice of intent to file a motion to withdraw was personally served on the client at least fourteen days prior to filing the motion to withdraw;

(ii) the client has been advised of its obligation immediately to retain new counsel or appear pro se if the motion to withdraw is granted; and

(iii) facts constituting good cause support withdrawal. A showing of good cause may be made by filing an ex parte affidavit separate from the affidavit addressing

subsections (i) and (ii) above. An ex parte affidavit must be served on the client but need not be served on any other party.

(c) Criminal Cases. Counsel's representation terminates automatically, without a motion or order, when the client no longer has a statutory or constitutional right to counsel in proceedings in this Court. Counsel may, but is not required to, continue representation. When the right to counsel no longer applies in this Court, pro se filings may not be dismissed or stricken on the grounds that the filer is or was represented by counsel in this or another court.

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 must 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 must 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 may 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 may 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, must 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, one original and three copies of any conventionally filed documents must be submitted to the clerk.

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 must be filed with the order of appointment. The Court may appoint a guardian ad litem *sua sponte*.

(b) Qualifications. No person may be appointed guardian ad litem who has an interest adverse to that of the ward, or who is connected in business with the adverse party, counsel of the adverse party, or attorney, or who has not sufficient pecuniary ability to answer to the ward for any

damage or injury which may be sustained by the ward as a result of negligence or misconduct in the case on the part of the guardian ad litem.

(c) Bond. No bond is ordinarily necessary from a guardian ad litem; provided, that no such guardian may receive any money or other property of the ward until the guardian has filed with the clerk a bond in an amount to be fixed by the judge, with sufficient surety, conditioned for the faithful performance of the guardian's duties. If the guardian does not desire to receive any such money or property, it must be paid or delivered to the Clerk of Court, or to such person as may be directed by the judge, with like effect as if paid or delivered to the guardian ad litem.

83.13 STANDARDS OF PROFESSIONAL CONDUCT.

The standards of professional conduct of attorneys practicing in this Court include the American Bar Association's Model Rules of Professional Conduct and the Montana Rules of Professional Conduct. For a willful violation of any 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.

(1) 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.

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

(3) Nothing contained in this Rule may be construed to limit or deny the Court such powers as are necessary to maintain control over proceedings before it, such as contempt power. Termination of a registered user's log-in and password does not constitute discipline or disbarment and may be effected at any time without prejudice to the user's ability to file conventionally.

(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 of 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.

(1) An attorney subject to this Court's disciplinary jurisdiction must, 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 document received by the attorney.

(2) An attorney subject to this Court's disciplinary jurisdiction must, 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 will 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 will 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 will 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 may 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 will enter an order suspending the attorney from engaging in the practice of law in this District pending further order. This must 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 will 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 is 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 must 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, must be filed with the Chief Judge, and must 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 must be verified.

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

(h) Investigation Procedure.

(1) The designated investigators must conduct such investigation as is warranted by the circumstances and 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 must include copies of statements of witnesses, all documentary evidence relative to the complaint, and a summary of findings.

(3) No report may 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 must be attached to the investigation report.

(4) The report, or the investigators if they disagree, must 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 will be dismissed.

(2) If, after review of the investigation report, the Chief Judge determines that a sanction is warranted but further proceedings are not, the Chief Judge may make an appropriate disposition with the agreement of the attorney so disciplined.

(3) If, after review of the investigation report, the Chief Judge determines the matter warrants further consideration, the Chief Judge will 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 must 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) must be randomly assigned.

(3) Counsel is authorized to conduct further investigation as necessary regarding the alleged misconduct of the respondent attorney and is 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 are instituted by the filing of a complaint, which must be sufficiently clear and specific to inform the respondent attorney of the alleged misconduct. A copy of the complaint must be served, in conformity with Fed. R. Civ. P. 4, upon the respondent attorney.

(2) *Case Management.* After the complaint is filed and a judge assigned, the Court will 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 must 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 must 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 must 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 must 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 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 must be filed with the Chief Judge. Upon receipt of a petition, the Chief Judge will set the matter for hearing by the Chief Judge or other designated judge. At such hearing, the petitioner has the burden of demonstrating that he or she is qualified to practice law in the District. Following the conclusion of the hearing, the Court will 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) Civil Pro Bono Panel.

(1) The Civil Pro Bono Panel is the Court's resource for identifying those members of the Bar of this Court who are willing to make a pro bono contribution to the District of Montana. Names of Panel members may not be publicly disclosed or disseminated.

(2) An attorney may participate on the Panel by writing to the Chief Judge a letter setting forth:

(A) the attorney's number of years in practice, including any particularly relevant litigation background or law school preparation; and

(B) the attorney's preference for appointment among various types of actions (e.g., social security appeals, employment discrimination actions, civil rights actions, habeas corpus).

(3) An attorney may, by letter, withdraw from the Panel at any time.

(4) Participation on the Panel is not a prerequisite to appointment. The Court's practice will be to contact counsel before appointment to determine counsel's ability and willingness to

accept appointment. However, the Judge has discretion to select any member of the Bar of this Court.

(b) Request for Counsel.

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

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

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

(1) The potential merit of the claim or claims;

(2) The nature and complexity of the action, both factual and legal, including the need for factual investigation and expert witnesses;

(3) The likelihood of conflicting testimony calling for a lawyer's presentation of evidence and cross-examination;

(4) The party's ability to prepare and present the case pro se;

(5) The party's inability to obtain counsel by other means;

(6) The extent to which the interests of justice will be served by appointment of counsel, including the benefit the Court may derive from counsel's assistance;

(7) The extent to which counsel might be appointed for a limited purpose rather than full representation; and

(8) Any other factors relevant to the exercise of the Court's discretion.

(d) Selection and Appointment.

(1) When the Judge concludes that appointment is warranted, an attorney or firm will be selected by the Judge.

(2) The Judge will issue an Order:

(A) appointing an individual attorney;

(B) staying proceedings for at least forty-five (45) days; and

(C) setting a deadline for the parties to file, jointly or separately, a status report setting forth a proposed plan and schedule for disposition of the remainder of the case.

(3) The clerk will immediately provide to appointed counsel courtesy copies of the order of appointment and all documents filed in the case prior to the date of appointment.

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

(f) Notice of Appearance. Within seven (7) days of entry of the Order

Appointing Counsel, the appointed attorney must file a Notice of Appearance.

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

(1) conflict of interest;

(2) personal incompatibility or a substantial disagreement on litigation strategy or tactics;

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

(4) any other basis that, in the discretion of the presiding Judge, justifies withdrawal.

(h) Expenses.

(1) Counsel must seek payment of costs from the adverse party if entitled to do so.

(2) With prior approval of the Court on a properly documented motion, counsel may obtain reimbursement for expenses reasonably incurred by appointed counsel or by counsel associated by appointed counsel. Reimbursement may be made from the Non-Appropriated Funds in an amount up to $3,000.00. Reimbursement for expenses over $3,000.00 must be approved by

the Committee on Non-Appropriated Funds.

(3) The Court will not reimburse counsel:

(A) for costs personally taxed against appointed counsel or paid by the adverse party; or

(B) where a judgment or settlement was obtained for at least $6,000.00.

(4) Reimbursement will generally be made at the conclusion of the representation. Where reimbursement is made on an interlocutory basis and appointed counsel later obtains a judgment or settlement of at least $6,000.00, counsel must reimburse the Court for costs it has already paid to counsel.

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

CHAPTER III.
CRIMINAL RULES

CR 1

SCOPE

CR 1.1 SCOPE OF CHAPTER III.

This chapter applies in all criminal proceedings in the District of Montana. Chapter I and Local Rules 5.2, 6, 7.1(c), 7.2, 7.3, 7.4, 10, 48.2, 77, 79.2, and 83 also apply to criminal proceedings to the extent they are not inconsistent with federal law or with other Local Rules in this chapter.

RULE CR 6

GRAND JURY

CR 6.1 WHEN AND WHERE IMPANELED; SECRECY.

(a) Grand juries are impaneled and 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) 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 has full power to act in all matters pertaining to the Grand Jury.

RULE CR 11

PLEAS

CR 11.1 PLEA AGREEMENTS.

Any party wishing to file a plea agreement under seal must comply with Rule 1.8.

RULE CR 12

MOTIONS – NOTICE AND OBJECTIONS

CR 12.1 MOTIONS.

(a) Briefing Schedule. A motion must be accompanied by a brief in support filed at the same time as the motion. Briefs in support of a motion must be filed separately from the motion. An adverse party may file a response within fourteen (14) days after the motion is filed. The moving party may file a reply within seven (7) days after the response is filed. A motion is deemed ripe for ruling after the response is filed. Oral argument may be ordered by the Court on its own or a party's motion.

(b) Length. Briefs in support of a motion and response briefs are limited to 6500 words, excluding caption and certificates of service and compliance. Reply briefs are limited to 3250 words, excluding caption and certificates of service and compliance. A party may not exceed these word limits without prior leave. Any brief that exceeds standard limits must include 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 may be deemed an admission that, in the opinion of counsel, the motion is without merit. Failure to file a brief by the adverse party may be deemed an admission that, in the opinion of counsel, the motion is well-taken.

(d) Submission by Fax. Except as otherwise provided in these Rules or in an order, documents may not be transmitted by fax, e-mail, or any electronic means other than the CM/ECF system for filing with the Court.

(e) Certificate of Compliance. Briefs must include a certificate of compliance that the brief complies with the word limits of this rule. The certificate must state the number of words in the brief, excluding caption and certificates of service and compliance. The signer of the certificate may rely on the word count of a word-processing system used to prepare the brief.

CR 12.2 NOTICE TO OPPOSING PARTIES AND OBJECTIONS.

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

RULE CR 17

SUBPOENAS AND WRITS

CR 17.1 OBTAINING PRESENCE OF INCARCERATED PERSON.

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

CR 17.2 SUMMONS AND SUBPOENAS.

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

RULE CR 17.1

PRETRIAL CONFERENCES

CR 17.1.1 WHEN PRETRIAL CONFERENCE HELD.

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

CR 17.1.2 SETTLEMENT CONFERENCES IN COMPLEX CRIMINAL CASES.

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

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

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

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

later request is permitted by the trial judge.

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

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

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

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

(g) Conduct of Conference.

(1) *Availability of Defendant.* The defendant may not be present during settlement discussions, unless otherwise ordered by the settlement judge. However, the defendant must be available (A) in the courtroom of the settlement judge, if the defendant is on pretrial release, or (B) in the Marshal's lock-up, if the defendant is under pretrial detention, unless the defendant's availability is

waived by the settlement judge.

(2) *Criminal History.* If so requested by either counsel at least fourteen (14) days before the settlement conference, the probation officer, without order of the Court, must provide a summary of the defendant's criminal history to both counsel within seven (7) days of the request.

(3) *Non-Recordation.* The settlement conference may not be reported, unless requested by the defendant and consented to by the settlement judge. If the defendant requests that the conference be reported and the settlement judge does not concur, the conference must be terminated.

(4) *Written Agreement.* If a settlement is agreed to by both counsel and approved by the defendant, the plea agreement must be reduced to writing and executed by the parties within 24 hours of the settlement conference.

(h) Restrictions on Participants.

(1) *Settlement Judge.* The settlement judge may not conduct any other proceedings in the case and must not communicate any of the substance of the settlement discussions to the trial judge, except as provided in paragraph (3)(D) below.

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

(3) *Counsel.* Neither counsel may disclose the substance of the settlement discussions or the comments and recommendations of

the settlement judge to the trial judge, except as provided for by this Rule.

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

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

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

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

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

CR 17.1.3 CONTINUANCES.

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

RULE CR 24

TRIAL JURORS

CR 24.1 IMPANELING A TRIAL JURY.

(a) Examination of Jurors.

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

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

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

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

(1) From the jury panel 12 jurors, plus the number of alternate jurors who are to be impaneled, plus a number of jurors equal to the total number of peremptory challenges which are allowed by law will be called in the first instance. These jurors constitute the initial panel. As the initial panel is called the clerk will assign numbers to the jurors in the order in which they are called. If any juror in the initial panel is excused for cause, an additional juror must be immediately called to fill out the initial panel. A juror

called to replace a juror excused for cause takes the number of the juror who has been excused. When the initial panel is filled, the parties will exercise their peremptory challenges as provided by these Rules. When peremptory challenges have all been exercised or waived, the clerk will call the names of the 12 prospective jurors having the lowest assigned numbers. These jurors constitute the trial jury.

(2) Alternate jurors, if any, must be selected pursuant to the procedures of Fed. R. Crim. P. 24(c).

(3) In criminal cases in which the government has six (6) and the defense ten (10) challenges, they will be exercised in the following order: the first by the government, the second by the defense, the next by the Government, the next two (2) by the defense, the next by the government, the next two (2) by the defense, the next by the government, the next two (2) by the defense, the next by the government, the next two (2) by the defense, the next by the government, and the last by the defense. The passing of a peremptory challenge by either party is the equivalent of a challenge. After all challenges have been taken, the jury will be sworn.

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

RULE CR 26

TRIAL

CR 26.1 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 may be examined unless leave is first obtained. The Court retains the authority under Fed. R. Evid. 102, 403, and 611 to limit the number of expert witnesses during trial.

RULE CR 30

JURY INSTRUCTIONS

CR 30.1 REQUESTS FOR INSTRUCTIONS TO JURY.

Jury instructions must be filed in accordance with the terms of the Scheduling Order entered in the case.

RULE CR 46

BAIL

CR 46.1 SECURITY.

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

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

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

CR 46.2 PERSONS NOT TO ACT AS SURETIES.

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

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

RULE CR 49

SERVING AND FILING PAPERS

CR 49.1 CONSEQUENCES OF ELECTRONIC FILING.

(a) Orders. All orders, decrees, judgments, and proceedings of the Court will be electronically filed. Such filing constitutes entry on the clerk's docket. Orders may also be made solely by an entry on the docket. Transmission of the Notice of Electronic Filing constitutes the notice and service required by the Federal Rules of Criminal Procedure. The clerk will print the Notice of Electronic Filing and attach it to any document that is conventionally served. Any order, decree, judgment, or other proceeding of the Court that is filed electronically without the original signature of the judge or clerk has the same force and effect as if the judge or clerk had signed a paper document that was filed and served in the conventional manner.

(b) Other Documents. Filing of any document in the Court's CM/ECF system, together with transmission of a Notice of Electronic Filing, constitutes entry of the document on the clerk's docket and filing of the document for all purposes. Transmission of the Notice of Electronic Filing constitutes the service required by the Federal Rules of Criminal Procedure. Documents that must be conventionally served must be accompanied by a printed copy of the Notice of Electronic Filing.

(c) Certificate of Service. All documents that are not generated by the Court and that are conventionally filed must include a conventional certificate of service.

CR 49.2 MOTIONS UNDER 28 U.S.C. § 2255.

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

RULE CR 58

MISDEMEANORS

CR 58.1 FIXED SUMS PAYABLE IN LIEU OF APPEARANCE.

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

CR 58.2 APPEAL FROM JUDGMENT OF UNITED STATES MAGISTRATE JUDGE.

(a) An appeal from a judgment of a United States Magistrate Judge lies pursuant to Fed. R. Crim. P. 58 and 18 U.S.C. § 3402.

(b) In processing the appeal, the clerk must 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.

APPENDIX A

SAMPLE FORMS

Additional forms may be available on the Court's website.

FORM A
NOTICE OF CONVENTIONAL FILING OF DOCUMENT OR ITEM
L.R. 1.6(f)

John E. Attorney
Attorneys R Us, P.C.
1234 Main Street
Billings, MT 59101
ph. (406) 000-0000
fax (406) 000-1111
AttRUs@AttRUs.com
Attorneys for Defendant Smith

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

TWO DOT DIVISION

MARY BROWN, Plaintiff, vs. JENNIFER JONES; PAUL SMITH; DAN WEBSTER, Defendants.	Case No. CV 99-316-TD-XYZ DEFENDANT SMITH'S NOTICE CONVENTIONAL FILING OF DOCUMENT OR ITEM

Please take notice that Defendant Smith, a registered CM/ECF user, has conventionally filed the architect's original hand drawings of the

Brown house . The document(s) or item(s) is/are not available in electronic form. The document(s) or item(s) has/have not been filed electronically because:

___ scanning is not practicable;

___ the electronic file exceeds ____ megabytes in size;

___ a court order excuses conventional filing;

_X_ the filing is exempted under Local Rule 7.2(b)(2)(B);

____ the filer experienced the following technical difficulties, as shown by the attached documentation:

_____

_____.

DATED this 5 day of December, 20 05 .

/s/ John E. Attorney
Attorney for Defendant Smith

FORM B
NOTICE REGARDING ELECTRONIC SERVICE
L.R. 5.2(a)

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

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

TWO DOT DIVISION

MARY BROWN, Plaintiff, vs. JENNIFER JONES; PAUL SMITH; DAN WEBSTER, Defendants.	Case No. CV 99-316-TD-XYZ PLAINTIFF BROWN'S NOTICE REGARDING ELECTRONIC SERVICE

__X__ I agree that all other parties to this litigation may serve me electronically with copies of all documents filed with the Court or served without being filed in the course of this action.

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

___ fax to [fax number] _____.

_X_ e-mail to [e-mail address] _janed@anonylaw.com_, limited to documents created in the following document and word processing formats:
PDF and WordPerfect.

___ both fax to _____ and e-mail to _____, limited to documents created in the following document and word processing formats:
_____.

_____ I revoke my previous consent to accept electronic service, which was filed in this case on
_____, 20___.

DATED this _8_ day of __December__, 20_05_.

_[conventional hand signature]___
Jane Doe
Attorney for Plaintiff

FORM C
NOTICE OF APPEARANCE
L.R. 12.2

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

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

TWO DOT DIVISION

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

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

DATED this 17 day of December, 20 05.

/s/ James Doe
Attorney for Defendant Jones

FORM D
PROPOSED FINAL PRETRIAL ORDER
L.R. 16.4

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

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

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

TWO DOT DIVISION

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

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

I. Nature of Action.

This is a negligence claim against Westbest Nursing Home that arises out of the injury and death of Mary Jones. Plaintiff claims the nursing home was negligent in physically restraining and then over-medicating Mary Jones. Mary Jones died when she became entangled in restraints caused by a medically induced disorientation.

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

II. Jurisdiction and Venue.

Mary Jones is a citizen of the State of Montana. Westbest Nursing Home is a corporation organized under the laws of Oregon having its

principal place of business in Oregon. Subject matter jurisdiction is based upon Diversity of Citizenship, 28 U.S.C. § 1332. Personal jurisdiction is not questioned. Venue is proper in the Missoula Division as the incident occurred in Polson, Montana. L.R. 1.9(e), 1.11(a)(2).

III. Jury.

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

IV. Agreed Facts.

The following facts are agreed upon and require no proof:

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

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

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

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

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

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

V. Elements of Liability.

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

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

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

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

staff.

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

VI. Defense Elements.

The following are elements of defenses asserted by Defendant:

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

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

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

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

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

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

VI. Relief Sought.

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

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

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

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

(d) Wrongful death $150,000.00.

(e) Survivorship $75,000.00.

VII. Legal Issues.

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

IX. Dismissals.

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

X. Witnesses.

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

(a) Plaintiff's will-call witnesses;

(b) Plaintiff's may-call witnesses;

(c) Defendant's will-call witnesses;

(d) Defendant's may-call witnesses.

XI. Exhibits.

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

(a) Plaintiff's will-offer exhibits;

(b) Plaintiff's may-offer exhibits;

(c) Defendant's will-offer exhibits;

(d) Defendant's may-offer exhibits.

XII. Discovery Documents.

Plaintiff will offer the following discovery documents:

(a) Defendant's Answers to Interrogatories

No. 1

No. 13

No. 20 (a), (b)

(b) Defendant's Responses to Requests for Admission

No. 3

No. 9

No. 15

(c) Defendant's Responses to Requests for Production

No. 7 (with attached documents)

Defendant will offer the following discovery documents:

(a) Plaintiff's Answers to Interrogatories

No. 17

No. 23

(b) Plaintiff's Responses to Requests for Admission

No. 10

No. 11

XIII. Deposition Excerpts and Summaries.

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

XIV. Estimate of Trial Time.

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

This Order supersedes the pleadings in this matter.

Dated this ____ day of _____, 20__.

_____
Xavier Yanni Zanthopoulos
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

/s/ Jane Doe
Attorney for Plaintiff Brown

/s/ James Doe
Attorney for Defendant Jones

FORM E
ONE PARTY'S WITNESS LISTS
L.R. 16.4(b)(10)

DEFENDANT'S WITNESS LIST - WILL CALL

Case Name: Jones v. Westbest Nursing Home
Case Number: CV 00-001-TD-XYZ

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

DEFENDANT'S WITNESS LIST - MAY CALL

Case Name: Jones v. Westbest Nursing Home
Case Number: CV 00-001-TD-XYZ

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

FORM F
ONE PARTY'S EXHIBIT LISTS
L.R. 16.4(b)(11)

PLAINTIFF'S EXHIBITS – WILL OFFER

Case Name: Jones v. Westbest Nursing Home
Case Number: CV 00-001-TD-XYZ

#	Description	Δ's Objection	Date Offered	Date Admitted	Date Refused	Date Reserved
1	Incident Report No. 389789, Officer Ruffian					
24	Video: nursing home room, without narrative	Rule 401				
107	Photograph of Plaintiff's bed and restraints					
329	Video: A Day in the Life of Westbest Residents	Rule 403; Rule 801; Rule 802; Rule 26(a)(2)(B)&(C)				

507	Westbest employee's handbook, pages 2-16 through 2-30	Rule 401; Rule 402; *Yaeger v. Deane*				
---	Impeachment & Rebuttal Exhibits					

PLAINTIFF'S EXHIBITS – MAY OFFER

Case Name: Jones v. Westbest Nursing Home
Case Number: CV 00-001-TD-XYZ

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

FORM G
MOTION BY ATTORNEY FOR LEAVE TO FILE CONVENTIONALLY
L.R. 1.6(d)

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

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

TWO DOT DIVISION

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

I, Clarence Darrow, hereby move the Court for leave to file

documents conventionally in this case because:

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

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

_X_ I and/or my staff have not yet taken the Court's CM/ECF training. An appointment will be scheduled and kept.

____ of the following special circumstances: _____

_____

_____.

DATED this _16_ day of _January_, 20_07_.

_[conventional hand signature]___
Clarence Darrow
Attorney for Defendant Webster

FORM H
CERTIFICATE OF SERVICE
L.R. 5.2(b)

CERTIFICATE OF SERVICE

I hereby certify that, on 12/16/05, a copy of the foregoing document was served on the following persons by the following means:

1, 3 CM/ECF
_____ Hand Delivery
2 Mail
_____ Overnight Delivery Service
_____ Fax
4 E-Mail

1. Clerk, U.S. District Court

2. Clarence Darrow
Darrow & Kunstler, PLLC
24 Main St.
Two Dot, MT 59085
Attorney for Defendant Webster

3. John E. Attorney
Attorneys R Us, P.C.
Attorneys for Defendant Smith

4. Jane Doe
janed@anonylaw.com
Attorney for Plaintiff Brown

/s/ James Doe
Attorney for Defendant Jones

FORM I
WITNESS INFORMATION SHEET

WITNESS INFORMATION SHEET

Thomas Q. Testifier
Polson, Montana

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

Date of statement: 02-16-2002

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

514
515
519
521
533

APPENDIX B

ABBREVIATED INDEX