RULE 3. COMMENCEMENT OF ACTION.

3.3 VENUE [proposed amendment in subsection (a)]**.**

(a) Civil Cases.

(1) ~~All~~ Except in habeas cases, all civil cases are assignable to any Division containing a county in which venue would be proper under the laws of the State of Montana. . . .

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

(3) Prisoner civil rights cases shall be venued according to the residence of one or more of the Defendants.

(~~2~~ 4) A Complaint's designation of a Division . . . .

(~~3~~ 5) At the time of appearance, any defendant . . . .

3.6. PRE-FILING REQUIREMENTS [NEW]**.**

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

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

(c) Any complaint or petition not submitted simultaneously with either the full filing fee, pursuant to subsection (b), or an affidavit or Application to Proceed *In Forma Pauperis*, pursuant to subsection (a), may be returned without filing or other record of its submission. Filing fees,

affidavits, or Applications received after a complaint has been returned shall be promptly returned to the plaintiff or other sending authority.

3.7 PRIVACY POLICY [NEW]**.**

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

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

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

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

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

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

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

RULE 4. SERVICE OF PROCESS AND PAPERS.

4.5. TIME LIMIT FOR SERVICE [NEW].

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

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

RULE 5. SERVICE AND FILING.

5.3. ELECTRONIC SERVICE [amendment]**.**

~~If parties agree to the procedures for electronic service in Federal Rule of Civil Procedure 5, parties shall file a signed written agreement with the Court setting forth details of the procedures agreed upon.~~ In its first appearance in any action, each represented party shall file with the Court and serve on all other parties a Notice Regarding Electronic Service. Electronic service is only permitted when the party being served, whether represented by counsel or acting pro se, has executed the following or similar notice on or prior to the date the document is electronically served. If a party wishes to revoke such consent, the party shall file written notification with the Court. Substitution of counsel operates as a revocation of consent.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

MISSOULA DIVISION

MARY JONES, Plaintiff, vs. WESTBEST NURSING HOME, Defendant.	)	CV 03-00-M-DWM **NOTICE REGARDING ELECTRONIC SERVICE PURSUANT TO L.R. 5.3**

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

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

___ facsimile transmission to [facsimile number].

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

___ both facsimile transmission to [facsimile number] and electronic mail at [electronic

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

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

OR

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

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

5.4. ADDRESS CHANGES [NEW]**.**

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

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

_____

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

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

RULE 7. MOTION PRACTICE.

7.1 MOTIONS [amendment to (c), NEW subsections (k) and (l)]**.**

. . .

(c) Upon serving and filing a motion, or within five (5) days thereafter, the moving party shall serve and file a brief. The five-day grace period does not apply in proceedings under L.R. 56.2. Briefs on motions shall contain an accurate statement of the questions to be decided, set forth succinctly the relevant facts and the argument of the party with supporting authorities, and be not longer than twenty (20) pages, exclusive of exhibits, table of contents, and certificate of service.

. . .

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

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

7.2 MOTIONS FOR RECONSIDERATION [NEW].

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

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

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

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

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

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

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

RULE 10. FILINGS.

10.1 FORM OF PAPERS [amendment to subsection (a)]**.**

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

. . .

10.2 FORM OF FILINGS [amendment to subsection (a)]**.**

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

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

(2) mailing and physical address;

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

(4) facsimile number, if available;

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

(~~5~~ 6) the party's name and interest in the litigation (i.e. plaintiff, defendant, etc.).

. . .

10.3 COPIES TO BE FURNISHED TO CLERK [amendment to subsection (b)]**.**

. . .

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

. . .

10.4. CITATION FORM [amendment to subsection (a)]**.**

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

. . .

10.5. SANCTIONS [amendment]**.**

If any filings do not comply with L.R. 10, the clerk shall bring the failure to comply to the attention of the filing party and to the presiding judge. The Court may sanction a violation of L.R. 10. ~~only by imposition of a fine against the attorney or a party proceeding pro se.~~

RULE 12. ANSWERS AND MOTIONS.

12.1. RESPONDING TO PRISONER-PLAINTIFFS -- WAIVER OF REPLY [NEW]**.**

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

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

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

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

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

meaning of 42 U.S.C. § 1997e(g)(2), and that the Complaint is not, on its face, frivolous or malicious, and that it does not seek solely monetary relief against a defendant who is immune from such relief, all within the meaning of 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). If the Court has ordered service, or if the Court has ordered a response to the Complaint, filing of a Waiver of Reply in lieu of an Answer or other appropriate motion is not permitted and may result in the entry of default and/or default judgment.

RULE 56. SUMMARY JUDGMENT.

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

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

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

> The Court requires this Notice and Warning to be given to all *pro se* prisoner litigants when an opposing party files a motion for summary judgment.
>
> Defendant _____ [name defendant, or state "all defendants"] has/have moved for summary judgment by which [appropriate pronoun] seek[s] to have your remaining claims dismissed and judgment entered against you. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case [as to the following claims: _____].
>
> Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact – that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations or other sworn testimony, you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in the other party's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, judgment will be entered against you and there will be no trial.
>
> Additionally, a local rule of the District of Montana, D. Mont. L. R. 56.1(b), requires that "[a]ny party opposing a motion for summary judgment must

file a Statement of Genuine Issues setting forth the specific facts, if any, that establish a genuine issue of material fact precluding summary judgment in favor of the moving party."

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

(d) Definition of "Prisoner-Plaintiff." Regardless of whether the person is represented by counsel or appears *pro se*, any plaintiff who is incarcerated or detained in any facility, and who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, 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 77. CLERK OF COURT.

77.2 FILING BY THE CLERK [amendment to subsection (a)]**.**

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

RULE 83. DISTRICT COURT RULES AND DIRECTIVES.

83.5. ATTORNEY UNDER APPOINTMENT OF COURT [amendment in (a)]**.**

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

(b) Gratuities. . . .

83.15. *PRO SE* LITIGANTS [NEW]**.**

(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 [NEW]**.**

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

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

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

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

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

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

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

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

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

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

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

(c) Appointment Procedure.

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

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

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

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

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

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

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

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

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

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

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

(F) whether counsel is mandated by law;

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

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

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

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

(7) When the action involves a petition for habeas corpus filed by a *pro se* party, the appointment, if any, may be made from either the Pro Bono Panel, the Federal Defenders of Montana, or the Criminal Justice Act Panel of Attorneys.

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

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

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

(d) Relief from Appointment.

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

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

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

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

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

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

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

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

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

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

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

(e) Discharge.

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

(2) When such a request is supported by good cause (e.g., substantial disagreement between the party and the appointed attorney on litigation strategy), the Judge shall forthwith issue an order discharging the appointed attorney from further

representation of the party in the action. In such cases, the Judge may issue a further order directing appointment of another attorney to undertake the representation, in accordance with the provisions of Rule 2. The Judge shall have discretion not to issue a further order of appointment in such cases. Where a party requests discharge of a second appointed attorney, no additional appointments shall be made.

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

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

(g) Compensation for Services.

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

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

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

(h) Duration of Representation.

(1) An appointed attorney shall represent the party in the action in the trial court from the date he or she enters an appearance until he or she has been relieved from

appointment by the Court according to the provisions of subsections (d) or (e), or until a final judgment is entered in the action.

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

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

(i) Educational Panels.

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

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

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