



# LOCAL RULES AMENDMENTS 2023

07/27/2023

CIVIL LOCAL RULES	EXPLANATION OF AMENDMENTS	
LR 1.1—Scope of Local Rules	<p><b>(b)</b> Chapter I governs civil proceedings. Chapter II, which incorporates this rule, <u>L.R. 5.1</u>, L.R. 48.2, and portions of L.R. 83, governs criminal proceedings. Amendments become effective on the date set forth in the order adopting the amendments.</p> <p><i>Reasoning: Consolidating LR 5.1 with CR 47.3 and incorporating LR 5.1 into criminal rules since the manner and means of filing with the Clerk should be the same regardless of whether it is a criminal case or a civil case.</i></p>	p.1
LR 1.3(c)—Broadcasting Prohibited	<p><b>(c) Broadcasting Prohibited.</b> Inside the courthouses of this District, broadcasting is prohibited, regardless of technology or medium. District and magistrate judges <u>presiding over civil cases</u>, may however, <u>provide the public with live audio access to non-trial proceedings that do not involve witness testimony</u>. <del>participate in pilot programs established by the Judicial Conference of the United States for purposes of livestreaming audio or video of specified court proceedings.</del></p> <p><i>Reasoning: Effective September 22, 2023, the Judicial Conference of the United States allows a judge presiding over a civil non-trial proceeding to, in the judge’s discretion, authorize live remote public audio access to any portion of that proceeding in which a witness is not testifying. This policy does not create any right of any party or the public to live remote public audio access to any proceeding.</i></p>	p.4
LR 1.3(d)(2)—Cameras and Personal Electronic Devices—Prohibited Uses	<p><b>(A)</b> Photography, videorecording, audio recording, broadcasting, and transmission of court proceedings and courthouse spaces is strictly prohibited <u>unless specifically allowed by written order or permission of the District executive/clerk of court.</u></p> <p><i>Reasoning: Codifies current practice.</i></p>	p. 4



L.R. 1.4(b)(6)— Means of Filing— Electronic Filing	<p>(6) <i>Attorney Exemption.</i> An attorney may seek leave to file nonelectronically by filing <u>a motion for leave to file nonelectronically Form G</u> at the first appearance in the case. The clerk will not serve an attorney by mail unless leave is granted. <u>A form motion for this purpose can be found on the court’s website.</u></p> <p><i>Reasoning: Deleted Form G. No need to have form attached to Local Rules if it is available on the website.</i></p>	p. 7
LR 3.1—Filing a New Case	<p><u>(g) Judge Notification. The clerk of court shall immediately notify any judge, magistrate judge, or bankruptcy judge named as a defendant in any lawsuit filed within this District and send a copy of the pleadings to the judge involved on the same day that such pleadings are received in the clerk’s office for filing.</u></p> <p><i>Reasoning: Incorporates Standing Order JFB-26.</i></p>	p. 11
LR. 4.1—Issuance and Service of Process	<p>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. The clerk will issue summons for <del>pro se</del> plaintiffs proceeding <u>under 28 U.S.C. § 1915 and 28 U.S.C. § 1915A in forma pauperis</u> only if directed to do so by the court.</p> <p><i>Reasoning: The reference to “pro se” has been removed because the Court must screen all complaints filed pursuant to 28 U.S.C. § 281915 and 28 U.S.C. § 1915A, even if a party has counsel or has paid the filing fee.</i></p>	p. 14
LR 5.1(b) Filing with the Clerk—Exhibits	<p><b>(b) Exhibits.</b></p> <p>(1) <u>Identification. Exhibits must be identified and electronically filed so as to allow the court and the parties to locate easily and refer unambiguously to a specific page of a specific exhibit.</u></p> <p>(2) <u>Excerpted Material. Excerpted material must be prominently identified as such.</u></p> <p>(3) <u>Mandatory Electronic Filing of Trial/Hearing Exhibits.</u> Unless otherwise ordered by the court, within ten days of the conclusion of a hearing or trial, a party must file in CM/ECF an electronic version of each documentary exhibit <u>admitted into evidence. that the party offered or introduced into evidence.</u></p>	p. 16



	<p><del>For purposes of this rule, only exhibits which were considered by the judge or jury during the hearing or trial need be filed.</del></p> <p><del>(42)</del> <b>Redaction.</b> Before electronically filing <u>such</u> exhibits, the filer must review each exhibit and redact any sensitive, confidential, or private information in accordance with Fed. R. Civ. P. 5.2, Fed. R. Crim. P. 49.1, the E-Government Act of 2002, and the Guide for Filing in the District of Montana or seek an order from the court either to seal the exhibit or to exempt the exhibit from electronic filing and service. Copies of any items filed under this rule shall also be served pursuant to Fed. R. Civ. P. 5(b)(2) <u>and Fed. R. Crim. P. 49</u> on any pro se parties.</p> <p><i>Reasoning: These changes make Civil LR 5.1(b) consistent with Criminal LR 47.3 so LR 5.1(b) can be incorporated into the criminal local rules and CR 47.3 can be omitted. Therefore,</i></p> <ul style="list-style-type: none"> <li>• <i>Incorporated paragraphs (a) and (b) from CR 47.3 into LR 5.1(b).</i></li> <li>• <i>Clarified that paragraph 3 refers to mandatory electronic filing of trial/hearing exhibits.</i></li> <li>• <i>Inserted Fed.R.Crim.P 49 regarding service on pro se parties.</i></li> </ul>	
LR 5.4—Emergency Filings	<p><b>5.4 Emergency Filings--<del>Withdrawn</del></b></p> <p><del>(a) Definition. For purposes of these Rules, “emergency filings” refers to any filing seeking injunctive relief before the next business day, without which the filing party alleges it will suffer an irreparable injury.</del></p> <p><del>(b) During Business Hours (8 am – 5 pm Mountain Time). File emergency pleadings using the Emergency Filing event in CM/ECF. After pleadings are electronically filed, the filer must call the clerk’s office to advise the court of the nature of the filing.</del></p> <p><del>(c) Outside of Business Hours (5 pm – 8 am Mountain Time). If the nature of the emergency requires immediate judicial action outside of normal business hours, file the pleading using the Emergency Filing event. Answer “yes” when prompted about the timing of the filing. Emergency filings shall be monitored periodically 24 hours a day.</del></p> <p><del>(d) Emergency Filings by Pro Se Filers. Pro se filers must bring their emergency filings to the clerk’s office during regular business hours.</del></p>	p. 21



	<p><del>(e) <b>Judge Assignment.</b> The court will designate a rotating on-call judge to decide emergency filings. The on-call judge shall preside over the case and issue any necessary orders prior to the next business day. On the next business day, the clerk of court shall re-assign any matter initiated via emergency filing in accordance with appropriate wheel assignment procedures and the judge to whom such matter is re-assigned shall preside over all further proceedings in the case.</del></p> <p><i>Reasoning: There is a proposal to withdraw this rule because it has not been used for its intended purpose and has been abused by litigants in existing cases. The rule was put in place to allow parties to seek emergency relief in situations where irreparable harm might otherwise occur before the next business day, with election disputes serving as the specific impetus. Instead of this local rule, the Court will provide ad hoc instructions for emergency filings on the court website during election season.</i></p>	
<p>New Conflict rule LR 7.1-1</p>	<p><b><u>7.1-1 Notice of Additional Interested Parties</u></b></p> <p><u>(a) Counsel for all non-governmental parties must file with their first appearance a Notice of Interested Parties, which must list all persons, associations of persons, firms, partnerships, and corporations (including parent corporations, clearly identified as such), other than the parties and their immediate families, that may have a financial interest in the outcome of the proceeding, including any insurance carrier that may be liable in whole or in part (directly or indirectly) for a judgment in the action or for the cost of defense.</u></p> <p><u>(b) A corporate party may include in the Notice filed under this L.R. 7.1-1 any disclosures required under Fed.R.Civ.P. 7.1; if this information is included in the corporation's Notice of Interested Parties, the corporation is not required to file a separate Disclosure Statement under Fed.R.Civ.P. 7.1.</u></p> <p><u>(c) All parties have a continuing duty to supplement this Notice.</u></p> <p><u>(d) For purposes of this Rule, the terms “proceeding” and “financial interest” shall have the meaning assigned by 28 U.S.C. § 455 (d)(1), (3) and (4), respectively.</u></p>	<p>p. 22</p>



	<i>Reasoning: The Ninth Circuit Committee on Conflict Screening has recommended that district courts consider adopting a local rule requiring parties to provide additional information to assist in the identification of conflicts.</i>	
LR 7.1(c)(3)(B)	(B) be e-mailed to the <u>presiding</u> judge in <del>WordPerfect</del> , Word format so <del>that</del> the judge may alter it;  <i>Reasoning: The court no longer supports the WordPerfect format.</i>	p. 23
LR. 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. <del>Form C, Notice of Appearance in an In Forma Pauperis Action, may be used for this purpose.</del>  <i>Reasoning: Form C is being omitted as unnecessary.</i>	p. 30
LR 16.5(b)(6) Alternative Dispute Resolution—names of available mediators	<del>(6) Available Mediators and Evaluators. Names of available mediators and evaluators are available on the court’s website.</del>  <i>Reasoning: We are removing the list of mediators from the court’s website and therefore need to remove reference to the list of mediators in the local rules.</i>	p. 40
LR 48.1 Communications with Trial Jurors	<b><u>48.1 Communications with Trial Jurors.</u></b> <b><u>(a) Before or During Trial.</u></b> <u>No person involved with the case may communicate with, or cause anyone else to communicate with, a juror, a prospective juror, or a juror’s or prospective juror’s family member.</u> <b><u>(b) After Trial.</u></b> <b><u>(1)</u></b> <u>Neither parties nor counsel may interview jurors unless, within 28 days after entry of judgment, a party files:</u> <b><u>(A)</u></b> <u>proposed written questions to be asked of the jurors;</u> <b><u>(B)</u></b> <u>an affidavit showing good cause; and,</u> <b><u>(C)</u></b> <u>if granted leave, a second affidavit showing the results.</u> <b><u>(2)</u></b> <u>Unless otherwise ordered by the court, a juror or prospective juror may decline to communicate with anyone concerning a trial in which the juror was involved.</u>	p. 50



	<p><i>Reasoning: The Court’s withdrawal of LR 48.1 and CR 24.2 in 2022 seems to have created confusion among practitioners regarding acceptable behavior in contacting jurors after trial. While there is no district-wide regulation, some judges have continued to impose restrictions by order or jury instruction at trial. Following instances in which practitioners have violated those orders, the Court is considering re-imposing district-wide regulations by rule.</i></p>	
LR 83.1(d)(4)(C)— Pro Hac Vice Appearance	<p>(C) that the applicant either has <u>reviewed the CM/ECF User’s Guide for Filing in the District of Montana which can be found on the court’s website completed the District of Montana’s online training for electronic filing</u> or is proficient in electronic filing in another federal district court;</p> <p><i>Reasoning: The District no longer maintains the online training for electronic filing and instead relies on the Guide for Filing in the District of Montana.</i></p>	p. 66
LR 83.6 Appointment of Counsel	<p>New paragraph:</p> <p><u>(g) Screening. Cases in which a party is proceeding without counsel and which have survived screening pursuant to 28 U.S.C. 1915(g) and 28 U.S.C. 1915A shall be referred to the court’s Pro Bono Panel to determine if a panel attorney is interested in entering an appearance in the matter.</u></p> <p><i>Reasoning: This rule will provide greater exposure of cases in need of counsel to the Pro Bono Panel.</i></p>	p. 80
New provision: 83.9 Limited scope representation	<p><b>83.9 Limited Scope Representation</b></p> <p><u>An attorney may provide limited representation to an unrepresented party in a civil action by order granting a motion which defines the scope of limited representation with reasonable particularity and certifies the approval of the unrepresented party. Any change in the scope of limited representation must be approved by the court. Termination of the representation must also be approved by the court.</u></p> <p><i>Reasoning: Limited Scope Representation is now permitted under Montana Rule of Professional Conduct 1.2(c) and there are state procedures in place. See, e.g., Mont. R. Civ. P. 4.1, 4.2. The language of the proposed rule is similar to the District of Colorado’s limited scope representation local rule.</i></p>	p. 83



CRIMINAL LOCAL RULES	EXPLANATION OF AMENDMENTS	
CR 1.1 Rules Incorporated from Chapter I	<p>Civil Local Rules 1, <u>5.1</u>, 48.2, and 83, except 83.3(b), 83.6, and 83.8(a) and (b), apply in criminal proceedings.</p> <p><i>Reasoning: Proposal to consolidate LR 5.1 with CR 47.3 and then incorporate LR 5.1 into criminal rules since the manner and means of filing with the Clerk should be the same regardless of whether it is a criminal case or a civil case.</i></p>	p. 84
CR 16.3—Expert Witnesses	<p><u>In addition to those requirements outlined</u> <del>An expert witness disclosure</del> under Fed. R. Crim. P. 16(a)(1)(G) or 16(b)(1)(C), <u>an expert witness disclosure</u> must include the following information:</p> <ul style="list-style-type: none"> <li><b>(a)</b> identification of all documents or other information reviewed by the expert;</li> <li><b>(b)</b> a summary of the results of any studies, examinations, or tests performed by the expert regarding the subject matter of the testimony;</li> <li><del>(c) the expert’s qualifications;</del></li> <li><del>(d) a written summary of the expert’s testimony describing the expert’s opinions and the bases and reasons for those opinions; and</del></li> <li><b>(ce)</b> a statement as to whether the expert will also testify as a lay witness.</li> </ul> <p><u>Unless the presiding judge sets a specific disclosure deadline, the parties must disclose all the above information no later than 21 days before trial.</u></p> <p><i>Reasoning: Rule 16 of the Federal Rules of Criminal Procedure were amended on December 1, 2022 with regard to expert disclosures in criminal cases. The rule states that the court must set the time for the disclosures sufficiently before trial—that deadline can be set by order or by local rule. Secondly, it sets out what is required of such disclosures. These amendments take out requirements which are already covered by the Federal Rules and set a deadline for such disclosures if the presiding judge does not set a specific deadline.</i></p>	p. 90-91
CR 18.1—Place of Trial <del>Divisional</del> Venue	<p><del>(a) Criminal cases are venued in the division containing a county where a crime allegedly occurred, unless the court orders a change of venue.</del></p> <p><u>(b) Criminal cases are tried in the division to which the case is assigned, unless the court, in its discretion, orders trial in another division.</u></p>	p. 95





	<p><i>Reasoning: To codify current practice, this amendment incorporates LR 3.2(d) which provides: <b>(d) Trial.</b> Cases are tried in the division to which the case is assigned, unless the court, in its discretion, orders trial in another division.</i></p> <p><i>The name of this Rule was changed, and paragraph (a) was removed to avoid confusion regarding the use of the word “venue.”</i></p>	
<p>CR 24.2 Communications with Trial Jurors</p>	<p><b><u>CR 24.2 Communications with Trial Jurors.</u></b></p> <p><u>(a) Before or During Trial. No person involved with the case may communicate with, or cause anyone else to communicate with, a juror, a prospective juror, or a juror’s or prospective juror’s family member.</u></p> <p><u>(b) After Trial.</u></p> <p><u>(1) Unless a different time applies under Fed. R. Crim. P. 33(b)(1) or a judge’s order, neither parties nor counsel may interview jurors unless, within 14 days after the jury returns its verdict, a party files:</u></p> <p><u>(A) proposed written questions to be asked of the jurors;</u></p> <p><u>(B) an affidavit showing good cause; and,</u></p> <p><u>(C) if granted leave, a second affidavit showing the results.</u></p> <p><u>(2) Unless otherwise ordered by the court, any juror or prospective juror may decline to communicate with anyone concerning a trial in which the juror was involved.</u></p> <p><i>Reasoning: The Court’s withdrawal of LR 48.1 and CR 24.2 in 2022 seems to have created confusion among practitioners regarding acceptable behavior in contacting jurors after trial. While there is no district-wide regulation, some judges have continued to impose restrictions by order or jury instruction at trial. Following instances in which practitioners have violated those orders, the Court is considering re-imposing district-wide regulations by rule.</i></p>	<p>p. 97</p>
<p>CR 32.1— Presentence Reports</p>	<p><b><u>(d) Reciprocal Arrangements with State and County Probation and Parole.</u></b> <u>The United States Probation Office for the District of Montana may, at the discretion of the chief United States Probation Officer, enter into reciprocal working arrangements with Montana state and county probation and parole agencies allowing for the exchange of information contained in presentence investigation reports. Any such arrangements must require that information disclosed be used only for</u></p>	<p>p. 98-99</p>





	<p><u>presentence investigation and the preparation of presentence reports, and that the receiving agencies maintain the essential confidentiality of the information exchanged. Any presentence investigation report shared pursuant to this rule must be redacted to include only the cover sheet, Identifying Data, Part B (The Defendant's Criminal History), and Part C (Offender Characteristics). Disclosure of information relating to defendants not yet sentenced is prohibited, except where necessary to prevent harm to the defendant or others.</u></p> <p><u><b>(e) Disclosure to Pardon Attorney.</b> Upon request of the Office of the Pardon Attorney of the Department of Justice, the United States Probation and Pretrial Services Office (“USPO”) for the District of Montana may disclose presentence investigation reports for defendants seeking executive clemency and/or pardon for federal offenses. Information disclosed may be used only for the evaluation of pardon or clemency applications, and the Office of the Pardon Attorney shall otherwise maintain the essential confidentiality of presentence investigation reports. Upon disclosure of any such reports, the USPO shall include a statement advising the Office of the Pardon Attorney of these confidentiality requirements.</u></p> <p><i>Reasoning: New paragraphs (d) and (e) incorporate Standing Orders DLC 33A and BMM-24 into CR 32.1.</i></p>	
CR 47.1(c)(2)	<p>(2) be e-mailed in <del>WordPerfect or Word</del> format to the <del>presiding</del> judge, so <del>that</del> the judge may alter it;</p> <p><i>Reasoning: The court no longer supports the WordPerfect format.</i></p>	p. 103
CR 47.3—Motion Exhibits	<p><del>CR 47.2 Motions Exhibits—Omitted—incorporated into Civil LR 5.1(b)2</del></p> <p><del>(a) Exhibits must be identified and electronically filed so as to allow the court and the parties to locate easily and refer unambiguously to a specific page of a specific exhibit. [Moved to Civil LR 5.1(b)(1)].</del></p> <p><del>(b) Only exhibits that are directly germane to the matter under consideration by the court may be filed.</del></p> <p><del>(c) Excerpted material must be prominently identified as such. [Moved to Civil LR 5.1(b)(2)].</del></p>	p. 104-105



	<p><del>(d) When an exhibit cannot be filed in the electronic record, the docket must reflect the date of its filing, a brief description, and its location. When the exhibit is returned to the filing party's custody, the docket must reflect the return.</del></p> <p><i>Reasoning: Incorporated into Civil L.R. 5.1(b)(1).</i></p>	
<b>STYLISTIC/ FORMATTING CHANGES</b>	<b>EXPLANATION OF AMENDMENTS</b>	<b>Page #</b>
	<ul style="list-style-type: none"> <li>• Consistent use of presiding judge versus just judge <ul style="list-style-type: none"> <li>○ LR 1.3(b)(5)</li> <li>○ LR 3.1(f)</li> <li>○ LR 5.1(3)</li> <li>○ LR 7.1(c)(3)(B) and (E)</li> <li>○ LR 16.3(a)(1)</li> <li>○ LR 17.1(c)</li> <li>○ LR 54.1</li> <li>○ CR 47.1(c)(2)</li> </ul> </li> <li>• LR 3.2(e). Added Sua Sponte Change of Venue as label for paragraph.</li> <li>• Removed as unnecessary <ul style="list-style-type: none"> <li>○ Form C—Notice of appearance in an ifp case.</li> <li>○ Form G—Motion by attorney for leave to file non-electronically (form is available on website).</li> <li>○ Abbreviated index.</li> </ul> </li> </ul>	<p>p. 4</p> <p>p. 11</p> <p>p. 16</p> <p>p. 23</p> <p>p. 34</p> <p>p. 41</p> <p>p. 52</p> <p>p. 103</p> <p>p. 123</p> <p>p. 138</p> <p>p. 153</p>