

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

FEDERAL BUILDING & UNITED STATES COURTHOUSE
550 WEST FORT STREET, MSC 039
BOISE IDAHO 83724

ANNOUNCEMENT TO ATTORNEYS AND THE PUBLIC

**LOCAL RULES OF CIVIL AND CRIMINAL PRACTICE
BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

Revised and Adopted January 1, 2005

Technical Amendments made to the following Local Rules on March 31, 2005

- Civil Rule 7.1(c)(3)**
- Civil Rule 7.1 (e) delete as redundant**
- Civil Rule 7.3**
- Civil Rule 16.5(a)(4)**
- Civil Rule 54.1(a)**
- Civil Rule 54.2**
- Civil Rule 72.1(a)(6)(F)**
- Civil Rule 81.1**
- Civil Rule 83.6(c)(2) and (4)**

The local rules are available for public viewing at the Boise Federal Court Clerk's office, Room 400, and at the divisional offices in Coeur d'Alene, Moscow and Pocatello.

The local rules, among other documents, are also available on the Internet web site at <http://www.id.uscourts.gov>.

We welcome your comments and suggestions, which will be forwarded to the Rules Committee.

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LOCAL RULES OF PRACTICE

CIVIL RULES

CIVIL RULE 1.1
SCOPE OF THE RULES

(a) **Title and Citation.** These rules will be known as the Local Rules of Civil and Criminal Practice before the United States District Court for the District of Idaho. They may be cited as “Dist. Idaho Loc. Civ. R. ____” or “Dist. Idaho Loc. Crim. R. ____.”

(b) **Effective Date.** These rules became effective on January 1, 2005. Any amendments to these rules become effective on the date approved by the Court.

(c) **Scope of Rules.** These rules must apply in all proceedings in civil actions. Rules governing proceedings before magistrate judges are incorporated herein. Additionally, the general provisions of these rules apply to criminal proceedings as set forth in Dist. Idaho Loc. Crim. R. 1.1.

(d) **Relationship to Prior Rules; Actions Pending on Effective Date.** These rules supersede all previous rules promulgated by this District or any judge of this Court. They must govern all applicable proceedings brought in this Court after they take effect. They also must apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the Court the application thereof would not be feasible or would work an injustice, in which event the former rules must govern.

(e) **Rule of Construction and Definitions.**

(1) Title 1, United States Code, Sections 1 to 5, must, as far as applicable, govern the construction of these rules.

(2) The following definitions must apply:

(A) **"Court."** As used in these rules, the term "Court" refers to the United States District Court for the District of Idaho, to the Board of Judges for the District of Idaho, or to a particular judge or magistrate judge of the Court before whom a proceeding is pending unless the rule expressly refers to a district judge only or to the full Court.

(B) **"Clerk."** As used in these rules, the term "Clerk" refers to the Clerk of Court or any deputy clerk designated by the Clerk of Court to act in the capacity of the Clerk.

RELATED AUTHORITY

None

CIVIL RULE 1.2
AVAILABILITY OF THE LOCAL RULES

When amendments to these rules are proposed, notice of such proposals and of the ability of the public to comment shall be provided on the Court's Internet web site and may be provided in The Advocate or other periodicals published by the Idaho State Bar.

When amendments to these rules are made, notice of such amendments shall be provided on the Court's Internet web site, and may be provided in The Advocate or other periodicals published by the Idaho State Bar.

RELATED AUTHORITY

Fed. R. Civ. P. 83

**CIVIL RULE 1.3
SANCTIONS**

The Court may sanction for violation of any Local Rule governing the submission of pleadings filed with the Clerk of Court , electronically or otherwise, only by the imposition of a fine against the attorney or a person proceeding pro se.

RELATED AUTHORITY

Fed. R. Civ. P. 11, 16(f), 26(g), 37, 61
28 U.S.C. § 1927

CIVIL RULE 3.1
VENUE

The Divisions of the United States District Court for the District of Idaho consist of the following counties:

- | | | | |
|----|--------------------|--|--|
| 1. | Northern Division: | Benewah
Bonner
Boundary | Kootenai
Shoshone |
| 2. | Central Division: | Clearwater
Idaho
Latah | Lewis
Nez Perce |
| 3. | Southern Division: | Ada
Adams
Blaine
Boise
Camas
Canyon
Elmore
Gem | Gooding
Jerome
Lincoln
Owyhee
Payette
Twin Falls
Valley
Washington |
| 4. | Eastern Division: | Bannock
Bear Lake
Bingham
Bonneville
Butte
Caribou
Cassia
Clark
Custer | Franklin
Fremont
Jefferson
Lemhi
Madison
Minidoka
Oneida
Power
Teton |

Cases that have venue in one of the above divisions will be assigned by the Clerk upon the filing of the complaint or petition to the appropriate division, unless otherwise ordered by the presiding judge. Juries will be selected from the divisions in accordance with the Jury Management Plan adopted by the Court.

RELATED AUTHORITY

28 U.S.C. § 92
General Order No. 158

**CIVIL RULE 5.1
ELECTRONIC CASE FILING**

(a) Official Records of the Court. The docketing and case management system for the District of Idaho shall be the judiciary's Case Management and Electronic Case Files (CM/ECF) Program. The official record of the Court consists of: (1) all documents filed electronically; (2) all documents converted to electronic format; and (3) all documents filed and not capable of conversion to electronic format.

(b) Establishment of Electronic Case Filing Procedures. The Clerk of Court for the United States District Court for the District of Idaho is authorized to establish and promulgate Electronic Case Filing Procedures ("ECF Procedures"), including the procedure for registration of attorneys and other authorized users, and for distribution of passwords to permit electronic filing and notice of pleadings and other papers. The Clerk may modify the ECF procedures from time to time, after conferring with the Chief Judges. The ECF Procedures shall be available to the public on the Court's web site: www.id.uscourts.gov.

(c) Scope of Electronic Filing. Unless expressly prohibited, the filing of all documents required or permitted to be filed with the Court in connection with a civil or criminal case shall be accomplished electronically as specified in General Order 187.

(1) Documents filed conventionally with the Court may be converted into an electronic format by the Court and in such cases, such documents will be treated for all purposes as if they had been electronically filed, except that conversion of a conventionally filed document to electronic format by the Court will not affect the original filing date and time of that document.

(2) On a case by case basis, the presiding judge may direct that paper copies of any documents filed electronically be sent directly to the judge's chambers.

(d) Court Retention of Records-Copies. Where a document filed conventionally is converted to an electronic format by the Court, the document originally filed shall be maintained as a copy only. Such copies of documents will be retained by the Court only so long as required to ensure that the information has been transferred to the Court's data base, for other Court purposes or as required by other applicable laws or rules. It shall be the responsibility of any party who has filed a document conventionally who desires to have the document returned by the Clerk, to specifically request and arrange for its return or the Clerk is authorized to dispose of the document after electronic conversion.

(e) Retention of Conventionally Signed Documents. The original of all conventionally signed documents that are electronically filed shall be retained by the filing party for a period of not less than the maximum allowed time to complete any appellate process, or the time the case of which the document is a part, is closed, whichever is later. The document shall be produced upon an order of the Court.

Anyone who disputes the authenticity of any signature on electronically-filed documents shall file an objection to the document within ten days of receipt of the document or notice of its filing, whichever first occurs.

(f) Eligibility. Only a Registered Participant or an authorized employee of the Registered Participant may file documents electronically. To become a Registered Participant, or to act as an authorized employee of the Registered Participant, a person must satisfy the registration requirements established by the Court and participate in training as required by the Court unless the Clerk is satisfied that training is not necessary.

(g) Consequences of Electronic Filings. The electronic transmission of a document to the Court via an electronic filing system authorized by the Court and consistent with the administrative and technical requirements established by the Court, constitutes filing of the document for all purposes. The filing date and time of a document filed electronically shall be the date and time the document is electronically received by the Court, which for the purposes of this Rules shall be Mountain Time.

(h) Entry of Court Issued Documents. The Court shall enter all orders, decrees, judgments and proceedings of the Court in accordance with the electronic filing procedures, which shall constitute entry of the order, decree, judgment, or proceeding on the docket kept by the Clerk of Court.

(i) Large Documents, Exhibits and Attachments. The parties are directed to refer to the Electronic Case Filing Procedures, which may be amended from time to time.

(j) Signatures. The electronic filing of any document by a Registered Participant shall constitute the signature of that person for all purposes provided in the Federal Rules of Civil and Criminal Procedure. For instructions regarding electronic signatures, refer to the Electronic Case Filing Procedures.

(k) Notice and Service of Documents. Participation by a Registered Participant in the Court's CM/ECF system by registration and receipt of a login and password from the Clerk of Court shall constitute consent by that Registered Participant to the electronic service of pleadings and other papers under applicable Federal Rules of Civil, Criminal and/or Bankruptcy Procedure.

(l) Technical Failures. Any Registered Participant or other person whose filing is made untimely or who is otherwise prejudiced as a result of a technical failure at or by the Court, may seek appropriate relief from the Court. The Court shall determine whether a technical failure has occurred or whether relief should be afforded on a case by case basis

RELATED AUTHORITY
Fed. R. Civ. P. 5(e)

CIVIL RULE 5.2
GENERAL FORMAT OF DOCUMENTS PRESENTED FOR FILING
ELECTRONICALLY OR, WHERE PERMITTED, IN CONVENTIONAL FORMAT

(a) All pleadings, motions, and other papers presented for filing must be in 8½ x 11 inch format, flat and unfolded, without back or cover, and must be plainly typewritten, printed, or prepared on one side of the paper only by a clearly legible duplication process, and double-spaced, except for quoted material and footnotes. Each page must be numbered consecutively. The top, bottom, and side margins must be at least one inch, and the font or typeface for all text, including footnotes, must be at least 12 point. All pleadings must be affixed by a fastener (i.e., paper clip) and NOT staples.

If pleadings are filed in paper form, it is the responsibility of the filer to ensure that the paper document can be scanned with a legible image. The court requires that such documents be submitted in black print on white paper, for maximum contrast. The Court may return filings that are not legible.

(b) The following information must appear in the upper left-hand corner of the first page of each paper presented for filing, except that in multiparty actions or proceedings, reference may be made to the signature page for the complete list of parties represented:

- (1) Name of the Attorney (or, if in propria persona, of the party)
- (2) E-mail address (if available)
- (3) State Bar Number
- (4) Office Mailing Address
- (5) Telephone Number
- (6) Facsimile Number
- (7) Specific identification of the party represented by name and interest in the litigation (i.e., plaintiff, defendant, etc.)

Following the counsel identification and commencing four inches below the top of the first page, (except where additional space is required for identification) the following caption must appear:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

(Party name))		Case No. _____
Plaintiff,))	
vs.))	
(Party name)))	TITLE DESCRIBING THE DOCUMENT
Defendant.))	OR ACTION (i.e., Response, Motion, etc.)
_____))	

- (1) The title of the court;
- (2) The title of the action or proceeding;
- (3) The file number of the action or proceeding;
- (4) The category of the action or proceeding as provided hereinafter in these rules;
- (5) A title describing the pleading. If the pleading is a response to a motion, that particular motion should be reflected in the title; and
- (6) Any other matter required by this rule.

(c) Documents submitted for filing, electronically or conventionally, must be accompanied by the appropriate fee, if any. In the event of a failure to comply with these rules, the Clerk may bring the failure to comply to the attention of the filing party and of the judge to whom the action or proceeding is assigned.

(d) Removing Cases from State Court:

(1) A copy of the entire state court record and the docket sheet must be provided at the time of filing the notice of removal.

(2) Civil Cover Sheet for Notices of Removal: Attorneys are required to complete a civil cover sheet when a notice of removal is filed in the District of Idaho. The form is available from the Clerk of Court. This form is used by the Clerk of Court to identify the status of all parties and attorneys. *See* Dist. Idaho Loc. Civ. R. 7.1, Motion Practice and Dist. Idaho. Loc. Civ. R. 81.

(d) Every complaint or other document initiating a civil action must be accompanied by a completed civil cover sheet, on a form available from the Clerk. This requirement is solely for administrative purposes, and matters appearing only on the civil cover sheet have no legal effect in the action.

If the complaint or other document is submitted without a completed civil cover sheet or civil cover sheet for notices of removal, the Clerk must file the complaint or the notice of removal as of the date received and promptly give notice of the omission of the respective civil cover sheet to the party filing the document. When the respective civil cover sheet has been received, the Clerk must process the complaint or notice of removal as of the original date of filing the complaint.

RELATED AUTHORITY
Fed. R. Civ. P. 83

CIVIL RULE 5.3
SEALED AND IN CAMERA DOCUMENTS

This Rule applies to documents filed electronically or those filed in paper format.

(a) General Provisions

(1) Motion to File Under Seal. Counsel seeking to file a document under seal shall file an ex parte motion to seal, along with supporting memorandum and proposed order, and file the document with the Clerk of Court. Said motion must contain “MOTION TO SEAL” in bold letters in the caption of the pleading.

(2) Public Information. The motion to seal will be noted in the public record of the Court. However, the filing party or the Clerk of Court shall be responsible for restricting public access to the sealed documents, as ordered by the Court.

(b) Electronic Filing of Sealed Documents

(1) Sealed documents and sealed cases will be filed in electronic format, with access restricted to the Court and authorized staff, unless otherwise ordered by the court.

(2) A motion to seal a document or case shall be submitted electronically in CM/ECF. If a party wishes to file a document under seal in CM/ECF, they shall first contact the clerks office for instructions regarding how to file the document and how to maintain the confidentiality of the information. The document submitted under seal shall be filed separately from the motion to seal.

(3) Documents submitted to the Court for *in camera* review shall be submitted in the same fashion as sealed documents.

(4) It is the attorney’s responsibility to ensure that the documents submitted for *in camera* review are not accessible to other parties. On a case-by-case basis, the presiding judge may request that paper copies of documents submitted for *in camera* inspection be sent directly to the judge’s chambers.

(5). Additional instructions for the electronic submission of sealed and *in camera* documents are contained in the Electronic Case Filing Procedures.

(c) Documents submitted in Paper Format

(1) Format of Documents Filed Under Seal. If the material to be sealed is presented in paper format, counsel lodging the material shall submit the material in an UNSEALED 8½ x 11 inch manilla envelope. The envelope shall contain the title of the Court, the case caption, and case number.

(2) Absent any other Court order, sealed documents submitted in paper format will be returned to the submitting party after the case is closed and the appeal time has expired, or if appealed, after the conclusion of all appeals.

*** Amended March 7, 2005 by General Order #192**

RELATED AUTHORITY

For further information, please see General Order 187 and
Electronic Case Filing Procedures.

CIVIL RULE 5.4
NON-FILING OF DISCOVERY
OR
DISCLOSURES AND DISCOVERY MATERIALS
NOT TO BE FILED WITH COURT

The following discovery documents must be served upon other counsel and parties but must not be filed with the Clerk of Court unless on order of the Court or for use in the proceeding:

- (1) Initial Disclosures
- (2) Disclosure of Expert Reports or Testimony
- (3) Interrogatories
- (4) Requests for Documents and Entry of Land
- (5) Requests for Admission
- (6) Notice of Taking Deposition
- (7) Answers and Responses

Any certificates of service related to discovery documents must not be filed with the Clerk. The party responsible for service of the discovery material must retain the original and become the custodian. The original transcripts of all depositions upon oral examination must be retained by the party taking such deposition.

RELATED AUTHORITY
Fed R. Civ. P. 5(d)

CIVIL RULE 5.5
PROTECTION OF PERSONAL PRIVACY

(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 pleadings 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 pleading, 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 pleading, 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.

(5) **Home addresses.** Only the city and state shall be identified.

(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 only if the party believes maintenance of the unredacted material in the Court record is critical to the case. The document must contain the following heading in the document, "SEALED DOCUMENT PURSUANT TO E-GOVERNMENT ACT OF 2002". This document shall be retained by the Court as part of the record until further order of the Court. The party must also electronically file a redacted copy of this document for the official record.

(c) In addition to the items listed in section (a) above, the Judicial Conference policy requires that the Court not provide public access to the following documents: unexecuted warrants of any kind; pretrial bail or presentence investigation reports; statement of reasons in the judgment of conviction; juvenile records, documents containing identifying information about jurors or potential jurors; financial affidavits filed in seeking representation pursuant to the Criminal Justice Act; ex parte requests for expert or investigative services at Court expense; and sealed documents.

(d) You are advised to exercise caution when filing documents that contain the following:

(1) Personal identification number, such as driver's license number;

(2) Medical records, treatment and diagnosis;

- (3) Employment history;
- (4) Individual financial information;
- (5) Proprietary or trade secret information;
- (6) Information regarding an individual's cooperation with the government;
- (7) Information regarding the victim of any criminal activity;
- (8) National security information;
- (9) Sensitive security information as described in 49 U.S.C. section 114(s).

(e) Counsel is strongly urged to share this information with all clients so that an informed decision about the inclusion of certain materials may be made. If a redacted document is filed, it is the sole responsibility of counsel and the parties to be sure that the redaction of personal identifiers is done. The clerk will not review each pleading for redaction.

RELATED AUTHORITY

Dist. Idaho General Order No. 179

Dist. Idaho Loc. R. 5.3

CIVIL RULE 6.1
REQUESTS AND ORDERS TO SHORTEN OR EXTEND TIME
OR CONTINUE TRIAL DATES

When by these rules or by notice given thereunder an act is required or allowed to be done at or within a specified time, the Court, for cause shown, may at any time, with or without motion or notice, order the period be shortened or extended.

(a) Requests for Time Extensions Concerning Motions. All requests to extend briefing periods or to vacate or reschedule motion hearing dates must be in writing and state the specific reason(s) for the requested time extension. Such requests will be granted only upon a showing of good cause. A mere stipulation between the parties without providing the reason(s) for the requested time extension will be deemed insufficient. The requesting party must apprise the Court if they have previously been granted any time extensions in this particular action.

(b) Requests for Trial Continuance. All requests to vacate, continue, or reschedule a trial date must be in the form of a written motion, must be approved by the client, and must state the specific reason(s) for the requested continuance. A mere stipulation between the parties without providing the specific reason(s) for the requested continuance will be deemed insufficient. Client approval can be satisfied either by the client's actual signature or by the attorney certifying to the Court that the client knows about and agrees to the requested continuance. The requesting party must apprise the Court if they have previously been granted a trial date continuance in this particular action.

RELATED AUTHORITY

Fed. R. Civ. P. 6
28 U.S.C. § 473

**CIVIL RULE 7.1
MOTION PRACTICE**

(a) General Requirements.

(1) The moving and responding parties are not required to submit an additional copy of any motion, memorandum of points and authorities, and supporting affidavits unless required by the judge assigned to the matter.

(2) No memorandum of points and authorities in support of or in opposition to a motion shall exceed twenty (20) pages in length, nor shall a reply brief exceed ten (10) pages in length, without express leave of the Court which will only be granted under unusual circumstances. The use of small fonts and/or minimal spacing to comply with the page limitation is not acceptable.

(3) Documents being submitted in response to, in support of, or in opposition to other documents shall be clearly labeled with the docket number of the motion or response in the caption.

(4) Only submit proposed orders concerning routine or uncontested matters via e-mail in accordance with ECF Procedures.

(5) Any party, either proposing or opposing a motion or other application, who does not intend to urge or oppose the same must immediately notify opposing counsel and the Clerk of Court by filing a pleading titled "Non-Opposition to Motion."

(b) Requirements for Submission--Moving Party.

(1) Each motion, other than a routine or uncontested matter, must be accompanied by a separate brief, not to exceed twenty (20) pages, containing all of the reasons and points and authorities relied upon by the moving party. In motions for summary judgment under Federal Rule of Civil Procedure 56, the moving party will also file a separate statement of all material facts, not to exceed ten (10) pages, upon which the moving party contends are not in dispute.

(2) The moving party must serve and file with the motion affidavits required or permitted by Federal Rule of Civil Procedure 6(d), copies of all photographs and documentary evidence on which the moving party intends to rely.

(3) The moving party may submit a reply brief, not to exceed ten (10) pages, within ten (10) days after service upon the moving party of the responding party's memorandum of points and authorities.

(4) If relief is sought under any of the Federal Rules of Civil Procedure, pertinent portions of discovery matters in dispute may be attached to the motion filed under these rules by the party seeking to invoke the Court's relief.

(c) Requirements for Submission--Responding Party.

(1) The responding party must serve and file a response brief, not to exceed twenty (20) pages, within twenty-one (21) days after service upon the party of the memorandum of points and authorities of the moving party. The responding parties must serve and file with the response brief any affidavits, copies of all photographs, and documentary evidence on which the responding party intends to rely.

(2) The responding party shall file a statement of facts which are in dispute not to exceed ten (10) pages in length.

(3) The response brief, should be clearly identified as a "Response to the Motion to _____ filed on _____" and must contain all of the reasons and points and authorities relied upon by the responding party.

(d) Determination of Motions by the Court and Scheduling for Oral Argument, if Appropriate.

(1) At the time of filing the motion, the attorney for the moving party shall promptly contact the courtroom deputy assigned to the case. If the matter has been referred to a magistrate judge, the attorney shall promptly contact that judge's courtroom deputy.

(2) Hearings.

(i) If the presiding judge determines that oral argument on the motion is appropriate, then the courtroom deputy, after considering appropriate time frames to respond to the motion, will promptly advise the attorney for the moving party of a hearing date for oral argument on the motion. It is the responsibility of the attorney for the moving party to prepare and file a notice of hearing and serve opposing counsel.

The attorney for the moving party is required to resolve any conflicts regarding the hearing date with opposing counsel and then contact the courtroom deputy for a new hearing date if conflicts develop over an initial hearing date. The attorney for the moving party will then serve a notice of the new hearing date within five (5) days.

(ii) If the presiding judge determines that oral argument will not be necessary, then the courtroom deputy will notify counsel for the moving party, who will then be responsible for notifying the other parties that the matter will be decided on the briefs.

If the presiding judge later determines that oral argument would be of assistance, then the moving party will be so notified by the courtroom deputy.

(3) Attorneys are encouraged to communicate with the courtroom deputies regarding the status of any motion.

(4) The parties may request that the hearing be conducted telephonically or by video conference by contacting the courtroom deputy. Video conferencing is available in Boise, Pocatello, Moscow and Coeur d'Alene.

(e) **Effects of Failure to Comply with the Rules of Motion Practice.** Failure by the moving party to file any documents required to be filed under this rule in a timely manner may be deemed a waiver by the moving party of the pleading or motion. In the event an adverse party fails to file any response documents required to be filed under this rule in a timely manner, such failure may be deemed to constitute a consent to the sustaining of said pleading or the granting of said motion or other application. In addition, the Court, upon motion or its own initiative, may impose sanctions in the form of reasonable expenses incurred, including attorney fees, upon the adverse party and/or counsel for failure to comply with this rule.

(f) **Requests to Extend Motion Briefing Period or to Vacate or Reschedule Motion Hearing Dates.** (*See Dist. Idaho Loc. Civ. R. 6.1.*)

***Technical Amendments made on March 31, 2005**

RELATED AUTHORITY Fed. R. Civ. P. 5(a), 6(b) & (d), 78

CIVIL RULE 7.2
EX PARTE ORDERS

All applications to a judge of this Court for ex parte orders may be made by a party appearing in propria persona or by an attorney of this Court. All applications must be accompanied by a memorandum and/or affidavit outlining the necessity and authority for issuance of the order ex parte. When the opposing party is represented by counsel, the application must recite whether opposing counsel has been notified of the application for an ex parte order or set forth the reasons why opposing counsel has not been notified.

RELATED AUTHORITY

Fed R. Civ. P. 5, 7, 78

**CIVIL RULE 7.3
STIPULATIONS**

Oral stipulations made in open court are binding on the parties. Written stipulations are binding on the parties when approved by the judge.

Stipulations between the parties to commence discovery prior to making their initial disclosures do not have to be approved by the Court.

***Technical Amendments made on March 31, 2005**

RELATED AUTHORITY

Fed. R. Civ. P. 7(b), 16, 29, 78

CIVIL RULE 9.1
NON-CAPITAL CASE HABEAS PETITIONS (STATE CUSTODY)

(a) All petitions for a writ of habeas corpus in non-capital cases filed pursuant to 28 U.S.C. § 2254 must be subject to the provisions of this rule unless otherwise ordered by the court.

(b) The petition must be in writing, and if presented pro se, the petition must be upon the form and in accordance with the instructions approved by the court. Copies of the forms and instructions will be supplied by the Clerk of Court upon request.

(c) All petitions for writ of habeas corpus will be subject to an initial review by the court pursuant to Rule 4 of the Rules Governing § 2254 Cases. Petitions accompanied by an application to proceed in forma pauperis are also subject to the initial review provisions of 28 U.S.C. § 1915.

(d) Upon completion of the initial review of the petition, the court may summarily dismiss the petition, or it may direct the Clerk of Court to serve the appropriate respondent with the petition or motion, together with a copy of the court's order requiring the respondent to file an answer, pre-answer motion, or other briefing in response to the initial review order and to file those portions of the records as may be ordered by the court, within a time period fixed by the court.

(e) If the petitioner had previously filed a petition for relief or for a stay of enforcement in the same matter in this court, then, where practicable the new petition must be assigned to the judge who considered the prior matter.

(f) If relief is granted on the petition of a state prisoner, the Clerk of Court must forthwith notify the state authority having jurisdiction over the prisoner of the action taken.

RELATED AUTHORITY

28 U.S.C. §§ 1915, 2241-2254

Rules Governing Section 2254 Cases in U.S. District Courts

CIVIL RULE 9.2
SPECIAL REQUIREMENTS FOR HABEAS CORPUS PETITIONS
INVOLVING THE DEATH PENALTY

(a) **Applicability.** This rule governs the procedures for a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 in which a petitioner seeks relief from a judgment imposing the penalty of death. The application of this rule may be modified by the judge to whom the petition is assigned. These rules supplement the Rules Governing Section 2254 Cases and do not in any way alter or supplant those rules.

(b) **Initiation of Proceedings and Request For a Stay of Execution.** When a death warrant has been issued, and after the Idaho Supreme Court has decided the consolidated direct appeal/post-conviction appeal and the United States Supreme Court has acted on a petition for writ of certiorari, if any, a petitioner may seek relief from a state court conviction and capital sentence in this court by filing a federal habeas corpus petition.

(1) **Preliminary Steps.** At his or her option, a petitioner may take the following steps preliminary to filing a federal habeas corpus petition by filing an original and a copy of the following:

- (A) Application for a stay of execution;
- (B) Application to proceed in forma pauperis with supporting affidavit, if applicable;
- (C) Application for the appointment of counsel or to proceed pro se, if applicable;
- (D) Statement of issues re: petition for writ of habeas corpus.

(2) **Statement of Issues.** The statement of issues re: petition for writ of habeas corpus must:

- (A) state whether petitioner has previously sought relief arising out of the same matter from this court or any other federal court, together with the ruling and reasons for denial of relief;
- (B) state that petitioner intends to file a petition for writ of habeas corpus;
- (C) list the issues to be presented in the petition for writ of habeas corpus; and
- (D) certify that the issues outlined raise substantial questions of constitutional law, are non-frivolous, and are not being raised simply for the purpose of delay.

(c) **Review of Petition or Preliminary Initial Filings by Court.** Upon receipt of the petition or initial filings, the Clerk of Court must immediately assign the matter to a district judge. When an application for the appointment of counsel and other preliminary initial filings have been submitted before a petition for writ of habeas corpus has been filed, the matter must be assigned to a district judge in the same manner that a petition would be assigned. The district judge must immediately review the petition or preliminary initial filings, and, if the matter is found to be properly before the court, the court will issue an initial review order (1) staying the execution for the duration of the proceedings in this court, (2) setting an initial case management conference, and, if applicable, (3) granting or denying the application to proceed in forma pauperis; and (4) granting or denying the application for the appointment of counsel.

(1) **Notice of Stay.** Upon the granting of any stay of execution, the Clerk of Court will immediately notify the following: counsel for the petitioner; the Idaho Attorney General; the warden of the Idaho Maximum Security Institution; and, when applicable, the clerks of the Idaho Supreme Court and the Ninth Circuit Court of Appeals. The Idaho Attorney General is responsible for providing the Clerk of Court with a telephone number where he or she or a designated deputy attorney general can be reached twenty-four (24) hours a day.

(d) **Counsel.**

(1) **Appointment of Counsel.** Each indigent capital case petitioner must be represented by counsel unless petitioner has clearly elected to proceed pro se and the court is satisfied, after a hearing, that petitioner's election is knowing and voluntary. Unless petitioner is represented by retained counsel, counsel must be appointed in every such case at the earliest practicable time.

(2) **Qualifications of Appointed Counsel.** Upon application by petitioner for the appointment of counsel, the court must appoint the Capital Habeas Unit of the Federal Defenders of Eastern Washington and Idaho as lead counsel. Upon request of the Capital Habeas Unit, the court must also appoint an attorney from the Criminal Justice Act (CJA) Capital Habeas Panel as second counsel. In the event the Capital Habeas Unit is unable to provide representation because of conflicts, existing workload, or other special factors, it must recommend the attorneys from the CJA Capital Habeas Panel to be appointed. The court will either accept the recommendation or select other attorneys from the CJA Capital Habeas Panel.

(e) **Case Management Conferences.** After a capital habeas corpus proceeding has been assigned to a judge and counsel has been appointed, the assigned judge shall conduct an initial case management conference to discuss anticipated proceedings in the case. In all cases where payment for attorneys' fees and investigative and expert expenses are requested under the CJA, the petitioner's counsel will be required to prepare phased budgets for submission to the Court at the beginning of each of the following applicable phases: Phase I, Appointment of Counsel, Record Review and Preliminary Investigation; Phase II, Petition Preparation or Amendment; Phase III, Procedural Defenses, Discovery related to Procedural Defenses, Motion for Evidentiary Hearing, and Briefing of Claims; and Phase IV, Discovery related to Merits, Evidentiary Hearing, and Final Briefing. After the initial case management

conference, the assigned judge may schedule additional case management conferences in advance of each of the budgeting phases. The assigned judge also may schedule one or more ex parte conferences with the petitioner's counsel to implement the budgeting process.

(f) Procedures for Considering the Petition for Writ of Habeas Corpus. The following schedule and procedures apply, subject to modification at the discretion of the assigned district judge.

(1) Petition for Writ of Habeas Corpus. Petitioner must file a final petition for writ of habeas corpus no later than the date set in the court's initial scheduling order.

(2) State Court Record. The respondent must, as soon as practicable after the initiation of the habeas corpus proceeding, but in any event no later than when respondent files an answer or pre-answer motion in response to the petition, file with the court one copy of the following:

- (A) Transcripts of the state court proceedings.
- (B) Clerk's records to the state court proceedings.
- (C) The briefs filed on consolidated appeal to the Idaho Supreme Court and on any petition for rehearing.
- (D) Copies of all motions, briefs and orders in any post-conviction relief proceeding.
- (E) An index to all materials described in paragraphs (A) through (D) above.

If any items required to be filed in paragraphs (A) through (D) above are not available, the respondent must so state and indicate when, if at all, such missing material(s) will be filed.

If counsel for the petitioner finds that the respondent has not complied with the requirements of this section, or if the petitioner does not have copies of all of the documents filed with the court, the petitioner must immediately notify the court in writing with a copy to the respondent. Thereafter, the respondent must provide copies of any missing documents to the petitioner.

(3) Procedural Defenses. At the initial case management conference, or at a reasonable time thereafter, the Court may authorize the respondent to file a pre-answer motion to dismiss, alleging that the petitioner's claims are barred by a failure to exhaust, a state procedural bar, the statute of limitations, or *Teague v. Lane*, 489 U.S. 288 (1989). If authorized, such motions must be filed within 60 days after the petition is filed. The petitioner's response brief must be filed within 60 days after the motion to dismiss is filed. If a party believes that discovery is needed, the party must file a motion for discovery and briefly outline the particular discovery needed and explain how he or she anticipates the discovery will aid the claim or defense. If the Court grants a motion for discovery, it will issue an order extending the petitioner's

response time accordingly. The respondent's reply in support of the motion to dismiss must be filed within 20 days after the petitioner's response is filed.

(4) **Unexhausted Claims.** If a petition is found to contain unexhausted claims for which a state remedy may still be available, the court may:

(A) dismiss the petition without prejudice; or

(B) upon motion, grant a petitioner's request to withdraw the unexhausted claims from the petition, and grant a temporary stay of execution to allow a petitioner to seek a further stay from the state court in order to litigate the unexhausted claims in state court. During the proceedings in state court, the federal habeas case will be stayed, and the petitioner must file a quarterly report about the status of the state court case in the federal habeas case. After the state court proceedings have been completed, petitioner may amend the federal petition to add the newly exhausted claims.

(5) **Answer.** The respondent's answer to the petition shall be filed within 60 days after a decision on the respondent's motion to dismiss, or within 60 days after the petition has been filed if the court has not authorized the respondent to file a pre-answer motion.

(6) **Traverse and Motion for Discovery on Merits.** Within 60 days after the answer is filed, the petitioner may file a traverse, if necessary. If a party wishes to seek authorization to conduct discovery related to the merits of any claim or defense, the party shall file a motion for discovery within 60 days after the answer is filed. Any motion for discovery must contain a brief outline of the particular discovery needed, explain how the party anticipates the discovery will aid the claim or defense, and prove entitlement to discovery under 28 U.S.C. § 2254(e)(2), Rule 6 of the Rules Governing Section 2254 Cases, or any other applicable standard.

(7) **Motion for Evidentiary Hearing on Merits.** Any motion for an evidentiary hearing must be made within 60 days after the answer is filed. The motion must specify which factual issues require a hearing.

(A) If the court determines that an evidentiary hearing is necessary, it will set a schedule for the hearing, order preparation of the transcript after hearing, and provide copies of the transcript to the parties. In its discretion, the court may order post-hearing briefing and argument.

(B) If the court determines that an evidentiary hearing is not necessary, it may take the matter under advisement on the pleadings or order briefing on the merits.

(g) Court's Final Decision. The court will issue a written decision granting or denying the petition.

The Clerk of Court will immediately notify the counsel for the petitioner, the Idaho Attorney General, the warden of the Idaho Maximum Security Institution, and the Clerk of the Idaho Supreme Court of the court's decision or ruling on the merits of the petition.

The Clerk of Court will immediately notify the Clerk of the United States Court of Appeals for the Ninth Circuit, and if applicable, the Clerk of the United States Supreme Court, by telephone of:

(1) any final order denying or dismissing a petition without a certificate of appealability; or

(2) any order denying or dissolving a stay of execution.

If the petition is denied and a certificate of appealability is issued, the court will grant a stay of execution which will continue in effect until the Ninth Circuit Court of Appeals acts upon the appeal or the order of stay.

When a notice of appeal is filed, the Clerk of Court must immediately transmit the record to the Clerk of the United States Court of Appeals for the Ninth Circuit.

(h) Pleadings, Motions, Briefs, and Oral Argument.

(1) **Caption.** Every pleading, motion, or other application for an order from the court which is filed in these matters must contain a notation in the caption which indicates that it is a capital case. The notation "CAPITAL CASE" must appear in bold, capital letters to the right of the case entitlement and directly beneath the Case Number. The following is provided as an example:

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

JOHN DOE,)	
)	Case No.
Petitioner,)	CAPITAL CASE
vs.)	
)	APPLICATION FOR
A. J. ARAVE,)	STAY OF EXECUTION
)	
Respondent.)	
_____)	

(2) **Motion Practice.** Unless this rule or an order of the court provides otherwise, motion practice must comply with the applicable local rules of the court.

(3) **Briefs.**

(A) Briefs in support of and in opposition to motions must be no longer than 30 pages. If a reply brief is permitted, it must be no longer than 15 pages.

(B) Principal briefs addressing the merits of the claims set forth in the petition must be no longer than 60 pages, and the reply brief must be no longer than 25 pages.

(C) A motion for permission to exceed page limits must be filed on or before the brief's due date and must be accompanied by a declaration stating the reasons for the motion.

(D) No brief may be filed unless permitted by an applicable rule or leave of court.

(4) Discovery. The parties may not conduct discovery without first obtaining leave of court.

(5) Oral argument. Motions and petitions shall be deemed submitted and shall be determined upon the pleadings, briefs, and record. The court, at its discretion, may order oral argument on any issue or claim.

RELATED AUTHORITY

28 U.S.C. § 2254

Rules Governing Section 2254 Cases in U.S. District Courts

Idaho Code Appellate Rule 25(a)(7) (1987)

CIVIL RULE 15.1
FORM OF A MOTION TO AMEND
AND ITS SUPPORTING DOCUMENTATION

A party who moves to amend a pleading must describe the type of the proposed amended pleading in the motion (i.e., motion to amend answer, motion to amend counterclaim). Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, must reproduce the entire pleading as amended. Failure to comply with this rule is not grounds for denial of the motion. The proposed amended document will be filed at the time of filing the motion and submitted to the Court for approval. However, typographical errors in briefs or other documents shall be brought to the attention of the Court.

RELATED AUTHORITY

Fed. R. Civ. P. 15(a)(d)

CIVIL RULE 16.1
SCHEDULING CONFERENCE AND LITIGATION PLANS

As a general rule, scheduling conferences will not be held in the following type of cases, unless otherwise ordered by the Court:

- (1) A petition for habeas corpus or other proceeding to challenge a criminal conviction or sentence.
- (2) An action to enforce or quash an administrative summons or subpoena.
- (3) An action by the United States to recover a benefit payment.
- (4) An action by the United States to collect on a student loan.
- (5) A proceeding ancillary to proceedings in other courts.
- (6) Petition to review a decision denying social security benefits.
- (7) Farm Service Administration Foreclosure Actions.

In all other civil cases, unless otherwise ordered by the Court, a scheduling conference will be conducted within ninety (90) days after the complaint has been filed. The Court, in its discretion, may use telephonic/video conferencing with the parties for this purpose. The Court will notify all parties of the date and time of the scheduling conference.

When the Clerk provides notice to the parties of the time and date of the scheduling conference, counsel will also be provided with a scheduling conference/litigation plan form used by the trial judge who has been assigned the case. This form also contains requests for discovery information that counsel will discuss at their Federal Rule of Procedure 26(f) conferences. Each judge's litigation plan form is available on the Court's website

At least twenty-one (21) days before the time and date set for the scheduling conference, counsel must confer and discuss each of the following items contained on the scheduling conference/litigation plan form. These include, but are not necessarily limited, to the following:

- (1) Discuss the requirement to make initial disclosures within fourteen (14) days.
- (2) Expert witness reports/testimony cutoff dates.
- (3) Number and length of depositions.
- (4) Discovery cutoff dates.
- (5) Joinder of parties and amendment of pleadings cutoff date.

- (6) Dispositive motions filing cutoff date.
- (7) Alternative Dispute Resolution:
 - (A) Settlement Conferences (Dist. Idaho Loc. Civ. R. 16.4)
 - (B) Arbitration (Local Rule 16.5)
 - (C) Mediation (Local Rule 16.5)
- (8) Status conference date, if counsel believe one will be necessary.
- (9) Pretrial conference date (to be entered by the Court).
- (10) Estimated length of trial.
- (11) Trial date (to be entered by the Court) .

Fourteen (14) days after counsel have conferred on the scheduling conference/litigation plan form, counsel must make their initial disclosures as required by Federal Rule of Civil Procedure 26(a)(1).

Fourteen (14) days after counsel have conferred on the scheduling conference and litigation plan form, counsel must forward to the Court the scheduling conference and litigation plan form which they have jointly stipulated to or, in the event counsel are unable to agree, their proposed plan.

After the scheduling conference, the Court will prepare and enter an order which will provide time frames and dates for the items contained on the scheduling/litigation plan form. Upon the Court's determination, certain cases can be exempted from these requirements and the parties will be so notified.

RELATED AUTHORITY

Fed. R. Civ. P. 16, 16(f)
Dist. Idaho Loc. Civ. R. 16.4, 16.5

CIVIL RULE 16.2
PRETRIAL CONFERENCES

At the scheduling conference, a time and date may be set for a pretrial conference. The Court may also conduct periodic status conferences to monitor how the case is proceeding to trial.

The assigned judge or magistrate judge may make such pretrial order or orders, at or following the pretrial conference, as may be appropriate. Such order must control the subsequent action or proceeding as provided in Federal Rule of Civil Procedure 16.

RELATED AUTHORITY

Fed. R. Civ. P. 16(d), -(e)

CIVIL RULE 16.3
TRIAL SUBMISSIONS

(a) Trial Submissions. Unless otherwise ordered, the parties must, not less than thirty (30) calendar days prior to the date on which the trial is scheduled to commence, provide to the other parties and *promptly file with the Court* the following information regarding evidence that it may present at trial, other than solely for impeachment:

(1) The name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(2) The designation of those witnesses whose testimony is expected to be presented by means of a deposition and a transcript of the pertinent portions of the deposition testimony;

(3) An appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

(b) Trial Memorandum and Objections to Trial Submissions. Within fourteen (14) calendar days before the scheduled trial date, each party shall serve and *promptly file with the Court* a trial memorandum, not to exceed twenty (20) pages, which should discuss the party's position, with supporting arguments and authorities, and any significant legal or evidentiary issues. The trial memorandum should contain a separate section that clearly states the objections to the other parties' trial submissions, including:

(1) Any objection to the use under Federal Rule of Civil Procedure 32(a) of a deposition designated by another party.

(2) Any objections, together with the grounds therefor, that may be made to the admissibility of materials identified as exhibits by the opposing party.

Objections not so disclosed, other than objections under Federal Rules of Evidence 402 and 403, shall be deemed waived unless excused by the Court for good cause shown.

(c) Response to Trial Memoranda. Within seven (7) days, a party may file a response memorandum, not to exceed ten (10) pages, to the opposing parties' trial memoranda, particularly addressing objections to trial submissions.

(d) Ruling on Objections to Trial Submissions. The listing of a potential objection does not constitute the making of that objection or require the Court to rule on the objection; rather, it preserves the right of the party to make the objection when, and as appropriate, during trial. However, this does not preclude any party from filing a motion in limine as to any particular item of evidence prior to trial.

(e) **Voir Dire and Jury Instructions.** In jury cases, serve and file proposed voir dire and jury instructions and form of verdict in conformance with Dist. Idaho Loc. Civ. R. 47.1 and 51.1.

(f) **Exhibit Lists.** All parties must furnish a list of their intended trial exhibits. A standard form may be obtained from the Court's website. In addition to physical and documentary exhibits, this list will include any deposition or document containing answers to interrogatories and requests for admissions to be offered or used in trial. The completed exhibit list must contain a brief description of each intended trial exhibit. To the extent possible, exhibits are to be listed in the sequence in which the parties propose to offer them. No exhibit is to be assigned a number without first contacting the Clerk. After assignment of numbers, the exhibit list is to be furnished to the opposing party or parties and three copies submitted to the Clerk. Each party must also prepare sufficient copies of their documentary exhibits to provide copies to the opposing party or parties. Additionally, each party must present the Clerk with an original and two copies of their documentary trial exhibits. All copies must be presented in a notebook or bound with metal paper fasteners and tabulated for marking.

RELATED AUTHORITY

Fed. R. Civ. P. 16, 26(a)(3)

CIVIL RULE 16.4
SETTLEMENT CONFERENCES

(a) After completion of factual discovery and the disclosure of expert witnesses, the attorneys will be *required* to meet or communicate between themselves and make a good faith effort to clarify and narrow issues, attempt to resolve certain disputed matters, and seriously explore the possibility of settlement.

Subsequent to the required meeting between counsel, if a party sincerely believes that a Court-involved settlement conference would be valuable, that party may request a judicially-conducted settlement conference. The Court, in its discretion, will determine whether, under the circumstances, a judicial settlement conference could be productive.

(b) At any time after an action or proceeding is at issue, any party may file a request for, or the assigned judge on his or her own initiative may order, a settlement conference. As a general rule, the assigned judge will not conduct the settlement conference. Another district judge or magistrate judge, hereinafter “settlement judge,” will hold the conference. None of the matters or information discussed during the conference will be communicated to the trial judge.

(c) The settlement judge before whom the settlement conference is scheduled may enter an order establishing an agenda and time schedule for the conference which may include, but not be limited to the following requirements:

(1) Each party to such conference be represented by counsel authorized to participate in settlement negotiations.

(2) The principals to the litigation be in attendance, unless excused by the settlement judge.

(3) The representatives of all involved insurance carriers be in attendance, unless excused by the settlement judge.

(4) The counsel for each party, each representative of a party, and each representative of an insurance carrier be knowledgeable about the facts of the case and be prepared to candidly discuss the same with the settlement judge.

(5) Each party prepare and submit to the settlement judge, in camera, a candid and fair written summation of the facts and the law that would apply to those facts as understood by that party.

(6) All information provided to the settlement judge must be held in confidence and all written material submitted must be returned to the submitting party upon termination of the settlement proceedings. No oral statement, written document, or other material considered during the settlement procedure may be used against any party in litigation.

(7) The settlement conference may be continued from time to time until settlement is reached or the settlement judge determines that the settlement conference should be terminated.

RELATED AUTHORITY

Fed. R. Civ. P. 16

CIVIL RULE 16.5
ALTERNATIVE DISPUTE RESOLUTION

(a) Purpose and Scope.

(1) Purpose. Pursuant to the findings and directives of Congress in 28 U.S.C. § 651 et seq., the primary purpose of this local rule is to provide parties to civil cases and proceedings in bankruptcy in this district with an opportunity to use alternative dispute resolution (ADR) procedures. This rule is intended to improve parties' access to the dispute resolution process that best serves their needs and fits their circumstances, to reduce the financial and emotional burdens of litigation, and to enhance the court's ability to timely provide traditional litigation services. Through this rule, the court authorizes and regulates the use of mediation and arbitration.

(2) Scope.

(A) Cases Pending Before a District Judge or Magistrate Judge. This local rule applies to all civil cases pending before any district judge or magistrate judge in this district.

(B) Proceedings Pending Before a Bankruptcy Judge. Under 28 U.S.C. § 651 et seq., and the court's inherent authority, proceedings pending before any bankruptcy judge in this district also may be afforded an opportunity to participate in ADR.

(3) Rules Specific to Individual ADR Processes. While many of the provisions of this local rule apply to all ADR processes conducted under its auspices, there are differences between ADR processes that require some process-specific prescriptions. The District of Idaho administratively sponsors the following ADR processes:

(A) **MEDIATION.**

(i) **Definition.** Mediation is a process in which an impartial third party (the "mediator") facilitates communication between parties and assists them in their negotiations, e.g. by clarifying underlying interests, as they attempt to reach an agreed settlement of their dispute. In some mediations, the neutral may spend some time meeting separately and privately with one party or side at a time. Whether a settlement results from mediation and the nature and extent of the settlement are within the sole control of the parties.

(ii) **Criteria for Inclusion on the Panel of Mediators** shall be posted on the Court's internet site .

(B) **ARBITRATION.**

(i) **Definition.** Arbitration is a process whereby an impartial third party (the "arbitrator") hears and considers the evidence and testimony of the disputants and others with relevant knowledge and issues a decision on the merits of the dispute. The

arbitrator makes an *award* on the issue(s) presented for decision. The arbitrator's award is binding or non-binding as the parties may agree in writing.

(ii) Criteria for Inclusion on the Panel of Arbitrators shall be posted on the Court's internet site.

(iii) Standards for Certification of Arbitrators. All arbitrators shall be certified to perform services in accordance with the following standards:

1. The arbitrator shall take the oath or affirmation described in 28 U.S.C. § 453; and

2. The arbitrator shall be subject to the disqualification rules under 28 U.S.C. § 455.

(v) Eligibility of Cases for Referral to Arbitration. No civil action or proceeding in bankruptcy shall be referred to arbitration except upon written consent of all parties. Notwithstanding the parties' request or consent to refer a case to arbitration, the court shall decline to make such referral if it finds that:

1. The action is based on an alleged violation of a right secured by the Constitution of the United States;

2. Jurisdiction is based in whole or in part on 28 U.S.C. § 1343;

3. The relief sought includes money damages in an amount greater than \$150,000.00; or

4. The objectives of arbitration would not be realized for any other reason.

(vi) Procedure for Consenting to Arbitration. Any request for reference to arbitration shall be in writing, signed by all parties and their counsel, and directed to the judge to whom the case is assigned. All such requests shall:

1. state whether the parties desire that the entire case be referred to arbitration. If the parties desire that only certain issues or portions of the case be referred to arbitration, the parties shall identify with particularity those issues or portions of the case and state the reason(s) why such a request should be granted;

2. state whether the arbitrator's award will be binding, with trial de novo waived, or non-binding, with trial de novo permitted if a request therefor is timely served and filed;

3. propose a discovery plan, a timetable for completion of the proposed discovery, and the date by which the arbitration shall be completed;

4. acknowledge that the arbitration shall be governed by the provisions of 28 U.S.C. Chapter 44, as the same may be amended from time to time, and, to the extent applicable, 9 U.S.C. § 1 et seq.;

5. contain a certification that the parties have been provided access to materials describing the arbitration program, and that they agree to arbitration freely and knowingly; and

6. provide such other information as may assist the court in determining whether to grant the request.

(vii) Single Arbitrator. Unless otherwise ordered by the court, all arbitrations under this rule will be held before a single arbitrator who shall have the power to:

1. conduct the arbitration hearings;
2. administer oaths and affirmations; and
3. make awards based upon the facts and the law.

(viii) Authority for Arbitration. The provisions of 28 U.S.C. Chapter 44, as the same may be amended from time to time, shall govern all aspects of the arbitration proceeding authorized.

1. The arbitrator will apply the Federal Rules of Evidence with respect to all evidence offered by any party.

2. The arbitrator will apply Federal Rule of Civil Procedure 45 with respect to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this rule.

3. No party or attorney shall be prejudiced in any way for refusing to participate in arbitration.

(ix) Parties May Choose a Panel of Three Arbitrators. Upon notification of the consent by all parties to participate in the arbitration process in very complex cases, the ADR Administrator will provide each party with an identical list of potential arbitrators. Each party will be given ten (10) days to choose five (5) arbitrators, ranking them in order of descending preference and returning the list to the ADR Administrator. The ADR Administrator will select one arbitrator from plaintiff's list(s) and one arbitrator from defendant's list(s). The two arbitrators chosen will select an additional arbitrator jointly agreeable to them from the roster of arbitrators received from the ADR Administrator.

Any decision/award must be agreed to by at least two of the selected arbitrators. All other arbitration rules and procedures remain the same.

(x) **The Award Must Be Submitted in Writing.** The arbitrator shall make his or her award in writing and shall file the award under seal with the Clerk of Court promptly after the arbitration hearing is closed, together with proof of service on all other parties by United States mail, addressed to the parties or, if represented, to the parties' attorney(s) of record. Unless the parties have waived trial de novo, the clerk shall seal the award, and the award shall remain sealed and the contents thereof not made known to any judge who might be assigned the case until the time has expired for a party to seek a trial de novo with no party timely serving and filing such a demand; *provided, however*, that the award may be unsealed after final judgment has been entered in the case or the action has otherwise been terminated.

(xi) **In the Event of Non-Resolution.** If, in any non-binding arbitration conducted under this section, a resolution of all aspects of the dispute does not result and the case proceeds to trial, no reference to the arbitration proceeding, or the result thereof, may be made to the trier of fact; *provided however*, that nothing in this rule shall prevent a party from presenting or using at the trial evidence presented in the arbitration proceeding, if such evidence is otherwise admissible under the Federal Rules of Evidence or the parties have stipulated to its use.

(xii) **Trial De Novo.** If trial de novo has not been waived by all parties, any party may demand a trial de novo of the issues referred to arbitration by serving and filing a request therefor within thirty (30) calendar days after service of the award. If a demand for trial de novo is timely served and filed, the case will be treated for all purposes, and the trial shall be conducted, as if no arbitration had occurred.

(xiii) **Parties' Rights Are Not Limited.** Nothing in this rule limits any party's right to agree to arbitrate any dispute, regardless of the amount involved, pursuant to Title 9, United States Code, or any other provision of law.

(4) **Parties Retain Right to Secure ADR Services Outside the Programs Sponsored by the Court.** Nothing in this rule precludes the parties from agreeing to seek ADR services outside the court's program. Parties remain free to use any form of ADR and any neutral they choose. To the extent resources permit, court staff may assist mediators outside of the court's ADR program.

(b) Process Administration.

(1) **ADR Administrator.** The ADR Administrator is responsible for implementing, administering, overseeing, and evaluating the ADR program and procedures covered by this local rule. These responsibilities extend to educating litigants, lawyers, judges, and court staff about the ADR program and rules. In addition, the administrator shall assure that appropriate systems are maintained for recruiting, screening, and training neutrals, as well as for maintaining on an on-going basis the neutrals' ability to provide role-appropriate and effective services to the parties.

(2) Rules and Materials Available. The Clerk of Court shall make pertinent rules and explanatory materials available to the parties.

(c) Selection of ADR Procedure.

(1) Mandated Early ADR Selection Process.

(A) The Parties' Duty to Consider ADR, Confer, and Report. No later than ten (10) days prior to the Rule 16 scheduling conference, unless otherwise ordered, in every case to which this rule applies, the parties must meet and confer about (I) whether they might benefit from participating in some ADR process, (ii) which type of ADR process is best suited to the specific circumstances in their case, and (iii) when the most appropriate time would be for the ADR session to be held. In their case management statement, the parties must report their shared or separate views about the utility of ADR, which ADR procedure would be most appropriate, and when the ADR session should occur.

(B) Designation of Process. After considering the parties' submissions, the court may order the parties, on appropriate terms and in conformity with this rule, to participate in ADR. The court may refer the case to mediation or, with the consent of all parties, to arbitration under 28 U.S.C. § 654 et seq., or to an ADR procedure which, by stipulation of all parties, has been tailored to meet the specific needs of the case.

(2) Referral to ADR During the Pretrial Period. Notwithstanding the provisions of paragraph (c)(1)(B) above regarding the early selection process, at any time before entry of final judgment, the court may, on its own motion or at the request of any party, order the parties to participate in mediation or, with the consent of all parties, arbitration.

(3) Protection Against Unfair Financial Burdens. Assigned judges shall take appropriate steps to assure that no referral to ADR results in an imposition on any party of an unfair or unreasonable economic burden.

(d) Panel of Neutrals and Selection.

(1) Panel of Neutrals. For each separate type of ADR procedure authorized under this rule, the court shall assure that separate panels are maintained of persons who are trained and otherwise qualified to serve as neutrals. Only persons who agree to serve on the terms the Court has established shall be admitted to and remain as members of the panel for that process.

(2) Selection of the Neutral. The court adopts the following procedures to facilitate party participation in selecting the neutral.

(A) Selection Process. After a case is referred to an ADR option, the parties shall contact the ADR Administrator within twenty (20) days of the Court's order. The ADR Administrator may be contacted at the U.S. District Court, 550 W. Fort Street, Boise, ID 83724; telephone (208) 334-9067; facsimile (208) 334-9209. The Court encourages the parties and

attorneys to consult the Court's internet site at www.id.uscourts.gov or contact the ADR Administrator to obtain ADR Program information.

- (B) Appointment of a Neutral When Parties Agree. If the parties agree on a neutral and confirm his or her availability, they must notify the ADR Administrator of their selection. The mediator will notify the ADR Administrator about the mediation date the parties have selected and provide a status report within ten (10) days after the end of the mediation session.
- (C) Appointment of a Neutral When Parties Disagree. If the parties cannot agree on a neutral, they must advise the ADR Administrator. The ADR Administrator will send a copy of the Court's mediator roster to the parties from which they may select a proposed mediator. Each party must submit the names of ten (10) mediators from the list, ranking them in order of preference, and return the list to the ADR Administrator. At the time all lists are received from the parties, the ADR Administrator will advise the parties of the neutral selected. The neutral chosen will be notified by the ADR Administrator, at which time the neutral will contact all parties to schedule and conduct the ADR session(s).
- (D) Documents Provided by the Court to the Neutral. When the ADR Administrator is involved in the mediator selection, the Administrator shall provide the mediator with a copy of: (I) the Order of ADR Reference and (ii) the case docket sheet.

(e) Disqualification of Neutrals.

(1) Applicable Standards. No person may serve as a neutral in an ADR proceeding under this rule in violation of the standards set forth in (I) 28 U.S.C. § 455 or (ii) any applicable standard of professional responsibility or rule of professional conduct.

(2) Mandatory Disqualification and Notice of Recusal. A prospective neutral who discovers a circumstance requiring disqualification shall immediately submit to the parties and to the ADR Administrator a written notice of recusal. The parties may not waive a basis for disqualification that is described in 28 U.S.C. § 455(b).

(3) Disclosure and Waiver of Non-Mandatory Grounds for Disqualification. If a prospective neutral discovers a circumstance that would not compel disqualification under an applicable rule of professional conduct or under 28 U.S.C. § 455(b), but that might be covered by 28 U.S.C. § 455(a) (impartiality might reasonably be questioned), the neutral must promptly disclose that circumstance in a notice of conflict of interest to the ADR Administrator. The parties may waive a possible basis for disqualification that is premised only on 28 U.S.C. § 455(a), but any such waiver must be in writing and delivered to the ADR Administrator within ten (10) days of the party receiving notice of the conflict of interest.

(f) Compensation of Neutrals. Subject to subparagraph (c)(3), Protection Against Unfair Financial Burdens, above, neutrals shall be compensated by the parties, equally, at a rate

specified by the neutral. Actual transportation expenses reasonably incurred by neutrals will be reimbursed equally by the parties. Any neutral may voluntarily serve on a pro bono basis.

(g) Immunity of Arbitrator. All persons serving as arbitrators under this local rule are deemed to be performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity. Mediators are not afforded this same protection.

(h) Integration With Case Management. Neither the parties' agreement to participate in an ADR procedure nor the court's referral of an action to ADR reduces the assigned judge's power and responsibility to maintain overall management control of a case before, during, and after the pendency of an ADR process.

(i) Telephone Conference With Neutral Before ADR Session. Promptly after being appointed to serve in a case, the neutral shall schedule a brief joint telephone conference with all counsel to discuss (1) fixing a convenient date and place for the session, (2) the procedures that will be followed during the session, (3) who shall attend the session on behalf of each party, (4) what material or exhibits should be provided to the neutral before the session or brought by the parties to the session, (5) any issues or matters that it would be especially helpful to have the parties address in their written pre-session statements, and (6) any and all information regarding the compensation of the neutral for services and expenses.

(j) Confidentiality of ADR Proceedings.

(1) Generally Applicable Provision. Except as provided in this local rule or by 28 U.S.C. § 657 (arbitrations), and except as otherwise required by law or as stipulated in writing by all parties and the neutral, all communications made in connection with any ADR proceeding under this local rule shall be privileged and confidential.

(2) Limitations on Communication With Assigned Judge. No person may disclose to the assigned judge any communication made, position taken, or opinion formed by any party or neutral in connection with any ADR proceeding under this local rule except as otherwise (A) stipulated in writing by all parties and the neutral, (B) provided in this local rule, (C) provided in 28 U.S.C. § 657 (for arbitrations), or (D) ordered by the court in connection with proceedings to determine whether the parties entered an enforceable agreement and, if so, what its terms are.

(3) Authorized Studies and Assessments of Program. Nothing in this rule shall be construed to prevent any participant or neutral in an ADR proceeding under this rule from responding to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate any aspect of the court's ADR program or to enforce any provision of this local rule. The identity of the sources of such information shall be appropriately protected.

(k) Neutral's Report That ADR Process Has Been Completed.

(1) Timing and Limited Content. No more than ten (10) days after the ADR process has been completed, and by the deadline fixed in the Order of ADR Reference, the neutral must submit to the ADR Administrator a case status form that reports limited information regarding the scheduling and outcome of the ADR session(s). This form also includes information regarding whether the parties will be submitting stipulations and dismissal documents. The case status report must not be filed with the Clerk of Court or sent to the assigned judge.

(2) Prohibition on Disclosure of Confidential Communications or Neutral's Opinions. Absent a written stipulation signed by all parties, in submitting the case status report, the neutral must not disclose to the assigned judge any confidential ADR communication or any opinions or thoughts the neutral might have about the merits of the litigation, about how it should be managed, or about the character of any party's participation in the ADR proceeding.

***Technical Amendments made on March 31, 2005**

<p>RELATED AUTHORITY 28 U.S.C. § 651 et seq.</p>

CIVIL RULE 17.1
INFANTS AND INCOMPETENT PERSONS

(a) Infants and Incompetent Persons.

(1) No claim of an infant or incompetent person will be settled or compromised without leave of the Court, embodied in an order approving the stipulation of settlement.

(2) Whenever an infant or incompetent person has recovered a sum of money, whether by settlement or judgment, such money, whether collected upon execution or otherwise, shall be deposited with the Clerk, unless otherwise ordered by the Court, to abide the further order of the Court in the premises. Such money shall not be withdrawn except as hereinafter provided.

(3) Upon production of a certified copy of letters of guardianship of the property of the infant or incompetent person, or like commission, or of an order approving the compromise of a disputed claim of a minor, as contemplated by Idaho Code § 15-5-409a, issued out of any court of competent jurisdiction of the state, county, or district where the infant or incompetent person resides, an application may be made on behalf of the infant or incompetent person for an order directing the Clerk to pay over to such guardian or other named or authorized person the amount so deposited. Such application must be made either by the attorney of record of the infant or incompetent person, or on notice to such attorney.

(4) On such application, the amount of the attorney's lien on the fund, if any, must be fixed and determined by the Court, which determination will be embodied in the order directing the disposal of the fund. The Clerk shall thereupon pay out the monies as directed.

(b) Bond of Guardian Ad Litem. In cases in which an infant or incompetent person is represented by a next friend or by a guardian ad litem, as required by Idaho Code § 16-1618, no such next friend or guardian ad litem will receive money or other property of the infant or incompetent person until the next friend or guardian ad litem has given such security for the faithful performance of such duties as the Court prescribes. If such next friend or guardian ad litem does not desire to receive any such money or property, the same may be paid or delivered to the Clerk, or to such persons as may be directed by the judge, with like effect as if paid or delivered to the next friend or guardian ad litem, subject to payment of the Clerk's fees.

RELATED AUTHORITY

Fed. R. Civ. P. 17(c)

CIVIL RULE 26.1
FORM OF CERTAIN DISCOVERY DOCUMENTS

The party answering, responding, or objecting to written interrogatories, requests for production of documents or things, or requests for admission must quote each such interrogatory or request in full immediately preceding the statement of any answer, response, or objection thereto. The parties must also number each interrogatory, request, answer, response, or objection sequentially, regardless of the number of sets of interrogatories or requests.

<p>RELATED AUTHORITY</p>

<p>Fed. R. Civ. P. 26, 33, 34, 36</p>

CIVIL RULE 26.2 DISCLOSURES

There is a duty to supplement all disclosures. These disclosures will be served upon the respective parties and not filed with the Court.

For good cause shown, the Court can excuse parties from compliance with the disclosure requirements.

(a) Initial Disclosures. Parties are required to complete initial disclosures as set forth in Federal Rule of Civil Procedure 26(a)(1) . Unless otherwise agreed to between the parties, a party may not seek discovery from any source before the parties have met and conferred as required by Federal Rule of Civil Procedure 26(d) and (f). However, by stipulation or order from the Court, the parties may proceed with discovery prior to the meet-and-confer conference.

(b) Disclosure of Expert Testimony. The disclosure of expert testimony must be in conformance with Federal Rules of Civil Procedure 26(a)(2) in the form of a written report prepared and signed by the witness. The expert witness must identify similar cases in which he or she has testified at trial or by deposition within the last four (4) years.

As a general rule, the Court will set the time for the disclosure of expert testimony. In the event the Court does not designate the time for disclosure of expert testimony, it must be disclosed at least one hundred twenty (120) days before the scheduled trial date, or if the evidence is intended solely to contradict or rebut evidence on the same subject identified by another party, within thirty (30) days after the disclosure made by such other party.

Except for good cause shown, the scope of subsequent testimony by an expert witness must be limited to those subject areas identified in the disclosure report or through other discovery such as a deposition.

RELATED AUTHORITY

Fed. R. Civ. P. 26(a)(1)-(3) 28 U.S.C. § 473

CIVIL RULE 30.1
LIMITATION OF DEPOSITION

In conformance with Federal Rule of Civil Procedure 30, there is a presumption that no more than ten (10) depositions per party will be taken by the parties. The parties should, however, be prepared at the scheduling conference to discuss whether the presumptive level should be decreased or increased due to the nature of the litigation.

Each deposition is limited to one (1) day of seven (7) hours unless otherwise stipulated between the parties or authorized by the Court.

RELATED AUTHORITY

Fed. R. Civ. P. 30

CIVIL RULE 33.1
LIMITS ON INTERROGATORIES

No party may serve upon any other single party to an action more than twenty-five (25) interrogatories, including subparts (which will be counted as separate interrogatories), without first obtaining a stipulation of such party to additional interrogatories or, in the event the parties are unable to agree, obtaining an order of the Court upon showing of good cause granting leave to serve a specific number of additional interrogatories.

RELATED AUTHORITY

Fed. R. Civ. P. 33
28 U.S.C. § 473

CIVIL RULE 37.1
DISCOVERY DISPUTES - MEET AND CONFER REQUIREMENT

Unless otherwise ordered, the Court will not entertain any discovery motion, except those motions brought by a person appearing pro se and those brought pursuant to Federal Rule of Civil Procedure 26(c) by a person who is not a party, unless counsel for the moving party files with the Court, at the time of filing the motion, a statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

RELATED AUTHORITY

Fed. R. Civ. P. 26(f), 37(a)(B)

CIVIL RULE 37.2
FORM OF DISCOVERY MOTIONS

(a) Any discovery motion filed pursuant to Federal Rule of Civil Procedure 26 and 37 must include a verbatim recitation of each interrogatory, request, answer, response, and objection which is the subject of the motion.

(b) The party filing the motion must specify separately and with particularity each issue that remains to be determined at the hearing, and the contentions and points and authorities of each party as to each issue. The supporting memorandum must be set forth in one document and contain all such issues in dispute and the contentions and points and authorities of each party.

Depending on the number of discovery matters at issue, the moving party has the option of reproducing them in the memorandum or attaching them as an addendum to the memorandum.

RELATED AUTHORITY

Fed. R. Civ. P. 26(c), 37(a), 78
ECF Procedures 5.F

CIVIL RULE 38.1
NOTATION OF “JURY DEMAND” IN THE PLEADING

If a party demands a jury trial by endorsing it on a pleading, as permitted by Federal Rule of Civil Procedure 38(b), a notation must be placed on the front page of the pleading, immediately following the title of the pleading, stating “Demand For Jury Trial” or an equivalent statement. This notation will serve as a sufficient demand under Rule 38(b). Failure to use this manner of noting the demand will not result in a waiver under Rule 38(d).

<p>RELATED AUTHORITY Fed. R. Civ. P. 38(b)</p>

CIVIL RULE 39.1
OPENING STATEMENTS, CLOSING ARGUMENTS,
AND EXAMINATION OF WITNESSES

(a) **Opening Statements.** Prior to offering any evidence, counsel for the plaintiff must make a statement of the facts which counsel intends to establish in support of plaintiff's claim, unless such statement is waived with permission of the Court. Such waiver or statement must be made as a matter of record. Following the statement of plaintiff or at the opening of defendant's case, at the election of counsel for the defendant, the defendant's counsel must make a statement of facts which defendant's counsel intends to establish, unless such statement is waived with permission of the Court. Such waiver or statement must be made as a matter of record.

(b) **Arguments.** Only one attorney will open and one attorney will close, except with the permission of the Court; provided that if the opening attorney does not intend to close, the opening attorney must so inform the Court so that the Court may appropriately apportion the arguments between counsel.

(c) **Examination of Witnesses.** Only one attorney for each party will examine or cross-examine a witness except with the permission of the Court.

RELATED AUTHORITY

None

CIVIL RULE 40.1
ASSIGNMENT OF CASES

Civil and criminal cases will be assigned by the Clerk to the respective judges of the Court by lot. If it appears that a case has been improperly assigned for any reason, the Court may, in its discretion, reassign the case to another calendar area without prior notice.

Death penalty and pro se cases are assigned on a rotating basis founded upon workload and relative assignment of a companion case.

RELATED AUTHORITY

28 U.S.C. § 137
Fed R. Civ. P. 40
General Order No. 158 and 159

**CIVIL RULE 41.1
DISMISSAL OF ACTIONS**

Any civil case in which no action of record has been taken by the parties for a period of six (6) months will, after sufficient notice, be dismissed by the Court for lack of prosecution.

RELATED AUTHORITY
Fed. R. Civ. P. 41

CIVIL RULE 47.1
VOIR DIRE OF JURORS

(a) The jury box must be filled before examination on voir dire. The Court will examine the jurors as to their qualifications and, if permitted, will direct the order and manner of examination by counsel. Not less than five (5) days before trial, attorneys may submit written requests for voir dire questions.

(b) The Court, after reviewing the complexity and possible length of the case, will determine the number of trial jurors necessary. This number of jurors, not less than six nor more than twelve, plus a number of jurors equal to the total number of peremptory challenges which are allowed by law, must be called in the first instance. These jurors constitute the initial panel. As the initial panel is called, the Clerk must 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 must take the number of the juror who has been excused. When the initial panel is qualified, the parties must exercise their peremptory challenges secretly and alternately, with plaintiff exercising the first challenge. When peremptory challenges have all been exercised or waived, the Court must call the names of the selected jurors having the lowest assigned numbers. These jurors must constitute the trial jury. All jurors selected will deliberate on the verdict.

RELATED AUTHORITY

Fed. R. Civ. P. 47
28 U.S.C. § 1870

CIVIL RULE 51.1
INSTRUCTIONS TO JURY

(a) **Submission of Proposed Jury Instructions.** In the case of a jury trial, written proposed jury instructions and any request for special interrogatories and special verdict forms must be prepared and filed by counsel at least fourteen (14) days prior to the date of trial, but the Court may, in its discretion, receive additional requests during the course of the trial.

Counsel must file proposed instructions and requests for special interrogatories and/or special verdict forms with the Clerk of Court. Each proposed instruction, request for special interrogatory, and/or special verdict must be numbered, must indicate the identity of the party presenting the same, and must contain citations of authority. Individual instructions must embrace one subject only, and the principle of law so embraced in any request for instruction must not be repeated on subsequent requests. The Court may require that proposed jury instructions, requests for special interrogatories, and/or special verdict forms also be submitted in electronic format for use by the Court.

(b) **Objections to Requested Instructions.** Requested instructions, together with any requests for special interrogatories and/or special verdicts, must be served upon the adverse party. The adverse party must, at least one (1) day prior to trial, specify objections to any of said instructions. Any objection must identify the instructions objected to by number, and specify distinctly the matter to which said adverse party objects. Objections must be accompanied by citations of authority in support thereof.

(c) **Objections to the Instructions Given by the Court.** The trial judge must fix the time, place, and procedure for making objections to the judge's charge to the jury. Objections must be made outside the presence of the jury and must be reported by the Court reporter in the transcript.

(d) **Instructions to the Jury.** The jury must be instructed by the Court, as provided in Federal Rule of Civil Procedure 51 either before or after arguments by counsel, or both, at the Court's election. The final jury instructions, as given by the Court, must be docketed and become a part of the permanent case file.

<p>RELATED AUTHORITY Fed. R. Civ. P. 51</p>
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CIVIL RULE 54.1
TAXATION OF COSTS

(a) Within fourteen (14) days after entry of a judgment, under which costs may be claimed, the prevailing party must serve and file a cost bill in the form prescribed by the Court. Within fourteen (14) days after service by any party of its cost bill, any other party may serve and file specific objections to any items setting forth the grounds therefor. The cost bill must itemize the costs claimed and be supported by a certificate of counsel that the costs are correctly stated, were necessarily incurred, and are allowable by law. Not less than twenty-eight (28) days after receipt of a party's cost bill, and objections if any, the Clerk will tax costs and serve copies of the cost bill upon all parties of record. The cost bill should reflect the Clerk's action as to each item contained therein.

(b) Generally, the prevailing party is the one who successfully prosecutes the action or successfully defends against it, prevails on the merits of the main issue, and the one in whose favor the decision or verdict is rendered and judgment entered.

(c) Costs must be taxed in conformity with the provisions of 28 U.S.C. §§ 1920-1923 and such other provisions of law as may be applicable and such directives as the Court may from time to time issue. Taxable items include:

(1) Clerk's Fees and Service Fees. Clerk's fees (see 28 U.S.C. § 1920) and service fees are allowable by statute. Fees required to remove a case from the state court to federal court are allowed as follows: fees paid to clerk of state court; fees for service of process in state court; costs of documents attached as exhibits to documents necessarily filed in state court, and fees for witnesses attending depositions before removal.

(2) Trial Transcripts. The cost of the originals of a trial transcript, a daily transcript and a transcript of matters prior or subsequent to trial, furnished to the Court is taxable at the rate authorized by the Judicial Conference of the United States when either requested by the Court, or prepared pursuant to stipulation. Mere acceptance by the Court does not constitute a request. Copies of transcripts for counsel's own use are not taxable unless approved in advance by the Court.

(3) Deposition Costs. The prevailing party may recover the following costs relative to depositions used for any purpose in connection with the case: i) the cost of the original deposition plus one copy (where the prevailing party was the noticing party); ii) the cost of a copy of a deposition (where the prevailing party was not the noticing party); and iii) the cost of video-taped depositions. The prevailing party who noticed the deposition may also recover the reasonable expenses incurred for reporter fees, notary fees, and the reporter's/notary's travel and subsistence expenses. In addition, witness fees, whether or not the witness was subpoenaed, are taxable at the same rate as for attendance at trial. The reasonable fee for a necessary interpreter to attend a deposition is also taxable on behalf of the prevailing party. Attorney's fees and expenses incurred in arranging for or taking a deposition are not taxable.

(4) Witness Fees, Mileage and Subsistence. The rate for witness fees, mileage and subsistence are fixed by statute (*see* 28 U.S.C. § 1821). Such fees are taxable even though the witness does not take the stand, provided the witness necessarily attends the Court. Such fees are taxable even though the witness attends voluntarily upon request and is not under subpoena. The mileage taxation is that which is traveled based on the most direct route. Mileage fees for travel outside the District must not exceed 100 miles each way without prior Court approval. Witness fees and subsistence are taxable only for the reasonable period during which the witness is within the District. No party will receive witness fees for testifying in his or her own behalf except where a party is subpoenaed to attend Court by the opposing party. Witness fees for officers of a corporation are taxable if the officers are not defendants and recovery is not sought against the officers individually. Fees for expert witnesses are not taxable in a greater amount than that statutorily allowable for ordinary witnesses. Allowance of fees for a witness on deposition must not depend on whether or not the deposition is admitted in evidence.

(5) Copies of Papers and Exhibits. The cost of an exhibit necessarily attached to a document (or made part of a deposition transcript) required to be filed and served is taxable. The cost of reproducing the required number of copies of the Clerk's record on appeal is allowable.

The cost of copies submitted in lieu of originals because of the convenience of offering counsel or his or her client are not taxable. The cost of reproducing copies of motions, pleadings, notices and other routine case papers is not taxable.

(6) Maps, Charts, Models, Photographs, Summaries, Computations and Statistical Summaries. The reasonable cost of maps, diagrams, visual aids and charts is taxable if they are admitted into evidence. The cost of photographs is taxable if admitted into evidence or attached to documents required to be filed and served on opposing counsel. Enlargements greater than 8" by 10" are not taxable except by order of the Court. The cost of models is not taxable except by order of the Court. The cost of compiling summaries, computations and statistical comparisons is not taxable.

(7) Interpreter and Translator Fees. The reasonable fee of a competent interpreter is taxable if the fee of the witness involved is taxable. The reasonable fee of a competent translator is taxable if the document translated is necessarily filed or admitted in evidence.

(8) Other Items. Other items may be taxed with prior Court approval.

(9) Certificate of Counsel. The certificate of counsel required by 28 U.S.C. § 1924 and the District of Idaho Local Civil and Criminal Rules of Practice must be prima facie evidence of the facts recited therein. The burden is on the opposing party to establish that a claim is incorrectly stated, unnecessary or unreasonable.

(d) A review of the decision of the Clerk in the taxation of costs may be taken to the Court on a motion to retax by any party, pursuant to Federal Rule of Civil Procedure 54(d), upon written notice thereof, served and filed with the Clerk within five (5) days after the costs have been

taxed in the Clerk's office, but not afterwards. The motion to retax must particularly specify the ruling of the Clerk excepted to, and no others will be considered. The motion will be considered and determined upon the same papers and evidence used by the Clerk and upon such memorandum of points and authorities as the Court may require. A hearing may be scheduled at the discretion of the trial judge.

***Technical Amendments made on March 31, 2005**

RELATED AUTHORITY

Fed. R. Civ. P. 54(d)
28 U.S.C. §§ 1821, 1920

CIVIL RULE 54.2
AWARD OF ATTORNEY FEES

(a) Claims for attorney fees will not be treated as routine items of costs. Attorney fees will only be allowed upon an order of a judge of the Court after such fact-finding process as the judge orders.

(b) Within fourteen (14) days after entry of a judgment under which attorney fees may be claimed, a party claiming the right to allowance of attorney fees may file and serve a petition for such allowance. The petition must state the amount claimed and cite the legal authority relied on. The petition must be accompanied by an affidavit of counsel setting forth the following: (1) date(s), (2) service(s) rendered, (3) hourly rate, (4) hours expended, (5) a statement of attorney fee contract with the client, and (6) information, where appropriate, as to other factors which might assist the Court in determining the dollar amount of fee to be allowed. Petitions for attorney fees and cost bills must be filed as separate documents. Failure to comply with this requirement will result in delay in processing.

(c) Within fourteen (14) days after receipt of a party's petition for allowance of attorney fees, any other party may serve and file objections to the allowance of fees or any portion thereof. The objecting party must set forth specific grounds of objection.

***Technical Amendments made on March 31, 2005**

<p>RELATED AUTHORITY Fed. R. Civ. P. 54(d)(2)</p>
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CIVIL RULE 54.3
JURY COST ASSESSMENT

When a civil action has been settled or otherwise disposed of in or out of Court, it is the duty of counsel to inform the Clerk by 3 p.m. of the business day immediately prior to trial. Costs may be assessed against counsel for failure to do so. In the event that failure to give notice hereunder results in the reporting of prospective jurors for service in the case, costs may include one day's fees for prospective jurors so reporting.

RELATED AUTHORITY

None

CIVIL RULE 58.1
ENTRY OF JUDGMENT

In every action or proceeding terminating in a judgment, there must be filed, separate from any findings of fact, conclusions of law, memorandum, opinion, or order, a judgment which must state in simple and direct terms the judgment of the Court, must be signed by the judge or the Clerk as allowed by Dist. Idaho Loc. Civ. R. 77.2 and must comply in other respects with Federal Rule of Civil Procedure 58.

RELATED AUTHORITY

Fed. R. Civ. P. 58

CIVIL RULE 58.2
SATISFACTION OF JUDGMENT

Whenever the amount directed to be paid by any judgment or order, together with interest (if interest accrues) and the Clerk's statutory charges, must be paid into Court by payment to the Clerk, the Clerk must enter satisfaction of said judgment or order. The Court must enter satisfaction of any judgment or order on behalf of the United States upon the filing of a written acknowledgment of satisfaction thereof by the United States Attorney, and in other cases, upon the filing of a written acknowledgment of satisfaction made by the judgment-creditor and the judgment-creditor's attorney, and by the legal representatives or assigns of the judgment-creditor with evidence of their authority, within two (2) years after the date of entry of the judgment or order, and thereafter upon written acknowledgment by the judgment-creditor or by the judgment-creditor's legal representatives or assigns with evidence of their authority.

<p>RELATED AUTHORITY Fed. R. Civ. P. 54, 58, 79(a), -(b)</p>

CIVIL RULE 62.2
SUPERSEDEAS BONDS

(a) **Approval, Filing, and Service.** If eligible under Dist. Idaho Loc. Civ. R. 67.1, the bond may be approved and filed by the Clerk. A copy of the bond plus notice of filing must be served on all affected parties promptly.

(b) **Objections.** The Court will determine objections to the form of the bond or sufficiency of the surety.

(c) **Execution.** Except where otherwise provided by Federal Rule of Civil Procedure 62, or order of the Court, execution may issue after ten (10) days from the entry of a judgment unless a supersedeas bond has been approved by the judge or the Clerk.

RELATED AUTHORITY

None

CIVIL RULE 65.1.1
SECURITY; PROCEEDING AGAINST SURETIES

(a) **The Judgment.** Every bond within the scope of these rules will contain the surety or sureties' consent that in case of the principal's or surety's default, upon notice of not less than fourteen (14) days, the Court may proceed summarily and render judgment against them and award execution.

(b) **Service.** Any indemnitee or party in interest who seeks the judgment provided by these rules will proceed by motion and, with respect to personal sureties and corporate sureties, will make the service provided by Federal Rule of Civil Procedure 5(b) or 31 U.S.C. § 9306, respectively.

RELATED AUTHORITY

Fed. R. Civ. P. 65.1

CIVIL RULE 65.1.2
BONDS AND OTHER SURETIES

(a) Bonds and Sureties.

(1) When Required. A judge may, upon demand of any party, where authorized by law and for good cause shown, require any party to furnish security for costs which may be awarded against such party in an amount and on such items as are appropriate.

(2) Qualifications of Surety.

(A) Every bond must have as surety either: (I) a corporation authorized by the Secretary of the Treasury of the United States to act as surety on official bonds under 31 U.S.C. §§ 9301-9308; (ii) a corporation authorized to act as surety under the laws of the State of Idaho; (iii) two individual residents of the District, each of whom owns real or personal property within the District of sufficient equity value to justify twice the amount of the bond; or (iv) a cash deposit of the required amount made with the Clerk and filed with a bond signed by the principals.

(B) An individual who executes a bond as a surety pursuant to this subsection will attach an affidavit which gives the individual's full name, occupation, residence, and business addresses, and demonstrates ownership of real or personal property within this District. After excluding property exempt from execution and deducting liabilities (including those which have arisen by virtue of suretyship on other bonds or undertakings), the real or personal property must be valued at no less than twice the amount of the bond.

(3) Court Officers as Sureties. No clerk, marshal, or other employee of the Court nor any member of the bar representing a party in the particular action or proceeding, shall be accepted as surety on any bond or other undertaking in any action or proceeding in this Court. Cash deposits on bonds may be made by members of the bar on certification that the funds are the property of a specified person who has signed as surety on the bond. Upon exoneration of the bond, such monies must be returned to the owner and not to the attorney.

(4) Examination of Sureties. Any party may apply for an order requiring any opposing party to show cause why it should not be required to furnish further or different security or requiring personal sureties to justify their financial status in support of their bond.

(b) Approval of Bonds by Attorneys and Clerk (or Judge). All personal surety bonds must be presented to the judge for approval. When the party is represented by counsel, there must be appended thereto a certificate of the attorney for the party for whom the bond is being filed substantially in the following form:

This bond has been examined by counsel for (plaintiff/defendant) and is recommended for approval as provided in this rule.

Dated this _____ day of _____, ____.

(attorney)

Such endorsement by the attorney will signify to the Court that said attorney has carefully examined the said financial information of the personal surety; that the attorney knows the contents thereof; that the attorney knows the purposes for which it is executed; that in the attorney's opinion the same is in due form; and that the attorney believes the affidavits of qualification to be true.

RELATED AUTHORITY

Fed. R. Civ. P. 65(c), 65.1

**CIVIL RULE 67.1
DEPOSITS**

(a) Whenever a party seeks an order for money to be deposited by the Clerk in an interest-bearing account, the party must prepare a form of order in accord with the following.

(b) The following form of standard order must be used for the deposit of registry funds into interest-bearing accounts or the investment of such funds in an interest-bearing instrument:

IT IS ORDERED that the Clerk of Court invest the amount of \$_____ in an automatically renewable (type of account or instrument, i.e., time certificate, treasury bill, passbook), in the name of the Clerk of Court, U.S. District Court, at (name of bank, savings and loan, brokerage house, etc.); said funds to remain invested pending further order of the Court.

IT IS FURTHER ORDERED that the Clerk of Court must deduct a fee from the income earned on the investment equal to ten percent (10%) of the income earned while the funds are held in the Court's registry fund, regardless of the nature of the case underlying the investment and without further order of the Court. The interest payable to the U.S. Courts must be paid prior to any other distribution of the account. Investments having a maturity date will be assessed the fee at the time the investment instrument matures.

IT IS FURTHER ORDERED that counsel presenting this order personally serve a copy thereof on the Clerk of Court or his or her financial deputy.

RELATED AUTHORITY

Fed. R. Civ. P. 67
28 U.S.C. §§2041, 2042
General Order No. 70

CIVIL RULE 67.2
WITHDRAWAL OF A DEPOSIT PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 67

(a) Funds may only be withdrawn upon an order of this Court. Such order must specify the amounts to be paid and the names of any person or company to whom the funds are to be paid.

(b) Any person seeking withdrawal of money which was deposited in the Court pursuant to Federal Rule of Civil Procedure 67 and which was subsequently deposited into an interest-bearing account or instrument as required by Rule 67, must provide, on a separate paper attached to the motion seeking withdrawal of the funds, the social security number or tax identification number of the ultimate recipient of the funds. This separate paper must be forwarded by the Court directly to the institution holding the money.

RELATED AUTHORITY

Fed. R. Civ. P. 67
28 U.S.C. §§ 2041, 2042

CIVIL RULE 72.1
MAGISTRATE JUDGE RULES

(a) Authority of United States Magistrate Judges.

(1) Authorized Magistrate Judge Duties. All United States magistrate judges of this Court are authorized to perform the duties prescribed by 28 U.S.C. § 636(a), (b), (c), and (g).

(2) Prisoner Cases Under 28 U.S.C. §§ 2254 and 2255. The magistrate judge may perform any or all of the duties imposed upon a judge by the rules governing proceedings in the United States District Courts under § 2254 and § 2255 of Title 28, United States Code. In so doing, the magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceedings and must submit to a district judge a report containing proposed findings of fact and recommendations for disposition of the petition or motion by the judge except in cases where the death penalty has been imposed; in which case, the district judge will conduct the evidentiary hearing, if necessary. Any order disposing of the petition or motion may only be made by a district judge.

(3) Prisoner Cases Under 42 U.S.C. § 1983. The magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceedings and must submit to a district judge a report containing proposed findings of fact and recommendations for the disposition of petitions or complaints filed by prisoners challenging the conditions of their confinement.

(4) Special Master References. A magistrate judge may be designated by a district judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Federal Rules of Civil Procedure 53(b) and 54.

(5) Preliminary Proceedings in Probation Cases. Magistrate judges may conduct preliminary proceedings in probation matters pursuant to Federal Rule of Criminal Procedure 32.1.

(6) Other Authorized Duties. A magistrate judge is also authorized to:

(A) Exercise general supervision of civil and criminal calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges;

(B) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;

(C) Preside over all arraignments before the District Court, accept pleas of not guilty, establish the times within which all pretrial motions will be filed and responded to, and fix trial dates. If a plea of guilty or nolo contendere is offered, the matter will be forthwith calendared before a district judge;

(D) Impanel the grand jury, preside when the grand jury reports, and accept for the District Court any indictments returned, issue warrants and summonses as appropriate, and establish the terms of release pending trial, continue the same if previously fixed or modify the terms of release as he or she sees fit;

(E) Accept waivers of indictment, pursuant to Federal Rule of Criminal Procedure 7(b);

(F) Conduct voir dire and select petit juries in a civil case assigned to a district judge, with the consent of the parties;

(G) Accept petit jury verdicts in civil and criminal cases at the request of a district judge and fix dates for imposition of sentence;

(H) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for Court proceedings.

(I) Order the exoneration or forfeiture of bonds;

(J) Fix the terms of release pending appeal to the Court of Appeals;

(K) Conduct examinations of judgment debtors in accordance with Federal Rule of Civil Procedure 69; and

(L) Perform any additional duty that is not inconsistent with the Constitution and laws of the United States.

(b) Objections to Magistrate Judge's Orders, Reports, and Recommendations.

(1) Nondispositive Matter - 28 U.S.C. § 636(b)(1)(A). When a pretrial matter not dispositive of a claim or defense of a party is referred to a magistrate judge pursuant to 28 U.S.C. § 636(b)(1)(A), the magistrate judge will conduct such proceedings as are required and when appropriate enter a written order setting forth its ruling on the matter.

A party must serve and file any objections, not to exceed twenty (20) pages, to such order within ten (10) days after being served with a copy of the magistrate judge's order, unless a different time period is set by the magistrate or district judge. A party waives his or her right to assign as error any defect in the magistrate judge's order to which a timely objection has not been filed. A party may respond to another party's objections within ten (10) days after being served with a copy thereof. The district judge to whom the case is assigned will consider such objections and modify or set aside any portion of the order found to be clearly erroneous or contrary to law. The district judge may also consider sua sponte any order found to be clearly erroneous or contrary to law. [Fed. R. Civ. P. 72(a)].

(2) Dispositive Matters - 28 U.S.C. § 636(b)(1)(B). When a pretrial matter dispositive of a claim or defense of a party, a post-trial motion for attorney fees, or a prisoner petition is referred to a magistrate judge without consent of the parties pursuant to 28 U.S.C. § 636(b)(1)(B), the magistrate judge will conduct such proceedings as required. The magistrate judge will enter a recommendation for disposition of the matter, including proposed findings of fact when appropriate.

A party objecting to the recommended disposition of the matter must serve and file specific, written objections, not to exceed twenty (20) pages, to the proposed findings and recommendations within ten (10) days after being served with a copy of the magistrate judge's report and recommendation. A party may respond to another party's objections within ten (10) days after being served with a copy thereof. The district judge to whom the case is assigned will make a de novo determination of any portion of the magistrate judge's recommended disposition to which specific objection has been made. The district judge may also consider sua sponte any portion of the proposed disposition. The district judge may accept, reject, or modify the recommended disposition, receive further evidence, or recommit the matter to the magistrate judge with directions.

(3) Special Master Reports--28 U.S.C. § 636(b)(2). Any party may seek review of, or action on, a special master report filed by a magistrate judge in accordance with the provisions of Federal Rule of Civil Procedure 53(e).

***Technical Amendments made on March 31, 2005**

RELATED AUTHORITY

Fed. R. Civ. P. 72
Fed. R. Civ. P. 54(d)(2)(D)
Fed. R. Civ. P. 53(e)

CIVIL RULE 73.1
ASSIGNMENT OF CIVIL CASES
TO A MAGISTRATE JUDGE
UPON THE CONSENT OF THE PARTIES

A civil case may be conditionally assigned to a magistrate judge or reassigned from a district judge to a magistrate judge under 28 U.S.C. § 636(c) for any and all proceedings in a jury or non-jury matter, including pretrial, trial, and post-trial motions, and ordering the entry of judgment. Before a magistrate judge can exercise jurisdiction over a civil case, all parties must sign a written consent to proceed before the magistrate judge.

(a) Notice. The Clerk of Court must notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. The consent notice and consent to proceed form will be sent to counsel for plaintiff(s) by the Clerk of Court at the time an action is filed. Additional consent notice(s) and consent to proceed form(s) will be sent to counsel for defendant(s) after an answer has been filed and, if necessary, may be included with pretrial notices and instructions.

(b) Return of Consent Forms. Any party deciding to proceed before a magistrate judge must sign the consent to proceed form and return it to the Clerk of Court by mail, or by e-mailing the form in .pdf format to Consents@id.uscourts.gov. The Clerk of Court will keep custody of all consent to proceed forms under seal until it is determined if all parties are going to consent to proceed before a magistrate judge. If all parties to an action consent to proceed before a magistrate judge, the Clerk of Court will file and docket the election to proceed forms and the case will continue before, or be reassigned to, a magistrate judge. Even though it is required that the consent form be returned to the Clerk of Court, parties are free to withhold their consent and no judge will be notified if any particular party did or did not consent to the exercise of jurisdiction by a magistrate judge.

***Amended January 12, 2005**

RELATED AUTHORITY General Order No. 159

CIVIL RULE 77.1
HOURS OF THE COURT

(a) **Location and Hours.** The office of the Clerk of Court is located at the Federal Building and United States Courthouse, 550 West Fort Street, Room 400, Boise, Idaho 83724. The regular hours are from 8 a.m. to 5 p.m. each day except Saturday, Sunday, and legal holidays or other days so ordered by the Court. Divisional offices are located at: 220 E. 5th Street, Room 304, Moscow, Idaho 83843; 801 E. Sherman St., Room 119, Pocatello, Idaho 83201; and 205 N. 4th, 2nd Floor, Room 202, Coeur d'Alene, Idaho 83814.

(b) Filings may be made electronically before and after regular office hours or on Saturdays, Sundays, and legal holidays. An electronic document is considered timely filed if received by the Court before midnight, Mountain Time, on the date set as a deadline, unless the judge sets a specific time of day otherwise.

RELATED AUTHORITY

Fed. R. Civ. P. 77(c)

CIVIL RULE 77.2
SESSIONS OF THE COURT

(a) This Court will transact judicial business in Boise, Coeur d'Alene, Moscow, and Pocatello, Idaho, on all business days. The judges will preside over hearings and trials in these locations as the judicial workload may warrant.

(b) Any judge of this Court may, in the interest of justice or to further the efficient performance of the business of the Court, conduct proceedings at a special session at any time, anywhere in the District, on request of a party or otherwise.

RELATED AUTHORITY

Fed. R. Civ. P. 77
28 U.S.C. § 138-139, 141

CIVIL RULE 77.3
UNITED STATES COURT LIBRARY

The Ninth Circuit law library is located on the sixth floor of the Federal Building and United States Courthouse in Boise, Idaho. The library is for the primary use of judges and personnel of the federal Court.

In addition, attorneys admitted to practice in this Court may use the library when circumstances require. The library is operated in accordance with such rules and regulations as the Court may from time to time adopt.

RELATED AUTHORITY

None

CIVIL RULE 77.4
EX PARTE COMMUNICATION WITH JUDGES

Attorneys or parties to any action or proceeding should refrain from writing letters to the judge, or otherwise communicating with the judge, unless opposing counsel is present. All matters to be called to a judge's attention should be formally submitted as hereinafter provided.

RELATED AUTHORITY

None

CIVIL RULE 79.1
CUSTODY OF FILES AND EXHIBITS

(a) After being admitted into evidence, exhibits of a documentary nature in any case pending or tried in this Court, shall be placed in the custody of the Clerk unless otherwise ordered by the Court. All other exhibits, models and material offered or admitted in evidence shall be retained in the custody of the attorney or party producing the same at trial unless otherwise ordered by the Court.

(1) At the conclusion of the trial or hearing, every exhibit marked for identification or introduced in evidence, all depositions and transcripts, shall be returned to the party who produced them.

(2) On request, a party or their attorney who has custody of any exhibits, has the responsibility to produce any and all such exhibits to this Court or the Court of Appeals; and shall grant the reasonable request of any party to examine or reproduce such for use in the proceeding.

(b) All exhibits received in evidence in a criminal case that are in the nature of narcotic drugs, legal or counterfeit money, firearms or contraband of any kind, shall be retained by the United States Attorney or his or her designee pending disposition of the case and for any appeal period thereafter.

RELATED AUTHORITY

None

CIVIL RULE 81.1
REMOVAL ACTIONS -- STATE COURT RECORDS

(a) This rule applies to civil actions removed to the United States District Court for the District of Idaho from the state courts and governs procedure after removal. The removing party must file:

(1) A copy of the entire state court record and the docket sheet must be provided at the time of filing the notice of removal, and

(2) A Civil Cover Sheet with the Notice of Removal. Attorneys are required to complete a civil cover sheet when a notice of removal is filed in the District of Idaho. The form is available on the Court's website. This form is used by the Clerk of Court to identify the status of all parties and attorneys. See Dist. Idaho Loc. Civ. R. 7.1, Motion Practice and Dist. Idaho. Loc. Civ. R. 81.

(b) Motions in Cases Removed from State Court. The filing date of the notice of removal will be considered the filing date of all pending motions previously filed in the state court action, unless otherwise ordered by the Court. If a response and/or reply have also been filed in the state court action prior to the filing of the notice of removal, no further response or reply pleadings will be accepted. If a response to the motion has not been filed in the state court action, the response deadline will be twenty-one (21) days after service of the notice of removal. If a response to the motion was filed in the state court action but a reply to the response has not been filed in the state court action, the reply deadline will be fourteen (14) days after service of the notice of removal.

***Technical Amendments made on March 31, 2005**

RELATED AUTHORITY Fed. R. Civ. P. 81(c)

CIVIL RULE 83.1
FREE PRESS - FAIR TRIAL PROVISIONS

(a) **Publicity.** Courthouse supporting personnel, including, among others, clerks and deputies, law clerks, messengers, and court reporters, must not disclose to any person information relating to any pending criminal or civil proceeding that is not part of the public records of the Court without specific authorization of the Court, nor can any such personnel discuss the merits or personalities involved in any such proceeding with any members of the public. Deputies and employees of the United States Marshal's Service coming into possession of confidential information obtained from the Court must not disclose such information unless necessary for official law enforcement purposes.

(b) **Confidentiality.** All courthouse support personnel are specifically prohibited from divulging information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

(c) **Conduct of Proceedings in a Widely Publicized or Sensational Case.**

(1) In a widely publicized or sensational case likely to receive massive publicity, the Court, on its own motion, or on motion of either party, may issue a special order governing such matters as extrajudicial statements by lawyers, parties, witnesses, jurors, and Court officials likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matter which the Court may deem appropriate for inclusion in such an order.

(2) Nothing in this rule or in any other criminal rule of this Court is intended to restrict the media's right to full pretrial coverage of news pursuant to the First Amendment to the United States Constitution.

(d) **Photographs, Broadcasts, Videotapes, and Tape Recordings Prohibited.**

(1) All forms, means, and manner of taking photographs, tape recordings, videotaping, broadcasting, or televising are prohibited in a United States courtroom or its environs during the course of, or in connection with, any judicial proceedings whether the Court is actually in session or not. This rule must not prohibit recordings by a court reporter or staff electronic recorder. No court reporter, staff electronic recorder, or any other person may use or permit to be used any part of any recording of a court proceeding on or in connection with any radio, videotape or television broadcast of any kind. The Court may permit photographs of exhibits or use of videotapes or tape recordings under the supervision of counsel.

(2) A judge may, however, permit (A) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (B) the broadcasting, televising, recording, or photographing of investiture, ceremonial, naturalization proceedings, or for other purposes.

(e) For purposes of this rule, *environs* means:

(1) In Boise, Idaho, the fifth and sixth floor of the Federal Building and United States Courthouse located at 550 West Fort Street, including the corridor area adjacent to the courtroom doors;

(2) In Moscow, Idaho, the third floor of the Federal Building and Courthouse located at 220 East Fifth Street;

(3) In Pocatello, Idaho, that portion of the second floor of the Federal Building and Courthouse at 804 East Sherman Street assigned for Court use, including the corridor area adjacent to the courtroom doors; and

(4) In Coeur d'Alene, Idaho, the second floor of the Federal Building and Courthouse located at 205 North Fourth Street assigned for court use, including the corridor adjacent to the courtroom doors.

RELATED AUTHORITY

45 F.R.D. 391 (1969)

51 F.R.D. 135 (1971)

87 F.R.D. 519 (1980)

CIVIL RULE 83.2
COURTROOM AND COURTHOUSE DECORUM

Position of Counsel. Counsel for the respective parties must be seated in accordance with instructions of the Court bailiff. In examining a witness or addressing the Court, counsel must remain at the counsel table or the lectern, if one is available, except when permission is granted by the Court to approach the bench, the Clerk's desk, or a witness. All papers and exhibits must be sent from counsel table to the Court, courtroom clerk, or witness by and through the bailiff unless permission is otherwise granted.

RELATED AUTHORITY

None

CIVIL RULE 83.3
SECURITY IN THE COURTHOUSE

The Court, or any judge, may from time to time make such orders or impose such requirements as may be reasonably necessary to assure the security of the Court and of all persons in attendance. To the extent deemed necessary, the Court or judge may coordinate any orders relating to the security of the Court and public with the U.S. Marshal's Service.

RELATED AUTHORITY

None

CIVIL RULE 83.4
BAR ADMISSION

(a) **Admission to the Bar of this Court.** Admission to and continuing membership in the bar of this Court is limited to attorneys of good moral character who are active members in good standing of the Idaho State Bar. Each applicant for admission must present to the Clerk a written petition for admission stating the applicant's residence and office addresses and by what courts he or she has been admitted to practice and the respective dates of admission to those courts. The petition must be accompanied by a certificate of a member of the bar of this Court, stating that the bar member knows the applicant and can affirm that the applicant is of good moral character. Upon qualification, the applicant may be admitted upon written or oral motion as determined by the Court. Before any certificate of admission shall issue, the applicant must sign the prescribed oath. Generally, the applicant must personally appear before the Court; however, in exceptional circumstances the Court may waive this requirement.

(b) **Practice in this Court.** Except as herein otherwise provided, only members of the bar of this Court may practice in this Court. Only a member of the bar of this Court may appear for a party, sign stipulations, or receive payment or enter satisfactions of judgment, decree, or order.

(c) **Attorneys for the United States and Federal Defender Organizations.** An attorney who is not eligible for admission under Dist. Idaho Loc. Civ. R. 83.4 hereof, but who is a member in good standing of and eligible to practice before the bar of any United States Court or of the highest court of any state or of any territory or of any insular possession of the United States, and who is of good moral character, may practice in this Court in any matter in which the attorney is employed or retained by the United States or its agencies and is representing the United States or any of its officers or agencies or in which the attorney is part of a federal defender organization and is appointed by the Court to represent a criminal defendant. (Dist. Idaho Loc. Crim. R. 44.1). 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.

(d) **Appearance by Entities Other Than an Individual.** Whenever an entity other than an individual desires or is required to make an appearance in this Court, the appearance shall be made only by an attorney of the bar of this Court or an attorney permitted to practice under these rules.

**(effective May 15, 2006)*

(e) **Pro Hac Vice/Local Counsel.** An attorney not eligible for admission under Dist. Idaho Loc. Civ. R. 83.4(a) hereof, but who is a member in good standing of and eligible to practice before the bar of any United States Court or of the highest court of any state or of any territory or insular possession of the United States, who is of good moral character, and who has been retained to appear in this Court, may, upon written application and in the discretion of the Court, be permitted to appear and participate in a particular case, and no certificate of admission must be issued by the Clerk.

~~Counsel should also refer to the Electronic Case Filing Procedures for specific requirements relative to pro hac vice status under CM/ECF.~~

~~Within thirty (30) days,~~ The attorney filing pro hac vice must **first** also (1) designate a member of the bar of this Court who ~~does~~ maintains an office within this Court as co-counsel with the authority to act as attorney of record for all purposes, and (2) file with such designation the address, telephone number, and written consent of such designee. **Designated local counsel shall be responsible both for filing the pro hac vice application through ECF and for payment of the prescribed fee.** The pro hac vice application must be presented to the Clerk and must state under penalty of perjury (1) the attorney's residence and office addresses, (2) by what court(s) the attorney has been admitted to practice and the date(s) of admission, (3) that the attorney is in good standing and eligible to practice in said court(s), and (4) that the attorney is not currently suspended or disbarred in any other court(s). **Upon the electronic filing of the pro hac vice application and payment of fees by designated local counsel, and granting of the application by the Court, out-of-state counsel shall immediately register for ECF.**

~~Attorneys not admitted to the bar of this Court who, upon the filing of a verified petition for permission to practice in an individual case, are admitted under the conditions prescribed in Dist. Idaho Loc. Civ. R. 83.4(e), and shall be required to pay a fee of Two Hundred Dollars (\$200.00) for each such pro hac vice application filed.~~ **Absent Court approval, an attorney who has been admitted pro hac vice for a particular case and received an ECF login and password, may not use these in a subsequent unrelated case.**

All pleadings filed with the Clerk of Court must contain the names and addresses and original signatures of the attorney appearing pro hac vice and associated local counsel.

The designee must personally appear with the attorney on all matters heard and tried before this Court unless such presence is excused by the Court. ~~Original proceedings may be filed by an attorney before admission pro hac vice, but the time for the responsive pleading must not begin to run until the appearance of associated local counsel is filed with the Clerk.~~

(f) Non-Appropriated Fund.

(1) Attorneys admitted to the bar of this Court under the conditions prescribed in Dist. Idaho Loc. Civ. R. 83.4 must be required to pay to the Clerk of Court an admission fee in accordance with the General Orders of the Court.

(2) Attorneys not admitted to the bar of this Court who, upon the filing of a verified petition for permission to practice in an individual case, are admitted under the conditions prescribed in Dist. Idaho Loc. Civ. R. 83.4(e), must be required to pay a fee in accordance with the General Orders of the Court..

(3) Monies deposited into the Non-Appropriated Fund must be used for purposes which inure to the benefit of members of the bench and bar of this Court in the administration of justice.

(g) Legal Interns. Legal interns are permitted to appear in this Court under the direction of a supervising attorney, who shall be an attorney licensed to practice before this court.

(h) 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 Dist. Idaho Loc. Civ. R. 83.4 hereof must promptly notify the Court of any change in his or her status in another jurisdiction which would make him or her ineligible for membership in the bar of this Court under Local Rule 83.4. In the event the attorney is no longer eligible to practice in another jurisdiction by reason of his or her suspension for nonpayment of fees or enrollment as an inactive member, he or she will forthwith be suspended from practice before this Court without any order of Court and until he or she becomes eligible to practice in such other jurisdiction.

RELATED AUTHORITY

General Order No. 161

CIVIL RULE 83.5
ATTORNEY DISCIPLINE

(a) Standard of Professional Conduct. All members of the bar of this court and all attorneys permitted to practice in this court must familiarize themselves with and comply with the Idaho Rules of Professional Conduct of the Idaho State Bar and decisions of any court interpreting such rules. These provisions are adopted as the standards of professional conduct for this court but must not be interpreted to be exhaustive of the standards of professional conduct. No attorney permitted to practice before this court will engage in any conduct which degrades or impugns the integrity of the court or in any manner interferes with the administration of justice therein.

(1) In the event any attorney engages in conduct which may warrant discipline or other sanctions, the court or any district judge may, in addition to initiating proceedings for contempt under Title 18, United States Code, and Federal Rule of Criminal Procedure 42, or imposing other appropriate sanctions pursuant to the court's inherent powers or the Federal Rules of Civil or Criminal Procedure, refer the matter for disciplinary proceeding as described in paragraph____ below.

(2) Any attorney admitted to practice in this court who is convicted of a felony in any court of the United States, of the District of Columbia, or of any state, territory, commonwealth, or possession of the United States, must immediately be suspended from practice before this court, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise. The court will issue an order to show cause directing the suspended attorney to demonstrate within thirty (30) days why the attorney should be reinstated to practice before the court during the pendency of any appeal. Upon the felony conviction becoming final, an order of disbarment will be entered unless the attorney can show cause within thirty (30) days after notice and the opportunity to be heard, why disbarment would not be in the interest of justice.

(3) Upon the receipt by this court of a certified copy of a judgment or order showing that any attorney admitted to practice before this court has been suspended, disbarred or otherwise disciplined by any other court of the United States or the District of Columbia, or of any state, territory, commonwealth or possession of the United States, this court will notify and issue an order to show cause directing the suspended, disbarred, or otherwise disciplined attorney to demonstrate to this court within thirty (30) days why the imposition of the identical discipline would be unwarranted.

Upon the expiration of thirty (30) days after notification and the opportunity to be heard, this court shall impose the identical discipline unless the attorney clearly demonstrates or this court finds that:

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

(B) there was such an absence of proof establishing misconduct that the court would not accept as final the conclusions reached;

(C) the imposition of the disciplinary action stated in the order would otherwise result in grave injustice; or

(D) the misconduct is deemed to warrant substantially different discipline from that stated in the order.

(b) Conduct Subject to Discipline. This court may impose discipline on any attorney practicing before this court, whether or not a member of the bar of this court, who engages in conduct violating the Idaho Rules of Professional Conduct, or who fails to comply with rules or orders of this court. The discipline may consist of disbarment from practice before this court, suspension, reprimand, or any other action that the court deems appropriate and just.

(c) Initiation of Disciplinary Proceedings. Whenever a district, magistrate, or bankruptcy judge of this district believes that conduct of an attorney may warrant disbarment, suspension, or a reprimand by the court, such judge may recommend the initiation of disciplinary proceedings by issuing a written recommendation for the initiation of disciplinary proceedings to the chief judge of this district. The chief judge of this district, or another active district judge if the chief judge is the judge recommending such action, shall review the recommendation to determine if reasonable grounds exist for the initiation of disciplinary proceedings. If the chief judge determines that disciplinary proceedings should be initiated, the chief judge shall issue an order to show cause under this rule that identifies the basis for possible discipline.

(d) Response. An attorney against whom an order to show cause is issued shall have twenty-eight (28) days from the date of the order in which to file a response. The attorney may include in the response a request for a hearing on briefs, or for an in-person or telephonic hearing. The failure to include a request for a hearing will be deemed a waiver of any right to a hearing. The failure to file a timely response may result in the imposition of discipline by the chief judge of this district, or his or her district judge designee, without further notice.

(e) Hearing on Disciplinary Charges. If requested by the attorney, and if the hearing judge, in his or her sole discretion, determines that an in-person hearing is warranted, an in-person hearing shall be conducted on the disciplinary charges on the record. If the hearing judge determines that an in-person hearing is not warranted or required, the matter shall be determined by the hearing judge on the record submitted to him or her. The attorney may be represented by counsel who shall file a notice of appearance with the designated judge and with any attorney appointed by the Court to prosecute the matter.

(f) Appointment of counsel to prosecute charges. In appropriate cases, the chief district judge of the district, or if the chief district judge is the complaining judge, an active district judge, may appoint an attorney to prosecute charges of misconduct and shall provide notice of that appointment to the attorney and his counsel, if any. The court may solicit recommendations from the Lawyer Representatives of the District of Idaho as to an appropriate appointment. Actual costs incurred by the attorney prosecuting the charges will be reimbursed from the non-appropriated fund after review and approval by the Board of Judges.

(g) Report and Recommendation. Following the hearing, the judicial officer shall prepare a report and recommendation. The report and recommendation shall be served on the attorney, and the attorney shall have twenty-one (21) days from the date of the report and recommendation within which to file a response. If the attorney files a response to the report and recommendation, the report and recommendation, together with the response, shall be presented to a randomly drawn three judge panel of District, Magistrate, or Bankruptcy judges of this district, other than the complaining judge. In its discretion, the panel may call for further submittals or a telephonic hearing. The final order in a disciplinary proceeding where a response has been filed by the attorney, shall be by the three-judge panel. In the absence of a response by the attorney, to the report and recommendation, the final order shall be by the chief district judge, or the designated district judge.

(h) Reinstatement. A suspended or disbarred attorney may file a petition for reinstatement with the clerk of this court. The petition shall contain a concise statement of the circumstances of the disciplinary proceedings, the discipline imposed by the court, and the grounds that justify reinstatement of the attorney. That petition shall be referred to a judicial officer and, if requested by the applicant after the report and recommendation, to a three-judge panel as provided above. The chief district judge shall thereafter rule on the petition, absent a request by the attorney for a three-judge panel.

(i) Confidentiality. All proceedings under this rule shall be public, except upon an order for good cause shown that confidentiality is appropriate to protect the privacy of the persons involved.

(j) Sanctions. Nothing in this rule shall limit the power of an individual judge to impose sanctions as authorized under the Federal Rules of Civil or Criminal Procedure or any applicable Bankruptcy Rule.

(k) Other Sanctions. This rule does not restrict the judges of this district from referring a matter to any bar association for disciplinary action.

<p style="text-align: center;">RELATED AUTHORITY</p>

<p style="text-align: center;">None</p>

CIVIL RULE 83.6
APPEARANCE, SUBSTITUTION, AND WITHDRAWAL OF ATTORNEYS

(a) **Appearances.** Whenever a party has appeared through an attorney, the party may not thereafter appear or act in his or her own behalf in the case or take any step therein unless an order of substitution must first have been made by the Court, after notice to the opposing party and his or her attorney; provided, that the Court may in its discretion hear a party in open court, notwithstanding the fact that the party has appeared or is represented by an attorney. A notice of appearance does not constitute a pleading and does not satisfy the requirement of an answer or preclude involuntary dismissal.

(b) **Substitutions.**

(1) When an attorney of record who is the sole representative for any person ceases to act for a party, such party must appear in person or appoint another attorney to appear on his behalf by filing a “Notice of Substitution of Attorney.” Said notice of substitution must be signed by the party, the attorney ceasing to act, and the newly appointed attorney or by a written designation filed in the cause and served upon the attorney ceasing to act unless said attorney is deceased, in which event the designation of the new attorney must so state. Until such substitution is filed with the Court, the authority of the attorney of record must continue for all proper purposes. The original notice of substitution, containing all signatures, shall be maintained by the filing party pursuant to Dist. Idaho Loc. R. 5.1(e).

(2) When an attorney of record who is the sole representative ceases to act for a party because the attorney is no longer with the same law firm and another attorney from the same law firm is substituted, a “Notice of Substitution of Attorney Within the Firm” and proposed order must be filed with the Clerk of Court. The “Notice of Substitution of Attorney Within the Firm” must be signed by the attorney ceasing to act for the party and the newly appointed attorney from the same firm. Until such substitution is filed with the Court, the authority of the attorney of record will continue for all proper purposes.

(c) **Withdrawal.**

(1) No attorney of record who is the sole representative for a party may withdraw from representing that party without leave of the Court. Before an attorney is to be granted leave to withdraw, the attorney must present to the Court a proposed order permitting the attorney to withdraw and directing the client to appoint another attorney to appear, or to appear in person by filing a notice with the Court stating how the party will be represented. After the Court has entered such order, the withdrawing attorney must forthwith and with due diligence serve all other parties.

(2) The order shall provide that the withdrawing attorney must continue to represent the client until proof of service of the withdrawal order on the client has been filed with the Court. The client will be allowed twenty-one (21) days after the filing of proof of service by the attorney(s) to advise the Court in writing in what manner the client will be represented.

If the said party fails to appear in the action, either in person or through a newly appointed attorney within such twenty-one (21)-day period, such failure will be sufficient grounds for the entry of a default against such party or dismissal of the action of such party with prejudice and without further notice, which shall be stated in the order of the Court.

(3) If the party represented by the withdrawing attorney is a corporation, the order must advise the entity that it cannot appear without being represented by an attorney in accordance with Dist. Idaho Loc. Civ. R. 83.4(d).

(4) Upon entry of the order and the filing of proof of service on the client, no further proceedings can be had in the action which will affect the right of the party represented by the withdrawing attorney for a period of twenty-one (21) days.

(d) Notice of Change of Address. Any attorney who has been permitted to appear and participate in an action before this Court must advise the Court and other counsel of record, in writing, if that attorney has a change in name, firm, firm name, or office mailing address, by filing a document entitled "Notice of Change of Address" in each case in which he or she has made an appearance.

The Clerk's office will assume record keeping responsibility only for address changes made in accordance with this rule.

***Technical Amendments made on March 31, 2005**

<p style="text-align: center;">RELATED AUTHORITY None</p>
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CIVIL RULE 83.7
PERSONS APPEARING WITHOUT AN ATTORNEY - PRO SE

Persons Appearing Without an Attorney--In Propria Persona. Any person who is representing himself or herself without an attorney must appear personally for such purpose and may not delegate that duty to any other person. While such person may seek outside assistance in preparing Court documents for filing, the person is expected to personally participate in all aspects of the litigation, including Court appearances. Persons appearing without attorneys are required to become familiar with and comply with all Local Rules of this District, as well as the Federal Rules of Civil and /or Criminal Procedure. In exceptional circumstances, the Court may modify these provisions to serve the ends of justice.

CIVIL RULE 83.8
FAIRNESS AND CIVILITY

All pretrial and trial proceedings in the United States District and Bankruptcy Courts for the District of Idaho, must be free from prejudice and bias towards another on the basis of gender, race, ethnicity, disability, age or sexual orientation. Fair and equal treatment must be accorded all courtroom participants, whether judges, attorneys, witnesses, litigants, jurors, or court personnel. The duty to be respectful of others includes the responsibility to avoid comment or behavior that can reasonably be interpreted as manifesting prejudice or bias toward another.

Civility is the responsibility of every lawyer, judge, and litigant in the federal system. While lawyers have an obligation to represent clients zealously, incivility to counsel, adverse parties, or other participants in the legal process undermines the administration of justice and diminishes respect for both the legal process and our system of justice.

The bar, litigants, and judiciary, in partnership with each other, have a responsibility to promote civility in the practice of law and the administration of justice. The fundamental principles of civility which will be followed in the United States District and Bankruptcy Courts for the District of Idaho, both in the written and spoken word, include the following:

- (1) Treating each other in a civil, professional, respectful, and courteous manner at all times.
- (2) Not engaging in offensive conduct directed towards others or the legal process.
- (3) Not bringing the profession in to disrepute by making unfounded accusations of impropriety.
- (4) Making good faith efforts to resolve by agreement any disputes.
- (5) Complying with the discovery rules in a timely and courteous manner.
- (6) Reporting acts of bias or incivility to the Clerk of Court. The Clerk of the Court will then determine the appropriate judicial officer with whom to discuss the matter.

RELATED AUTHORITY

None

LOCAL RULES OF PRACTICE

CRIMINAL RULES

CRIMINAL RULE 1.1
SCOPE

(a) **Title and Citation.** These rules shall be known as the Local Rules of Criminal Practice before the United States District Court for the District of Idaho. They may be cited as “Dist. Idaho Loc. Crim. R. _____.”

(b) **Effective Date.** These rules became effective on January 1, 2005. Any amendment to these rules become effective on the date approved by the Court.

(c) **Scope of Rules.** These rules shall apply to all criminal proceedings in the District of Idaho.

(d) **Relationship to Prior Rules; Actions Pending on Effective Date.** These rules supersede all previous rules promulgated by this Court or any judge of this Court. They shall govern all applicable proceedings brought in this Court after they take effect. They also shall apply to all proceedings pending at the time they take effect, except to the extent that in the opinion of the Court the application thereof would not be feasible or would work an injustice, in which event the former rules shall govern.

(e) **Rule of Construction and Definitions.**

(1) Title 18, United States Code, Sections 3771 and 3772, shall, as far as applicable, govern the construction of these rules.

(2) The following definitions shall apply:

(A) “Court.” As used in these rules, the term “court” refers to the United States District Court of the District of Idaho, the entire Board of Judges for the District of Idaho, or to a judge or magistrate judge of the Court before whom a proceeding is pending unless the rule expressly refers to a district judge only or to the full Court.

(B) “Clerk.” As used in these rules, the term “Clerk” refers to the Clerk of Court or any deputy clerk designated by the Clerk of Court to act in the capacity of the Clerk.

(f) **Applicability of Local Rules of Civil Practice.** All general provisions of the Local Rules of Civil Practice apply to criminal proceedings unless such provisions are in conflict with or are otherwise provided for by the Federal Rules of Criminal Procedure or the Local Rules of Criminal Practice.

RELATED AUTHORITY

None

CRIMINAL RULE 6.0
SEALED DOCUMENTS AND PUBLIC ACCESS

The provisions of Dist. Idaho Loc. Civil R. 5.1(j) apply to criminal actions and proceedings unless otherwise ordered by the Court.

RELATED AUTHORITY

None

CRIMINAL RULE 12.1
PROCEDURAL ORDERS AND MOTIONS

(a) Procedural Orders. At the arraignment, the magistrate judge or district judge shall set cutoff dates for the filing of requests for discovery, pretrial motions, and submission of jury instructions in accordance with the Criminal Procedural Order approved by the Court. These dates will be strictly adhered to unless an extension of time is granted by the Court upon good cause shown.

(b) Pretrial Conference. At the time of the arraignment, a date will be set for a pretrial conference. In addition to any other matters to be covered, i.e., evidentiary or trial procedures, the defendant should be prepared to advise the trial judge (1) if the case will continue to trial based on a not guilty plea, or (2) whether the case will be resolved on a plea of guilty.

RELATED AUTHORITY

Fed. R. Cr. P. 12, 47

CRIMINAL RULE 28.1
INTERPRETERS

(a) **Courtroom Proceedings.** Only officially designated interpreters may interpret official courtroom proceedings. Regardless of the presence of a private interpreter, such official interpreter must interpret all proceedings in the courtroom.

(b) **Out-of-Court Proceedings.** Official interpreters shall also be available when needed to interpret at interviews between the attorney and his or her non-English-speaking client.

(c) **Compensation for Interpreters.** Attorneys appointed by the Court may claim up to the maximum allowed by the Criminal Justice Act in interpreter fees and be reimbursed, provided they attach all pertinent interpreter bills to said voucher.

Interpreters are compensated in accordance with the policies and the Fee Schedule established by the Judicial Conference of the United States.

RELATED AUTHORITY

Fed. R. Crim. P. 28

CRIMINAL RULE 32.1
INVESTIGATIVE REPORTS BY
UNITED STATES PROBATION OFFICE

(a) Presentence Report Confidentiality.

(1) The presentence report is a confidential document and not available for public inspection. During the sentencing hearing, it will be filed with the Clerk of Court under seal. It also shall not be reproduced or copies distributed to other agencies or other individuals unless permission is granted by the Court or the Chief United States Probation Officer.

(2) In addition to the presentence report, the probation officer will submit a separate document entitled "Sentencing Recommendation" to the Court. It shall be confidential and not disclosed to the government or to the defendant, or defendant's counsel or to any other person or party.

(b) Presentence Report.

(1) The Court will set a date of sentencing to occur no less than seventy (70) days following the entry of a guilty plea or nolo contendere plea or verdict of guilty. At the time the sentencing date is set, the Court will advise counsel and the probation office of the dates the presentence report will be disclosed to counsel, the date counsel is to submit any objections to the probation office, the date on which the presentence report, and any amendments thereto, will be submitted to the Court and counsel. Should counsel or the probation office be unable to comply with the Court's specified dates, they will notify the Court forthwith and request a continuance of the sentencing hearing. It is contemplated that in most circumstances, the Court will not formally accept a finding of guilty of a plea until after review of the presentence report.

(2) The probation officer shall provide timely notification to counsel of the date and place of the initial and subsequent interviews for the presentence report. Counsel shall be provided a reasonable opportunity to attend any interview of the defendant during the course of the presentence investigation.

(3) In the event a plea agreement has been entered into between the attorney for the government and the attorney for the defendant, it must be reduced to writing and submitted to the Court prior to entry of the plea of guilty or nolo contendere.

(4) Not less than thirty-five (35) days prior to the date of sentencing, on the date specified by the Court, the probation officer shall disclose the presentence investigation report to the defendant and to counsel for the defendant and the government. Within fourteen (14) days thereafter, on the date specified by the Court, counsel shall file with the Clerk of Court and submit a copy to the probation officer any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report.

(5) After receiving counsel's objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The probation officer may request counsel for both parties to meet with the probation officer to discuss unresolved factual and legal issues.

(6) Seven (7) days prior to the date of the sentencing hearing, on the date specified by the Court, the probation officer shall submit the presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the officer's comments thereon. The probation officer shall certify that the contents of the report, including any revisions thereof, have been disclosed to the defendant and to counsel for the defendant and the government; that the content of the addendum has been communicated to counsel; and that the addendum fairly states any remaining objections.

(7) Except with regard to any objection made under subdivision (a) that has not been resolved, the report of the presentence investigation may be accepted by the Court as accurate. The Court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the Court may consider any reliable information presented by the probation officer, the defendant, or the government.

(8) The times set forth in this rule may be modified by the Court for good cause shown, except that the fourteen-(14)-day period set forth in subsection (b)(4) may be diminished only with the consent of the defendant.

(9) Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under Federal Rule of Criminal Procedure 32.

(10) The presentence report shall be deemed to have been disclosed (A) when a copy of the report is physically delivered, (B) one (1) day after the report's availability for inspection is orally communicated, or (C) three (3) days after a copy of the report or notice of its availability is mailed.

(c) Confidentiality of Probation Records.

(1) Investigative reports and supervision records of this Court maintained by the probation office are confidential and not available for public inspection. The Chief Probation Officer may disclose these records to federal, state, or local Courts; correctional and law enforcement agencies; or paroling authorities who have a legal, investigative, or custodial interest in that individual.

(2) Any party, other than those defined in subsection (c)(1), seeking access to the confidential records maintained by the probation office, shall do so by written petition to the Court establishing with particularity the need for specific information in the records.

(d) Rule Not to Supersede or Void Provisions of Federal Rule of Criminal Procedure 32(c). Nothing in this rule shall be construed to supersede or void the provisions of Federal Rule of Criminal Procedure 32(c).

RELATED AUTHORITY

Fed. R. Crim. P. 32

CRIMINAL RULE 44.1
RIGHT TO AND APPOINTMENT OF COUNSEL

(a) Right to and Appointment of Counsel. Attorneys may be appointed for indigent parties in a criminal proceeding including pretrial diversion and parole revocation hearings. If a defendant, appearing without counsel in a criminal proceeding, desires to obtain his or her own counsel, a reasonable continuance for arraignment shall be granted for that purpose. If the defendant requests appointment of counsel by the Court or fails for an unreasonable time to appear with his or her own counsel, the assigned judge or magistrate judge shall, subject to the applicable financial eligibility requirements, appoint counsel unless the defendant advises the Court that he or she wishes to represent himself pro se. Any financial affidavit submitted with the application for appointment of counsel shall be sealed by the Clerk.

If a defendant desires to represent himself and proceed without counsel, he or she shall sign and file a written waiver of right to counsel. The district judge or magistrate judge may nevertheless designate counsel to advise and assist the defendant to the extent defendant might thereafter desire. Appointment of counsel shall be made in accordance with the plan of this Court adopted pursuant to the Criminal Justice Act of 1964 and on file with the Clerk.

(b) Appearance and Withdrawal of Counsel. An attorney who has appeared for a defendant may thereafter withdraw only upon notice to the defendant and all parties to the case and after order of the Court finding good cause exists and granting leave to withdraw. Failure of a defendant to pay agreed compensation shall not alone be deemed sufficient cause.

Unless such leave is granted, the attorney shall continue to represent the defendant until the case is dismissed or the defendant is acquitted. In the event the defendant is convicted, unless leave is granted, the attorney shall continue to represent the defendant until the time for making post-trial motions and for filing notice of appeal, as specified in Federal Rule of Appellate Procedure 4(b), has expired. If an appeal is taken, the attorney shall continue to serve until leave to withdraw is granted by any competent Court.

(c) Pro Hac Vice/Local Counsel. An attorney eligible for admission under Dist. Idaho Loc. Civ. R. 83.4(a), and who is a member in good standing and eligible to practice before the bar of any United States Court or of the highest court of any state or of any territory or insular possession of the United States, who is of good moral character and who has been retained to appear in this Court, may, upon written application and in the discretion of the Court, be permitted to appear and participate in a particular case, and no certificate of admission shall be issued by the Clerk of Court.

The pro hac vice application shall be presented to the Clerk of Court and shall state under penalty of perjury (1) the attorney's residence and office addresses, (2) by what court(s) the attorney has been admitted to practice and the date(s) of admission, (3) that the attorney is in good standing and eligible to practice in said court(s), and (4) that the attorney is not currently suspended or disbarred in any other court(s). The attorney shall also (1) designate a member of the bar of this Court who does maintain an office within this Court as co-counsel with the authority to act as

attorney of record for all purposes; and (2) file with such designation the address, telephone number, and written consent of such designee.

Attorneys not admitted to the bar of this Court who, upon the filing of a verified petition for permission to practice in an individual case, are admitted under the conditions prescribed in Dist. Idaho Loc. Civ. R. 83.4(e), and shall be required to pay the proscribed fee for each such pro hac vice application filed.

Attorneys not admitted to the bar of this Court who, upon the filing of a verified petition for permission to practice in an individual case, are admitted under the conditions prescribed in Dist. Idaho Loc. Civ. R. 83.4(e), and shall be required to pay a fee in accordance with the general orders of the court for each such pro hac vice application so filed.

The designee shall personally appear with the attorney on all matters heard and tried before this Court unless such presence is excused by the Court. Original proceedings may be filed by an attorney before admission pro hac vice, but the time for the responsive pleading shall not begin to run until the appearance of associated local counsel is filed with the Clerk of Court.

RELATED AUTHORITY

Fed. R. Crim. P. 44

CRIMINAL RULE 46.1
RELEASE FROM CUSTODY/BAIL

(a) **Release from Custody.** Eligibility for release prior to and after trial shall be in accordance with 18 U.S.C. §§ 3142, 3143, and 3144.

(b) **Bail.** If the Court sets as a condition of release a monetary bail under the Bail Reform Act, the bond or equivalent security shall comply with Dist. Idaho Loc. Civ. R. 65.1 unless the Court specifically orders otherwise.

(c) **Motion to Modify Release or Detention Orders.** Except as otherwise ordered by a judge of this Court, magistrate judges shall, subject to the provisions of 18 U.S.C. § 3141 et seq., hear and determine all motions to modify release or detention orders.

(d) **Appeal of Release or Detention Orders.** If a defendant is not moving to modify a previous order entered by a magistrate judge, but desires to appeal the decision made by the magistrate judge, the pleading should be clearly entitled “Notice of Appeal.”

RELATED AUTHORITY

18 U.S.C. §§ 3142-3144
Fed. R. Crim. P. 46
Dist. Idaho Loc. Civ. R. 65.1

CRIMINAL RULE 46.2
PRETRIAL SERVICES

Pursuant to the Pretrial Services Act of 1982 (18 U.S.C. §§ 3152-3155), the Court authorizes the United States Probation Office for the District of Idaho to establish a Pretrial Services Division as provided for by the Act.

At the discretion of the Chief U.S. Probation Officer, personnel within the probation office shall be designated as pretrial service officers pursuant to the Act.

Upon notification that a defendant has been charged with an offense, either felony or misdemeanor, pretrial service officers will conduct a pre-release investigation as soon as practicable. The judicial officer setting bail or reviewing a bail determination shall receive and consider all reports submitted by pretrial service officers.

Pretrial service reports shall be made available to the attorneys for the accused and the attorneys for the government and shall be used only for the purpose of fixing conditions of release, including bail determinations. Otherwise, the reports shall remain confidential, as provided in 18 U.S.C. § 3153, subject to the exceptions provided therein. In the event a pretrial service report is received in evidence at a hearing on terms and conditions of release, it shall be sealed by the Court and not made a matter of public record.

Pretrial service officers shall supervise persons released on bail at the discretion of the judicial officer granting the release or conditions of the release.

The Chief U.S. Probation Officer of the District is authorized to approve interdistrict travel for persons under the supervision of the Court.

In the event a defendant violates the conditions of his pretrial release, a warrant for his arrest may be sought by the pretrial services officer from any judge after business hours if it is believed that the defendant is a flight risk or a danger to the community. Request for an arrest warrant should first be directed to a magistrate judge and, if one is unavailable, then to a district judge.

RELATED AUTHORITY

18 U.S.C. §§ 3152-3155
18 U.S.C. § 3142(c)(1)(B)(VI)

CRIMINAL RULE 57.1
RELEASE OF INFORMATION BY ATTORNEYS
IN CRIMINAL CASES

(a) **General.** It is the duty of the lawyer for the United States and the lawyer for the defendant not to release or authorize the release of information or opinion for dissemination by any means of public communication, in connection with pending or imminent criminal litigation with which he or she is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

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, a lawyer associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement for dissemination by any means of public communication related 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 lawyer may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his or her apprehension or to warn the public of any danger he or she 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 lawyer may announce the identify 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 as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

(b) **Pretrial Matters.** During the course of any pretrial proceedings, including investigations by the grand jury, the attorney for the United States shall be guided by the provisions of Fed. R. Crim. Pro. 6(e) and 28 C.F.R. § 50.2(b), Release of Information by Personnel of the Department of Justice Relating to Criminal Proceedings. Attorneys for the defendant shall comply with Rule 3.6, Idaho Rules of Professional Conduct.

(c) **Release of Information During Trial.** During the trial of any criminal matter, including the period of selection of the jury, no lawyer associated with the prosecution or the defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial for dissemination by any means of public communication.

(d) **Release of Information After Trial.** After the completion of a trial or disposition without trial of any criminal matter and prior to the imposition of sentence, a lawyer associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement for dissemination by any means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

(e) **Exclusions.** Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

(f) **Sanctions.** Violation of this rule may result in sanctions being imposed consistent with the powers of the Court.

<p style="text-align: center;">RELATED AUTHORITY</p>

<p style="text-align: center;">None</p>

CRIMINAL RULE 57.2
VIOLATION NOTICES, FORFEITURE OF COLLATERAL
IN LIEU OF APPEARANCE

For certain scheduled offenses committed within the territorial and subject matter jurisdiction of a United States magistrate judge within the District of Idaho, collateral may be posted in the scheduled amount, in lieu of an accused's appearance before the magistrate judge.

If the accused fails to appear before the magistrate judge after posting collateral in the scheduled amount, the collateral shall be forfeited to the United States and such forfeiture shall be accepted in lieu of appearance and as authorizing the termination of the proceedings.

No forfeiture of collateral will be permitted for certain listed offenses described in the general order adopting the Uniform Collateral Forfeiture Schedule for this Court.

Copies of current schedules of offenses for which collateral may be posted in lieu of appearance, and of the amounts of required collateral shall be available for public inspection at the offices of the Clerk of Court in Boise, Pocatello, Moscow, and Coeur d'Alene.

RELATED AUTHORITY
General Order No. 148

CRIMINAL RULE 57.3
CUSTODY OF FILES AND EXHIBITS

The provisions of Dist. Idaho Loc. Civ. R. 79.1 apply to criminal actions and proceedings,
unless otherwise ordered by the Court.

CRIMINAL RULE 58.1
ASSIGNMENT OF CRIMINAL MATTERS
TO MAGISTRATE JUDGES

(a) **Misdemeanor Cases.** All misdemeanor cases shall be assigned, upon the filing of an information or the return of an indictment, to one of the district judges and then delivered to a magistrate judge to conduct the arraignment. If consent is given by the defendant for the trial of the case by a magistrate judge, the magistrate judge shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and Fed. R. Crim. Pro. 58.

(b) **Felony Cases.** Upon the return of an indictment or the filing of an information, all felony cases shall be assigned by the Clerk of Court to one of the district judges and then delivered to a magistrate judge to conduct an arraignment, appointment of counsel when appropriate, and other preliminary matters pursuant to the Federal Rules of Criminal Procedure, including entry of the procedural order. Upon receipt of a not guilty plea, the magistrate judge shall calendar the case for the assigned judge for the purpose of trial setting. If the defendant advises the magistrate judge that he or she wishes to enter a plea of guilty or nolo contendere, the magistrate judge shall calendar the case for the assigned district judge for entry of a plea of guilty or nolo contendere.

(c) **Objections to Magistrate Judge's Orders, Reports, and Recommendations.** *See* Dist. Idaho Loc. Civ. R. 72.1(b)(1-3).

RELATED AUTHORITY

28 U.S.C. § 636(b)
18 U.S.C. § 3401
Fed. R. Crim. P. 48
Dist. Idaho Loc. Civ. R. 72.1

CRIMINAL RULE 58.2
APPEAL FROM CONVICTION
BY A MAGISTRATE JUDGE

(a) **Notice of Appeal.** A defendant who has been convicted by a magistrate judge may appeal to a district judge by filing a timely notice of appeal within ten (10) days after entry of judgment with the Clerk of Court and by serving a copy on the United States Attorney pursuant to Fed. R. Crim. Pro. 58(c)(4).

(b) **Record.** A transcript, if desired, shall be ordered as prescribed by Fed. R. App. Pro. 10(b), except that, in the absence of a reporter, the transcript shall be ordered as directed by the magistrate judge. Applications for orders pertaining thereto shall be made to the magistrate judge. Within thirty (30) days after a transcript has been ordered, the transcript shall be filed with the Clerk.

If no transcript is ordered within ten (10) days after the notice of appeal is filed, the record on appeal shall be deemed complete.

(c) **Assignment to a District Judge.** The Clerk of Court shall assign the appeal to a District judge in the same manner as any indictment or felony information.

(d) **Notice of Hearing.** After assignment, the Clerk shall promptly notify the parties of the time set for oral argument. Argument shall be scheduled not less than sixty (60) days, nor more than ninety (90) days, after the date of the notice. However, an earlier date may be set upon application to the judge to whom the appeal has been assigned.

(e) **Time for Serving and Filing Briefs.** The appellant shall serve and file his or her brief within twenty-one (21) days after the notice of hearing. The appellee shall serve and file his or her brief within twenty-one (21) days after service of the brief of the appellant. The appellant may serve and file a reply brief within seven (7) days after service of the brief of the appellee. These periods may be altered by order of the assigned judge upon application of a party for good cause shown.

(f) **Scope of Appeal.** The scope of the appeal shall be the same as on an appeal from a judgment of the District Court to the Court of Appeals.

RELATED AUTHORITY

None

APPENDICES

Effective January 1, 2005, the following fees and schedules can be found on the Court's website at www.id.uscourts.gov:

1. District Court Fees.
2. Rates of Compensation of Counsel Appointed Under 21 U.S.C. § 848(q).
3. Rates of Compensation for Interpreters.
4. Transcript Fees