UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

JAMES A. McCLURE FEDERAL BUILDING &
UNITED STATES COURTHOUSE
550 WEST FORT STREET
BOISE IDAHO 83724

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

Revised and Adopted ~~January 9~~September 27, 2013

The local rules are available for public viewing at the Clerk's Office in Boise 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. Please e-mail them to the District Court Local Rules Committee at local_rulesDC@id.uscourts.gov

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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, and are numbered and correspond with the Court's case numbers:

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

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 Rule 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.

[hyperlink to Procedures document]

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.

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. All pleadings must be affixed by a fastener (i.e., paper clip) and NOT staples. 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

Plaintiff, v. Defendant.	Case No. _____ TITLE DESCRIBING THE DOCUMENT 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 as it appears in CM/ECF, (i.e. 1:10-cv-043-XYZ, representing the Division (1-Southern; 2=Northern; 3=Central; 4=Eastern), year of filing, designation as civil or criminal, case number, and assigned judge's initials);

(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.

e) 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 a 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. Unless otherwise ordered, 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 clerk's 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 manila 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.

RELATED AUTHORITY

For further information, please see
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 and Answers

(4) Requests for Documents and Entry of Land and Responses

(5) Requests for Admission and Responses

(6) Notice of Taking Deposition

(7) Privilege Logs

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) The redaction requirement in section(a) shall not apply to in rem forfeiture actions or to the lodging of the state court record in habeas corpus cases brought under 28 U.S.C. § 2241 or § 2254, to the extent that the state court record is lodged with the Court in paper format.

d) In order to comply with the Judicial Conference Policy, in addition to the items listed in section (a) above, the Court shall 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.

e) In addition to the redaction procedures outlined above, the Judicial Conference policy requires Counsel to redact the personal identifiers noted in (a), which are contained in any transcripts filed with the Court. Counsel should follow the transcript redaction procedures outlined on the Court's website at:
http://www.id.uscourts.gov/CourtReporter/Transcripts.pdf

f) 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).

g) 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 materials, including affidavits and/or declarations, 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) Parties shall submit proposed orders concerning routine or uncontested matters only 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."

6) The time periods specified herein and automatically generated by CM/ECF for service do not supersede, alter or amend any otherwise applicable Federal or Local Rule specifying a different time period for service or method of computing time.

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, in addition to the requirements contained in Federal Rule of Civil Procedure 56(c)(1), the moving party shall file a separate statement of all material facts, not to exceed ten (10) pages, which the moving party contends are not in dispute.

2) The moving party shall serve and file with the motion affidavits required or permitted by Federal Rule of Civil Procedure 6(c), declarations submitted in accordance with 28 U.S.C. § 1746, copies of all photographs, documentary evidence and other supporting materials on which the moving party intends to rely.

3) The moving party may submit a reply brief, not to exceed ten (10) pages, within fourteen (14) 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 dealing with discovery practices, the party seeking or opposing such relief shall comply with the specific practices and procedures governing discovery motions found in Local Rules 37.1 and 37.2.

c) **Requirements for Submission--Responding Party.**

1) The responding party shall 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 party shall serve and file with the response brief any affidavits, declarations submitted in accordance with 28 U.S.C. § 1746, copies of all photographs, documentary evidence, and other supporting materials on which the responding party intends to rely.

2) In responding to a motion for summary judgment under Federal Rule of Civil Procedure 56, in addition to the requirements contained in Federal Rule of Civil Procedure 56(c)(1), the responding party shall also file a separate statement, not to exceed ten (10) pages, of all material facts which the responding party contends are in dispute.

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) Hearings.

A) 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. The courtroom deputy will then prepare and file a notice of hearing.

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 courtroom deputy will then serve a notice of the new hearing date within five (5) days.

B) 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.

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

3) 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.**

1) 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. Except as provided in subpart (2) below, if an adverse party fails to timely file any response documents required to be filed under this rule, 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.

2) In motions brought under Federal Rule of Civil Procedure 56, if the non-moving party fails to timely file any response documents required to be filed, such failure shall not be deemed a consent to the granting of said motion by the Court. However, if a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Federal Rule of Civil Procedure 56(c) or Local Rule 7.1(b)(1) or (c)(2), the Court nonetheless may consider the uncontested material facts as undisputed for purposes of consideration of the motion, and the Court may grant summary judgment if the motion and supporting materials - including the facts considered undisputed - show that the moving party is entitled to the granting of the motion.

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

RELATED AUTHORITY

Fed. R. Civ. P. 5(a), 6(b) & (d), 56, 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. The party filing the stipulation must submit a proposed order via e-mail in accordance with ECF Procedures.

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

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 or other preliminary initial filings are made 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 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 file 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. 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, Petitioner, vs. A.M. ARAVE, Respondent.	Case No. **CAPITAL CASE** APPLICATION FOR STAY OF EXECUTION

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 thirty (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, VOLUNTARY CASE MANAGEMENT CONFERENCE (VCMC) 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) Availability of Voluntary Case Management Conference (VCMC)

8) Alternative Dispute Resolution: (Dist. Idaho Loc. Civ. R. 16.4)

A) Settlement Conferences

B) Arbitration

C) Mediation

9) Status conference date, if counsel believes one will be necessary.

10) Pretrial conference date (to be entered by the Court).

11) Estimated length of trial.

12) Trial date (to be entered by the Court).

a) **Voluntary Case Management Conference.**

1) **Definition**. Voluntary Case Management Conference (VCMC) is a tool whereby a Magistrate Judge hosts an informal meeting with counsel in civil cases to identify areas of agreement, clarify and focus the issues, and encourage the parties to enter procedural and substantive stipulations. The VCMC conference is not a settlement conference; it is an effort to: (1) assist in the reduction of expense and delay; and (2) enhance direct communication between the parties about their claims.

2) **Timing**. During the Scheduling Conference, the trial judge will discuss with the parties whether the case would benefit from a VCMC conference before a designated Magistrate Judge. If the trial judge and the parties agree that a VCMC conference is warranted, the parties will be ordered to appear at a VCMC conference within 45 days after the Scheduling Conference.

A) Counsel for any party may request an earlier VCMC conference by contacting the court's ADR Coordinator. The ADR Coordinator will discuss the request with the assigned trial judge, who will determine whether it is appropriate to refer the action to an earlier VCMC conference.

B) The Magistrate Judge conducting the VCMC conference may order the VCMC conference be conducted by telephone upon request by counsel for any party.

3) **Process**. At the VCMC conference, the Magistrate Judge will discuss the parties' claims and defenses in order to suggest stipulations and pretrial procedures that

may reduce the expense and delay in the case. The Magistrate Judge assigned to the VCMC conference will generally be the same Magistrate Judge assigned to conduct a judicially supervised settlement conference in the case, although he or she will not be the trial judge assigned to the case or designated for referrals by a District Judge in the same case.

A) All communications during the VCMC conference shall be privileged and confidential.

B) If necessary, the Magistrate Judge conducting the VCMC conference may, after consultation with the trial judge, modify the scheduling order based on agreements reached at the VCMC conference.

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).

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, within the time period prescribed by the judge conducting the scheduling conference.

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.

b) (B) Electronically Stored Information

The parties shall discuss the parameters of their anticipated e-discovery at the Rule 26(f) conference, as well as at the Rule 16 scheduling conference. More specifically, during the 26(f) conference, the parties shall exchange the following information and discuss the following e-discovery issues:

1) The names of the most likely custodians of relevant electronically stored information, as well as a brief description of each person's title and responsibilities;

2) A list of each relevant electronic device or system that has been in place at ll relevant times and a general description of each device or system including, but not limited to, the nature, scope, character, organization, and formats employed in each device or system. The parties should also discuss whether their electronically stored information is reasonably accessible. Electronically stored information that is not reasonably accessible may include information created or used by electronic storage media, or for which retrieval otherwise involves undue burden or substantial cost;

3) A brief description of the steps each party has taken to segregate and preserve all potentially relevant electronically stored information;

4) The potential for conducting discovery of electronically stored information in phases as a method for reducing costs and burden;

5) The methodology the parties shall employ to conduct an electronic search for relevant electronically stored information and any restrictions as to the scope and method of the search;

6) The format for production (e.g., text searchable image files such as pdf or tiff) of electronically stored information, and

7) Any problems reasonably anticipated to arise in connection with e-discovery (e.g., email duplication).

If the parties fail to reach agreement on any of the e-discovery issues addressed in subparts (4) through (7) above prior to the Rule 16 scheduling conference the parties shall bring this fact to the Court's attention at the Rule 16 scheduling conference and discuss whether the Court's intervention on those topics is necessary.

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 will 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. Unless electronically submitted or otherwise agreed among counsel or ordered by the Court, each party must also prepare and provide sufficient copies of their documentary exhibits 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

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 mediation and arbitration.

b) ADR Procedures and Rules.

1) Judicial Settlement Conference

A) Definition. A Judicial Settlement Conference is a process in which a Magistrate Judge (Settlement Conference Judge) is made available in order to facilitate communication between the parties and assist them in their negotiations, e.g., by clarifying underlying interests, as they attempt to reach an agreed settlement of their dispute. Whether a settlement results from a Judicial Settlement Conference and the nature and extent of the settlement are within the sole control of the parties.

B) Initiation of a Judicial Settlement Conference. At any time after an action or proceeding is commenced, any party may request, or the assigned judge on his or her own initiative may order, a Judicial Settlement Conference. As a general rule, the judge assigned to the matter will not conduct the Judicial Settlement Conference. None of the matters or information discussed during the conference will be communicated to any judge assigned to matter, unless all parties expressly stipulate to such communications.

C) Procedure for Judicial Settlement Conference. After the initiation of the Judicial Settlement Conference process, the Settlement Conference Judge

will issue an order governing the process and procedure utilized by that Judge for the Judicial Settlement Conference.

D) Report of Settlement Conference Judge. At the conclusion of a Judicial Settlement Conference, a docket entry order with the court will reflect whether settlement was or was not achieved.

2) Mediation.

A) Definition. Mediation is a process in which a private, impartial third party (the "Mediator") is hired or retained by the parties to facilitate communication between them to assist in their negotiations, e.g., by clarifying underlying interests, as they attempt to reach an agreed settlement of their dispute. Whether a settlement results from a Mediation and the nature and extent of the settlement are within the sole control of the parties.

B) Initiation of a Mediation. At any time after an action or proceeding is at issue, any party may request, or the assigned judge on his or her own initiative may order, a Mediation. None of the matters or information discussed during the conference will be communicated to any judge assigned to matter.

C) Selection of a Mediator. The parties may either select from the list of approved Mediators found on the Court's website or select someone not on the Court's list through mutual agreement. The parties may contact the Court's ADR Coordinator for facilitation of selection of a mediator from the Court's list.

D) Report of Mediator. Within five days of the conclusion of a Mediation, the Mediator shall file a report with the Court's ADR Coordinator indicating when mediation occurred and merely whether settlement was or was not achieved.

3) Arbitration.

A) Definition. Arbitration is a process whereby an impartial third party (the "Arbitrator") is hired or retained by the parties to hear and consider 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.

B) Cases Eligible for ADR Arbitration. No civil action, or proceeding in bankruptcy, shall be referred to Arbitration as the parties' ADR method, except upon written consent of all parties. Additionally, no matter will be referred to arbitration if the court finds that:

(i) The action is based upon an alleged violation of a right secured by the Constitution of the United States;

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

(iii) The relief sought includes money damages in an amount greater than $150,000.00; or

(iv) The objectives of arbitration would not be realized for any other reason.

C) Initiation of an Arbitration. At any time after an action or proceeding is at issue, any party may request an Arbitration. Both parties must, consent in a writing, signed by all parties and their counsel, before an Arbitration will be ordered by the judge assigned to the matter.

D) Selection of an Arbitrator. The parties may select from the list of approved Arbitrators found on the Court's website. The parties, for good cause, may select an Arbitrator not on the Court's approved Panel of Arbitrators only with the approval of the judge assigned to the case.

E) Procedure for Arbitration. After the initiation of Arbitration, the Arbitrator will issue to the parties a document setting forth the process and procedure utilized and to be followed.

F) Award. At the conclusion of an Arbitration, the Arbitrator shall issue to the parties a written Award.

c) Selection of ADR Procedure.

1) Mandated Early ADR Selection Process.

A) The Parties' Duty to Consider ADR, Confer and Report. No later than five (5) 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 litigation plan or proposed scheduling order, 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 Judicial Settlement Conference, Mediation or, with written consent of all parties, to an ADR procedure which, by stipulation of all parties, has been tailored to meet the specific needs of the parties and the case.

2) Referral to ADR during Pretrial Period. Notwithstanding the provisions of paragraph (c)(1) 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 a Judicial Settlement Conference or Mediation or, with the written 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.

4) 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.

d) Process Administration.

1) ADR Coordinator. The ADR Coordinator is responsible for implementing, administering, overseeing and evaluating, along with the Board of Judges, the ADR program and procedures covered by this local rule. The ADR Administrator may be contacted through the court's website: www.id.uscourts.gov or as follows:

U.S. District Court
ADR Administrator
550 W Fort St
Boise ID 83724
(208) 334-9067 (telephone)
(208) 334-9202 (facsimile)

2) ADR Resources. The ADR Administrator maintains the requirements for, and roster of, available neutrals and information regarding the ADR process and procedures set forth in this rule.

RELATED AUTHORITY

28 U.S.C. § 651 through 658; 207

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.

RELATED AUTHORITY

Fed. R. Civ. P. 26, 33, 34, 36

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)(B) in the form of a written report prepared and signed by any witness retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony.

As a general rule, the Court will set the time for the disclosure of expert testimony during the Rule 16.1 scheduling conference.

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 brought pursuant to Federal Rule of Civil Procedure 26(c) by a person who is not a party, unless the moving party through counsel or the self represented litigant, files with the Court, at the time of filing the motion, a statement showing that the party making the motion has made a reasonable effort to reach agreement with opposing attorneys or self represented litigant 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).

RELATED AUTHORITY

Fed. R. Civ. P. 38(b)

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

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 seven (7) days before trial, attorneys may submit written requests for voir dire questions.

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 should 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.

RELATED AUTHORITY

Fed. R. Civ. P. 51

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 seven (7) 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.

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) Unless a statute or a court order provides otherwise, a party claiming the right to allowance of attorney fees may file and serve a motion for such allowance within fourteen (14) days after entry of judgment under which attorney fees may be claimed. The motion must state the amount claimed and cite the legal authority relied on. The motion 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. Motions 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 twenty-one (21) days after receipt of a party's motion for allowance of attorney fees, any other party may serve and file a response brief objecting to the allowance of fees or any portion thereof. The responding party must set forth specific grounds of objection.

d) Within fourteen (14) days after receipt of a response brief, the moving party may submit a reply brief.

RELATED AUTHORITY

Fed. R. Civ. P. 54(d)(2)

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.

RELATED AUTHORITY

Fed. R. Civ. P. 54, 58, 79(a), (b)

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 fourteen (14) 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 the Court Registry Investment System ("CRIS"), which is administered by the Administrative Office of the United States Courts under 28 U.S.C. § 2045, and said funds to remain invested pending further Order of the Court.
>
> IT IS FURTHER ORDERED that the Administrative Office of the Courts is authorized and directed by this Order to deduct the investment services fee for the management of investments in the CRIS and the registry fee for maintaining accounts deposited with the Court.

RELATED AUTHORITY

Fed. R. Civ. P. 67
28 U.S.C. §§2041, 2042
General Order No. 257
Dist. Idaho Loc. Civil. R. 67.2

CIVIL RULE 67.2

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

(a) Order of the Court

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) Application Process

Any person seeking withdrawal of monies, which were provided to the Court by Dist. Idaho Loc. Civ. R. 67.1 and subsequently deposited into an interest-bearing account or instrument as required, shall file a motion seeking withdrawal of the funds. In addition to the motion, a separate document providing the full social security number or tax identification number, and the mailing address of the ultimate recipient of the funds, should be emailed to the appropriate judge's proposed orders email account.

Advisory Committee Notes:

Pursuant to 67.2(b), the email sent to the judge's proposed orders account must list the following items in the email subject line, separated by an underscore: (1) the case number, (2) judge's initials, (3) the docket number of the motion filed electronically, which is the subject of the proposed order; and (4) a description. (Example: 1:13-cv-0000_BLW_Dkt. 10_Personal Information for Motion to Withdraw Monies.wpd

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. Upon referral by a district judge a magistrate judge may perform any or all of the duties imposed upon a district judge by the rules governing proceedings in the United States District Courts under § 2254 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 by the district judge except in cases where the death penalty has been imposed; in which case, the district judge will conduct any evidentiary hearing or other appropriate proceeding. Any order disposing of the motion may only be made by a district judge.

3) Prisoner Cases Under 42 U.S.C. § 1983. Upon referral by a district judge a 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) Other Authorized Duties. A magistrate judge is also authorized to:

A) Conduct any pretrial matters, such as pretrial conferences, settlement conferences, omnibus hearings, and related proceedings in civil cases upon the referral by a district judge;

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

C) Accept petit jury verdicts in civil cases at the request of a district judge.

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

1) Nondispositive Matters - 28 U.S.C. § 636(b)(1)(A). Pursuant to Fed. R. Civ. P. 72(a), a party may serve and file any objections, not to exceed twenty (20) pages, to a magistrate judge's order within fourteen (14) days after being served with a copy of the order, unless the magistrate judge or district judge sets a different time period. A party may serve and file a response, not to exceed twenty (20) pages, to another party's objections

within fourteen (14) days after being served with a copy thereof. The district judge may also consider sua sponte any order by a magistrate judge found to be clearly erroneous or contrary to law.

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 report and recommendation for disposition of the matter, including proposed findings of fact when appropriate.

Pursuant to Fed. R. Civ. P. 72(a), 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 fourteen (14) days after being served with a copy of the magistrate judge's report and recommendation, unless the magistrate or district judge sets a different time period. A party may serve and file a response, not to exceed ~~ten~~ twenty (20) pages, to another party's objections within fourteen (14) 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.

RELATED AUTHORITY

Fed. R. Civ. P. 72

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. In all prisoner pro se cases and cases involving an in forma pauperis (IFP) application, Notice of Assignment to United States Magistrate Judge ("Notice of Assignment") with a consent to proceed form will be sent to the plaintiff by the Clerk of Court at the time the action is conditionally filed. If the case is not dismissed by the initial review order and reassignment was not requested by the plaintiff(s), the case will provisionally remain with the randomly assigned Magistrate Judge, and Notice of Assignment and consent to proceed form will be sent to counsel for the appearing defendant(s). In all other civil cases, the Notice of Assignment and consent to proceed form will be sent to counsel for the plaintiff and first-appearing defendant by the Clerk of Court at the time the first defendant appears. Additional Notices of Assignment and consent to proceed form(s) will be sent to counsel for each subsequently-appearing defendant(s) after their appearance has been made.

b) **Return of Consent Forms.** Any party deciding to proceed before a magistrate judge should sign the consent to proceed form and return it to the Clerk of Court by e-mailing the same in .pdf format to the following address: consents@id.uscourts.gov (or by mail if the pro se litigant does not have electronic capabilities). The Clerk of Court will keep custody of all consent to proceed forms under seal until it is determined whether all parties have consented 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 consent to proceed forms and the case will continue before, or be reassigned to, a Magistrate Judge. Parties are free to withhold their consent without adverse substantive consequences, and the Clerk of Court will take reasonable steps to ensure the voluntariness and confidentiality of consents and requests for reassignment.

RELATED AUTHORITY

General Order No. 216

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~~ 9 a.m. to ~~5~~ 4 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 6450 N. Mineral Dr., Room 148 Coeur d'Alene, Idaho 83815.

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; however, attorneys admitted to practice in this Court may use the library when circumstances require.

In addition, with the permission of a judge, attorneys may use library materials that are not available at the Idaho Supreme Court law library. Requests for library access should be made in writing to the Chief United States Magistrate Judge for the District of Idaho.

The library is operated in accordance with such rules and regulations as the Court may from time to time adopt. The Public Access Policy for the library is available on the Court's website and may be viewed at the library.

RELATED AUTHORITY

United States Court Library, Boise, Idaho
Public Access Policy

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 Register of Actions 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 the filing of the notice of removal.

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) **Wireless Portable Devices.** Because of the increased reliance on wireless devices, portable wireless communication devices such as cell phones, smart phones (including Androids, BlackBerrys and iPhones), PDA's and laptops (including iPads) such devices will be allowed in the courtroom so long as they do not either disrupt Court proceedings or pose a security threat. Cell phone calls cannot be either made from or answered in the courtroom. All such devices must be either turned off or set to the silent or vibrate mode. However, if a particular device is incompatible with existing technological architecture in a certain courtroom, (e.g. causes a microphone to buzz when an incoming call is received, despite being in the silent or vibrate mode), the owner will be asked to remove it from the courtroom or take some other action. Using any wireless device for surreptitious communication or unauthorized filming, photographing, recording or transmitting of either court proceedings, images of jurors, witnesses or undercover agents is strictly prohibited. The foregoing restrictions also apply to all jurors. Furthermore, jurors may not use cell phones during deliberations nor use wireless devices with internet access to research issues or access court files during the course of the trial.

f) 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 6450 N. Mineral Dr. 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. 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.

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 for the United States or for a Federal Defender Organization, 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.

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.

The attorney requesting to appear pro hac vice must first (1) designate an active member of the bar of this Court as Local Counsel with the authority to act as attorney of record for all purposes, and with whom the Court and opposing counsel may readily communicate regarding the conduct of the case, 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.

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 designated local counsel must personally appear with the attorney on all matters heard and tried before this Court unless such presence is excused by the Court.

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 this 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 appearing 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 this 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.

4) Attorneys for the United States, and Federal Public Defender, need not pay the admission fees specified above.

g) **Legal Interns.** At the discretion of the presiding judge, a legal intern who posses a limited license issued by the Idaho State Bar, may appear before the District Court in the presence 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 the District Court and the Bankruptcy Court for the District of Idaho (hereafter the "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.

b) **Discipline.**

1) **General authority of the Court, and conduct subject to discipline.**

2) 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. In the event any attorney engages in conduct which may warrant discipline or other sanctions, the Court 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 and/or the Federal Rules of Civil, Bankruptcy or Criminal Procedure, initiate a disciplinary process under section (b)(2) - (4) of this rule, and/or refer the matter under section (b)(8) of this rule.

3) **Conviction of felony or serious crime.** Any attorney admitted to practice in this Court who is convicted of a felony or other "serious crime" as defined in Idaho Bar Commission Rule 501(s), in any court of the United States, of the District of Columbia, or of any state, territory, commonwealth, or possession of the United States, has the duty and obligation to report such conviction to this Court within fourteen (14) days of its entry. Upon receiving notice of an attorney's conviction of a felony or other serious crime, whether received from the attorney, another court or its clerk, or otherwise, such attorney will be immediately 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.

A) **Pending appeal.** The Court will issue an order to show cause at the time of suspension directing the suspended attorney to demonstrate within thirty (30) days from the date of such order why the attorney should be reinstated to practice before the Court during the pendency of any appeal.

B) **Finality of conviction, and disbarment.** Upon the conviction becoming final and the Court being informed thereof, the Court will issue an order to show cause directing the suspended attorney to demonstrate within thirty (30) days from the date of such order why the suspension under section (b)(2) of this rule shall not be made permanent and why the Court should not enter an order of disbarment.

4) **Reciprocal discipline (disbarment, suspension or other discipline by any other court).** 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 (hereafter the "supervising court"), or has resigned in lieu of discipline, this Court will review the judgment and order and determine whether similar discipline should be imposed by this Court.

A) **Order imposing discipline and allowing response.** If the Court decides that similar discipline is warranted, an order of discipline and conjoined order to show cause will issue advising the disciplined attorney that (1) he or she is immediately subject to the same discipline as imposed by the supervising court and, if such discipline includes suspension or disbarment, may only be reinstated to practice before this Court as hereinafter provided, and (2) if the disciplined attorney contends that meritorious reasons exist why the disciplined attorney should not be subject to the same discipline by this Court as imposed by the supervising court, the disciplined attorney must file within thirty (30) days of this Court's order, a petition to set aside the discipline and/or be reinstated to practice in this Court. The petition must clearly demonstrate or this Court otherwise find: (i) the procedure in the supervising court was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; (ii) there was such an absence of proof establishing misconduct that this Court would not accept as final the conclusions reached by the supervising court; (iii) the imposition of the disciplinary action stated in the order of the supervising court would otherwise result in a grave injustice; or (iv) the misconduct warrants discipline substantially different from that stated in the order of the supervising court.

B) **Wind-up.** Unless otherwise ordered, the disciplined attorney will have fourteen (14) days after the date of the Order described in this section to wind-up and complete on behalf of any client, all matters pending on the date of the entry of such order.

5) **Original (non-reciprocal) disciplinary proceedings.**

A) **Initiation of proceedings.** Whenever a district, magistrate or bankruptcy judge of this district believes that conduct of an attorney may warrant disbarment, suspension, reprimand or other discipline by this Court, other than those matters addressed in sections (b)(1), (2) and (3) of this rule, such judge may issue a written report and recommendation for the initiation of disciplinary proceedings (the "recommendation"). The chief district judge, or another district judge if the chief district judge is the judge recommending such action (hereafter the "reviewing judge"), shall review the

recommendation to determine if reasonable grounds exist for the initiation of disciplinary proceedings. If the reviewing judge determines that disciplinary proceedings should be initiated, the reviewing judge shall issue an order to show cause under this rule that identifies the basis for and nature of possible discipline.

B) **Response.** An attorney against whom an order to show cause is issued under this section shall have thirty (30) days from the date of the order in which to file a response. The attorney may include in the response (i) a request to submit the matter on the recommendation, affidavits, briefs, and the record, or (ii) for a hearing, whether in-person, telephonic, or by video. 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 Court without further notice.

C) **Hearing on disciplinary charges.** If requested by the attorney, a hearing shall be conducted on the disciplinary charges. If a hearing is not requested, the matter shall be determined by the reviewing judge on the record submitted to him or her. At any hearing under this rule, the attorney may be represented by counsel who shall file a notice of appearance with the reviewing judge and with any attorney appointed by the Court to prosecute the matter under section (b)(4)(d) of this rule.

D) **Appointment of counsel to prosecute charges.** In appropriate cases, the reviewing 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 out-of-pocket 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.

E) **Determination, and entry of order.** Upon the completion of hearing, if any, and its review of the record, the reviewing judge shall prepare a proposed determination which shall be served on the attorney, and his or her counsel if any. The attorney shall have ten (10) days from the service of the proposed determination within which to file a reply. If the attorney files a reply, the proposed determination, reply and any record developed shall be presented to a randomly drawn three judge panel of the district, magistrate and bankruptcy judges of this Court, other than the initially complaining judge and the reviewing judge. In its discretion, the panel may call for further submissions or hearing. The final order in a disciplinary proceeding where such a reply has been filed by the attorney, shall be by the panel. In the absence of a reply, the proposed determination shall be entered as the final order.

6) **Reinstatement.** To be readmitted, a suspended or disbarred attorney must 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. If this Court has imposed reciprocal discipline under section (b)(3) of this rule, and if the attorney has been readmitted by the supervising court or the discipline imposed by that supervising court

has been modified or satisfied, the petition shall explain the situation with specificity, including description of any restrictions or conditions imposed on readmission by that supervising court. The petition shall be referred to the chief district judge, or another district judge at the chief district judge's discretion, who will file a proposed determination. The provisions of section (b)(4)(e) of this rule will govern determination and entry of decision on the petition for reinstatement.

7) **Confidentiality.** All proceedings under this rule shall be public, except upon an order entered upon a showing of good cause that sealing all or part of the record is appropriate. The Court may make such determination and enter such an order *sua sponte*.

8) **Non-limiting effect of rule.** Nothing in this rule shall limit the power of an individual judge to impose sanctions as authorized under applicable law including the Federal Rules of Civil, Bankruptcy or Criminal Procedure. Nothing in this rule is intended to limit the inherent authority of any judge of this court to suspend an attorney from practicing before that judge on a case by case basis, after appropriate notice and an opportunity to be heard.

9) **Referral to other courts and entities.** This rule does not restrict the Court or any judge thereof from referring an attorney or a matter to any other court or to any bar association for investigation and/or disciplinary action.

Related Authority and Notes

Idaho Bar Commission Rule 512(b) requires notification of conviction as is provided in section (b)(2) of this rule.

Idaho Bar Commission Rule 517(d) provides a period similar to that set forth in section (b)(3)(B) of this rule.

CIVIL RULE 83.6

APPEARANCE, SUBSTITUTION, AND WITHDRAWAL OF ATTORNEYS

a) **Appearances.**

1) An attorney's signature to a pleading filed with the Court shall constitute an appearance by the attorney who signs it. Otherwise, an attorney who wishes to appear for a party or participate in any manner in any action must file a notice of appearance, containing the information required for pleadings as set forth in Rule 5.2. Failure to file a separate notice of appearance may result in an attorney not receiving copies of orders issued by the Court.

2) 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.

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, or other entity, 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 or pro se litigant 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 or pro se litigant has a change in name, firm, firm name, office mailing address, or /other 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.

RELATED AUTHORITY

None

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, 2007. Any amendments 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 local rules promulgated by this Court or any judge of this Court. They govern all applicable proceedings brought in this Court after they take effect. They also apply to all proceedings pending at the time they take effect, except to the extent that their application is not feasible or will work an injustice, in which event the former rules shall govern.

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

1) Title 28, United States Code, Section 2071, 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

28 U.S.C. § 2071 and Fed. R. Crim. P. 57

CRIMINAL RULE 6.0

SEALED DOCUMENTS AND PUBLIC ACCESS

The provisions of Dist. Idaho Loc. Civil R. 5.3 apply to criminal actions and proceedings unless otherwise ordered by the Court.

RELATED AUTHORITY

None

CRIMINAL RULE 12.1

PROCEDURAL ORDERS AND MOTION

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 an 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
DISCLOSURE OF INVESTIGATIVE REPORTS BY UNITED STATES PROBATION OFFICE

(a) Presentence Report, Sentencing Recommendation and Confidentiality.

(1) Presentence reports ~~are not docketed in criminal cases and~~ are not available for public inspection. They shall not be reproduced or copies distributed to other agencies or other individuals unless the Court or the Chief United States Probation Officer grants permission.

(2) In addition to the presentence report, the probation officer will submit a separate document entitled "Sentencing Recommendation" to the Court. The Sentencing Recommendation is for the benefit of the Court and will not be disclosed to the government, the defendant, or defendant's counsel or to any other person or party, unless authorized by the sentencing judge, as provided in subsection (3).

(3) The Sentencing Recommendation may be disclosed to the government and defense counsel if authorized by the sentencing judge. Such authorization shall be communicated to the Chief United States Probation Officer in writing or electronically and shall specify whether the authorization applies to all of the individual sentencing judge's cases or to selected cases only. The sentencing judge may revoke the authorization at any time by so notifying the Chief United States Probation Officer in writing or electronically.

(4) If a sentencing is scheduled before a visiting judge, the probation officer shall contact the staff of the visiting judge to determine whether the visiting judge would like the Sentencing Recommendation disclosed to the government and defense counsel.

(5) Probation reports, violation of supervised release reports, and sentencing recommendations prepared for these reports are governed by these same provisions.

(b) Presentence Report.

(1) Sentencing shall 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 Court sets the date of sentencing, 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, and 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 shall notify the Court and request a continuance of the sentencing hearing.

(2) The probation officer shall timely notify 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) Not less than thirty-five (35) days prior to the date of sentencing, 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, 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.

(4) 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.

(5) Seven (7) days prior to the date of the sentencing hearing, 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, as well as the Sentencing Recommendation. The final presentence report and any addendum will also be disclosed at this time to counsel for the defendant and the government. If the sentencing judge has authorized its disclosure, the Sentencing Recommendation shall be disclosed to counsel for the defendant and the government ~~together with the presentence report and addendum. Counsel shall not be permitted to discuss the Sentencing Recommendation with the probation officer~~.

(6) Except with regard to any objection made under subdivision (a) that has not been resolved, the presentence report 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.

(7) The times set forth in this rule may be modified by the Court for good cause shown, except that the thirty-five (35) day period set forth in subsection (b)(3) may only be shortened if the defendant expressly consents.

(8) 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.

(9) The presentence report shall be deemed to have been disclosed when a copy of the report is delivered by electronic filing, hand, fax, or e-mail~~, one (1) day after the report's availability for inspection is orally communicated to the parties, or 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. However, the Chief Probation Officer may disclose these records to federal, state, or local Courts; correctional and law enforcement agencies, contacted treatment providers; 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, must file a written request to the Chief Probation Officer that conforms to the requirements of *The Guide to Judiciary Policy, Volume 20, Chapter 8* (which is available at www.idp.uscourts.gov/disclosure.html).

(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 Fed. R. Crim. P. 32(c)(1).

RELATED AUTHORITY

Fed. R. Crim. P. 32
The Guide to Judicial Policy, Volume 20, Chapter 8

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 an active member of the bar of this Court as Local Counsel with the authority to act as attorney of record for all purposes and with whom the Court and opposing counsel may readily communicate regarding the conduct of the case,; and (2) file with such designation the address, telephone number, and written consent of designated local counsel.

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 this Court for each such pro hac vice application so filed.

The designated local counsel 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 to perform pretrial services 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. Supervision will be conducted in accordance with 18 U.S.C. § 3154, *The Guide to Judiciary Policy,* Volume 8, and District of Idaho operations policy.

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

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 identity of the victim if the announcement is not otherwise prohibited by law;

5) The possibility of a plea of guilty to the offense charged or a lesser offense; or

6) Any opinion 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.

RELATED AUTHORITY

None

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. All magistrate judges are specifically designated to exercise misdemeanor jurisdiction. If the defendant consents to a 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. P. 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, to appoint counsel when appropriate, and to resolve 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 set the matter for trial before the assigned district judge. 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 inform the district judge so the matter can be place on the district judge's calendar.

RELATED AUTHORITY

28 U.S.C. § 636(b)
18 U.S.C. § 3401
Fed. R. Crim. P. 58

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 fourteen (14) 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 fourteen (14) 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

CRIMINAL RULE 59.1

MAGISTRATE JUDGE RULES

a) **Authority of United States Magistrate Judges in Felony Matters.**

1) Upon referral by a district judge, a magistrate judge shall impanel the grand jury.

2) A magistrate judge may accept waivers of indictment pursuant to Federal Rule of Criminal Procedure 7(b).

3) A magistrate judge shall preside over all arraignments, establish deadlines within which parties shall file and respond to pretrial motions, and fix trial dates.

4) A magistrate judge may conduct plea inquiry hearings pursuant to Fed. R. Crim. P. 11 if a district judge has referred the matter to the magistrate judge, and the defendant, in writing, has waived his or her right to have a district judge take the plea. If, during the hearing, the requirements of Fed. R. Crim. P. 11 are met, the magistrate judge shall:

A) Order the probation officer to conduct a presentence investigation and prepare a presentence report pursuant to Fed. R. Crim. P. 32;

B) Set deadlines in accordance with Fed. R. Crim. P. 32 for disclosure of the presentence report;

C) Set the date for objections and responses to objections;

D) Calendar the case for sentencing before the district judge; and

E) File a report certifying that the requirements of Fed. R. Crim. P. 11 have been met and recommending that the district court accept the defendant's plea.

5) A magistrate judge may conduct voir dire and select petit juries if the district court has referred the matter to the magistrate judge for that purpose and the parties have consented in writing.

6) A magistrate judge may at the request of a district judge, and with the consent of the parties, accept petit jury verdicts, fix dates for imposition of sentence, determine if release pending appeal is appropriate, and set the terms and conditions of that release.

7) Perform any additional duties not inconsistent with the Constitution and laws of the United States.

b) **Orders and Reports and Recommendations**

Objections to an order on a non-dispositive matter or to a report and recommendation on a dispositive matter filed by a magistrate judge shall be filed pursuant to Fed. R. Crim. P. 59 and shall not exceed twenty (20) pages. A party may respond to another party's objections within fourteen (14) days of being served with a copy of the objections, or at some other time set by the magistrate judge. Any response shall not exceed ten (10) pages.

RELATED AUTHORITY

Fed. R. Crim. P. 59
Fed. R. Crim. P. 11
Fed. R. Crim. P. 32

LOCAL RULES OF PRACTICE

PATENT RULES

LOCAL PATENT RULES

1. SCOPE OF RULES

1.1. TITLE.

These are the Local Patent Rules for Cases before the United States District Court for the District of Idaho. They may be cited as "Dist. Idaho Loc. Patent R. __."

1.2. SCOPE AND CONSTRUCTION.

These rules apply to all civil actions filed in or transferred to this Court which allege infringement of a utility patent in a complaint, counterclaim, cross-claim or third party claim, or which seek a declaratory judgment that a utility patent is not infringed, is invalid or is unenforceable. The District of Idaho's Local Civil Rules shall also apply to such actions, except to the extent that they are inconsistent with these Local Patent Rules. If the filings or actions in a case have not triggered the application of these Local Patent Rules under the terms set forth herein, the parties shall meet and confer as soon as any triggering circumstances become known for the purpose of agreeing on the application of these Local Patent Rules to the case and promptly report the results of the meet and confer to the Court.

1.3. MODIFICATION OF THESE RULES.

The Court may modify the obligations or deadlines set forth in these Patent Local Rules based on the circumstances of any particular case, including, without limitation, the simplicity or complexity of the case as shown by the patents, claims, products, facts, or parties involved. Such modifications shall, in most cases, be made at the initial scheduling conference, but may be made at other times upon a showing of good cause. In advance of submission of any request for a modification, the parties shall meet and confer for purposes of reaching an agreement, if possible, upon any modification.

1.4. EFFECTIVE DATE.

These Local Patent Rules take effect on December 1, 2009. They govern patent cases filed on or after that date. For actions pending prior to December 1, 2009, the Court will confer with the parties and apply the Local Patent Rules as the Court deems appropriate.

2. GENERAL PROVISIONS

2.1. GOVERNING PROCEDURE.

a) **Initial Scheduling Conference**. When the parties confer pursuant to Fed. R. Civ. P. 26(f), in addition to the matters covered by Fed. R. Civ. P. 26, the parties shall discuss and address in the scheduling/litigation plan filed pursuant to Fed. R. Civ. P. 26(f) and Dist. Idaho Loc. Civ. R. 16.1, the following topics:

1) Proposed modification of the obligations or deadlines set forth in these Local Patent Rules to ensure that they are suitable for the circumstances of the particular case (see Dist. Idaho Loc. Patent R. 1.3);

2) The scope and timing of any claim construction discovery including disclosure of and discovery from any expert witness permitted by the Court;

3) The format of the Claim Construction Hearing, including whether the Court will hear live testimony, the order of presentation, and the estimated length of the hearing;

4) The scope and timing of any discovery after the claim construction ruling including the disclosure of and discovery from expert witnesses (see Dist. Idaho Loc. Patent R. 5);

5) How the parties intend to educate the Court on the technology at issue;

6) The need for any discovery confidentiality order; and

7) Whether the management of the case would benefit from a voluntary case management conference with a Magistrate Judge pursuant to Dist. Idaho Loc. Civ. R. 16.1.

2.2. CONFIDENTIALITY.

Discovery cannot be withheld on the basis of confidentiality absent Court order. Pending entry of a confidentiality order, discovery and disclosures deemed confidential by a party shall be produced to the adverse party for outside counsel's Attorney's Eyes Only, solely for the purposes of the pending case and shall not be disclosed to the client or any other person.

2.3. CERTIFICATION OF DISCLOSURES.

All documents including statements, disclosures, or charts filed or served in accordance with these Local Patent Rules shall be dated and signed by counsel of record. Counsel’s signature shall constitute a certification that to the best of his or her knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances,

the information contained in the statement, disclosure, or chart is complete and correct at the time it is made.

2.4. ADMISSIBILITY OF DISCLOSURES.

Statements, disclosures, or charts governed by these Local Patent Rules are admissible to the extent permitted by the Federal Rules of Evidence or Procedure. However, the statements and disclosures provided for in Dist. Idaho Loc. Patent R. 4.1, 4.2 and 4.3 are not admissible for any purpose other than in connection with motions seeking an extension or modification of the time periods within which actions contemplated by these Local Patent Rules shall be taken.

2.5. RELATIONSHIP TO FEDERAL RULES OF CIVIL PROCEDURE.

Except as provided in this paragraph or as otherwise ordered, it shall not be a ground for objecting to an opposing party's discovery request (e.g., interrogatory, document request, request for admission, deposition question) or declining to provide information otherwise required to be disclosed pursuant to Fed. R. Civ. P. 26(a)(1) that the discovery request or disclosure requirement is premature in light of, or otherwise conflicts with, these Local Patent Rules, absent other legitimate objection. A party may object, however, to responding to the following categories of discovery requests (or decline to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) on the ground that they are premature in light of the timetable provided in the Local Patent Rules:

a) Requests seeking to elicit a party's claim construction position;

b) Requests seeking to elicit from the patent claimant a comparison of the asserted claims and the accused apparatus, product, device, process, method, act, or other instrumentality;

c) Requests seeking to elicit from an accused infringer a comparison of the asserted claims and the prior art; and

d) Requests seeking to elicit from an accused infringer the identification of any advice of counsel, and related documents.

Where a party properly objects to a discovery request (or declines to provide information in its initial disclosures under Fed. R. Civ. P. 26(a)(1)) as set forth above, that party shall provide the requested information on the date on which it is required to be provided to an opposing party under these Local Patent Rules or as set by the Court, unless there exists another legitimate ground for objection.

2.6. LIMITATIONS ON DISCOVERY.

Based on the circumstances of a particular case, the Court may modify the scope of discovery to be permitted prior to any Claim Construction Hearing. Such limitations shall, in most cases, be made at the initial scheduling conference, but may be made at other times

upon a showing of good cause. In advance of submission of any request for a modification, pursuant to Dist. Idaho Loc. Patent R. 1.3, the parties shall meet and confer for purposes of reaching an agreement, if possible, upon any modification.

3. PATENT DISCLOSURES

3.1. DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS.

Not later than 14 days after the initial scheduling conference, a party claiming patent infringement shall serve on all parties a "Disclosure of Asserted Claims and Infringement Contentions." Separately for each opposing party, the "Disclosure of Asserted Claims and Infringement Contentions" shall contain the following information:

a) Each claim of each patent in suit that is allegedly infringed by such opposing party, including for each claim the applicable statutory subsections of 35 U.S.C. §271 asserted;

b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality ("Accused Instrumentality") of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, and apparatus shall be identified by name or model number, if known. Each method or process shall be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;

c) A chart identifying specifically where each limitation of each asserted claim is found within each Accused Instrumentality, including for each limitation that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;

d) For each claim which is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described;

e) Whether each limitation of each asserted claim is alleged to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;

f) For any claim in a patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

g) If a party claiming patent infringement wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party shall identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and

h) If a party claiming patent infringement alleges willful infringement, the basis for such allegation.

3.2. DOCUMENT PRODUCTION ACCOMPANYING DISCLOSURE.

With the "Disclosure of Asserted Claims and Infringement Contentions," the party claiming patent infringement shall produce to each opposing party or make available for inspection and copying and identify by production number which documents correspond to each category:

a) Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing materials, offer letters, beta site testing agreements, and third party or joint development agreements) sufficient to evidence each discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, or any public use of, the claimed invention prior to the date of application for the patent in suit. A party's production of a document as required herein shall not constitute an admission that such document evidences or is prior art under 35 U.S.C. § 102;

b) All documents evidencing the conception, reduction to practice, design, and development of each claimed invention, which were created on or before the date of application for the patent in suit or the priority date identified pursuant to Dist. Idaho Loc. Patent R. 3.1(f), whichever is earlier;

c) A copy of the file history for each patent in suit;

d) Documents sufficient to establish ownership of the patent rights by the party asserting patent infringement; and

e) If a party identifies instrumentalities pursuant to Dist. Idaho Loc. Patent R. 3.1(g), documents sufficient to show the operation of any aspects or elements of such instrumentalities the patent claimant relies upon as embodying any asserted claims.

3.3. INVALIDITY CONTENTIONS.

Not later than 42 days after service upon it of the "Disclosure of Asserted Claims and Infringement Contentions," each party opposing a claim of patent infringement, shall serve on all parties its "Invalidity Contentions" which shall contain the following information:

a) The identity of each item of prior art that allegedly anticipates each asserted claim or renders it obvious. Each prior art patent shall be identified by its number, country of origin, and date of issue. Each prior art publication shall be identified by its title, date of publication, and where feasible, author and publisher. Prior art under 35 U.S.C. § 102(b) shall be identified by specifying the item offered for sale or publicly used or known, the date the offer or use took place or the information became known, and the identity of the person or entity which made the use or which made and received the offer, or the person or entity which made the information known or to whom it was made known. Prior art under 35 U.S.C. § 102(f) shall be identified by providing the name of the person(s) from whom and

the circumstances under which the invention or any part of it was derived. Prior art under 35 U.S.C. § 102(g) shall be identified by providing the identities of the person(s) or entities involved in and the circumstances surrounding the making of the invention before the patent applicant(s);

b) Whether each item of prior art anticipates each asserted claim or renders it obvious. If obviousness is alleged, an explanation of why the prior art renders the asserted claim obvious, including an identification of any combinations of prior art showing obviousness;

c) A chart identifying where specifically in each alleged item of prior art each limitation of each asserted claim is found, including for each limitation that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in each item of prior art that performs the claimed function; and,

d) Any grounds of invalidity based on 35 U.S.C. § 101, indefiniteness under 35 U.S.C. § 112(2) or lack of enablement or insufficiency of written description under 35 U.S.C. § 112(1) of any for the asserted claims.

3.4. DOCUMENT PRODUCTION ACCOMPANYING INVALIDITY CONTENTIONS.

With the "Invalidity Contentions," the party opposing a claim of patent infringement shall produce or make available for inspection and copying:

a) Source code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an Accused Instrumentality identified by the patent claimant in its Dist. Idaho Loc. Patent R. 3.1(c) chart; and

b) A copy or sample of the prior art identified pursuant to Dist. Idaho Loc. Patent R. 3.3(a) which does not appear in the file history of the patent(s) at issue. To the extent any such item is not in English, an English translation of the portion(s) relied upon shall be produced.

The producing party shall separately identify by production number which documents correspond to each category.

3.5. DISCLOSURE REQUIREMENT IN PATENT CASES FOR DECLARATORY JUDGMENT OF INVALIDITY.

a) **Invalidity Contentions If No Claim of Infringement.** In all cases in which a party files a complaint or other pleading seeking a declaratory judgment that a patent is invalid Dist. Idaho Loc. Patent R. 3.1 and 3.2 shall not apply unless and until a claim for patent infringement is made by a party. If the Defendant does not assert a claim for patent infringement in its answer to the complaint, no later than 14 days after the Defendant serves its answer, or 14 days after the initial scheduling conference, whichever is later, the party seeking a declaratory judgment of invalidity shall serve upon each opposing party its

Invalidity Contentions that conform to Dist. Idaho Loc. Patent R. 3.3 and produce or make available for inspection and copying the documents described in Dist. Idaho Loc. Patent R. 3.4.

b) **Inapplicability of Rule.** This Dist. Idaho Loc. Patent R. 3.5 shall not apply to cases in which a request for a declaratory judgment that a patent is invalid is filed in response to a complaint for infringement of the same patent.

3.6. DISCLOSURE REQUIREMENTS FOR PATENT CASES ARISING UNDER 21 U.S.C. § 355 (COMMONLY REFERRED TO AS "THE HATCH-WAXMAN ACT").

The requirements of this Dist. Idaho Loc. Patent R. 3.6 apply to all patents subject to a Paragraph IV certification in cases arising under 21 U.S.C. § 355 (commonly referred to as "the Hatch-Waxman Act"). This provision takes precedence over any conflicting provisions in Dist. Idaho Loc. Patent R. 3.1 to 3.5 for all cases arising under 21 U.S.C. § 355.

a) At or before the initial scheduling conference, the Defendant(s) shall produce to Plaintiff(s) the entire Abbreviated New Drug Application or New Drug Application that is the basis of the case in question.

b) Not more than 14 days after the initial scheduling conference, the Defendant(s) shall provide to Plaintiff(s) the written basis for their "Invalidity Contentions," for any patents referred to in Defendant(s) Paragraph IV Certification which shall contain all disclosures required by Dist. Idaho Loc. Patent R. 3.3.

c) Any "Invalidity Contentions" disclosed under Dist. Idaho Loc. Patent R. 3-6(b), shall be accompanied by the production of documents required under Dist. Idaho Loc. Patent R. 3.4.

d) Not more than 14 days after the initial scheduling conference, the Defendant(s) shall provide to Plaintiff(s) the written basis for their "Non-Infringement Contentions," for any patents referred to in Defendant(s) Paragraph IV Certification which shall include a claim chart identifying each claim at issue in the case and each limitation of each claim at issue. The claim chart shall specifically identify for each claim which claim limitation(s) are literally absent from the Defendant(s) allegedly infringing Abbreviated New Drug Application or New Drug Application.

e) Any "Non-Infringement Contentions" disclosed under Dist. Idaho Loc. Patent R. 3.6(d), shall be accompanied by the production of any document or thing that the Defendant(s) intend to rely on in defense against any infringement contentions by Plaintiff(s).

f) Not more than 42 days after the disclosure of the "Non-Infringement Contentions" as required by Dist. Idaho Loc. Patent R. 3.6(d), Plaintiff(s) shall provide Defendant(s) with a "Disclosure of Asserted Claims and Infringement Contentions," for all patents referred to in Defendant(s) Paragraph IV Certification, which shall contain all disclosures required by Dist. Idaho Loc. Patent R. 3.1.

g) Any "Disclosure of Asserted Claims and Infringement Contentions" disclosed under Dist. Idaho Loc. Patent R. 3.6(f), shall be accompanied by the production of documents required under Dist. Idaho Loc. Patent R. 3.2.

3.7. AMENDMENT TO CONTENTIONS.

Amendments to the Infringement Contentions or the Invalidity Contentions may be made only by order of the Court upon a timely application and showing of good cause. Non-exhaustive examples of circumstances that may, absent undue prejudice to the nonmoving party, support a finding of good cause include: (a) a claim construction by the Court different from that proposed by the party seeking amendment; (b) recent discovery of material, prior art despite earlier diligent search; (c) recent discovery of nonpublic information about the Accused Instrumentality which was not discovered, despite diligent efforts, before the service of the Infringement Contentions; and (d) disclosure of an asserted claim and infringement contention by a Hatch-Waxman Act plaintiff under Dist. Idaho Loc. Patent R. 3.6(f) that requires response by defendant because it was not previously presented or reasonably anticipated. The duty to supplement discovery responses does not excuse the need to obtain leave of court to amend contentions.

3.8. ADVICE OF COUNSEL.

Not later than 28 days after service by the Court of its Claim Construction Ruling, each party relying upon advice of counsel as part of a patent-related claim or defense for any reason shall:

a) Produce or make available for inspection and copying any written advice and documents related thereto for which the attorney-client and work product protection have been waived;

b) Provide a written summary of any oral advice and produce or make available for inspection and copying that summary and documents related thereto for which the attorney-client and work product protection have been waived; and

c) Serve a privilege log identifying any other documents, except those authored by counsel acting solely as trial counsel, relating to the subject matter of the advice which the party is withholding on the grounds of attorney-client privilege or work product protection.

A party who does not comply with the requirements of this Dist. Idaho Loc. Patent R. 3.8 shall not be permitted to rely on advice of counsel for any purpose absent a stipulation of all parties or by order of the Court.

4. CLAIM CONSTRUCTION PROCEEDINGS

4.1. EXCHANGE OF PROPOSED TERMS FOR CONSTRUCTION.

a) Not later than 14 days after service of the "Invalidity Contentions" pursuant to Dist. Idaho Loc. Patent R. 3.3, not later than 42 days after service upon it of the "Disclosure

of Asserted Claims and Infringement Contentions" in those actions where validity is not at issue (and Dist. Idaho Loc. Patent R. 3.3 does not apply), or, in all cases in which a party files a complaint or other pleading seeking a declaratory judgment not based on validity, not later than 14 days after the Defendant serves an answer that does not assert a claim for patent infringement (and Dist. Idaho Loc. Patent R. 3.1 does not apply), each party shall serve on each other party a list of claim terms which that party contends should be construed by the Court, and identify any claim term which that party contends should be governed by 35 U.S.C. § 112(6).

b) The parties shall thereafter meet and confer for the purposes of limiting the terms in dispute by narrowing or resolving differences and facilitating the ultimate preparation of a Joint Claim Construction and Prehearing Statement. The parties shall also jointly identify the 10 terms per unrelated patent likely to be most significant to resolving the parties' dispute, including those terms for which construction may be case or claim dispositive.

4.2. EXCHANGE OF PRELIMINARY CLAIM CONSTRUCTIONS AND EXTRINSIC EVIDENCE.

(a) Not later than 21 days after the exchange of the lists pursuant to Dist. Idaho Loc. Patent R. 4.1, the parties shall simultaneously exchange proposed constructions of each term identified by either party for claim construction. Each such "Preliminary Claim Construction" shall also, for each term which any party contends is governed by 35 U.S.C. § 112(6), identify the structure(s), act(s), or material(s) corresponding to that term's function.

(b) At the same time the parties exchange their respective "Preliminary Claim Constructions," each party shall also identify all references from the specification or prosecution history that support its proposed construction and designate any supporting extrinsic evidence including, without limitation, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses. Extrinsic evidence shall be identified by production number or by producing a copy if not previously produced. With respect to any supporting witness, percipient or expert, the identifying party shall also provide a description of the substance of that witness' proposed testimony that includes a listing of any opinions to be rendered in connection with claim construction.

(c) The parties shall thereafter meet and confer for the purposes of narrowing the issues, jointly identifying up to a maximum of 10 terms per unrelated patent likely to be most significant in resolving the parties' dispute, including those terms for which construction may be case or claim dispositive, and finalizing preparation of a Joint Claim Construction and Prehearing Statement. For purposes of Dist. Idaho Loc. Patent R. 4.2, 4.3 and 4.5, a patent and any continuation, divisional, reexamined or reissued patent that claims priority to the same patent application are considered "related."

(d) The number of terms per unrelated patent that are identified under Dist. Idaho Loc. Patent R. 4.2(c) and 4.3(c) and addressed by the parties' claim construction briefs under Dist. Idaho Loc. Patent R. 4.5 may be modified by the Court at the initial scheduling

conference pursuant to Dist. Idaho Loc. Patent R. 2.1(a)(1) or by stipulation of all parties. If all parties stipulate to a different limitation, the parties' stipulation shall be reflected in the Joint Claim Construction and Prehearing Statement.

4.3. JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT.

Not later than 28 days after the Exchange of Preliminary Claim Construction and Extrinsic Evidence the parties shall complete and file a Joint Claim Construction and Prehearing Statement, which shall contain the following information:

a) The construction of those terms on which the parties agree;

b) Each party's proposed construction of each disputed term, together with an identification of all references from the specification or prosecution history that support that construction, and an identification of any extrinsic evidence known to the party on which it intends to rely either to support its proposed construction or to oppose any other party's proposed construction, including, but not limited to, as permitted by law, dictionary definitions, citations to learned treatises and prior art, and testimony of percipient and expert witnesses;

c) An identification of the terms whose construction will be most significant to the resolution of the case up to a maximum of 10 per unrelated patent. The parties shall also identify any term among the 10 whose construction will be case or claim dispositive. If the parties cannot agree on the 10 most significant terms, the parties shall identify the ones which they do agree are most significant and then they may evenly divide the remainder with each party identifying what it believes are the remaining most significant terms. However, the total terms identified by all parties as most significant cannot exceed 10. For example, in a case involving two parties, if the parties agree upon the identification of five terms as most significant, each may only identify two additional terms as most significant; if the parties agree upon eight such terms, each party may only identify only one additional term as most significant.

d) The anticipated length of time necessary for the Claim Construction Hearing; and

e) Whether any party proposes to call one or more witnesses at the Claim Construction Hearing, the identity of each such witness, and for each witness, a summary of his or her testimony including, for any expert, each opinion to be offered related to claim construction.

4.4. COMPLETION OF CLAIM CONSTRUCTION DISCOVERY.

Not later than 28 days after service and filing of the Joint Claim Construction and Prehearing Statement, the parties shall complete all discovery relating to claim construction, including any depositions with respect to claim construction of any witnesses, including experts, identified in the Preliminary Claim Construction statement (Dist. Idaho Loc. Patent

R. 4.2) or Joint Claim Construction and Prehearing Statement (Dist. Idaho Loc. Patent R. 4.3).

4-5. CLAIM CONSTRUCTION BRIEFS.

a) Not later than 42 days after serving and filing the Joint Claim Construction and Prehearing Statement, the party claiming patent infringement, or the party asserting invalidity if there is no infringement issue present in the case, shall serve and file an opening brief and any evidence supporting its claim construction. The opening brief may not exceed thirty (30) pages absent prior leave of Court.

b) Not later than 14 days after service upon it of an opening brief, each opposing party shall serve and file its responsive brief and supporting evidence. Each responsive brief may not exceed thirty (30) pages absent prior leave of Court.

c) Not later than 7 days after service upon it of a responsive brief, the party claiming patent infringement, or the party asserting invalidity if there is no infringement issue present in the case, shall serve and file any reply brief and any evidence directly rebutting the supporting evidence contained in an opposing party's response. Any reply brief may not exceed fifteen (15) pages absent prior leave of Court.

4.6. CLAIM CONSTRUCTION HEARING.

Subject to the convenience of the Court's calendar, two weeks following submission of the reply brief specified in Dist. Idaho Loc. Patent R. 4.5(c), the Court shall conduct a Claim Construction Hearing, to the extent the parties or the Court believe a hearing is necessary for construction of the claims at issue.

4.7. GOOD FAITH PARTICIPATION.

A failure to make a good faith effort to narrow the instances of disputed terms or otherwise participate in the meet and confer process of any of the provisions of section 4 may expose counsel to sanctions, including under 28 U.S.C. § 1927.

5. DISCOVERY AFTER CLAIM CONSTRUCTION

5.1. DISCOVERY OTHER THAN FOR EXPERT WITNESSES.

The parties shall have 42 days after the Court enters its claim construction ruling to take discovery, unless the case Scheduling Order provides for a longer time.

5.2. DISCLOSURE OF EXPERTS AND EXPERT REPORTS.

In the event there will be expert testimony in addition to what was presented during proceedings on claim construction, the following shall apply:

a) Not later than 28 days after the close of discovery provided for in Dist. Idaho Loc. Patent R. 5.1, each party shall make its initial expert disclosures required by Fed. R. Civ. P. 26 on the issues for which each bears the burden of proof.

b) Not later than 28 days after the first round of disclosures, each party shall make its initial expert witness disclosures required by Fed. R. Civ. P. 26 on the issues for which the opposing party bears the burden of proof.

c) Not later than 14 days after the second round of disclosures, each party shall make any rebuttal expert witness disclosures permitted by Fed. R. Civ. P. 26.

5.3. DEPOSITIONS OF EXPERTS.

Depositions of expert witnesses disclosed under Dist. Idaho Loc. Patent R. 5.2 shall be completed within 28 days after the deadline for disclosing rebuttal expert witnesses.