IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

| | |
|---|---|
| In re: | GENERAL ORDER 48 |
| LOCAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO | ORDER ADOPTING LOCAL RULES OF PRACTICE |

The United States District Court Advisory Committee on Local Rules for the District of Idaho having recommended that the United States District Court adopt the Local Rules as published as the Local Rules of United States District Court for the District of Idaho; and

The United States Magistrate of the U.S. District Court for the District of Idaho having recommended the adoption of the Local Rules as published; and

The Court having reviewed the proposed Local Rules and having found that these rules are not inconsistent with the United States Code or the Federal Rules of Civil and Criminal Procedure;

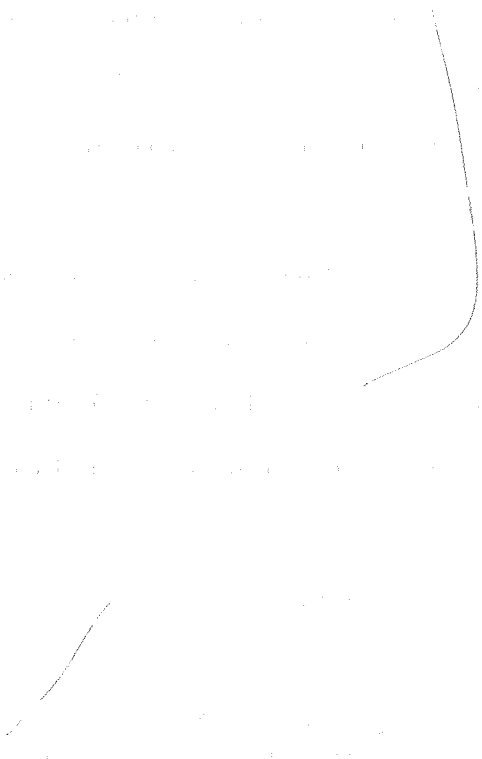
IT IS HEREBY ORDERED That the Local Rules as published are adopted as the Local Rules of this Court effective the 1st day of January, 1988, and the same shall serve as the Local Rules of practice for the United States District Court for the District of Idaho from and after that date.

DATED this 31st day of December, 1987.

Marion J. Callister

MARION J. CALLISTER, Chief
UNITED STATES DISTRICT JUDGE

HAROLD L. RYAN
UNITED STATES DISTRICT JUDGE



# LOCAL RULES OF PROCEDURE FOR THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

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# CHAPTER 1—GENERAL RULES

## RULE 1-101

## TITLE AND EFFECTIVE DATE

These rules shall be known as the Local Rules of the United States District Court for the District of Idaho and cited as "Local Rule _____." These rules shall become effective on January 1, 1988.

# RULE 1-102

# CONSTRUCTION AND DEFINITIONS

(a) "**In General.**" These rules supplement the Federal Rules of Civil and Criminal Procedure and the Rules of Procedure for the Trial of Misdemeanors before the United States Magistrates. They shall be construed so as to be consistent with those rules and to promote the just, efficient, and economical determination of actions and proceedings brought before this court.

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

(c) "**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 for him.

(d) Wherever in these rules the masculine pronoun is used, it is intended to include the feminine gender.

# RULE 1-103

# SESSIONS OF COURT

(a) This court shall be in continuous session for transacting judicial business in Boise, Idaho, on all business days throughout the year and shall hold sessions of court in Coeur d'Alene, Moscow, and Pocatello, Idaho, at such times as the judicial workload of this court 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.

# RULE 1-104

# CALENDAR AREAS OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

The calendar areas of the United States District Court for the District of Idaho shall consist of the following counties:

Southern Calendar:

| | |
|---|---|
| Ada | Gooding |
| Adams | Jerome |
| Blaine | Lincoln |
| Boise | Minidoka |
| Camas | Owyhee |
| Canyon | Payette |
| Cassia | Twin Falls |
| Elmore | Valley |
| Gem | Washington |

Eastern Calendar:

| | |
|---|---|
| Bannock | Franklin |
| Bear Lake | Fremont |
| Bingham | Jefferson |
| Bonneville | Lemhi |
| Butte | Madison |
| Caribou | Oneida |
| Clark | Power |
| Custer | Teton |

Northern Calendar:

| | |
|---|---|
| Benewah | Kootenai |
| Bonner | Latah |
| Boundary | Lewis |
| Clearwater | Nez Perce |
| Idaho | Shoshone |

Cases that have venue in one of the above calendar areas will be assigned by the clerk upon the filing of the complaint or petition to the appropriate calendar area. Juries will be selected from the calendar areas in accordance with the Jury Selection Plan adopted by the court.

# RULE 1-105

# ATTORNEYS—ADMISSION TO PRACTICE

(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 Association.

Each applicant for admission shall present to the clerk a written petition for admission, stating the applicant's residence and office addresses and by what courts he has been admitted to practice and the respective dates of admission to those courts.

The petition shall be accompanied by a certificate of a member of the Bar of this court, stating that the bar member knows the applicant and can affirm that the applicant is of good moral character.

Upon qualification, the applicant may be admitted upon written or oral motion as determined by the court. Before any certificate of admission shall issue, the applicant must sign the prescribed oath. Generally, the applicant must personally appear before the court; however, in exceptional circumstances the court may waive this requirement.

(b) **Practice in this Court.** Except as herein otherwise provided, only members of the Bar of this court shall 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.** An attorney who is not eligible for admission under Local Rule 1-105(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 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. 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) **Pro Hac Vice/Local Counsel.** An attorney not eligible for admission under Local Rule 1-105(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 shall be issued by the clerk.

The *pro hac vice* application shall be presented to the clerk and shall state under penalty of perjury (1) the attorney's residence and office addresses, (2) by what court(s) the attorney has been admitted to practice and the date(s) of admission, (3) that the attorney is in good standing and eligible to practice in said court(s), and (4) that the attorney is not currently suspended or disbarred in any other court(s). The attorney shall also (1) designate a member of the Bar of this court who does maintain an office within this court as co-counsel with the authority to act as attorney of record for all purposes; (2) file with such designation the address, telephone number, and written consent of such designee; and (3) submit a proposed order allowing his admission *pro hac vice*.

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

(e) **Legal Interns.** Legal interns are permitted to appear in this court. An Order and Plan for the appearance of Legal Interns has been approved by the court and interested parties may obtain a copy of the Plan from the clerk. The Order and Plan are made a part of these Rules by reference.

# RULE 1-106

# 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 Local Rule 1-105(c) or (d) hereof shall promptly notify the court of any change in his status in another jurisdiction which would make him ineligible for membership in the Bar of this court under Local Rule 1-105(a) hereof or ineligible to practice in this court under Local Rule 1-105(c) and (d) hereof. In the event the attorney is no longer eligible to practice in another jurisdiction by reason of his suspension for nonpayment of fees or enrollment as an inactive member, he shall forthwith be suspended from practice before this court without any order of court and until he becomes eligible to practice in such other jurisdiction.

# RULE 1-107

## STANDARDS OF PROFESSIONAL CONDUCT

Every member of the Bar of this court and any attorney permitted to practice in this court shall familiarize himself with and comply with the standards of professional conduct required of members of the Idaho State Bar Association and decisions of any court applicable thereto which are hereby adopted as standards of professional conduct of this court. These provisions shall not be interpreted to be exhaustive of the standards of professional conduct. In that connection, the Idaho Rules of Professional Conduct for the Idaho State Bar Association should be noted. No attorney permitted to practice before this court shall engage in any conduct which degrades or impugns the integrity of the court or in any manner interferes with the administration of justice therein.

# RULE 1-108

# DISCIPLINE

(a) In the event any attorney engages in conduct which may warrant discipline or other sanctions, the court or any district judge may, in addition to initiating proceedings for contempt under Title 18 U.S.C. and Rule 42, Fed. R. Cr. P., or imposing other appropriate sanctions pursuant to the court's inherent powers or the Federal Rules of Criminal Procedure, refer the matter to the disciplinary body of any court before which the attorney has been admitted to practice. A United States magistrate shall refer and certify any contempt proceedings to a district judge pursuant to 28 U.S.C. § 636(e).

(b) Any attorney admitted to practice in this court, pursuant to Rule 1-105 of the Local Rules, who is convicted of a felony shall immediately be suspended from practice before this court. Upon the felony conviction becoming final, an order of disbarment will be entered. The disbarred attorney may make a motion in this court within sixty (60) days after the date of his disbarment for an order of modification of the disbarment as justice may require.

# RULE 1-109

## *EX PARTE* ORDERS

All applications to a judge of this court for *ex parte* orders must be made by a party appearing *in propria persona* or by an attorney of this court. All applications shall 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 he has not been notified.

# RULE 1-110

## APPEARANCES AND SUBSTITUTIONS OF ATTORNEYS

(a) **Appearances.** Whenever a party has appeared through an attorney, he may not thereafter appear or act in his own behalf in the case or take any step therein unless an order of substitution shall first have been made by the court, after notice to the opposing party and his attorney; provided, that the court may in its discretion hear a party in open court, notwithstanding the fact that he has appeared or is represented by an attorney.

(b) **Substitutions.** When an attorney of record for any person ceases to act for a party, such party shall appear in person or appoint another attorney by a written substitution of attorney 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 a new attorney shall so state. Until such substitution is approved by the court, the authority of the attorney of record shall continue for all proper purposes.

(c) **Withdrawal.** No attorney of record for a party may withdraw from representing that party without leave of the court. Before an attorney is to be granted leave to withdraw, he shall present to the court a proposed order permitting the attorney to withdraw and directing his client to appoint another attorney to appear, or to appear in person by filing a written notice with the court stating how he will represent himself within twenty (20) days from the date the court enters the order authorizing withdrawal. After the court has entered such order, the withdrawing attorney shall forthwith and with due diligence serve all other parties and either personally serve copies of the same upon his client or mail said notices by first class mail, return receipt requested. The order shall provide that the withdrawing attorney shall continue to represent the client until proof of service of the withdrawal order on the client has been filed in the court.

Upon the 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 effect the right of the party represented by the withdrawing attorney for a period of twenty (20) days. If the said party fails to appear in the action, either in person or through a newly appointed attorney within such twenty-(20)-day period, such failure shall be sufficient grounds for the entry of 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.

# RULE 1-111

# STIPULATIONS

Except as otherwise provided, stipulations shall be recognized as binding only when made in open court or filed in the case. Written stipulations shall not be effective unless approved by the judge or clerk as applicable. A proposed order shall be submitted with every stipulation.

# RULE 1-112

## CORRESPONDENCE AND COMMUNICATIONS WITH THE JUDGE

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.

# RULE 1-113

## PERSONS APPEARING WITHOUT AN ATTORNEY *IN PROPRIA PERSONA*

Any person who is representing himself without an attorney must appear personally for such purpose and may not delegate that duty to any other person. Any person so representing himself without an attorney is bound by these Local Rules and by the Federal Rules of Civil and Criminal Procedure. Failure to comply therewith may be grounds for dismissal or judgment by default. While such person may seek outside assistance in preparing court documents for filing, he is expected to personally participate in all aspects of the litigation, including court appearances. In exceptional circumstances, the court may modify these provisions to serve the ends of justice.

# RULE 1-114

# APPEARANCES BY CORPORATIONS

Whenever a corporation 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.

# RULE 1-115

## LOCATION OF THE CLERK AND HOURS: CUSTODY OF FILES; DISPOSITION OF EXHIBITS AND TRANSCRIPTS OF PLEADINGS; ORDERS ISSUED BY THE CLERK; AND FORMAT

(a) **Location and Hours.** The office of the clerk of this court shall be at the United States Courthouse, Box 039, 550 West Fort Street, Room 612, Boise, Idaho 83724. The regular hours shall be from 8 a.m. to 5 p.m. each day except Saturday, Sunday, and legal holidays or other days so ordered by the court. All matters to be filed with the clerk of the court will be filed at the above address except when the clerk of the court or a deputy clerk is available in either Moscow, Idaho, Pocatello, Idaho, or Coeur d'Alene, Idaho, then matters may be filed with the clerk of the court or a deputy clerk at those locations.

Emergency filings may be made before and after regular office hours or on Saturdays, Sundays, and legal holidays by contacting the clerk of the court or any deputy clerk.

(b) **Files; Custody and Withdrawal.** All files of the court shall remain in the custody of the clerk and no court pleadings, discovery documents, exhibits, etc., shall be taken from the custody of the clerk without a special order of a judge and a proper receipt signed by the person obtaining the pleading or court document. Orders shall be granted only in extraordinary circumstances.

(c) **Custody and Disposition of Exhibits and Transcripts.** Every exhibit introduced in evidence and all depositions and transcripts shall be held in the custody of the clerk. When preparing exhibit lists for multi-party litigation, the exhibit list should specify which party is offering the exhibit. Copies may be substituted for original documents upon the request of a party and approval of the court unless reasons exist for retaining the original document. Large exhibits, i.e., mechanical parts, charts, and graphs, should be claimed by the party who introduced them immediately following trial and photographs substituted therefor unless reasons exist for retaining the actual exhibit.

After final judgment has been entered and the time for appeal and motion for new trial has passed or upon the filing of a stipulation waiving and abandoning the right to appeal and to a new trial, any party may, upon ten (10) days prior written notice to all parties, withdraw any exhibit, deposition, or transcript of testimony originally produced by it unless some other party or person files prior notice with the clerk of a claim to the exhibit, deposition, or transcript. If such a notice of claim is filed, the clerk shall not deliver the exhibit, deposition, or transcript, except with the consent of the party who produced it and the claimant, or until the court has determined the person entitled thereto.

(d) **Disposition of Unclaimed Exhibits and Transcripts.** If exhibits and transcripts are not withdrawn within thirty (30) days after notice by the clerk to the parties, the clerk may dispose of the exhibits and transcripts.

(e) **Orders Grantable by Clerk.** The clerk is authorized to sign and enter orders specifically allowed to be signed by the clerk under the Federal Rules of Civil Procedure and is, in addition, authorized to sign and enter the following orders without further direction of a judge:

(1) Orders specifically appointing persons to serve process or for service of process by publication in accordance with Rule 4, Fed. R. Civ. P.;

(2) Orders by stipulation noting satisfaction of a judgment, providing for the payment of money, withdrawing stipulations, annulling bonds, exonerating sureties or setting aside a default;

(3) Order of dismissal by stipulation, with or without prejudice, except in cases to which Rules 23, 23.1, or 66, Fed. R. Civ. P., apply.

(4) Orders entering default for failure to plead or otherwise defend in accordance with Federal Rules of Civil Procedure 55;

(5) Any other orders which pursuant to Federal Rules of Civil Procedure 77(c) do not require direction by the court;

(6) Orders for extension of time may be entered by the clerk upon stipulation of all parties. Orders for extension of time not to exceed fifteen (15) days may be granted once, *ex parte* by the clerk, if accompanied by a statement showing specific reasons for the extension of time and that opposing counsel has been contacted and does not object. Any opposing party may move to have the extension of time set aside. Orders for extension of time shall be limited to:

(i) Motion to dismiss or answer to complaint;

(ii) Answer or objection to interrogatories under Rules 31 and 33, Fed. R. Civ. P.;

(iii) Response to requests for production or for inspection under Rule 34, Fed. R. Civ. P.; and

(iv) Response to requests for admissions under Rule 36, Fed. R. Civ. P.;

(f) **Form, Paper, Legibility.** All papers presented for filing shall be on white opaque paper of good quality, 8 1/2" x 11" in size, and shall be flat, unfolded (except where necessary for the presentation of exhibits), without back or cover, and firmly bound at the top, and shall comply with all applicable provisions of these rules. Matter shall be presented by typewritten, printed, or other clearly legible reproduction process and shall appear on one side of each sheet only. All paper shall be double spaced except for the identification of counsel, title of the case, footnotes, and quotations. Each page shall be serially numbered at the bottom thereof.

(g) **Counsel Identification, Caption, and Title.** The name, address, and telephone number of counsel (or, if *in propria persona,* of the party) and a specific identification of the party represented by name and interest in the litigation (i.e., plaintiff, defendant, etc.) shall appear in the upper left-hand corner of the first page of each paper presented for filing, except that in multi-party actions or proceedings, reference may be made to the signature page for the complete list of parties represented. Following the counsel identification and commencing four inches below the top of the first page, (except where additional space is required for identification) there shall appear:

(i) The title of the court;

(ii) The title of the action or proceeding;

(iii) The file number of the action or proceeding;

(iv) The category of the action or proceeding as provided hereinafter in these rules;

(v) A title describing the pleading; and

(vi) any other matters required by this rule.

(h) **Filing by Clerk.** The clerk shall file all pleadings presented for filing upon payment of the appropriate fee, if any. In the event of a failure to comply with these rules, he may require the prompt refiling of the paper in a form complying with these rules, or bring the failure to comply to the attention of the filing party and of the judge to whom the action or proceeding is assigned.

When filing motions and submitting proposed orders with the clerk, all counsel are required to supply the following:

1. The appropriate number of copies that will need to be served on all parties, including a copy for the submitting party; and

2. Stamped, addressed envelopes for each of the parties that will receive service.

# RULE 1-116

# FEE SCHEDULE

The following filing and service fees shall be collected by the clerk of the court:

| | |
|---|---|
| Ordinary Civil | $120.00 |
| Habeas Corpus | 5.00 |
| Notice of Appeal (including joint notices) | 5.00 |
| Docket Fees for Ninth Circuit | 100.00 |
| Naturalization: | |
| Declaration of Intention | 5.00 |
| Petition | 50.00 |
| Repatriation | 1.00 |
| Miscellaneous: | |
| Filing and Indexing any paper not a case | 20.00 |
| Registration of Judgments | 20.00 |
| Petition to Perpetuate Testimony | 20.00 |
| Letters Rogatory | 20.00 |
| Letters of Request | 20.00 |
| Notice of taking depositions in cases from another district | 20.00 |
| Photocopy (does not include certification) (per page) | .50 |
| Requests for and certification of results of search | 15.00 |
| Abstract of judgment | 15.00 |
| Certification of any document (each certification) | 5.00 |
| Exemplifications (3 certifications) | 5.00 |
| Admission | 20.00 |
| Duplicate certificate of admission | 5.00 |
| Certification that attorney is member of this court | 5.00 |
| Retrieving record from Federal Records Center, National Archives, or other storage location removed from place of business of court | 25.00 |
| Check paid into court which is returned for lack of funds | 25.00 |
| Appeal to district judge from judgment of conviction by magistrate in misdemeanor case | 25.00 |

# RULE 1-117

# ASSIGNMENT OF CASES

All actions, causes, and proceedings, civil and criminal, shall be assigned by the clerk to the respective judges of the court by lot. However, all cases to be heard in the northern or eastern calendar areas shall be automatically assigned by the clerk to the judge currently in charge of the calendar for that particular calendar area. 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.

# RULE 1-118

## PUBLICITY AND PROHIBITION ON PHOTOGRAPHIC OR RECORDING EQUIPMENT

(a) **Publicity.** Courthouse supporting personnel, including, among others, marshals, clerks and deputies, law clerks, messengers, and court reporters, shall 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 shall any such personnel discuss the merits or personalities involved in any such proceeding with any members of the public.

(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.** 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.

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, Video Tapes, and Tape Recordings Prohibited.** All forms, means, and manner of taking photographs, tape recordings, video taping, 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 shall not prohibit recordings by a court reporter or staff electronic recorder provided, however, no court reporter, staff electronic recorder, or or any other person shall use or permit to be used any part of any recording of a court proceeding on or in connection with any radio, video tape or television broadcast of any kind. The court may permit photographs of exhibits or use of video tapes or tape recordings under the supervision of counsel.

For purposes of this rule, *environs* means:

(1) In Boise, Idaho, the sixth floor of the Federal Building and United States Courthouse located at 550 West Fort Street, and the second floor of the Borah Station Post Office assigned for court use, 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 250 South Fourth Street assigned for court use, including the corridor area adjacent to the courtroom doors; and

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

# RULE 1-119

# INTEREST BEARING ACCOUNTS

(a) Funds received under Rule 67 of the Federal Rules of Civil Procedure may be retained temporarily in a non-interest bearing treasury account as necessary to arrange for their deposit in an interest bearing account. The clerk of the court shall insure that any depository has pledged adequate security or is protected by an adequate bond or insurance to protect the integrity of the deposit.

(b) The following form of standard order shall 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 invest the amount of $ _____ in an automatically renewable (type of account or instrument, i.e., time certificate, treasury bill, passbook) in the name of the clerk, U.S. District Court, at (name of bank, savings and loan, brokerage house, etc.), said funds to remain invested pending further order of the court.
>
> IT IS FURTHER ORDERED that counsel presenting this order personally serve a copy thereof on the clerk or his chief deputy. Absent the aforesaid service, the clerk is hereby relieved of any personal liability relative to compliance with this order.

# RULE 1-120

# BONDS AND SURETIES

(a) **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 terms as are appropriate.

(b) **Qualifications of Surety.** Every bond must have as surety either: (1) 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; (2) a corporation authorized to act as surety under the laws of the state of Idaho; (3) 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 (4) a cash deposit of the required amount made with the Clerk and filed with a bond signed by the principals.

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

(c) **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 shall be returned to the owner and not to the attorney.

(d) **Bond for Removal.** Where a bond is required to secure costs in proceedings for removal of an action from a state court, it shall be in the sum of $250.

(e) **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.

# RULE 1-121

## APPROVAL OF BONDS BY ATTORNEY AND CLERK (OR JUDGE)

(a) **Attorney.** All personal surety bonds must be presented to the judge for approval. When the party is represented by counsel, there shall 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 Local Rule 1-120.
>
> 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 he knows the contents thereof; that he knows the purposes for which it is executed; that in his opinion the same is in due form; and that he believes the affidavits of qualification to be true.

# RULE 1-122

# SUPERSEDEAS BONDS

(a) **Approval, Filing, and Service.** If eligible under Local Rule 1-120, the bond may be approved and filed by the clerk. A copy of the bond plus notice of filing shall be served on all affected parties promptly.

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

(c) **Execution.** Except where otherwise provided by Rule 62, Fed. R. Civ. P., or order of the court, execution may issue after ten (10) days from the entry of a judgment unless a supersedeas bond has been approved by the judge or the clerk.

# RULE 1-123

## SUMMARY JUDGMENT 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 sureties' default, upon notice of not less than seventeen (17) 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 Rules of Civil Procedure 5(b) or 31 U.S.C. §9306, respectively.

# RULE 1-124

# SECURITY FOR COSTS

(a) **Security for Costs.** Upon application of any party, and for good cause shown, the court may require any party to a civil action transferred to this court from another district to file security for costs.

(b) **Form of Security.** The security for costs shall consist of a bond in the sum of $250 or such other amount as the court may order. It shall secure the payment of all costs of the action which a party may ultimately be directed to pay to any other party.

(c) **By Other Parties.** Upon good cause, the court may order original or additional security to be given by any party.

(d) **Judgment Against Surety.** By entering into a cost bond pursuant to this rule, the surety both submits itself to this court's jurisdiction and irrevocably appoints the clerk of this court its agent upon whom any papers affecting its liability may be enforced upon motion without the necessity of an independent action.

# RULE 1-125

# COURT LIBRARY

A 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 this court and for the resident circuit judge and his personnel.

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

# RULE 1-126

# SECURITY OF THE COURT

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.

# RULE 1-127

# SANCTIONS AND PENALTY FOR NONCOMPLIANCE

Failure of counsel or a party to comply with any provision of these rules or the Federal Rules of Civil or Criminal Procedure shall be grounds for imposition of appropriate sanctions as permitted by rule or law, including, but not limited to, imposition of costs, allowance of attorney fees, dismissal or default in the action, contempt proceedings, and suspension or disbarment of counsel.

# CHAPTER 2—CIVIL RULES

## RULE 2-101

## DESIGNATION OF NATURE OF ACTION

Every complaint, petition, or other pleading initiating a civil action or proceeding shall be accompanied by a complete civil cover sheet and shall set forth immediately below the docket number, one or more of the following categories most nearly descriptive of the subject matter of the action or proceeding:

(1) Admiralty—Maritime claims (except Jones Act);

(2) Antitrust;

(3) Contracts;

(4) Copyrights/Trademarks/Unfair Competition;

(5) Patents;

(6) Labor Relations;

(7) Tax;

(8) Torts: Personal Injury, Property Damage, Frauds, Others (Specify);

(9) Civil Rights;

(10) Land Condemnation;

(11) Habeas Corpus;

(12) Review of Administrative Action;

(13) Miscellaneous (Specify).

# RULE 2-102

# ORDER TO SHORTEN TIME

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.

# RULE 2-103

# SPECIAL RULES FOR SOCIAL SECURITY AND BLACK LUNG CASES

Complaints filed in civil cases, pursuant to Section 205(g) of the Social Security Act, 42 U.S.C. §504(g), for benefits under Title II, XVI, and XVIII of the Social Security Act, as well as Part B, Title IV, of the Federal Coal Mine Health and Safety Act of 1969, shall contain the social security number of the individual for whom benefits are sought, in addition to complying with other provisions of these Local Rules.

# RULE 2-104

# THREE-JUDGE COURT

Whenever any action or proceeding is required by act of Congress to be heard and determined by a three-judge court, the complaint or petition shall so state and the proposed order to show cause or the notice of motion shall include a request for a hearing before a three-judge court. In addition to the original pleadings, the parties, upon order that the case has been designated a three-judge-panel case, shall lodge three copies of all pleadings and three copies of all briefs with the clerk of the court. Only the originals will be placed in the files.

# RULE 2-105

# SERVICE OF PROCESS

Pursuant to Rule 4(c), Fed. R. Civ. P., service of process in civil actions or proceedings in this court is to be made in accordance with the statutes and rules of procedure established for service of process in the district courts of the state of Idaho or of the courts of general jurisdiction in the state where service is made. If a party requests an order of appointment for a special process server, the applicant shall apply to the clerk pursuant to Local Rule 1-115(e)(1).

# RULE 2-106

# LIMITED SERVICE OF PROCESS BY UNITED STATES MARSHAL

Notwithstanding the provisions of Local Rule 2-105, *supra,* service of process shall be made by the United States Marshal in the following situations:

(1) Summons and complaints where the United States of America or an agency thereof is named as a party, either as plaintiff or defendant.

(2) *In forma pauperis* actions

(3) In proceedings for seizures, forfeitures, or attachments.

(4) Where specially ordered by a judge of this court.

# RULES 2-107

# PROOF OF SERVICE

Whenever any pleading presented for filing is required or permitted by any rule or other provision of law to be served upon any party or person, it shall bear or have attached to it (a) an acknowledgement of service by the person served, or (b) proof of service stating the date, place, and manner of service and the names of the persons served, certified by the person who made service.

# RULE 2-108

# SERVICE OF MOTIONS

All motions, orders to show cause, petitions, applications, and every other document by which relief is sought shall be served upon the adverse party or his attorney.

# RULE 2-109

# HEARINGS ON MOTIONS

Motions and applications will be heard orally only when permitted by the court upon notice given as provided in these rules. Generally, motions shall be submitted and determined upon the motion pleadings herein referred to, except in the event of a motion to review taxation of costs by the clerk under Rule 54(d), Fed. R. Civ. P., and motions for summary judgment. However, the parties may stipulate to submit motions to review taxation of costs and motions for summary judgment on the record.

If oral argument is permitted by the court, the clerk shall give at least five (5) days' notice of the hearing to the parties.

# RULE 2-110

# REQUIREMENTS FOR SUBMISSION

There shall be served and filed with all motions and other applications, and as a part thereof, (a) copies of all photographs and documentary evidence which the moving party intends to submit in support of the motion or other application, in addition to the affidavits required or permitted by Rule 6(d), Fed. R. Civ. P., and (b) a brief containing a written statement of all reasons in support thereof, including the points and authorities relied upon by the moving party. Each party opposing the motion or other application shall, within fourteen (14) days thereafter, serve and file a brief containing a written statement of all the reasons in opposition thereto and the points and authorities relied upon, or a written statement that he will not oppose said motion, and not later than fourteen (14) days after the service of the motion, serve and file copies of all photographs, documentary evidence and affidavit upon which he intends to rely. If the moving party so desires, he may, within fourteen (14) days after the service upon him of the points and authorities of the adverse party, file a reply memorandum. An additional copy of all briefs shall be submitted to the clerk of the court for use by the court.

Any party, either proposing or opposing a motion or other application, who does not intend to urge or oppose the same, or who intends to move for a continuance, shall immediately notify opposing counsel and the clerk. Time limitations specified in this rule may be extended or shortened by a judge of the court upon written motion evidencing good cause.

# RULE 2-111

## EFFECTS OF FAILURE TO COMPLY WITH THE RULES OF MOTION PRACTICE

Failure by the moving party to file any instruments provided to be filed under this rule shall be deemed a waiver by the moving party of the pleading or motion. In the event an adverse party fails to file the instruments provided to be filed under this rule in a timely manner, such failure shall be deemed to constitute a consent to the sustaining of said pleading or the granting of said motion or other application.

In the event an adverse party fails to file the instruments provided to be filed under this rule in a timely manner, the court, upon motion or upon its own initiative, may impose upon the person who failed to file the instrument, or upon a represented party or both, an appropriate sanction which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading or motion, including a reasonable attorney fee.

# RULE 2-112

# MOTIONS FOR SUMMARY JUDGMENT

There shall be served and filed with each motion for summary judgment a concise statement of the material facts as to which the moving party contends there is not genuine issue.

Any party opposing the motion may, not later than fourteen (14) days after the service of the motion on him, serve and file a concise statement setting forth all material facts as to which it is contended there exists a genuine issue necessary to be litigated.

In determining any motion for summary judgment, the court may assume that the facts as claimed by the moving party are admitted to exist without controversy, except and to the extent that such facts are asserted to be actually in good faith controverted by a statement filed in opposition to the motion.

# RULE 2-113

## SANCTIONS FOR UNNECESSARY MOTIONS

The presentation to the court of unnecessary motions, the unwarranted opposition to motions—which in either case unduly delays the course of an action or proceeding, or the failure to comply fully with these rules subjects an offender, at the discretion of the court, to appropriate sanctions.

# RULE 2-114

# INTERROGATORIES

Answers and objections to interrogatories shall set forth each question in full before each answer or objection. Each objection shall be followed by a statement of reasons therefor.

# RULE 2-115

# REQUESTS FOR PRODUCTION

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

# RULE 2-116

# REQUESTS FOR ADMISSION

Responses to requests for admission made pursuant to Rule 36(a), Fed. R. Civ. P., shall set forth each request in full before each response or objection. Each objection shall be followed by a statement of the reasons therefor.

# RULE 2-117

# NON-FILING OF DISCOVERY

Interrogatories, requests for documents, requests for admission, and answers and responses thereto shall be served upon other counsel and parties but shall not be filed with the court unless on order of the court or for use in the proceeding. A party may file notices of taking of depositions with the clerk to obtain witness subpoenas. The party responsible for service of the discovery material shall retain the original and become the custodian. The original of all depositions upon oral examination shall be retained by the party taking such deposition.

If relief is sought under any of the Federal Rules of Civil Procedure, pertinent portions of discovery matters in dispute shall be lodged with the court contemporaneously with any motion filed under these rules by the party seeking to invoke the Court's relief.

If depositions, interrogatories, requests for documents, requests for admissions, answers, or responses are to be used at trial or are necessary to a pretrial or post trial motion, those *portions* to be used shall be lodged with the clerk at the outset of the trial or at the filing of the motion insofar as their use can be reasonably anticipated by the parties.

When documentation of discovery not previously in the record is needed for appeal purposes, upon an application and order of the court, or by stipulation of counsel, the necessary discovery papers shall be lodged with the clerk. Discovery lodged with the court shall be returned to appropriate counsel after final disposition of the case. Discovery lodged with the court will be treated as exhibits and returned pursuant to Local Rule 1-115.

# RULE 2-118

# RELIEF FROM DISCOVERY

(a) If relief is sought under Rule 26(c) or Rule 37 of the Federal Rules of Civil Procedure concerning any interrogatories, depositions, requests for production or inspection, requests for admissions, answers to interrogatories or responses thereto, copies of the relevant portions in dispute shall be filed with the court contemporaneously with any motion filed under Rule 36(c) and Rule 37 of the Federal Rules of Civil Procedure. This rule shall not preclude their use as exhibits or as evidence on a motion or at trial.

(b) The court will entertain no motion pursuant to Rules 26 through 37, Fed. R. Civ. P., unless counsel shall have previously met and conferred concerning all disputed issues. If counsel for the moving party seeks to arrange such a conference and counsel for the party against whom the motion will be made willfully refuses or fails to meet and confer, the judge (in the absence of a prior order dispensing for good cause with such a meeting) may order the payment of reasonable expenses, including attorney fees. At the time of filing any motion with respect to Rules 26 through 37, Fed. R. Civ. P., counsel for the moving party shall serve and file a certificate of compliance with this rule.

# RULE 2-119

# STATUS CONFERENCE

At any time after the commencement of an action, the assigned judge may, with or without written request of any party, order the holding of a status conference. Status conferences may be telephonic or in person. All parties shall be prepared to discuss any particular subjects specified in the status conference notice, in addition to the following:

(a) Service of process on parties not yet served;

(b) Jurisdiction and venue;

(c) Anticipated motions;

(d) Anticipated or remaining discovery;

(e) Further proceedings including setting dates for discovery cutoff, pretrial, and trial;

(f) Appropriateness of special procedures such as reference to a master or magistrate or the Judicial Panel on Multidistrict Litigation or the application of the Manual for Complex Litigation;

(g) Modification of the pretrial procedure specified by this rule on account of the relative simplicity or complexity of the action or proceeding;

(h) Prospects for settlement;

(i) Any other matters which may be conducive to the just, efficient, and economical determination of the action or proceedings.

A status conference may be utilized separately or in conjunction with a discovery conference provided for in Rule 26(f) of the Federal Rules of Civil procedure.

# RULE 2-120

# STATUS CONFERENCE ORDER

At the conclusion of the status conference, the assigned judge or magistrate may enter such order governing further proceedings in the action as he may deem appropriate, including provision for discovery and pretrial motions cut-off dates, initiation of pretrial proceedings, and trial settings. Copies of any such orders shall be served on all parties who have appeared in the action or proceeding.

# RULES 2-121

# PRETRIAL CONFERENCE

One or more pretrial conferences shall be held in any action or proceeding at such time as the assigned judge may order (a) by a status conference order, or (b) by any other order issued at the written request of any party or on the judge's own motion. If any party files such a request, a copy shall be served upon all other parties who shall have fourteen (14) days within which to respond to paid request.

Not less than twenty (20) days prior to the date on which the pretrial conference is ordered to be held, counsel shall meet and discuss:

(a) preparation of a joint pretrial statement;

(b) coordination of pretrial statements if no agreement is reached on the filing of a joint statement; and

(c) settlement of the action.

# RULE 2-122

# PRETRIAL CONFERENCE AGENDA

A pretrial conference shall be held on the date and at the time scheduled. The agenda for the pretrial conference shall consist of the matters covered by Rule 16, Fed. R. Civ. P., and the foregoing local rule and any other matters germaine to the trial of the action or proceeding. Each party shall be represented at the pretrial conference by counsel having authority with respect to all matters on the agenda, including settlement of the action or proceeding.

# RULE 2-123

# CONTENTS OF THE PRETRIAL STATEMENT

Except as otherwise provided by a status conference order prepared under these rules or by stipulation of all parties approved by the assigned judge, the parties shall, not less than five (5) days prior to the date of the pretrial conference, file a joint pretrial statement or, if after a good faith attempt they are unable to agree to a joint statement, serve and file separate pretrial statements which shall follow the form and contain the information specified in this rule:

(a) **Party.** The names of the parties or party in whose behalf the statement is filed.

(b) **Jurisdiction and Venue.** The claimed statutory basis of federal jurisdiction and venue and a statement as to whether any party disputes jurisdiction or venue.

(c) **Substance of the Action.** A brief description of the substance of the claims and defenses presented.

(d) **Undisputed Facts.** A plain and concise statement of all material facts not reasonably disputable.

Counsel are expected to make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(e) **Disputed Factual Issues.** A plain and concise statement of all disputed factual issues.

(f) **Relief Prayed.** A detailed statement of the relief claimed, including an itemization of all elements of damages claimed.

(g) **Points of Law.** A concise statement of each disputed point of law with respect to liability and relief. Reference shall be made to statutes and decisions relied upon, but extended legal argument is not to be included in the pretrial statement.

(h) **Witnesses to be Called.** A list of all witnesses likely to be called at trial, except for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

(i) **Exhibits, Schedules, and Summaries.** A list of all documents and other items to be offered as exhibits at the trial, except for impeachment or rebuttal, with a brief statement following each describing its substance or purpose and the identity of the sponsoring witness.

(j) **Further Discovery or Motions.** A statement of all remaining discovery or motions.

(k) **Stipulations.** A statement of stipulations requested or proposed for pretrial or trial purposes.

(l) Amendments, Dismissals. A statement of requested or proposed amendments to pleadings or dismissals of parties, claims, or defenses.

(m) **Settlement Discussion.** A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

(n) **Agreed Statement.** A statement as to whether presentation of the action or proceeding, in whole or in part, upon an agreed statement of facts, is feasible and desired.

(o) **Bifurcation, Separate Trial of Issues.** A statement whether bifurcation, or a separate trial of specific issues, is feasible and desired.

(p) **Reference to Magistrate or Master.** A statement whether reference of all or a party of the action or proceeding to a magistrate or master is feasible and desired.

(q) **Appointment and Limitation of Experts.** A statement whether appointment by the court of an impartial expert witness, or limitation of the number of expert witnesses, is feasible and desired.

(r) **Trial Date.** Except where the trial date has been previously set, a statement of the proposed trial date.

(s) **Estimate of Trial Time.** An estimate of the number of court days expected to be required for the presentation of each party's case. Counsel are expected to make a good faith effort to reduce the time required for trial by all means reasonably feasible, including stipulations, agreed statement of facts, expedited means of presenting testimony and exhibits, and the avoidance of cumulative proof.

(t) **Claims of Privilege or Work Product.** A statement indicating whether any of the matters otherwise required to be stated by this rule are claimed to be covered by the work product or other privilege. Upon such indication, such matters may be omitted subject to further order at the pretrial conference.

(u) **Miscellaneous.** Any other subjects relevant to the trial of the action or proceeding, or material to its just, efficient, and economical determination.

# RULE 2-124

## PRETRIAL ORDER, SUBMISSION OF PRETRIAL MATERIAL

The assigned judge or magistrate may make such pretrial order or orders, at or following the pretrial conference, as may be appropriate. Such order shall control the subsequent action or proceeding as provided in Rule 16, Fed. R. Civ. P. Unless otherwise ordered, the parties shall, not less than fourteen (14) calendar days prior to the.date on which the trial is scheduled to commence:

(a) Serve and file briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues, setting forth briefly the parties' positions and the supporting arguments and authorities.

(b) In jury cases, serve and file proposed jury instructions and form of verdict in conformance with these rules.

(c) Serve and file statements designating excerpts from depositions (specify the witness and page and line reference), from interrogatory answers, and from responses to requests for admissions, to be offered at the trial other than for impeachment or rebuttal.

(d) Exchange copies of all exhibits to be offered and all schedules, summaries, diagrams, and charts to be used at the trial, other than for impeachment or rebuttal.

(e) On a standard form, obtainable from the clerk of the Court, all parties shall furnish a list of their intended trial exhibits. 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 shall contain a brief description of each intended trial exhibit. To the extent possible, exhibits are to be listed in the sequence in which the parties propose to offer them. No exhibit is to be assigned a number without first contacting the clerk. After assignment of numbers, the exhibit list is to be furnished to the opposing party or parties and three copies submitted to the clerk. Each party shall also prepare sufficient copies of their documentary exhibits to provide copies to the opposing party or parties. Additionally, each party must lodge with the clerk an original and two copies of their documentary trial exhibits. All copies shall be bound with metal paper fasteners and tabulated for marking.

Each party appearing shall present to the clerk their intended trial exhibits, except for impeachment and rebuttal materials. This will include depositions, answers to interrogatories, and requests for admissions, as well as all other documents and things intended to be used or offered by such party as trial exhibits.

If, however, a pretrial order is filed in lieu of a pretrial conference, the exhibits must be lodged with the clerk ten (10) days prior to the date of the trial. Finally, when presented to the clerk, the exhibits shall be in the same sequence as they appear on the exhibit list, but shall not be assigned a number without first contacting the clerk. In complying with this rule, counsel may discuss the matter and obtain assistance from the judge's law clerk and/or the judge's courtroom deputy.

# RULE 2-125

# SPECIAL PROVISIONS FOR CONDEMNATION CASES

In eminent domain proceedings, additional pretrial disclosure shall be made as follows:

(a) Not later than ten (10) days in advance of the pretrial conference each party appearing shall lodge with the clerk, under seal, the original and sufficient additional copies for the judge and all parties appearing, of a summary "Statement of Comparable Transactions." Said summary shall contain the relevant facts as to each sale or other transaction to be relied upon as comparable to the taking, including the alleged date of such transaction, the names of the parties thereto, and the consideration thereof; together with the date of recordation and the book and page or other identification of any record of such transaction; and such statement shall be in form and content suitable to be presented to the jury as a summary of evidence on the subject. As soon as such statement shall have been lodged by all parties appearing in connection with a particular parcel or parcels of property in issue, the clerk shall unseal the statements, regularly file the originals, and forthwith serve copies of each party's statement by United States Mail on the attorneys for the other parties appearing. Each copy so served shall bear the clerk's stamp showing the filing date of the original;

(b) Not later than the date of filing of the statements required under the foregoing paragraph, each party shall lodge with the clerk, under seal, for examination by the judge *in camera,* the original and one copy of "Schedule of Witnesses as to Value," setting forth:

(1) The names of all persons, including expert appraisers and owners and former owners, intended to be called to give opinion evidence as to the value, and

(2)The opinion to be given by each.

(c) The provisions of this subsection do not preclude prior or additional discovery as provided in the Federal Rules of Civil Procedure.

# RULE 2-126

## SETTLEMENT CONFERENCES

At any time after an action or proceeding is at issue, any party may file a request for, or the assigned judge on his own initiative may order, a settlement conference. The settlement conference may be ordered held in conjunction with any status or pretrial conference or independent thereof. Such conference may be held before the assigned judge, or at the request of a party, or again on the assigned judge's own motion, before such other judge or magistrate (hereafter the settlement judge) as may be designated for the purpose.

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

1. The requirement that each party to such conference be represented by counsel authorized to participate in settlement negotiations;

2. The principals to the litigation be in attendance or available by telephone;

3. The representatives of all involved carriers be in attendance or available by telephone where insurance coverage is being provided;

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

5. Each party prepare and submit to the settlement judge, *in camera,* a candid and fair written summation of the facts as understood by that party.

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

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

# RULE 2-127

# DISMISSAL FOR LACK OF PROSECUTION

Actions or proceedings which have been pending in this court for more than six (6) months without any proceedings having been taken therein during such period may, after notice, be dismissed by the court for lack of prosecution.

# RULE 2-128

# 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 immediately. 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.

# RULE 2-129

# DEMAND FOR JURY TRIAL

Any party may demand a jury as provided in Rule 38, Fed. R. Civ. P., but such demand must be made in writing, on the last page of the complaint or answer, signed by the party making such demand or his attorney, or in a separate written document so signed. In the event the demand for jury trial is combined with a pleading, the title thereof shall include the words "Demand for Jury Trial."

# RULE 2-130

# NUMERICAL MAKEUP OF JURY

The jury in a civil case at law, or in a non-criminal case in which a right to trial by jury is otherwise granted by statute, shall consist of six (6) jurors unless the parties stipulate to a lesser or greater number.

# RULE 2-131

# VOIR DIRE EXAMINATION OF JURORS

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

# RULE 2-132

## REPLACEMENT FOR CAUSE OR USE OF A STRUCK JURY

A juror dismissed for cause shall be immediately replaced unless a struck jury is used. If a struck jury is used, the court may, in its discretion, cause a panel of jurors to be questioned and passed for cause in a number equal to the number of jurors required for the final jury and alternates and an additional number equal to the number of peremptory challenges of the parties. Such prospective jurors, when chosen, shall be seated in such manner as to be designated numerically with the lower numbered jurors constituting the initial panel and the subsequent numbered jurors becoming the replacement jurors in the event any of the jurors of the original panel are removed by a peremptory challenge.

# RULE 2-133

# PEREMPTORY CHALLENGES

Peremptory challenges shall be exercised in a manner directed by the court and in such manner that the jurors are not informed as to which party makes the challenge.

# RULE 2-134

## 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 shall be prepared and presented 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 shall file one copy of proposed instructions and requests for special interrogatories and/or special verdict forms with the clerk of the Court; the original and one copy of same shall be presented to the trial judge. The original of each proposed instruction, requests for special interrogatory, and/or special verdict shall not be numbered or indicate the identity of the party presenting the same and shall not contain citations of authority. Each copy shall be numbered, shall indicate the party presenting the same, and shall have such citations to authority as counsel will rely on. Individual instructions shall embrace one subject only, and the principle of law so embraced in any request for instruction shall not be repeated in subsequent requests.

# RULE 2-135

## OBJECTIONS TO REQUESTED INSTRUCTIONS

Copies of requested instructions together with any requests for special interrogatories and/or special verdicts shall be served upon the adverse party at the time of filing a copy with the clerk as hereinabove provided. The adverse party shall, at least one day prior to trial, specify objections to any of said instructions. Such objections shall be submitted in writing (or orally, if permitted by the Court), shall be numbered, and shall identify the instructions objected to by number, and specify distinctly the matter to which said adverse party objects; said objection shall be accompanied by citations of authority in support thereof.

# RULE 2-136

## OBJECTIONS TO THE INSTRUCTIONS GIVEN BY THE COURT

The trial judge shall fix the time, place, and procedure for making objections to the judge's charge to the jury. Objections shall be made outside of the presence of the jury and shall be reported by the court reporter in the transcript or, in the absence of a transcript, by the clerk in the minutes of the trial.

# RULE 2-137

## GENERALLY

The order of procedure of all trials or hearings shall be under the control of the presiding judge.

# RULE 2-138

# POSITION OF COUNSEL

Counsel for the respective parties shall be seated in accordance with instructions of the court bailiff. In examining a witness or addressing the court, counsel shall remain at counsel table or 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 shall be sent from counsel table to the court, courtroom clerk, or witness by and through the bailiff unless permission is otherwise granted.

# RULE 2-139

## OPENING STATEMENTS

Prior to offering any evidence, counsel for the plaintiff shall make a statement of the facts which he intends to establish in support of his claim, unless such statement is waived with permission of the court. Such waiver or statement shall 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 shall make a statement of facts which he intends to establish, unless such statement is waived with permission of the court. Such waiver or statement shall be made as a matter of record.

# RULE 2-140

# ARGUMENTS

Only one attorney shall open and one attorney shall close, except with the permission of the court; provided that if the opening attorney does not intend to close, he shall so inform the court so that the court may appropriately apportion the arguments between the counsel.

# RULE 2-141

# EXAMINATION OF WITNESSES

Only one attorney for each party shall examine or cross-examine a witness except with the permission of the court.

# RULE 2-142

# INSTRUCTIONS TO THE JURY

The jury shall be instructed by the court, as provided in Rule 51 of the Federal Rules of Civil procedure, either before or after arguments by counsel, or both, at the court's election.

# RULE 2-143

# FILING OF COST BILL

Within ten (10) days after notice of entry of judgment, under which costs may be claimed, the prevailing party may serve and file a cost bill requesting taxation of costs itemized thereon. Said party shall also submit extra copies on which the clerk shall endorse his action and which he shall mail to all parties when costs have been taxed.

The cost bill shall 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.

# RULE 2-144

# OBJECTIONS TO COST BILL

Within ten (10) 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.

# RULE 2-145

# TAXING OF COSTS

Not less than fifteen (15) days after receipt of a party's cost bill, the clerk, after consideration of any objections thereto, shall tax costs and shall serve copies of the cost bill upon all parties of record. The cost bill should reflect his action as to each item contained therein.

# RULE 2-146

# FILING OF CLAIMS FOR ATTORNEY FEES—OBJECTIONS

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 shall order.

(a) **Filing Requirement:** Within thirty (30) days after notice of entry of judgment, a party claiming the right to allowance of attorney fees may file and serve a petition for such allowance. The petition shall state the amount claimed and cite the legal authority relied on. The petition shall be accompanied by an affidavit of counsel setting forth the hours reasonably expended; the hourly rate claimed; a statement of attorney fee contract with the client; and information, where appropriate, as to other factors which might assist the court in determining the dollar amount of fee to be allowed. *See Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975), *cert. denied* 425 U.S. 951 (1976).

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

(c) **Findings by the Court:** In the event the court allows an attorney fee, the court shall enter a reasoned order setting the amount of fee to be allowed.

# RULE 2-147

# COUNSEL'S LIABILITY FOR EXCESSIVE COST

The court will enforce the provisions of 28 U.S.C. § 1927 in the event an attorney or other person admitted to practice in this court causes an unreasonable increase in costs.

# RULE 2-148

# REVIEW OF COST BILL

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 Rule 54(d), Fed. R. Civ. P., upon written notice thereof, served and filed with the clerk within ten (10) days after the costs have been taxed in the clerk's office, but not afterwards. The motion to retax shall particularly specify the ruling of the clerk excepted to, and no others will be considered at the hearing. The motion will be heard upon the same papers and evidence used before the clerk and upon such memorandum of points and authorities as the court may require.

# RULE 2-149

# RULES FOR TAXING COSTS

Costs shall 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.

# RULE 2-150

# FORM OF JUDGMENT

In every action or proceeding terminating in a judgment, there shall be filed, separate from any findings of fact, conclusions of law, memorandum, opinion, or order, a judgment which shall state in simple and direct terms the judgment of the court, shall be signed by the judge, and shall comply in other respect with Rule 58, Fed. R. Civ. P.

# RULE 2-151

# SATISFACTION OF JUDGMENTS

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

# RULE 2-152

## SETTLEMENT OF CLAIMS OR MINORS OR INCOMPETENTS

(a) **Infants, Incompetents, etc.** No claim of an infant or incompetent shall be settled or compromised without leave of the court, embodied in an order approving the stipulation of settlement.

Whenever an infant or incompetent 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 to abide the further order of the court in the premises. Such money shall not be withdrawn except as hereinafter provided.

Upon production of a certified copy of letters of guardianship of the property of the infant or incompetent, 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 resides, an application may be made on behalf of the infant or incompetent for an order directing the clerk to pay over to such guardian or other named and authorized person the amount so deposited. Such application must be made either by the attorney of record of the infant or incompetent, or on notice to him.

On such application the amount of the attorney's lien on the fund, if any, shall be fixed and determined by the court, which determination shall 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 his next friend or by a guardian *ad litem,* no such next friend or guardian *ad litem* shall receive money or other property of the infant or incompetent person until he has given such security for the faithful performance of his duties as the court shall prescribe. If such next friend or guardian *ad litem* shall 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.

# RULE 2-153

# DEPOSITS IN COURT

(a) All monies paid into the court under Rule 67, Fed. R. Civ. P., shall be deposited by the clerk in accordance with 28 U.S.C. § 2041 and 2042.

(b) The funds may only be withdrawn upon an order of this court. Such an order shall specify the amounts to be paid and the names of any person or company to whom the funds are to be paid.

# CHAPTER 3—CRIMINAL RULES

The rules under this title govern criminal proceedings in the United States District Court for the District of Idaho. These rules supplement and are to be construed in harmony with the Federal Rules of Criminal Procedure and are promulgated pursuant to Rule 57, Fed. R.Cr. P.

# RULE 3-101

# 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 Local Rules 1-120 and 1-121, unless the court specifically orders otherwise.

(c) **Motion to Modify Bail.** Except as otherwise ordered by a judge of this court, magistrates shall, subject to the provisions of 18 U.S.C. 3141, *et seq.,* hear and determine all motions to modify bail.

# RULE 3-102

# 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 United States Probation Officer, personnel within the probation office shall be designated as pretrial service officers pursuant to the Act.

Upon notification that a defendant has been charged with an offense, either felony or misdemeanor, pretrial service officers will conduct a pre-release interview 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.

# RULE 3-103

# RIGHT TO AND APPOINTMENT OF COUNCEL

(a) **Right to and Appointment of Counsel.** Attorneys may be appointed for indigent parties in criminal proceeding including pretrial diversion and parole revocation hearings. If a defendant, appearing without counsel in a criminal proceeding, desires to obtain his 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 own counsel, the assigned judge or magistrate shall, subject to the applicable financial eligibility requirements, appoint counsel unless the defendant advises the court that he wishes to represent himself *pro se*. If a defendant desires to represent himself and proceed without counsel, he shall sign and file a written waiver of right to counsel. The judge or magistrate 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 that 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 Rule 4(b), Fed. R. App. P., has expired. If an appeal is taken, the attorney shall continue to serve until leave to withdraw is granted by the court having jurisdiction over the case or until other counsel is appointed by that court as provided in 18 U.S.C. § 3006A and in "Provisions for the Representation on Appeal of Defendants Financially Unable to Obtain Representation" as adopted by the Judicial Council of the Ninth Circuit.

# RULE 3-104

# PROCEDURAL ORDERS AND MOTIONS

(a) **Procedural Orders.** At the arraignment, the magistrate or judge shall set cut-off dates for the filing of requests for discovery, pretrial motions, and submission of jury instructions. These dates will be strictly adhered to unless an extension of time is granted by the court upon good cause shown.

(b) **Motions.** Criminal motions shall be served upon the adverse party, or his attorney, and filed with the clerk of the court. Each Motion shall be accompanied by a separate written memorandum containing all of the reasons in support thereof, including the points and authorities in support of the motion, if legal authority is relevant to the particular motion, along with copies of all documentary evidence relied upon. Each party opposing the motion shall serve upon the adverse party, or his attorney, and file with the clerk a memorandum containing all the reasons in opposition thereto, including the points and authorities relied upon and copies of all documentary evidence upon which the party in opposition relies; or a written statement that he will not oppose the motion.

# RULE 3-105

# NON-FILING OF DISCOVERY IN CRIMINAL CASES

All written requests for notice or discovery under Rules 12 and 16 of the Federal Rules of Criminal Procedure and all responses thereto shall be filed with the clerk of the court unless otherwise ordered. However, copies of documents and other items of discovery attached to or included with a response to discovery or notice request may be retained by the party who prepared the response and need not be attached to the original response filed with the clerk.

# RULE 3-106

# PRETRIAL CONFERENCES

On request of any party or on his own motion, the assigned judge, or a designated magistrate, may hold one or more pretrial conferences in any criminal action or proceeding. At the discretion of the judge, the conference may be informal or formal. The defendant shall have the right to be present at any formal pretrial conference held on the record, unless the right is waived. The agenda at the pretrial conference shall consist of any of the following items, to the extent consistent with applicable statutes, i.e., Jencks Act, 18 U.S.C. § 3500, and the Federal Rules of Criminal Procedure. The court may add other items to the agenda if they would tend to promote the fair and expeditious trial of the action or proceedings:

(a) Production of statements or reports of witnesses;

(b) Production of grand jury testimony of witnesses intended to be called at the trial;

(c) Stipulation of facts which may be deemed proved at the trial without further proof by either party;

(d) Dismissal of certain counts and elimination from the case of certain issues;

(e) Severance of trial as to any co-defendant or joinder of any related case;

(f) Pretrial exchange of lists of witnesses, expert or other, intended to be called in person or by deposition to testify at trial, except those who may be called only for impeachment or rebuttal;

(g) Pretrial exchange, with opportunity for mutual inspection of lists of documents, exhibits, summaries, schedules, models, or diagrams intended to be offered or used at trial;

(h) Premarking of intended trial exhibits, except for impeachment and rebuttal materials. No exhibit is to be assigned a number without first contacting the clerk and the exhibits shall remain in the same sequence as they appear on the exhibit list;

(i) Pretrial resolution of objections to exhibits or testimony to be offered at trial;

(j) Preparation of trial briefs on disputed points of law likely to arise at trial; or

(k) Any other matter which may tend to promote a fair and expeditious trial.

# RULE 3-107

# PLEAS

(a) **Changing Not Guilty Plea.** Except where there has been filed with the court a written waiver of jury trial or upon a showing of good cause, the following pleas shall not be accepted on the day of trial unless the court has been advised of the defendant's desire to enter such a plea at least two (2) days prior to the day of trial:

(1) A plea of guilty to a lesser offense;

(2) A plea of guilty to a superseding information;

(3) A plea of guilty to less than all counts contained in the indictment; or

(4) A plea of guilty to all counts contained in the indictment accompanied by the United States Attorney's recommendation of leniency at sentencing or other such recommendation.

(b) **Impositions of Costs.** Failure of counsel to comply with this rule which results in non-utilization of a jury that has been called for the case, may result in the assessment of jury costs to the offending party or his attorney.

# RULE 3-108

# PRETRIAL BRIEFS AND JURY INSTRUCTIONS

(a) **Trial Briefs.** Unless otherwise ordered by the court, counsel for the government and for each defendant may file a trial brief not less than five calendar days prior to the date on which the trial is scheduled to commence. Copies shall be provided for the trial judge and adverse counsel. The brief should set forth any reasonably foreseeable point of law bearing on the issues upon which either party relies and the foreseeable evidentiary problems that are unusual or which otherwise require support, with citation of relevant statute, ordinances, rules, cases, or other authorities.

(b) **Jury Instructions.** In all jury trials, counsel for the government and for each defendant shall serve and file proposed written instructions, unless otherwise ordered, not less than five calendar days prior to the date on which the trial is scheduled to commence. Copies shall be provided for the trail judge and adverse counsel. The proposed written instructions to be filed shall be numbered with an indication of which party presents it and the citation of the source of said instruction together with additional supporting authority. A copy of the proposed written instructions, as filed, shall be served on adverse counsel. A copy of the proposed written instructions, as filed, and a copy clear of any indication of which party presents it and the citation of source shall be provided for use by the trial judge.

# RULE 3-109

# INVESTIGATIVE REPORTS BY UNITED STATES PROBATION AND PAROLE OFFICE

(a) **Presentence Report Confidentiality.** The presentence report is a confidential document; however, during the sentencing hearing, it will be filed with the clerk of the court under seal. The presentence report is not available for public inspection. It also shall not be reproduced nor copies distributed to other agencies or other individuals unless permission is granted by the court or the Chief Probation Officer.

(b) **Presentence Report.** The District Court will set the date of sentencing to occur no less than sixty (60) days following the entry of a guilty plea or *nolo contendre* plea or verdict of guilty. It is contemplated that in most circumstances, the court will not formally accept a finding of guilty on a plea until after review of the presentence report.

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

(2) Not less than twenty (20) days prior to the date set for sentencing, the probation officer shall disclose the presentence investigation report to the defendant and to counsel for the defendant and the government. Within ten (10) days thereafter, counsel shall communicate 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. Such communication may be oral or written, but the probation officer may require that any oral objection be promptly confirmed in writing.

(3) 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 officer may require counsel for both parties to meet with the officer to discuss unresolved factual and legal issues.

(4) 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 The probation officer shall certify that the contents of the report, including any revisions thereof, have been disclosed to the defendant and to counsel for the defendant and the government; that the content of the addendum has been communicated to counsel; and that the addendum fairly states any remaining objections.

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

(6) The times set forth in this rule may be modified by the court for good cause shown, except that the ten-(10)-day period set forth in subsection (2) may be diminished only with the consent of the defendant.

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

(8) The presentence report shall be deemed to have been disclosed (i) when a copy of the report is physically delivered, (ii) one day after the report's availability for inspection is orally communicated, or (iii) three days after a copy of the report or notice of its availability is mailed.

(c) **Probation Records.** Investigative reports and supervision records of this court maintained by the probation office are confidential and not available for public inspection. The Chief Probation Officer may disclose these records to federal, state, or local courts; correctional and law enforcement agencies; or paroling authorities who have a legal, investigative, or custodial interest in that individual. Any other party seeking access to the confidential records maintained by the probation office shall do so by written petition to the court establishing with particularity the need for specific information in the records.

(d) **Rule Not to Supersede or Void Provisions of Rule 32(c), Fed. R. Cr. P.** Nothing. in this rule shall be construed to supersede or void the provisons of Rule 32(c), Fed. R. Cr. P.

# RULE 3-110

# APPEAL FROM CONVICTION

(a) **Notice of Appeal.** Pursuant to Rule 7, Rules of Procedure for the Trial of Misdemeanors before the United States Magistrates, a defendant who has been convicted by a magistrate may appeal to a judge by filing a timely notice of appeal within ten (10) days after entry of judgment with the clerk of the court and by serving a copy on the United States Attorney.

(b) **Record.** A transcript, if desired, shall be ordered as prescribed by Rule 10(b), Fed. R. App. P., except that, in the absence of a reporter, the transcript shall be ordered as directed by the magistrate. Applications for orders pertaining thereto shall be made to the magistrate.

Within thirty (30) days after a transcript has been ordered, the original and one copy shall be filed with the magistrate and all recordings shall be returned to the magistrate. All other documents and exhibits shall be held by the magistrate pending the receipt of the transcript. Upon its receipt, the record on appeal shall be deemed complete and the magistrate shall forthwith transmit the record to the clerk of the court.

If no transcript is ordered within ten (10) days after the notice of appeal is filed, the record on appeal shall be deemed complete and the magistrate shall forthwith transmit the record to the clerk of the court without a transcript.

(c) **Assignment to a District Judge.** The clerk of the court shall assign the appeal to a judge in the same manner as any indictment or felony information. The magistrate shall provide the clerk with a copy of the transcript, if any, for the use of the assigned judge.

(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) 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 brief within twenty-one (21) days after the notice of hearing. The appellee shall serve and file his 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 upon 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.

# RULE 3-111

# 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 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 apprehension or to warn the public of any danger he 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 Rule 6(e), Fed. R. Cr. P., 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 including those referred to in Local Rules 1-106, 1-107, and 1-127.

# RULE 3-112

# VIOLATION NOTICES, FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE

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

If the accused fails to appear before the magistrate 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 office of each magistrate and at the office of the clerk of the court.

# RULE 3-113

# 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 non-English speaking client.

(c) **Compensation for Out-of-Court Interpreters.** Compensation for such interpreting shall be at the rate set forth in a schedule maintained by the clerk of the court. Court appointed counsel shall pay for the interpreter's services and thereafter claim the expense on CJA Form 4 by listing in Section IV therein the name of the interpreter, the time spent, and the amount paid to the interpreter out of pocket.

Court appointed attorneys may claim up to $300 in interpreter fees and be reimbursed provided they attach all pertinent interpreter bills to said voucher.

# CHAPTER 4—MAGISTRATE RULES

## RULE 4-101

## AUTHORITY OF UNITED STATES MAGISTRATES

(a) **Duties under 28 U.S.C. 636(a).**

Each United States Magistrate of this court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a), and may:

(1) Exercise all the powers and duties conferred or imposed upon United States Commissioners by law and the Federal Rules of Criminal Procedure;

(2) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146 and 3149, and take acknowledgments, affidavits, and depositions; and

(3) Conduct extradition proceedings, in accordance with 18 U.S.C. § 3184.

(b) **Disposition of Misdemeanor and Petty Offense Cases - 18 U.S.C. § 3401.**

The magistrate may:

(1) With the Defendant's consent, try persons accused of, and sentence persons convicted of, misdemeanor and petty offenses committed within this district in accordance with 18 U.S.C. § 3401. In addition, magistrates may dispose of misdemeanor and petty offenses which are transferred to this district under Rule 20, Fed. R. Cr. P., or Rule 3(c), Rules of Procedure for the Trial of Misdemeanors Before United States Magistrates.

(2) Direct the probation service of the court to conduct a presentence investigation in any misdemeanor and petty offense cases; and

(3) With the defendant's consent, conduct a jury trial in misdemeanor and petty offense cases when the defendant is entitled to trial by jury under the Constitution and laws of the United States.

(c) **Determination of Non-Dispositive Pretrial Matters - 28 U.S.C. § 636(b)(1)(A).**

The magistrate may hear and determine any procedural or discovery motion or other pretrial matter in a civil or criminal case, other than the motions which are specified in subsection (d), *infra,* of these rules. The following are examples of motions or other pretrial matters that may be heard and determined by the magistrate, but the enumeration hereof shall not operate to exclude other non-dispositive motions and matters:

(1) Motions to compel and for sanctions;

(2) Motions for more definite statement;

(3) Objections to interrogatories or requests for admissions;

(4) Motions for leave to amend;

(5) Motions for protective order;

(6) Motions for permission to intervene;

(7) Motions to substitute parties;

(8) Motions to extend discovery period;

(9) Motions to take premature deposition;

(10) Motions to discontinue or limit deposition;

(11) Motions for leave to file third-party complaint;

(12) Motions for leave to proceed *in forma pauperis;*

(13) Motions for extension of time to file pleadings;

(14) Review requested subpoenas for *in forma pauperis* cases;

(15) Motions for correspondence in prisoner complaints and petitions;

(16) Motions for the seizure of property under Rule 64, Fed. R. Civ. P., (He may not order the sale of seized property.)

(17) Motions for security for costs;

(18) Motions to sever or consolidate;

(19) Motions for release and substitution of counsel;

(20) Motions to fix bail on appeal; and

(21) All non-dispositive discovery motions.

(d) **Recommendations Regarding Case—Dispositive Motion—28 U.S.C. § 636(b)(1)(B).**

When a dispositive motion, petition, or application is referred to a magistrate by a district judge, the magistrate shall review, conduct any necessary evidentiary or other hearings, and file with the clerk of the court proposed findings and recommendations for disposition by the district judge. The case-dispositive pretrial motions in civil and criminal cases which may be referred to a magistrate shall include, but are not limited to, the following:

(1) Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;

(2) Motions for judgment on the pleadings;

(3) Motions for summary judgment;

(4) Motions to dismiss or permit the maintenance of a class action;

(5) Motions to dismiss for failure to state a claim upon which relief may be granted;

(6) Motions to involuntarily dismiss an action;

(7) Motions for review of default judgments;

(8) Motions to dismiss or quash an indictment or information made by a defendant;

(9) Motions to suppress evidence in a criminal case;

(10) Motions to remand a case to a state court; and

(11) Motions to strike a pleading.

(e) **Prisoner Cases Under 28 U.S.C. § 2254 and 2255.**

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

(f) **Prisoner Cases Under 42 U.S.C. § 1983.**

The magistrate may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a 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.

(g) **Special Master References.**

The magistrate may be designated by a district judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Rule 53 of the Federal Rules of Civil Procedure. Upon the consent of the parties, the magistrate may be designated by a judge to serve as a special master in any civil case, notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure.

(h) **Preliminary Proceedings in Probation Cases.**

Magistrates may conduct preliminary proceedings in probation matters pursuant to Rule 32.1, Fed. R. Cr. P.

(i) **Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties—28 U.S.C. § 636(c).**

A full-time magistrate specially designated by the court may conduct any and all proceedings, including pretrial and post-trial motions, in any civil case which is filed in this court pursuant to 28 U.S.C. § 636(c) provided all parties have consented to trial by the magistrate and after the court has reviewed the case and determined that it should be referred to the magistrate and a referral order has been entered by the court. A part-time magistrate, specifically designated by the district court to try civil cases, may, upon the specific request of the parties and if the Chief Judge of the district certifies that the full-time magistrate is not reasonably available to try the case, conduct any and all proceedings in the case, including pretrial and post-trial motions.

(j) **A magistrate is also authorized to:**

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

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

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

(4) Preside when the Grand Jury reports and accept for the court any indictments returned, issue warrants and summonses as appropriate, and establish the terms of release pending trial, continue the same if previously fixed or modify the terms of release as he shall see fit;

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

(6) Conduct voir dire and select petit juries for the court;

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

(8) Issue subpoenas, writs of habeas corpus *ad testificandum* or habeas corpus *ad prosequendum,* or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;

(9) Order the exoneration or forfeiture of bonds;

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

(11) Have and exercise the powers of a district judge with respect to issuance of warrants of removal and in the implementation and execution of the provisions of Rule 40, Fed. R. Cr. P.;

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

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

# RULE 4-102

# ASSIGNMENT OF MATTERS TO MAGISTRATES

(a) **Criminal Cases.**

(1) ***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 the magistrate to conduct the arraignment. If consent is given by the defendant for the trial of the case by the magistrate, he shall proceed in accordance with the provisions of 18 U.S.C. §3401 and the Rules of Procedure for the Trial of Misdemeanors before United States Magistrates and other applicable rules and laws.

(2) ***Felony Cases:*** Upon the return of an indictment or the filing of an information, all felony cases shall be assigned by the clerk of the court to one of the district judges and then delivered to the magistrate to conduct an arraignment, appointment of counsel when appropriate, and other preliminary matters pursuant to Federal Rules of Criminal Procedure. Upon receipt of a not guilty plea, the magistrate shall calendar the case for the assigned judge for the purpose of trial setting, enter an order scheduling any pretrial motions to be heard before the judge, and notify the parties and counsel. If the defendant advises the magistrate that he wishes to enter a plea of guilty or *nolo contendere,* the magistrate shall calendar the case for the assigned district judge for entry of a plea of guilty or *nolo contendere.*

(b) **Civil Cases.**

Upon filing, all civil cases shall be assigned by the clerk of the court to the district judge, who may refer the same to the magistrate to conduct scheduling conferences and may also refer pretrial motions to him pursuant to these rules. When directed by a judge of the court, either by general reference or by specific reference in any case, the magistrate may conduct additional pretrial conferences and hear dispositive and non-dispositive motions under Local Rule 4-101(c) and (d) and perform any other duties set forth in these rules. When the parties consent to trial and disposition of a case by a magistrate under subsection 4-101(i) of these rules, *supra,* such case shall, with the approval of the district judge to whom it was assigned at the time of filing, be referred to the magistrate to conduct all further proceedings and the entry of judgment and resolution of post-judgment motions.

(c) **General.**

Nothing in these rules shall preclude any district judge from reserving any proceeding for hearing by a district judge rather than the magistrate. The court may also by order modify the method of assigning proceedings to a magistrate as changing conditions may warrant.

# RULE 4-103

# CONDUCT OF CIVIL TRIALS BY MAGISTRATE

(a) **Conduct of Trials and Dispositions of Civil Cases Upon Consent of the Parties.**

Following the written consent of all of the parties and reference of the case to a United States magistrate by a district Judge, a United States magistrate may conduct any or all proceedings in any civil case which is filed in this court, including conducting a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). In the course of conducting such proceedings, a magistrate may hear and determine any and all pretrial and post-trial motions which are filed by the parties, including case-dispositive motions.

(b) **Special Provisions for the Disposition of Civil Cases by a Magistrate on Consent of the Parties—28 U.S.C. § 636(c).**

(1) ***Notice.***

The clerk of the court shall notify the parties in all civil cases that they may consent to have a magistrate conduct any or all proceedings in the case and order the entry of a final judgment. The consent notice and election to proceed form shall be handed or mailed to the plaintiff or his representative at the time an action is filed and plaintiff shall cause a copy of the consent notice and election to proceed form to be served on all opposing parties with the complaint and summons. Additional consent notices and election to proceed forms may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

(2) ***Reference.***

After the election to proceed form has been executed and filed by all parties, the clerk shall transmit it to the judge to whom the case has been assigned for consideration of referral of the case to a magistrate. Once the case has been assigned to a magistrate, the magistrate shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the clerk of the court to enter a final judgment in the same manner as if a district judge had presided.

# RULE 4-104

# REVIEW AND APPEAL

(a) **Appeal of Non-Dispositive Matters—28 U.S.C. § 636(b)(1)(A).**

A district judge may reconsider any motion or matter under Rule 4-101(c) of these rules within ten (10) days after issuance of the magistrate's order, unless a different time is prescribed by the magistrate or a district judge. Such party shall file with the clerk of the court and serve on the magistrate and all parties a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any such appeal together with points and authorities in support thereof. The opposing party shall within ten (10) days thereafter file and serve upon the appealing party a memorandum of points and authorities responding to the objections. The district judge shall consider the appeal and shall set aside any portion of the magistrate's order found to be clearly erroneous or contrary to law. The judge may also reconsider *sua sponte* any matter determined by a magistrate under this rule. The district judge may affirm, reverse, or modify, in whole or in part, the ruling made by the magistrate. The district judge may also remand the same to the magistrate with directions.

(b) **Review of Case-Dispositive Motions and Prisoner Litigation—28 U.S.C. § 636(b)(1)(B).**

Any party dissatisfied with the proposed findings and recommendations of a magistrate made pursuant to Local Rules 4-101(d), (e), (f), and (h) may file with the clerk of the court and serve upon the opposing party, within ten (10) days from the date of entry of the magistrate's proposed findings and recommendations, specific written objections to the same, together with points and authorities in support thereof. The opposing party shall, within ten (10) days thereafter, file and serve upon the appealing party a memorandum of points and authorities responding to the objections. The clerk shall then submit the case file to the district judge who shall make a *de novo* determination of those portions of the specified proposed findings or recommendations to which objections are made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The district judge, however, needs to conduct a new hearing only at his discretion or where required by law and may consider the record developed before the magistrate, making his own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate with instructions.

(c) **Special Master Reports—28 U.S.C. § 636(b)(2).**

Any party may seek review of, or action on, a special master report filed by a magistrate in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure.

(d) **Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties—28 U.S.C. § 636(c).**

(1) ***Appeal to the Court of Appeals.***

Upon the entry of judgment in any civil case disposed of by a magistrate on consent of the parties under authority of 28 U.S.C. § 636(c) and Local Rule 4-101(i) of these rules, *supra,* an aggrieved party shall appeal directly to the United States Court of Appeals for the Ninth Circuit in the same manner as an appeal from any other judgment of this court.

(2) ***Appeal to a District Judge.***

(A) ***Notice of Appeal.***

In accordance with 28 U.S.C. § 636(c)(4), the parties may consent to appeal any judgment in a civil case disposed of by a magistrate to a judge of this court, rather than directly to the Court of Appeals. In such case, the appeal shall be taken by filing a notice

of appeal with the clerk of the court within thirty (30) days after entry of the magistrate's judgment; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within sixty (60) days of entry of the judgment. For good cause shown, the magistrate or a judge may extend the time for filing the notice of appeal for an additional twenty (20) days. Any request for such extension, however, must be made before the original time period for such appeal has expired. In the event a motion for a new trial is timely filed, the time for appeal from the judgment of the magistrate shall be extended to thirty (30) days from the date of the ruling on the motion for a new trial, unless a different period is provided by the Federal Rules of Civil or Appellate Procedure.

(B) ***Service of the Notice of Appeal.***

The clerk of the court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record for all parties other than the appellant, or if a party is not represented by counsel to the party at his last known address.

(C) ***Record on Appeal.***

The record on appeal to a judge shall consist of the original papers and exhibits filed with the court and the transcript of the proceedings before the magistrate, if any. Every effort shall be made by the parties, counsel, and the court to minimize the production and costs of transcription of the records, and otherwise to render the appeal expeditious and inexpensive, as mandated by 28 U.S.C. § 636(c)(4).

(D) ***Memoranda.***

The appellant shall within thirty (30) days of the filing of the notice of appeal file and serve a typewritten memorandum with the clerk stating the specific facts, points of law, and authorities on which the appeal is based. The appellee shall file and serve an answering memorandum within thirty (30) days of the filing of the appellant's memorandum. The court may extend these time limits upon a showing of good cause made by the party requesting the extension. Such good cause may include reasonable delay in the preparation of any necessary transcript. If an appellant fails to file his memorandum within the time provided by this rule, or any extensions thereof, the court may dismiss the appeal.

(E) ***Disposition of the Appeal by a District Judge.***

The district judge shall consider the appeal on the record, in the same manner as if the case had been appealed from a judgment of the district court to the Court of Appeals and may affirm, reverse, or modify the magistrate's judgment, or remand with instructions for further proceedings. The judge shall accept the magistrate's findings of fact unless they are clearly erroneous, and shall give due regard to the opportunity of the magistrate to judge the credibility of the witnesses.

(F) ***Appeals from Other Orders of a Magistrate.***

Appeals from any other decisions and orders of a magistrate not provided for in this rule should be taken as provided by governing statute, rule, or decisional law.

# CHAPTER 5—MISCELLANEOUS RULES OF THE UNITED STATES DISTRICT COURT

## RULE 5-101

## JURY SELECTION PLAN, CRIMINAL JUSTICE ACT PLAN, AND PLAN FOR PROMPT DISPOSITION OF CRIMINAL CASES

This District has published and adopts as part of the Local Rules by reference, the Jury Selection Plan, Criminal Justice Act Plan, and the Plan for Prompt Disposition of Criminal Cases (Speedy Trial Act.)

# RULE 5-102

# HABEAS CORPUS PROCEEDINGS UNDER 28 U.S.C. § 2254 and 28 U.S.C. § 2255

(a) All petitions for writs of habeas corpus (pursuant to 28 U.S.C. § 2254) and motions filed pursuant to 28 U.S.C. § 2255 shall be subject to the provisions of this rule unless otherwise ordered by the court.

(b) The petition or motion shall be in writing, accompanied by all state court. opinions and judgments in the case, and signed under penalty of perjury and, if presented *in propia persona,* upon the form and in accordance with the instructions approved by the court. Copies of the forms and instructions shall be supplied by the clerk upon request. A petitioner who is unable to furnish the opinions and judgments in the case shall state why they are unavailable and where they may be obtained. If they are not furnished by petitioner, the respondent shall furnish them to the court or state why such documents are not supplied.

In a capital case, the petition shall set forth any scheduled execution date.

(c) All petitions submitted by state prisoners shall state with specificity that all issues raised in the petition:

(1) Have been raised before all state tribunals in which the issues could be heard to the exhaustion of the petitioner's state remedies; or

(2) Have not been raised before all state tribunals in which the issues could be heard along with all facts which justify the failure to exhaust state remedies.

(d) All petitions submitted by state prisoners, if the petitions request an evidentiary hearing, shall state that:

(1) Each issue of fact to be raised at the hearing has not been the subject of a state court evidentiary hearing in which a finding was made as to the fact in question; or

(2) For those issues that were raised in a prior state court evidentiary hearing, the state hearing was not a full and fair consideration of the issue of fact in question, along with all reasons why the state hearing was inadequate.

(e) All petitioners shall state whether or not petitioner has previously sought relief arising out of the same matter from this court or from any other federal court, together with the ruling and reasons given for denial of relief.

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

(g) If a hearing in which petitioner will be represented by counsel is granted by the court, a pretrial conference of court and counsel shall be held and a pretrial order filed. The pretrial order should list all grounds for upsetting the conviction or sentence which appear relevant, whether or not raised in the petition or motion as issues of fact to be tried at the hearing along with related issues of law.

(h) In its decision, the court should make a specific finding on each issue of fact listed in the pretrial order and should rule expressly on each issue of law stating the reasons for the ruling.

(i) If relief is granted on a petition of a state prisoner or if any stay of execution of a state court judgment is issued by the court, the clerk shall forthwith notify the state authority having jurisdiction over the prisoner of the action taken.

(j) If relief is denied such state prisoner and a certificate of probable cause is issued, the court will also grant a stay of execution to continue in effect until such time as the Court of Appeals acts in the matter; and the clerk of this court shall forthwith notify the clerk of the Court of Appeals of the action taken.

(k) Other provisions of these Local Rules notwithstanding an evidentiary hearing on a petition by a state prisoner in a case where the death penalty has been imposed shall be held by a United States district judge. Where an evidentiary hearing has been conducted in a death penalty case, the court shall order a transcript immediately following the hearing for purposes of appellate review.

(l) The *Rules Governing Section 2254 Cases in the United States District Courts* and the *Rules Governing Section 2255 Proceedings in the United States District Court* shall be followed by the parties and shall govern the course of proceedings in Section 2254 and Section 2255 actions.