United States District Court
District of Idaho

Re: Revision of Local Rules

General Order
No. #106



Notice of Publication of these revised Local Rules was duly given to the Idaho Bar on May 5, 1994 stating that these revised Local Rules would become effective on July 1, 1994.

Since the period for comment has expired and since the changes, if any, have been incorporated, the attached revised Local Rules became effective on July 1, 1994.

IT IS HEREBY ORDERED that, the attached revised Local Rules are effective nunc pro tunc.

dated: July 11, 1994

Edward J. Lodge,
Chief U.S. District Judge

Harold L. Ryan,
Senior U.S. District Judge

Marion J. Callister
Senior U.S. District Judge

Mikel H. Williams,
U.S. Magistrate Judge

Larry M. Boyle,
U.S. Magistrate Judge

106.

**CLERK'S CERTIFICATE OF MAILING**

I certify that a copy of the attached document was mailed to the following named persons:

The Library
Ninth Circuit Court of Appeals
for the Ninth Circuit
San Francisco, CA

Ralph Meacham, Director
Administrative Office of the
United States Courts
Washington, D.C. 20544

Greg Walters (Judicial Council)
Ninth Circuit Court of Appeals
101 Spear St., Suite 215
San Francisco, CA 94105

Ninth Circuit Judge Trott
Ninth Circuit Judge Nelson

Chief Judge Lodge
Sr. Judge Callister
Sr. Judge Ryan

Chief Judge Pappas
Judge Hagan

Chief Magistrate Judge Williams
Magistrate Judge Boyle

DATED: August 1, 1994

CAMERON S. BURKE, CLERK

By: Glenda Longstreet

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

**Effective date: June 1, 1991**
**Amended March 1, 1992, May 1, 1993,**
**and July 1, 1994**

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## PART 2. CRIMINAL RULES

## RULE 1.1

## SCOPE OF THE RULES

(a) **Title and Citation.** These rules shall be known as the Local Rules of the United States District Court for the District of Idaho. They may be cited as "D.Id.LR____."

(b) **Effective Date.** These rules became effective on June 1, 1991. Any amendments to these rules become effective on the date approved by the court.

(c) **Scope of Rules.** These rules shall apply in all proceedings in civil, criminal, and bankruptcy actions. Rules governing proceedings before magistrate judges are incorporated herein. These rules shall apply in bankruptcy cases and adversary proceedings except to the extent that there are otherwise applicable provisions of the Federal Rules of Bankruptcy procedure or the Local Bankruptcy Rules.

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

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

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

(2) The following definitions shall apply:

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

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

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**RELATED AUTHORITY**

NONE

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## RULE 1.2

## AVAILABILITY OF THE LOCAL RULES

Copies of these rules, as amended and with any appendices attached hereto, are available from the clerk's office at no charge. These local rules are available either in hard copy or can be downloaded from the Court's FEDNET BBS using a PC with a modem and communications software by dialing 334-9476 and registering free of charge. If you prefer, the Clerk's Office can provide a copy in Word Perfect (IBM) format if you supply a formatted 3.5" or 5.25" diskette with a self-addressed stamped mailer.

When amendments to these rules are made, notice of such amendments shall be provided in The Advocate or other periodicals published by the Idaho State Bar.

When amendments to these rules are proposed, notice of such proposals and of the ability of the public to comment shall be provided in The Advocate or other periodicals published by the Idaho State Bar and by posting on the clerk's office bulletin board located on the fourth floor of the Federal Building and United States Courthouse, 550 West Fort Street, Boise, Idaho.

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### RELATED AUTHORITY

**Fed. R. Civ. P. 83**

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## RULE 3.1

## VENUE

RULE 1.2

## RULE 3.1

## VENUE

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.

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**RELATED AUTHORITY**

28 U.S.C. § 92

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**RULE 3.1**

## RULE 5.1

## GENERAL FORMAT OF PAPERS PRESENTED FOR FILING

(a) All pleadings, motions, and other papers presented for filing shall be on 8 1/2 x 11 inch white paper of good quality, flat and unfolded, without back or cover, and shall be plainly typewritten, printed, or prepared by a clearly legible duplication process, and double-spaced, except for quoted material. Documents on 14 inch paper shall be reduced in size before filing. Documents more than 1/2 inch thick shall be two-hole punched at top edge. Each page shall be numbered consecutively.

(b) 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:

(1) The title of the court;

(2) The title of the action or proceeding;

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

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

(5) A title describing the pleading; and

(6) Any other matter required by this rule.

(c) 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, the clerk 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.

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

If the complaint or other document is submitted without a completed civil cover sheet, the clerk shall file the complaint as of the date received and promptly give notice of the omission of the civil cover sheet to the party filing the document. When the civil cover sheet has been received, the clerk shall process the complaint as of the date of filing.

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**RELATED AUTHORITY**

Fed. R. Civ. P. 5(e), 79(a)(d)

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## RULE 5.4

## COPIES OF ORDERS

(a) When filing motions or stipulations, the following are required:

(1) The proposed order with copies for the submitting party and all other parties; and

(2) Stamped, addressed envelopes for each of the parties to be served.

(b) A proposed order is not required when filing dispositive motions and preliminary injunctions.

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## RELATED AUTHORITY

NONE

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## RULE 5.5

## NON-FILING OF DISCOVERY

Initial disclosures, disclosure of expert testimony, 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. Any certificates of service related to discovery documents shall not be filed with the clerk. 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 may be attached to the motion filed under these rules by the party seeking to invoke the court's relief.

If initial disclosures, disclosure of expert testimony, 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. Documents must indicate the scheduled date of trial or hearing at which they will be used and to whom the documents should be returned after the trial or hearing.

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 79.1.

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## RELATED AUTHORITY

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

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## RULE 7.1

## MOTION PRACTICE

(a) **Requirements for Submission.**

(1) Motions and related proposed orders shall be submitted as separate documents.

(2) 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 Fed. R. Civ. P. 6(d), 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. The above referenced documents shall be individual separate pleadings. Each party opposing the motion or other application shall, within fourteen (14) days thereafter, serve and file a response brief containing a written statement of all the reasons in opposition thereto and the points and authorities relied upon, or a written statement that the party 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 affidavits upon which the party intends to rely. If the moving party so desires, such party may, within fourteen (14) days after the service upon the party of the points and authorities of the adverse party, file a reply brief.

(3) Briefs in support of and in opposition to motions filed shall be no longer than twenty (20) pages in length.

(34) At the time of filing the original brief, an additional copy shall be submitted to the Clerk of Court for use by the court.

(45) 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.

(b) **Scheduling**

At the time of filing a motion, the attorney shall contact the courtroom deputy assigned to the case, who will determine, in consultation with the Court, if the motion will require oral hearing. If the motion will be heard orally, the courtroom deputy will calculate the maximum time allowed for filing a response (14 days), filing a reply (14 days), mailing (6 days), and sufficient time for court review (minimum of 15 days for all dispositive motions). The courtroom deputy would then provide the attorney with a date on which to schedule the motion hearing. The attorney filing the motion will be responsible for noticing all parties of record. Attorneys are encouraged to communicate with the courtroom deputies regarding the status of any motions.

(c) **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 motions for summary judgment. Motions for summary judgment will be heard by the court, unless the court determines, based on the record, that oral argument is unnecessary and would delay resolution of the proceedings.

(d) **Effects of Failure to Comply with the Rules of Motion Practice.**

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

(e) Requests to Extend Motion Briefing Period or to Vacate or Reschedule Motion Hearing Dates (see D.Id.LR 7.3(a))

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**RELATED AUTHORITY**

Fed. R. Civ. P. 5(a), 6(d), 7(b), 78

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## RULE 7.4

## 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 with copies and stamped, addressed envelopes for each party shall be submitted with every stipulation and shall be filed as separate documents.

All stipulations concerning time extensions for briefing periods or vacating, continuing or rescheduling a motion hearing date or trial date must be in writing and state the specific reason(s). Such stipulations will be approved only upon a showing of good cause. (See D.Id.LR 7.3)

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## RELATED AUTHORITY

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

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## RULE 9.3
## NON-CAPITAL CASE HABEAS PETITIONS (STATE CUSTODY) AND MOTIONS (FEDERAL CUSTODY)

**(A) All petitions for writs of habeas corpus in non-capital cases filed 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 and, if presented in propria 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 of the Court upon request. Upon receipt of a petition and application to proceed in forma pauperis, the Clerk of the Court shall conditionally file these items subject to the Court's initial review under 28 U.S.C. § 1915.**

**(C) Upon completion of the initial review of the conditionally filed petition and application to proceed in forma pauperis, if the Court deems it proper to proceed under 28 U.S.C. § 1915, the Clerk of the Court shall be directed to serve the appropriate attorney general's office with the petition. Counsel for the respondent shall be responsible for filing an answer to the petition and for filing those portions of the record ordered by the Court.**

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

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

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**RELATED AUTHORITY**

28 U.S.C. § 1915
28 U.S.C. §§ 2241-2255
Rules Governing Section 2254 Cases in United States District Courts
Rules Governing Section 2255 Cases in United States District Courts

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## RULE 9.4
## SPECIAL REQUIREMENTS FOR HABEAS CORPUS PETITIONS INVOLVING THE DEATH PENALTY

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

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

*UNITED STATES DISTRICT COURT*
*DISTRICT OF IDAHO*

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

**(C) Counsel.**

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

(2) Qualifications of appointed counsel. A panel of attorneys qualified for appointment in capital cases will be certified by the Court in accordance with the requirements provided in 21 U.S.C. § 848(q)(4)-(9). Upon application by petitioner for the appointment of counsel, the Court shall appoint two (2) attorneys to represent petitioner throughout the federal habeas corpus proceedings. Appointment shall be made from the panel of qualified attorneys certified by the Court. When an application for the appointment of counsel is made prior to the filing of a final petition for writ of habeas corpus (in anticipation of preparing such petition), the application shall be assigned to a district judge in the same manner that a petition would be assigned and counsel shall be appointed by the assigned judge. The judge so assigned shall be the judge assigned when counsel files a petition for writ of habeas corpus.

(D) Initial proceedings and request for a stay of execution. Upon the issuance of a death warrant by a state district court, and following the courts' decisions on a petitioner's direct appeal to the Idaho Supreme Court and application for writ of certiorari to the United States Supreme Court, if any, a petitioner may seek relief from a capital sentence in this Court by filing a petition for writ of habeas corpus.

(1) Initiation of habeas corpus proceedings. Federal habeas corpus proceedings may be initiated in this Court by a petitioner or on behalf of a petitioner by filing an original and one copy of the following:

(a) Application for a stay of execution.

(b) Application to proceed in forma pauperis with a supporting affidavit. (Not required if petitioner has retained counsel.)

(c) Application for the appointment of counsel or to proceed pro se. (Not required if petitioner has retained counsel.)

(d) Statement of issues re: petition for writ of habeas corpus.

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

(a) state whether petitioner has previously sought relief arising out of the same matter from this or any other federal court, together with the ruling and reasons for denial of relief;

(b) state that petitioner intends to file a petition for writ of habeas corpus;

**RULE 9.4**

(c) list the issues to be presented in the petition for writ of habeas corpus; and

(d) certify that the issues outlined raise substantial questions of constitutional law, are non-frivolous, and are not being raised simply for the purpose of delay.

(3) Receipt of initial filings by the Court. Upon receipt of the initial filings, the Clerk of the Court shall immediately assign the matter to a district judge who shall immediately review the filings and, if the matter is found to be properly before the Court, the Court will issue an order containing a stay of execution for the duration of the proceedings in this Court, a ruling on the application to proceed in forma pauperis, a ruling on the application for the appointment of counsel, and setting forth an initial scheduling order of deadlines for the filing of a final petition for writ of habeas corpus and a response.

(4) Notice of stay. Upon the granting of any stay of execution, the Clerk of the Court will immediately notify the following: counsel for the petitioner, the Idaho Attorney General, the warden of the Idaho Maximum Security Institution, and, when applicable, the Clerks of the Idaho Supreme Court and the Ninth Circuit Court of Appeals shall also be notified.

The Idaho Attorney General is responsible for providing the Clerk of the Court with a telephone number where he or she or a designated deputy attorney general can be reached twenty-four (24) hours a day.

(5) Temporary stay for unexhausted claims. If a petition is found to contain unexhausted claims for which a state remedy may still be available, the Court may:

(a) dismiss the petition without prejudice; or

(b) grant a temporary stay of execution for sixty (60) days in which to allow a petitioner to seek a further stay from the state court in order to litigate the unexhausted claims in state court; or

(c) order that the parties submit a stipulation as to which claims in the federal habeas petition have been exhausted. Proceedings on the stipulated exhausted issues contained in the federal habeas petition would continue simultaneously with the pursuit of available state remedies on the unexhausted issues. After state court proceedings were complete, the petitioner would be allowed to amend the petition with respect to the newly exhausted claims. The Court would hold in abeyance a final decision all issues raised in the petition pending the state courts' decisions on the previously unexhausted claims and their presentation here.

**RULE 9.4**

**(E) Final Petition for Writ of Habeas Corpus.**

(1) Final Petition defined. A "final petition" for writ of habeas corpus shall mean: the original filing, pursuant to the Court's initial scheduling order, relating to a particular conviction and sentence, and a subsequent or amended filing if the original filing was not dismissed on the merits. The term "final petition" shall not include a petition for habeas corpus that has been dismissed by the Court for lack of jurisdiction.

(2) Answer. Respondent shall file an answer to the petition, with accompanying points and authorities, within thirty (30) days from the date of service of the final petition. The answer shall be in compliance with Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts. Any other relevant documents not already filed or lodge shall be attached to the answer.

(3) Reply. Within fourteen (14) days after the respondent files an answer, petitioner may file a reply to the answer.

(4) State Court Record. The respondent shall, as soon as practicable but in no event later than the date of the filing of a response to the petition, lodge with the Court one copy of the following:

(a) the complete record of all state trial court proceedings, as well as exhibits, containing all of the items described and required by the Appellate Rule 25(a)(7) of the Idaho Code;

(b) the briefs filed on direct appeal to the Idaho Supreme Court as well as the opinions and orders of that court; and

(c) the briefs filed in any post-conviction relief proceeding in any state court, and all opinions, orders, and transcripts of such proceedings.

If any items required to be lodged in paragraphs (a) through (c) above are not available, respondent shall so state and indicate when, if at all, such missing material(s) will be lodged.

If the petitioner claims that the respondent has not complied with the requirements of this section, or if petitioner does not have copies of all of the documents lodged with the Court, petitioner shall immediately notify the Court in writing with a copy to the respondent. Copies of any missing documents shall be provided to petitioner by the respondent.

(5) No discovery shall be had without leave of the Court.

**RULE 9.4**

**(F) Procedures for considering the final petition for writ of habeas corpus.** Unless the Court summarily dismisses the final petition under Rule 4 of the Rules Governing Section 2254 Cases in United States District Court, the following schedule and procedures shall apply, subject to modification in the discretion of the assigned district judge. Requests for extensions of any time period shall be made in compliance with the applicable Local Rules of the Court.

(1) Status conference. After the Court receives the final petition, answer, and reply, if any, the Court shall schedule and hold a status conference within thirty (30) days of the date the last pleading was filed. The Court, in its discretion, may use telephonic hearings for this purpose.

Counsel shall be prepared to discuss at the status conference the general procedural posture of the petition, whether there are factual issues in dispute that would require an evidentiary hearing, when such a hearing could take place, the anticipated length of such a hearing, and the amount of time the parties will need to prepare to proceed to a hearing on the final petition itself. Counsel should also plan to advise the Court of any motions they anticipate filing, as well as any other matters relevant to the circumstances of that particular case.

Following the status conference, the Court will issue an order which provides deadlines and/or hearing dates as discussed at the status conference, as well as addressing any other matters then before the Court.

(2) Evidentiary hearing. A request for an evidentiary hearing shall be made as soon as is reasonable after the deadline for the filing of a reply has passed.

The request shall be in writing and shall include a statement of which factual issues require a hearing and a summary of what evidence petitioner proposes to offer. Any opposition to the request for an evidentiary hearing shall be made within fifteen (15) days from the filing of the request. The Court will then give due consideration to whether an evidentiary hearing will be held and will notify the parties of the date and time such a hearing will commence.

(3) Oral argument. Except in cases where the petition is patently frivolous, the Court will set the final petition down for oral argument. Whenever possible, a date for oral argument will be scheduled at the status conference.

**(G) Notification of Court's decision or ruling.** The Court will issue its decision or ruling on the issues set forth in the final petition in writing.

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

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

**(1) the issuance of a final order denying or dismissing a petition without a certificate of probable cause for appeal; and**

**(2) the denial of a stay of execution.**

**If the Court denies a petition for writ of habeas corpus but does issue a certificate of probable cause for appeal, then the Court will grant a stay of execution which will continue in effect until the Ninth Circuit Court of Appeals acts upon the appeal or the order of stay.**

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

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**RELATED AUTHORITY**

28 U.S.C. § 2254
Rules Governing Section 2254 Cases in United States District Courts
21 U.S.C. § 848(q)(4)-(9)
Idaho Code Appellate Rule 25(a)(7) (1987)

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**RULE 9.4**

## RULE 16.1
## PRE-TRIAL PROCEDURES

(a) Scheduling Conference.

Unless otherwise ordered by the Court, or in those cases exempted as inappropriate, a scheduling conference will be conducted and an order issued in all civil cases within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant. The Court, in its discretion, may use telephonic hearings for this purpose.

Ten (10) days prior to the scheduling conference, attorneys will be required to communicate between themselves with respect to the issues, cut-off dates and time frames contained on the scheduling conference form/litigation plan, obtainable from the Clerks Office. These include:

1. Joinder of parties & amendment of pleadings cut-off date;

2. Initial disclosures; (see D.Id.LR 26.2)

3. Expert testimony disclosures; (see D.Id.LR 26.2

4. Number and length of depositions;

5. Discovery cut-off date;

6. Dispositive motions filing cut-off date;

7. Settlement conference date; (see D.Id.LR 68.1)

8. Consideration of Alternative Dispute Resolution (ADR)
(General Order # 92)

9. Status conference date; (see D.Id.LR 16.1(b))

10. Pretrial conference date; (see D.Id.LR 16.1(c))

11. Estimated length of trial

12. Trial date (to be entered by Court)

The courtroom deputy for the assigned judge will contact the attorneys to set a date and time for the scheduling conference. Attorneys will be required to submit an executed copy of the scheduling conference form/litigation plan to the Court no later than 7 days prior to the scheduling conference.

Within 7 days after the scheduling conference, the Court will prepare and enter an order which will provide time frames and dates for the items contained on the scheduling form.

(a)(1) NATURE OF SUITS EXEMPT FROM SCHEDULING ORDER REQUIREMENT

CONTRACT

150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans
153 Recovery of Overpayment of Veteran's Benefits

REAL PROPERTY

210 Land Condemnation
220 Foreclosure

TORTS
PERSONAL PROPERTY

371 Truth in Lending

BANKRUPTCY

422 Appeal 28 USC 158
423 Withdrawal 28 USC 157

PRISONER PETITIONS

510 Motions to Vacate Sentence
Habeas Corpus
530 General
535 Death Penalty
540 Mandamus & Other
550 Other

FORFEITURE / PENALTY

610 Agriculture
620 Other Food & Drug
625 Drug Related Seizure of Property 21 USC 881
630 Liquor Laws
640 R.R. & Truck
650 Airline Regs
660 Occupational Safety / Health
690 Other

SOCIAL SECURITY

861 HIA (1395ff)
862 Black Lung (923)
863 DIWC / DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))

FEDERAL TAX SUITS

871 IRS - Third Party
26 USC 7609

OTHER STATUTES

460 Deportation
895 Freedom of Information Act
900 Appeal of Fee Determination Under Equal Access to Justice

(b) 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:

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

(2) Jurisdiction and venue;

(3) Anticipated motions;

(4) Anticipated or remaining discovery;

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

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

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

(8) Prospects for settlement;

(9) Appropriateness of reference to an Alternative Dispute Resolution (ADR) program.

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

At the conclusion of the status conference, or anytime thereafter, the assigned judge or magistrate judge may enter such order governing further proceedings in the action as he or she 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.

A status conference may be utilized separately or in conjunction with a discovery conference provided for a Fed. R. Civ. P. 26(f).

**(c) Pretrial Conference.**

One or more pretrial conferences shall be held in any action or proceeding at such time as the assigned judge may order (i) by a status conference order, or (ii) 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 said 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:

(1) preparation of a joint pretrial statement;

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

(3) settlement of the action.

**(d) Pretrial Conference Agenda.**

(1) 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 Fed. R. Civ. P. 16, and the foregoing local rule and any other matters germane 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.

(2) Except as otherwise provided by a status conference order prepared under the 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 stipulation 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 Judge or Master.** A statement whether reference of all or a party of the action or proceeding to a magistrate judge 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.

(e) **Pretrial Order, Submission of Pretrial Material.**
The assigned judge or magistrate judge may make such pretrial order or orders, at or following the pretrial conference, as may be appropriate. Such order shall control the subsequent action or proceeding as provided in Fed. R. Civ. P. 16. Unless otherwise ordered, the parties shall,

not less than fourteen (14) calendared days prior to the date on which the trial is scheduled to commence:

(1) 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.

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

(3) 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.

(4) 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.

(5) On a standard form, obtainable from the Clerk of 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.

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## RELATED AUTHORITY

Fed. R. Civ. P. 16
28 U.S.C. § 473

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## RULE 26.2
## DISCLOSURES

There shall be a duty to supplement all disclosures.

These disclosures will be served upon the respective parties and not filed with the Court.

Document production requests, requests for admissions, interrogatories and all other forms of discovery shall not be made until after the requesting party has made its initial disclosures and such disclosures are made, or are due from, the other parties.

For good cause showing, the court can excuse parties from compliance with the disclosure requirements. In accordance with General Order No. 101 of the United States Bankruptcy Court for the District of Idaho, all Local Rules regarding disclosure shall not apply in bankruptcy cases or adversary proceedings unless spceficially ordered by the Court.

A. INITIAL DISCLOSURES:

At least fourteen (14) days prior to the scheduling conference, the parties shall be required to disclose all information in conformance with Federal Rules of Civil Procedure 26(a)(1)(A-D)

B. DISCLOSURE OF EXPERT TESTIMONY:

The disclosure of expert testimony shall be in conformance with Federal Rules of Civil Procedure 26(a)(2)(A-C) in the form of a written report prepared and signed by the witness. The expert witness need only identify similar cases in which he or she has testified in the last four (4) years.

Unless the Court designates a different time, the disclosure of expert testimony shall be made at least one hundred twenty (120) days before the scheduled trial date, or if the evidence is intended solely to contradict or rebut evidence on the same subject identified by another party, within thirty (30) days after the disclosure made by such other party.

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

C. PRETRIAL DISCLOSURES:

**All pretrial disclosures shall be made in conformance with Federal Rules of Civil Procedure 26(a)(3) at least sixty (60) days before the scheduled trial date.**

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**RELATED AUTHORITY**

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

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**RULE 26.2**

## RULE 30.1
## LIMITATION OF DEPOSITION

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

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## RELATED AUTHORITY

**Fed. R. Civ. P. 30**

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## RULE 33.1
## LIMITS ON INTERROGATORIES

**No party shall serve upon any other single party to an action more than 40 interrogatories, including subparts (which will be counted as separate interrogatories), without first obtaining a stipulation of such party to additional interrogatories and obtaining an order of the Court upon showing of good cause granting leave to serve a specific number of additional interrogatories.**

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### RELATED AUTHORITY

**Fed. R. Civ. P. 33**
**28 U.S.C. § 473**

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## RULE 51.1
## INSTRUCTIONS TO THE JURY

**(a) Submission of Proposed Jury Instructions.**
In the case of a jury trial, written proposed jury instructions and any request for special interrogatories and special verdict forms shall be prepared and filed by counsel at least ten (10) 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 an original and two copies of proposed instructions and requests for special interrogatories and/or special verdict forms with the Clerk of Court. 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. The two copies 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 on subsequent requests. The original and all copies must have a cover sheet. Proposed jury instructions, requests for special interrogatories and/or special verdict forms may also be submitted on a 3½ or 5¼ diskette in a WordPerfect IBM-compatible 5.X format.

**(b) 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.

**(c) 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 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.

**(d) Instructions to the Jury.**
The jury shall be instructed by the court, as provided in Fed. R. Civ. P. 51 either before or after arguments by counsel, or both, at the court's election. One copy of the final jury instructions, as given by the court, shall be docketed and become a part of the permanent case file.

## RELATED AUTHORITY

**Fed. R. Civ. P. 51**

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## RULE 51.1

## RULE 54.1
## TAXATION OF COSTS

(a) Within fourteen (14) days after 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 copies for all parties on which the clerk shall endorse the clerk's action and which shall be mailed to all such 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. 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. Not less than twenty (20) 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 the clerk's action as to each item contained therein. Within fourteen (14) days after service by any party of its cost bill, any other party may serve and file specific objections to any items setting forth the grounds therefor.

(b) 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. Taxable items include:

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

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

(3) Deposition Costs. The reporter's charge for the original deposition and copy is taxable whether or not the same is actually received in evidence, or whether or not it is taken solely for discovery. Other copies are not taxable, regardless of which party took the deposition. The reasonable expenses of the deposition reporter, and the notary, or other official presiding at the taking of the depositions are taxable, including travel and subsistence. Counsel's fees, expenses in arranging for taking of a deposition are not taxable. Fees for the witness at the taking of a deposition are taxable at the same rate

as for attendance at trial. The witness need not be under subpoena. A reasonable fee for a necessary interpreter at the taking of a deposition is taxable.

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

(5) Exemplification and Copies of Papers. The cost of an exhibit necessarily attached to a document (or made part of a deposition transcript) required to be filed and served is taxable. The cost of copies submitted in lieu of originals because of the convenience of offering counsel or his or her client are not taxable. The cost of reproducing copies of motions, pleadings, notices and other routine case papers is not taxable. The cost of reproducing the required number of copies of the clerk's record on appeal is allowable.

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

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

(8) Docket Fees. Docket fees and costs of briefs are taxable pursuant to 28 U.S.C. § 1923. Docket fees may be awarded only when the United States is the prevailing party.

**RULE 54.1**

(9) Other items may be taxed with prior court approval.

(10) The certificate of counsel required by 28 U.S.C. § 1924 and the Local Rules shall be prima facie evidence of the facts recited therein. The burden is on the opposing party to establish that a claim is incorrectly stated, unnecessary or unreasonable.

(c) 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 Fed. R. Civ. P. 54(d), upon written notice thereof, served and filed with the clerk within five (5) days after the costs have been taxed in the clerk's office, but not afterwards. The motion to retax shall particularly specify the ruling of the clerk excepted to, and no others will be considered. The motion will be considered and determined upon the same papers and evidence used by the clerk and upon such memorandum of points and authorities as the court may require. A hearing may be scheduled at the discretion of the trial judge.

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## RELATED AUTHORITY

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

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## RULE 54.3
## AWARD OF ATTORNEY FEES

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

(b) Within fourteen (14) days after entry of final 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 following: (1) date(s), (2) service(s) rendered, (3) hourly rate, and (4) hours expended; 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. Petitions for attorney fees and cost bills shall be filed as separate documents. Failure to comply with this requirement will result in delay in processing.

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

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### RELATED AUTHORITY

28 U.S.C. § 2412

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## RULE 67.2
## DEPOSITS

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

(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 the clerk shall be authorized to deduct a fee from the income earned on the investment equal to 10 percent of the income earned while the funds are held in the court's registry fund, regardless of the nature of the case underlying the investment and without further order of the court. The interest payable to the U.S. courts shall be paid prior to any other distribution of the account. Investments having a maturity date will be assessed the fee at the time the investment instrument matures.
>
> IT IS FURTHER ORDERED that counsel presenting this order personally serve a copy thereof on the clerk or his or her financial deputy. Absent the aforesaid service, the clerk is hereby relieved of any personal liability relative to compliance with this order.

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### RELATED AUTHORITY

Fed. R. Civ. P. 67
28 U.S.C. § 2041-2042
General Order 70, December 6, 1990

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## RULE 68.1
## SETTLEMENT CONFERENCES

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

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

(b) At any time after an action or proceeding is at issue, any party may file a request for, or the assigned judge on his or her own initiative may order, a settlement conference. 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 judge (hereafter the settlement judge) as may be designated for the purpose.

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

(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; and

(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.

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**RELATED AUTHORITY**

Fed. R. Civ. P. 16

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## RULE 72.1
## MAGISTRATE JUDGE RULES

(a) **Authority of United States Magistrate Judges.**

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

(2) Prisoner Cases Under 28 U.S.C. §§ 2254 and 2255. The magistrate judge may perform any or all of the duties imposed upon a judge by the rules governing proceedings in the United States district courts under § 2254 and § 2255 of Title 28 United States Code. In so doing, the magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceedings and 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, if necessary. Any order disposing of the petition or motion may only be made by a district judge.

(3) Prisoner Cases Under 42 U.S.C. § 1983. The magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceedings and 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.

(4) Special Master References. A magistrate judge may be designated by a district judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Fed. R. Civ. P. 54. Upon the consent of the parties, the magistrate judge may be designated by a judge to serve as a special master in any civil case, notwithstanding the limitations of Fed. R. Civ. P. 53(B).

(5) Preliminary Proceedings in Probation Cases. Magistrate judges may conduct preliminary proceedings in probation matters pursuant to Fed. R. Cr. P. 32.1.

(6) Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties. A full-time magistrate judge 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 judge and after the court has reviewed the case and determined that it should be reassigned to the magistrate judge and a reassignment order has been entered by the court. A part-time magistrate judge, 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 a full-time magistrate judge is not reasonably available to try the case, conduct any and all proceedings in the case, including pretrial and post-trial motions.

(7) A magistrate judge is also authorized to:

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

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

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

(D) 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 or she shall see fit;

(E) Accept waivers of indictment, pursuant to Fed. R. Civ. P. 7(b);

(F) Conduct voir dire and select petit juries for the court in civil cases with the consent of the parties;

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

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

(I) Order the exoneration or forfeiture of bonds;

(J) Fix the terms of release pending appeal to the court of appeals

(K) Conduct examinations of judgment debtors in accordance with Fed. R. Civ. P. 69; and

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

(b) **Assignment of Matters to Magistrate Judges.**

(1) Criminal Cases.

(A) Misdemeanor Cases: All misdemeanor cases shall be assigned, upon the filing of an information or the return of an indictment, to one of the district judges and then delivered to the magistrate judge to conduct the arraignment. If consent is given by the defendant for the trial of the case by the magistrate judge, he or she shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and the Rules of Procedure for the Trial of Misdemeanors before the United States Magistrate Judges and other applicable rules and laws.

(B) Felony Cases: Upon the return of an indictment or the filing of an information, all felony cases shall be assigned by the Clerk of Court to one of the district judges and then delivered to the magistrate judge 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 judge 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 judge that he or she wishes to enter a plea of guilty or *nolo contendere*, the magistrate judge shall calendar the case for the assigned district judge for the entry of a plea of guilty or *nolo contendere*.

(2) Civil Cases. Upon filing, all civil cases shall be assigned by the Clerk of Court to the district judge, who may refer the same to the magistrate judge 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 judge may conduct additional pretrial conferences and hear dispositive and non-dispositive motions and perform any other duties set forth in these rules. When the parties consent to trial and disposition of a case by a magistrate judge, 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 judge to conduct all further proceedings and the entry of judgment and resolution of post-judgment motions.

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

(c) **Notice of Availability for the Disposition of civil Cases by a Magistrate Judge on Consent.**

(1) Notice. The Clerk of Court shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. The consent notice and election to proceed form shall be handed or mailed to the initiating party or his or her representative at the time an action is filed and initiating party 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) Reassignment. 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 reassignment of the case to a magistrate judge. Once the case has been reassigned to a magistrate judge, the magistrate judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk of Court to enter a final judgment in the same manner as if a district judge had presided.

(d) **Review and Appeal.**

(1) Appeal of Non-Dispositive, Dispositive, and Prisoner Litigation--28 U.S.C. § 636(b)(1)(A). A district judge may reconsider any motion or matter heard by a magistrate judge within ten (10) days after receipt of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a district judge. Such party shall file with the Clerk of Court and serve on the magistrate judge 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 under the appropriate standard of review (i.e., clearly erroneous, de novo). The judge may also reconsider sua sponte any matter determined by a magistrate judge under this rule. The district judge may affirm, reverse, or modify, in whole or in part, the ruling made by the magistrate judge. The district judge may also remand the same to the magistrate judge with directions.

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

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**RELATED AUTHORITY**

**Fed. R. Civ. P. 72 and 73**

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## RULE 77.1
## HOURS OF THE COURT

(a) **Location and Hours.** The office of the Clerk of Court shall be at the United States Courthouse, 550 West Fort Street MSC 039; Room 400, 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. Matters to be filed with the Clerk of Court may be filed at any time in Boise, but only during regular hours at the divisional offices, which are located at: 220 E. 5th St, Moscow, Idaho 83843; 250 S. 4th Ave. Pocatello, Idaho 83201; and 205 N. 4th, 2nd Floor, Coeur d'Alene, Idaho 83814.

(b) Filings may be made before and after regular office hours or on Saturdays, Sundays, and legal holidays in Boise by using the 24 hour filing box located outside the entrance to the Federal Building. Filings accompanied by check or money order should be filed at the Clerk's Office inside the building. Documents with cash must be filed at the Clerk's Office.

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### RELATED AUTHORITY

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

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## RULE 77.6
## 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 or her 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.**

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### RELATED AUTHORITY

NONE

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## RULE 79.1
## CUSTODY OF FILES AND EXHIBITS

**(a) Files.** All files of the court shall remain in the custody of the clerk and no court pleadings, 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.

**(b) Exhibits and Transcripts.**

(1) The exhibits offered or admitted at trial shall be retained by the Clerk until the time for appeal has expired. After the time for appeal has elapsed, normally thirty (30) days, the exhibits shall be returned to the party or attorney offering the exhibit.

(2) In the event an appeal is prosecuted by any party, the Ninth Circuit will specifically request exhibits it believes are relevant.

(3) If any party, having received notice from the Clerk concerning the removal of appellate exhibits, fails to do so within thirty (30) days from the date of such notice, the Clerk may destroy or otherwise dispose of those exhibits.

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**RELATED AUTHORITY**

NONE

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## RULE 83.5
## BAR ADMISSION

(a) **Admission to the Bar of this Court.** Admission to and continuing membership in the bar of this court is limited to attorneys of good moral character who are active members in good standing of the Idaho State Bar. Each applicant for admission shall present to the clerk a written petition for admission, stating the applicant's residence and office addresses and by what courts he or she has been admitted to practice and the respective dates of admission to those courts. The petition 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 and Federal Defender Organizations.** An attorney who is not eligible for admission under Local Rule 83.5(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 or in which the attorney is part of a federal defender organizations and is appointed by the court to represent a criminal defendant. (Criminal Rule 44.1). Attorneys so permitted to practice in this court are subject to the jurisdiction of the court with respect to their conduct to the same extent as members of the bar of this court.

(d) **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.

(e) **Pro Hac Vice/Local Counsel.** An attorney not eligible for admission under Local Rule 83.5(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 and (2) file with such designation the address, telephone number, and written consent of such designee.

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.

(f) **Non-Appropriated Fund.**

(1) Attorneys admitted to the bar of this court under the conditions prescribed in Local Rule 83.5(a) shall be required to pay to the Clerk of Court an admission fee of Forty Dollars ($40.00). Twenty Dollars ($20.00) of this fee will be deposited by the clerk in the Treasury of the United States, and Twenty Dollars ($20.00) will be deposited in the District of Idaho Non-Appropriated Fund.

(2) Attorneys not admitted to the bar of this Court who, upon the filing of a verified petition for permission to practice in an individual case, are admitted under the conditions prescribed in Local Rule 83.5(e), shall be required to pay a fee of Twenty Dollars ($20.00) for each such verified petition so filed. The entire fee of Twenty Dollars ($20.00) will be deposited into the fund.

(3) Monies deposited into the fund must be used for purposes which inure to the benefit of members of the bench and bar of this court in the administration of justice.

(g) **Legal Interns.** Legal interns are permitted to appear in this court. 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.

(h) **Notice of Change of Status.** An attorney who is a member of the bar of this court or who has been permitted to practice in this court under Local Rule 83.5(c) or (d) hereof shall promptly notify the court of any change in his or her status in another jurisdiction which would make him or her ineligible for membership in the bar of this court under Local Rule 83.5(a) hereof or ineligible to practice in this court under Local Rule 83.5(c) and (d) hereof. In the event the attorney is no longer eligible to practice in another jurisdiction by reason of his or her suspension for nonpayment of fees or enrollment as an inactive member, he or she shall forthwith be suspended from practice before this court

without any order of court and until he or she becomes eligible to practice in such other jurisdiction.

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

If the attorney is changing firms, he or she must formally, in writing as specified in Local Rule 83.7, withdraw from any active cases in which he or she intends to discontinue representation. Until then, the authority and responsibility of the attorney of record shall continue for all proper purposes.

The Clerk's Office will assume recordkeeping responsibility only for address changes made in accordance with this rule.

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**RELATED AUTHORITY**

NONE

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## RULE 83.7
## APPEARANCE AND SUBSTITUTION OF ATTORNEYS

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

(b) **Substitutions.** 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 the 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.**

(1) 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, the attorney shall present to the court a proposed order permitting the attorney to withdraw and directing the client to appoint another attorney to appear, or to appear in person by filing a written notice with the court stating how the party will be represented. 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 or her 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 with the court. The client shall have twenty (20) days from filing of proof of service by the attorney to file written notice with the court stating how the client will be represented. If the party represented by the withdrawing attorney is a corporation, the order must advise the corporation that it cannot appear without being represented by an attorney in accordance with Local Rule 83.5(d).

(2) Upon entry of the order and the filing of proof of service on the client, no further proceedings can be had in the action which will affect the right of the party represented by the withdrawing attorney for a period of twenty (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 a default against such party or dismissal of the action of such party with prejudice and without further notice, which shall be stated in the order of the court.

(d) **Persons Appearing Without an Attorney – *In Propria Persona*.**

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

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## RELATED AUTHORITY

NONE

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## CRIMINAL RULE 11.1
## 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 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 or her attorney.

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### RELATED AUTHORITY

**Fed. R. Cr. P. 11**

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## CRIMINAL RULE 12.1
## PROCEDURAL ORDERS AND MOTIONS

(a) **Procedural Orders.** At the arraignment, the magistrate judge or district judge shall set cutoff dates for the filing of requests for discovery, pretrial motions, and submission of jury instructions. 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 or her attorney, and filed with the Clerk of Court. Each motion shall be accompanied by a separate written memorandum containing all the reasons in support thereof, including the points and authorities in support of the motion, if the 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 or her 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 or she will not oppose the motion. An additional copy of all briefs shall be submitted to the Clerk of Court for use by the court.

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### RELATED AUTHORITY

Fed. R. Cr. P. 12 and 47

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## CRIMINAL RULE 17.1
## PRETRIAL CONFERENCES

On request of any party or on his or her own motion, the assigned judge, or a designated magistrate judge, 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, including experts, 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.

## RELATED AUTHORITY

**Fed. R. Cr. P. 11**

## CRIMINAL RULE 17.1

## CRIMINAL RULE 28.1
## INTERPRETERS

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

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

(c) **Compensation for Out-of-Court Interpreters.** See Appendix IV.

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

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## RELATED AUTHORITY

**Fed. R. Cr. P. 28**

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## CRIMINAL RULE 44.1
## RIGHT TO AND APPOINTMENT OF COUNSEL

(a) **Right to and Appointment of Counsel.** Attorneys may be appointed for indigent parties in a criminal proceeding including pretrial diversion and parole revocation hearings. If a defendant, appearing without counsel in a criminal proceeding, desires to obtain his or her own counsel, a reasonable continuance for arraignment shall be granted for that purpose. If the defendant requests appointment of counsel by the court or fails for an unreasonable time to appear with his or her own counsel, the assigned judge or magistrate judge shall, subject to the applicable financial eligibility requirements, appoint counsel unless the defendant advises the court that he or she wishes to represent himself *pro se*. Any financial affidavit submitted with the application for appointment of counsel shall be sealed by the clerk. If a defendant desires to represent himself and proceed without counsel, he or she shall sign and file a written waiver of right to counsel. The district judge or magistrate judge may nevertheless designate counsel to advise and assist the defendant to the extent defendant might thereafter desire. Appointment of counsel shall be made in accordance with the plan of this court adopted pursuant to the Criminal Justice Act of 1964 and on file with the clerk.

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

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

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### RELATED AUTHORITY

**Fed. R. Cr. P. 44**

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## CRIMINAL RULE 61.1
## APPEAL FROM CONVICTION

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

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

Within thirty (30) days after a transcript has been ordered, the original and one copy shall be filed with the magistrate judge and all recordings shall be returned to the magistrate judge. All other documents and exhibits shall be held by the magistrate judge pending the receipt of the transcript. Upon its receipt, the record on appeal shall be deemed complete and the magistrate judge shall forthwith transmit the record to the Clerk of 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 judges shall forthwith transmit the record to the Clerk of Court without a transcript.

(c) **Assignment to a District Judge.** The Clerk of Court shall assign the appeal to a judge in the same manner as any indictment or felony information. The magistrate judge 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 or her brief within twenty-one (21) days after the notice of hearing. The appellee shall serve and file his or her brief within twenty-one (21) days after service of the brief of the appellant. The appellant may serve and file a reply brief within seven (7) days after service of the brief of the appellee. These periods may be altered by order of the assigned judge upon application of a party for good cause shown.

(f) **Scope of Appeal.** The scope of the appeal shall be the same as on an appeal from a judgment of the district court to the court of appeals.

### RELATED AUTHORITY
NONE

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# CRIMINAL RULE 62.1
# RELEASE OF INFORMATION BY ATTORNEYS IN CRIMINAL CASES

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

From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement for dissemination by any means of public communication related to that matter and concerning:

(1) The prior criminal record (including arrests, indictments, or other charges of crime) or the character or reputation of the accused, except that the lawyer may make a factual statement of the accused's name, age, residence, occupation, and family status and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his or her apprehension or to warn the public of any danger he or she may present;

(2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer may announce the identity of the victim if the announcement is not otherwise prohibited by law;

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

(6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.

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

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

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

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

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

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## RELATED AUTHORITY

NONE

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