# RULES

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF NORTH DAKOTA

As amended and revised to January 4, 2000, by and under authority of Rule 83 of the Federal Rules of Civil Procedure and Rule 57 of the Federal Rules of Criminal Procedure.

# UNITED STATES DISTRICT COURT
# DISTRICT OF NORTH DAKOTA

JUDGES:

Honorable Rodney S. Webb
Chief Judge . . . . . 655 1st Avenue North, Suite 410
Fargo, North Dakota 58102-4952

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Senior Judge . . . . . Post Office Box 1578
Bismarck, North Dakota 58502-1578

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These rules when adopted were believed to conform to all existing statutes and all controlling rules and orders of the Supreme Court. If a statute of the United States or any rule or order of the Supreme Court having the force of law, now or hereafter requires a different procedure than that required by any rules of this court, such rule of this court insofar as it is inconsistent, must be disregarded.

A number of Special Orders and Plans have been adopted by the court and are on file in the office of the Clerk of this Court. They are not included as part of the local rules herein but copies are available upon request:

Plan for Random Jury Selection
Plan pursuant to the Criminal Justice Act
Order for the Forfeiture of Collateral in Petty Offenses
Plan for the Prompt Disposition of Criminal Cases
Civil Justice Expense and Delay Reduction Plan
Equal Employment Opportunity and Employment Dispute Resolution Plan

**UNITED STATES DISTRICT COURT**
**DISTRICT OF NORTH DAKOTA**

IN THE MATTER
OF THE ADOPTION OF
LOCAL RULES OF COURT FOR
THE DISTRICT OF NORTH DAKOTA

**ORDER**

It is hereby **ORDERED** that the Local Rules of Court for the District of North Dakota are **REVISED**, **AMENDED** and **ADOPTED**. Prior adopted local rules are hereby **REVOKED**.

These local rules supplement the Federal Rules of Civil Procedure, Title 28 of the United States Code, the Federal Rules of Criminal Procedure and Title 18 of the United States Code. A local rule is subject to modification by a Judicial Officer upon application of a party to litigation, or on the Court's own motion for good cause.

**SO ORDERED**.

Dated this 4th day of January, 2000.

_____
RODNEY S. WEBB, CHIEF JUDGE
UNITED STATES DISTRICT COURT

_____
PATRICK A. CONMY, DISTRICT JUDGE
UNITED STATES DISTRICT COURT

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## RULE 3.1

## VENUE IN CIVIL CASES

(A) DIVISION ASSIGNMENT

All civil cases must be assigned to that division of the district where the action arose or where the defendant resides, and the trial of all cases must be at the place where court is held within the division, unless by agreement of the parties with the consent of the court, or by order of the court in its discretion, or for good cause shown, such trial is ordered elsewhere. The plaintiff must endorse on the complaint or bill, the division where the case is assignable. The endorsement of the plaintiff's attorney as to the division where such case is assignable will constitute a certificate by the attorney that the case is properly assigned.

(B) MOTION TO REASSIGN

At the time of appearance, if the defendant believes that the case is improperly assigned, the defendant may, in addition to any other motions made, move that the case be assigned to the proper division of the court. A defendant appearing without making such motion will be held to have consented to the assignment made, but the court may, on its own motion, reassign the case any time prior to trial.

## RULE 4.1

## FEES

(A) FILING FEES

Fees must be paid in advance and in amounts as prescribed by statute or by the Judicial Conference of the United States.

(1) The party commencing an action or the party removing an action from the state court must pay to the clerk the statutory filing fee as prescribed in 28 U.S.C. § 1914 before the case will be docketed and process issued.

(2) Upon the filing of any separate or joint notice of appeal to any Circuit Court of Appeals or the Supreme Court of the United States, or upon the receipt of any order allowing or notice of the allowance of an appeal from an appellate court, the party or parties prosecuting such appeal must pay the filing fee as set by the Judicial Conference. See, 28 U.S.C. § 1913. This rule applies to civil, criminal and bankruptcy proceedings.

(3) Upon the filing of any petition or application for a writ of *habeas corpus*, (28 U.S.C. § 2254), or appeal from a deportation order of a United States magistrate judge, the petitioner or applicant must pay to the clerk the statutory filing fee. A filing fee will not be required in 28 U.S.C. § 2255 proceedings.

(4) The clerk is authorized to mark "Received" and to hold any suit or proceeding, writ, or other process, or any paper or papers in any suit or proceeding until the filing fees are paid.

(B) MISCELLANEOUS CLERK'S FEES

The clerk may require prepayment of all other fees collectible and prescribed by statute or by the Judicial Conference of the United States.

## RULE 4.2

## SERVICE OF PROCESS AND OTHER PAPERS

(A) SERVICE AND FILING

Issuance, filing, and service of process and other papers must be made as provided in Fed. R. Civ. P. 4 and 5, and Local Rule 5.1.

(1) Service by the United States Marshal. If service is to be made by the United States Marshal pursuant to the appropriate provisions of Fed. R. Civ. P. 4, the request must be accompanied by a completed USM-285 form (available from the United States Marshal or the clerk). The clerk must issue the summons or other process requested and deliver it to the United States Marshal for service.

(2) Service by Persons Specially Appointed. Requests for service by persons specially appointed pursuant to Fed. R. Civ. P. 4(c)(1) or 4(c)(2), must be made in writing and must include the full name and address of the individual to be appointed. General appointments of process-server firms cannot be made.

(B) PROOF OF SERVICE

To ensure the effective monitoring of cases pending before this court, proof of service in the form required by the Federal Rules of Civil Procedure, must be filed promptly with the clerk. Service must not be made by facsimile machine unless otherwise ordered by the court.

(C) SERVICE OUTSIDE OF DISTRICT

In petitioning this court for an order permitting service upon persons residing outside of the District of North Dakota, the petitioner must state the authority upon which the petition for such service is based and submit a proposed order. See, Fed. R. Civ. P. 4, (e) and (f).

## RULE 5.1

## FILES AND FILING

(A) FAILURE TO FILE

If a party to an action fails to file within a reasonable time after service, any of the papers required by Fed. R. Civ. P. 5(d), the court may order the papers stricken and their service to be of no effect.

(B) WITHDRAWAL OF ORIGINAL RECORDS AND PAPERS

All persons must obtain (1) an order of a judicial officer of this court and (2) leave a proper receipt with the clerk, prior to withdrawing any original pleading, paper, record, model or exhibit from the custody of the clerk or other officer of this court; except, upon direction of the court, the clerk may return exhibits to counsel, who are responsible for retention and safekeeping for the duration of all subsequent proceedings.

(C) FORM OF PAPERS

(1) All pleadings, papers, and documents for filing in this court must be on standard size (8 1/2" x 11") paper, properly paginated at the bottom of each page.

(2) Text must appear on one side of the page with a minimum margin of one and a half inches (1 1/2") at the top of the paper for binding. All text must be typeset with 11-point font or larger and be double spaced, except the title of the case and quoted material may be single spaced. Names must be typed or printed under all signatures.

(3) All papers offered for filing, after the initial pleading, must bear the file number assigned to the case.

(4) Backing or manuscript covers must not be fastened to any papers tendered for filing.

(5) Multiple page documents must be firmly bound together with a staple at the upper left corner of the document.

(6) Duplicate originals must be tendered if such documents are to be filed in more than one case.

(7) All copies of documents for service must completely conform to the originals before submission to the clerk for filing.

(8) All corrections in papers submitted for filing must be made by the attorneys.

(9) Prisoner petitions under 42 U.S.C. § 1983 and applications under 28 U.S.C. §§ 2254/2255 may be on forms provided by the clerk pursuant to the rules of the Judicial Conference of the United States.

(10) All documents submitted for filing must be in pleading format, each containing the venue, case title and file number. See, Fed. R. Civ. P. 10(a).

(11) All proposed orders submitted with motions or responsive memoranda must be drafted as separate instruments and must be in pleading format, containing the venue, case title and file number.

(12) No filings may be made by facsimile unless ordered by the court.

(D) FILING OF PLEADINGS REQUIRING LEAVE OF COURT

A party filing a motion for leave of court to file pleadings, must lodge the original proffered pleading with the clerk, along with a proposed order. If leave to file is granted by the court, the clerk will immediately file the original pleading.

(E) FILING COMPLAINTS IN SOCIAL SECURITY CASES

Complaints filed in civil cases, pursuant to section 405(g) of the Social Security Act, 42 U.S.C. § 405(g), for benefits under Titles II, XVI and XVIII of the Social Security Act must contain, in addition to what is required under Fed. R. Civ. P. 8(a), the following information:

(1) The Social Security number of the worker on whose wage record the application for benefits was filed (who may or may not be the plaintiff), in cases involving claims for retirement, survivors, disability and health insurance.

(2) The Social Security number of the plaintiff, in cases involving claims for supplemental security income benefits.

(F) SEALED DOCUMENTS AND FILES

(1) The clerk must return documents filed under seal in civil actions to the party submitting them, upon entry of a final judgment or termination of appeal, if any, unless otherwise ordered by the court.
(2) The clerk must retain custody of documents filed under seal in criminal cases, unless otherwise ordered by the court.
(3) The clerk must retain custody of entire files which are permanently sealed by statute or court order.

## RULE 5.2

## THREE-JUDGE CASES

For the convenience of the judges, each party in a three-judge court case must promptly lodge with the clerk three (3) copies of all pleadings, briefs and memoranda. The clerk will not file these additional copies as part of the official court record.

## RULE 7.1

## MOTIONS

(A) SUBMISSION ON BRIEFS

A dispositive motion is one which seeks dispositive relief, whether partial or complete, pursuant to Fed. R. Civ. P. 12 or 56. Any other motion, except as otherwise designated by the court, is a non-dispositive motion. Upon serving and filing a motion, or within five (5) days thereafter, the moving party must serve and file a brief. The adverse party may have ten (10) days after service of a brief in support of a motion, other than a dispositive motion, within which to serve and file an answer brief. The method for calculating the time for filing briefs, both by the moving party and the responding party, will be determined by Fed. R. Civ. P. 6(a). Parties must obtain leave of court to submit additional briefs, except that a moving party may, but is not required to, submit a reply brief pursuant to N.D. Ct. R. 7.2(B). Upon the filing of briefs, the motion is deemed submitted and taken under advisement by the court. The court may order oral argument on its own motion, or upon application of either party within five (5) days after the time has expired for filing briefs. Any motion upon which oral argument is so ordered will be heard at a time designated by the court.

(B) MOTIONS FOR DISPOSITIVE RELIEF

(1) The party moving for dispositive relief must submit with the brief a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried.

(2) In response to the motion, the adverse party must file separate from the brief, a short and concise statement of the material facts as to which it is contended there exists a genuine issue to be tried. The adverse party may have thirty (30) days after service of a brief in support of a dispositive motion within which to serve and file an answer brief.

(3) All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the adverse party.

(4) This procedure will be applicable to all dispositive motions, except in Social ecurity cases and other cases in which the court is limited to a review of the factual findings of an administrative agency.

(C) FAILURE TO FILE BRIEFS

Failure to file briefs within the prescribed time may subject such motions to summary ruling and the failure to file a brief by the moving party may be deemed an admission that, in the opinion of counsel, the motion is without merit, and such failure to file a brief by the adverse party may be deemed an admission that, in the opinion of counsel, the motion is well taken.

(D) EXTENSIONS OF TIME

Extensions of time for filing briefs, or for continuance of the hearing on a motion, may be granted only by written order of court. All requests for extension of time or continuance, whether written or oral, must be accompanied by a proposed order.

(E) MOTIONS DUE BEFORE PRETRIAL

Except for good cause shown, all motions must be filed no later than the date set by the pretrial Scheduling/Discovery order.

(F) SEPARATE INSTRUMENTS

Any proposed order submitted with motions or responsive memoranda must be drafted in a separate instrument and must be in pleading format, each containing the venue, case title and file number.

## RULE 7.2

## BRIEFS

(A) FAILURE TO COMPLY

In all cases where there is an order of this court for the filing of briefs, attorneys must advise the court before the due date, if for good cause shown, the order cannot be complied with and briefs filed within the specified time. In any case where no such request for additional time has been received in advance of the due date and no brief has been filed, the court may decide the matter without the brief, or take such other actions as the court deems proper.

(B) FORM AND LENGTH OF BRIEFS

All briefs must contain a concise statement of each point to be argued, with a list of all cases and statutes referred to in the argument covering the point. Unless leave of court is obtained prior to filing, briefs must not exceed fifteen (15) pages in all matters except dispositive motions. Briefs in support of or in opposition to dispositive motions must not, without leave of court, exceed twenty five (25) pages. Statements of material fact submitted by the moving party and the adverse party with respect to a dispositive motion must not be restated in the brief and the statements of material fact are not included for computing page limitations. Reply briefs are not required, but if submitted must not exceed seven (7) pages and must be served within five (5) days after service of the answer brief.

(C) TRIAL MEMORANDUM

In all civil cases, unless otherwise ordered by the court, counsel must file with the clerk a trial memorandum, with proof of service upon opposing counsel, at least five (5) working days before the day on which such case is set for trial. Said trial memorandum must contain: a general statement of the case, the issues of law, citation of the authority upon which the party relies, the issues of fact and a general statement of the evidence to be offered, and any statement of evidence or procedural problem expected to arise, with citations of authority.

## RULE 16.1

## CIVIL CASE MANAGEMENT

(A) PRETRIAL CONFERENCES

Pretrial conferences may be scheduled at the discretion of the presiding judicial officer, and must be scheduled as required by Fed. R. Civ. P. 16(b), except that the following categories of actions are exempted from Rule 16(b) scheduling conferences unless otherwise ordered by the court:

(1) IRS enforcement actions;

(2) eminent domain proceedings;

(3) forfeitures;

(4) *habeas corpus* actions (28 U.S.C. §§ 2254 and 2255 actions);

(5) Freedom of Information Act proceedings;

(6) enforcement of out-of-state judgments;

(7) appeals from the magistrate judge, the bankruptcy court, and administrative agency decisions (including Social Security);

(8) actions brought by the United States to collect debts;

(9) actions in which one of the parties is incarcerated and appears *pro se*;

(10) student loan cases;

(11) overpayment of Veterans' Administration benefits;

(12) admission to or revocation of citizenship;

(13) arbitration actions (to set aside, confirm, or compel arbitration);

(14) actions to compel testimony or production of documents;

(15) applications for attorneys fees or costs;

(16) actions to enforce or quash administrative subpoenas;

(17) all cases not reported for statistical purposes as "filed" cases (e.g., registration of foreign judgments, grand jury matters, *in forma pauperis* requests which are denied, disbarment or reinstatement of attorneys).

Counsel in any case may petition the court to hold a pretrial conference.

(B) DISCOVERY

(1) The scope of discovery and the time for completion of discovery must be determined at the Fed. R. Civ. P. 16(b) conference. In cases exempt from a Fed. R. Civ. P. 16(b) conference and in cases in which the time for completion of discovery has not been specifically provided for by court order, discovery must be completed thirty (30) days prior to the scheduled trial date. In those cases where the attorney for any party may anticipate the need to expedite, limit, or extend discovery, the attorney must, within one hundred and twenty (120) days after joinder of issue, proceed as provided in Fed. R. Civ. P. 26(f).

(2) Discovery materials must not be filed. Exceptions to this rule are limited to the following:

(a) Discovery material required by the court for disposition of a pending motion. Counsel will be responsible for attaching relevant material to the motion.
(b) Discovery material which is ordered by the court to be filed at the time of trial. Unless specifically ordered by the court to be filed, discovery material must not be filed.
(c) Upon direction of the court, the clerk must return filed discovery materials to counsel, who are responsible for retention and safekeeping for the duration of all subsequent proceedings.

(3) The responses to interrogatories and requests for admissions must set out the interrogatory and request in full, followed by the response. Counsel may return nonconforming responses to adverse counsel for compliance.

(4) To curtail undue delay in the administration of justice, the court may refuse to hear any motion to compel discovery or for protective order unless the moving party first advises the court, in writing, of sincere attempts by counsel to actually confer, whether in-person or by telephonic or other electronic means, to resolve differences without involving the court. This statement must also recite the date, time, and place of such conference, and the names of all participating parties. The requirement to confer is subject to waiver by the court only in exceptional circumstances upon an appropriate showing of the conference's futility.

(5) Discovery material must not be filed at the time of trial unless ordered by the court or if introduced as an exhibit.

(C) DISPOSITION OF CASES

Cases which are not ready for trial and which have been pending in court without any activity for more than one (1) year may be dismissed by the court on its own motion or on motion of the defendant for failure to prosecute.

(D) CONTINUANCES

A matter will not be continued by stipulation except on court order for good cause shown.

(E) HEARING ON INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS

An *ex parte* temporary restraining order will be granted only upon strict compliance with Fed. R. Civ. P. 65(b). On application for preliminary injunctions the court may, except where the interests of justice otherwise require, order trial on the merits to be advanced and consolidated with the hearing on the injunction.

## RULE 16.2

## ALTERNATIVE DISPUTE RESOLUTION ("ADR")

(A) AUTHORIZATION

(1) Pursuant to 28 U.S.C. § 651, the court authorizes the use of ADR in civil cases, including adversary proceedings in bankruptcy. Cases which are limited to review of an administrative decision on an existing record or in which one or more parties are appearing *pro se* are excluded from this authorization, except upon specific designation by a judicial officer.

(2) The primary form of ADR offered by the court is mediation in court-sponsored settlement conferences held by judicial officers. The court will not offer arbitration as a court-sponsored ADR process, but in appropriate cases, with the consent of the parties, the court will facilitate other forms of ADR process, such as early neutral evaluation, mini-trial and summary jury trial, before a judicial officer. Additionally, the court encourages but does not require the parties to arrange and participate in ADR in the private market as an alternative to court-sponsored ADR.

(B) DESIGNATION OF CASES

The court strongly encourages participation in ADR at an early stage of the case and requires that the parties, in all civil cases not excluded from application of this rule, discuss early ADR participation and the appropriate timing of such effort. In cases before the district court, the parties must include in their Federal Rule of Civil Procedure 26(f) Report a recitation of their discussion about participating in early ADR and must indicate in their Federal Rule of Civil Procedure 16(b) Scheduling/Discovery Plan the ADR option they choose and the appropriate timing. Although the court requires only exploratory discussion, not actual participation in ADR early in the proceedings, the court will generally require participation in a settlement conference shortly before trial. In addition, upon request by any party or upon the court's own initiative, the court may schedule a settlement conference at any stage of the proceedings, if the nature of the case, the amount in controversy and the status of the case indicate that the conference may be beneficial.

(C) CONFIDENTIALITY

(1) The trial judge will not ordinarily serve as the settlement judge, unless the parties jointly agree otherwise in an appropriate jury case. The trial judge will not be informed of any positions taken by parties during the ADR process and will only be advised whether or not the case settled.

(2) The ADR process is confidential and not open to the public. In addition, all written and oral communications by parties or their representatives in relation to court-sponsored

ADR proceedings are deemed confidential. Disclosure of confidential ADR communications is prohibited, except as authorized by the court or agreed by the parties.

(3) The judicial officer conducting an ADR proceeding may not be called to testify in connection with any dispute relating to the ADR proceeding or its result except upon written agreement of the parties and concurrence of the court, or when otherwise required by law.

(D) ADMINISTRATION

The court will designate by order of appointment a judicial officer to serve as program administrator to implement, oversee and evaluate the district's ADR program.

(E) DISQUALIFICATION

(1) A judicial officer conducting an ADR proceeding may be disqualified for bias or prejudice as specified in 28 U.S.C. § 144; or, for conflict of interest as specified in 28 U.S.C. § 455.

(2) Any party who believes that a judicial officer conducting an ADR proceeding has a conflict of interest must file a Request for Recusal at the earliest opportunity.

(3) Upon disqualification of a judicial officer from conducting an ADR proceeding, the ADR program administrator will assign another judicial officer to conduct further ADR proceedings. If the ADR program administrator has been disqualified, the Chief Judge will assign another judicial officer to conduct further ADR proceedings.

## RULE 23.1CR

## CRIMINAL JURY TRIALS

(A) SELECTION OF JURORS

The names of prospective grand and petit jurors must be selected and drawn in accordance with the court's standing order: "A Plan for Random Jury Selection".

(B) DISCLOSING THE NAMES OF JURORS

After a petit jury is drawn, the clerk must send a list of jurors' names, to each attorney, or firm of attorneys, representing parties in the cases to be tried.

(C) JURY SIZE

(1) Misdemeanors. A full panel of eighteen (18) jurors must be called in the first instance. The government may have three (3) peremptory challenges and the defendant may have three (3) peremptory challenges, exercised by the government first striking one (1), the defendant then striking one (1), and so on until each side has exhausted or waived its right.
(2) Felonies Not Punishable by Death. A full panel of twenty eight (28) jurors must be called in the first instance. The government may have six (6) peremptory challenges and the defendant may have ten (10) peremptory challenges, exercised in the following order: The first by the government, the next two (2) by the defendant, the next by the government, the next two (2) by the defendant, the next by the government, the next two (2) by the defendant, the next by the government, the next two (2) by the defendant, the next by the government, the next by the defendant, the next by the government, and the last by the defendant.
(3) Capital Offenses. A full panel of fifty two (52) jurors must be called in the first instance. The government may have twenty (20) peremptory challenges and the defendant may have twenty (20) peremptory challenges, exercised in the following order: The first by the government, the next by the defendant, the next by the government, and so on until each side has exhausted or waived its right.

(D) EXAMINATION OF JURORS

The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination pursuant to Fed. R. Crim. P. 24(a). In the latter event, the court will permit the parties or their attorneys to supplement the examination by such further inquiry as the court deems proper or will itself submit to the prospective jurors such additional questions of the parties or their attorneys as the court deems proper.

(E) ARGUMENTS TO JURY

(1) Not more than one counsel on the same side may argue any question to court or jury, except by special permission of the court before the argument opens; and only one counsel may examine or cross-examine the same witness, unless by leave of the court. Closing arguments, however, may be split between the opening and rebuttal without leave of the court.

(2) Counsel will be limited to one (1) hour upon each side for the argument of cases to the jury, but the court may, before the commencement of the argument, increase or diminish the time allowed. The plaintiff must open and close the argument to the jury; provided, that if the defendant has the affirmative burden of proof of the issue to be tried, the foregoing order may be reversed.

(F) REQUESTS FOR INSTRUCTIONS TO JURY

Counsel must present to the court and serve upon each adverse party requests for instructions to the jury, at least five (5) business days prior to the commencement of all jury trials. Counsel may present additional requests for instructions relating to questions arising during the trial at any time prior to the argument. All requests for instructions must be plainly marked with the number of the case, must designate the party submitting the request, and each requested instruction must be numbered and written on a separate page, together with a citation of authorities supporting the proposition of law stated in the instruction.

## RULE 23.2CR

## GRAND JURIES

The names of grand jurists must not be published or disclosed to any person after a grand jury is drawn, other than to an attorney for the government and necessary support personnel for use in the performance of official duties to enforce federal criminal law and to such other persons as may be required by law or allowed by special order of the court.

## RULE 26.1

## EXEMPTIONS FROM DISCLOSURE

Class One cases, as defined in this rule, and *pro se* prisoner petitions are exempt from the requirements of Fed. R. Civ. P. 26(a)(1) unless the court orders those requirements imposed in a particular case. Class One cases are defined as those cases requiring minimal judicial management and which can be disposed of more quickly than those cases requiring more intensive coordination or control. This class includes, but is not limited to, such cases as bankruptcy appeals, Social Security appeals, consent cases, collection actions, Veterans' Administration overpayments, foreclosures and student loan collections. All stipulations amending or exempting the requirements of Fed. R. Civ. P. 26 must be approved by the court. The disclosure material must not be filed.

## RULE 27.1

## DEPOSITIONS

All depositions received by the clerk for filing must remain sealed in the containers in which received, and cannot be opened prior to trial except by the judicial officers for this district, or by order of the court. Depositions will be returned upon conclusion of the appellate process.

## RULE 32.1CR

## THE PROBATION AND PRETRIAL SERVICES OFFICE

(A) DUTIES

The Probation and Pretrial Services Officers of this court may have such duties as are provided by statute, and such other duties as the Chief Probation and Pretrial Services Officer or court may direct. Among the officers' other duties, they are authorized and directed to conduct bail bond investigations and presentence investigations, as requested by United States magistrate judges. Additionally, the Officers are authorized upon request and the approval of the Chief Probation and Pretrial Services Officer to conduct pretrial diversion investigations or summary reports on juveniles, as requested by the United States Attorney's office.

(B) TIME

The time limitations prescribed by Fed. R. Crim. P. 32 must be adhered to unless good cause for deviation can be shown, in order to provide adequate time for preparation of the Presentence Investigation Report (PSIR), disclosure of the PSIR to the parties, the filing of presentence submissions by the parties, and to meet the requirements of the Sentencing Guidelines.

(1) The sentencing date may be no earlier than seventy (70) days following entry of a guilty plea or a verdict of guilty.

(2) If a party reasonably disputes sentencing factors or facts material to sentencing, or seeks the inclusion of additional factors or facts material to sentencing in the PSIR, it is the obligation of the complaining party to seek administrative resolution of such factors or facts through opposing counsel and the U.S. Probation and Pretrial Services Office. Resolution of disputed factors or facts material to sentencing should be resolved to the extent practicable through informal procedures, including telephone conferences.

(3) The U.S. Probation and Pretrial Services Office must submit to the sentencing judicial officer a PSIR which includes guideline computations and an addendum setting out any unresolved factual disputes or objections by the parties with respect to the application of the guidelines.

(4) Prior to imposition of sentence the parties must be given adequate opportunity to present information to the court relating to factors reasonably in dispute.

(5) The Probation and Pretrial Officer's sentencing recommendation must not be disclosed, unless directed by the court.

(C) REPORTS ARE PROPERTY OF THE COURT

PSIRs and other reports by Probation and Pretrial Services Officers to the judicial officers of this court, are the exclusive property of the court. The court authorizes the defendant, defendant's counsel and the government to retain their copies of the PSIR. The court also authorizes Probation and Pretrial Services Officers to loan a copy of the PSIR to the United States Federal Bureau of Prisons, the United States Parole Commission, and to other agencies providing placement, training or treatment services to persons sentenced by the court. With the exception of use by the government in collecting an assessment, criminal fine, forfeiture or restitution imposed by the court, the confidentiality of the PSIR must be maintained at all times. A loaned copy of a PSIR must not be reproduced or redistributed without the express approval of the court.

(D) RELEASE OF JUVENILE INFORMATION

The court authorizes Probation and Pretrial Officers to release information on juveniles when requests are made pursuant to provisions of 18 U.S.C. § 5038(a).

(E) REQUEST FOR DISCLOSURE

All requests for disclosure of PSIRs or probation records, except as provided in this rule, must be by petition to the court showing with particularity the need for and entitlement to such information. A Probation and Pretrial Officer must never disclose confidential information when requested or demanded by subpoena, except under an order issued by the court directing disclosure.

(F) PRETRIAL SERVICES

(1) As a combined Probation and Pretrial Services Office this district must provide pretrial services as required by the Pretrial Services Act of 1982, 18 U.S.C. §§ 3152-3155.

(2) A pre-release interview must be conducted as soon as practicable after notification that an arrest has been made. A pretrial service report must be provided to the judicial officer before whom an accused is brought, and also provided to the attorneys for the government and the accused. The confidentiality of the pretrial service report must be maintained at all times, except to the extent that the reports are utilized for determination of bail, conditions of release, bail supervision, and such other use as authorized by statute. Copies of such reports must be returned to the U.S. Probation and Pretrial Services Office after use.

(3) Probation and Pretrial Officers must supervise persons released on bail when directed by the presiding judicial officer.

(G) DRUG TESTING

Probation and Pretrial Officers may perform drug testing of criminal defendants, prior to the defendant's initial appearance when conducting pretrial services investigations, as prescribed by the court's Special Order, dated December 12, 1990.

(H) CJA FORM 23

Probation and Pretrial Officers of this district may assist defendants in filling out Criminal Justice Act Form 23 (Financial Affidavit).

## RULE 43.1

## EXHIBITS

(A) MARKING EXHIBITS

Counsel must complete the physical marking and numbering of all papers and objects that are expected to be introduced as exhibits in any proceedings before the court. The exhibits are to be marked with an exhibit sticker so as to allow for identification by the court. All exhibits in the case are to be numbered consecutively using a "P" for plaintiff, "D" for defendant (for example P-1 through P-20, D-21 through D-40) and tabulated on exhibit-list forms which must be lodged with the clerk prior to the commencement of trial. Trial counsel will retain the exhibits in their possession but must submit the list of exhibits as an attachment to the pretrial statement as ordered by the magistrate judge or as directed by the presiding judicial officer.

(B) CUSTODY OF EXHIBITS

All exhibits which have been offered in evidence, except those described in subdivision (D) of this rule or those of unusual bulk or weight, must be left with the clerk and retained in the clerk's custody, unless the court orders otherwise. Exhibits of unusual bulk or weight may remain in the custody of the attorney producing them, who shall permit their inspection by any party for the purpose of preparing the record on appeal, and who shall be charged with the responsibility of their safekeeping and transportation to the appellate court.

(C) RETURN OF EXHIBITS

Upon direction of the court, the clerk must return exhibits to counsel, who are responsible for retention and safekeeping for the duration of all subsequent proceedings.

(D) SENSITIVE EXHIBITS

(1) The United States Attorney or the arresting or investigative agency of the government must take custody of all sensitive exhibits received into evidence which include but are not limited to drugs, legal or counterfeit money, articles of high monetary value, explosives, weapons, or contraband of any kind. The government entity taking custody of any sensitive exhibits must execute and file a receipt with the clerk. Drugs, legal or counterfeit money and smaller weapons (other than firearms) admitted into evidence must be presented to the court for admittance in a sealed evidence bag which must not be opened except under order of the court.

(2) Any firearm must be rendered inoperable whenever possible through the use of trigger guards and must be inspected by the United States Marshal prior to being brought into the courtroom.

(E) RESERVATION OF POWER TO RULE

Nothing contained within this local rule may prevent the court from a specific ruling with respect to any exhibit in any specific proceeding or trial.

## RULE 47.1

## CIVIL JURY TRIALS

(A) SELECTION OF JURORS

The names of prospective grand and petit jurors must be selected and drawn in accordance with the court's standing order: "A Plan for Random Jury Selection".

(B) DISCLOSING THE NAMES OF JURORS

After a petit jury is drawn, the clerk must send a list of jurors' names, to each attorney, or firm of attorneys, representing parties in the cases to be tried.

(C) JURY SIZE

(1) In all jury cases, the presiding judicial officer may exercise discretion in determining the size of the jury consistent with the language of Fed. R. Civ. P. 48.

(2) The initial jury panel must consist of the number of jurors to try the case, plus the number of persons equal to the total number of peremptory challenges.

(3) Challenges may be exercised by the plaintiff, defendant, and third parties alternately striking one (1), in that order, until each side has exhausted or waived its right. In condemnation cases, challenges may be exercised by the defendant and plaintiff alternately striking one (1), in that order, until each side has exhausted or waived its right. The number of peremptory challenges may be increased by order of the presiding judicial officer.

(4) The trial jury will consist of those unchallenged persons appearing first on the list, following the dismissal of jurors for cause and the exercise of peremptory challenges.

(D) EXAMINATION OF JURORS

The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination pursuant to Fed. R. Civ. P. 47(a). In the latter event, the court will permit the parties or their attorneys to supplement the examination by such further inquiry as the court deems proper or will itself submit to the prospective jurors such additional questions of the parties or their attorneys as the court deems proper.

(E) ARGUMENTS TO JURY

(1) Not more than one counsel on the same side may argue any question to court or jury, except by special permission of the court before the argument opens; and only one counsel may examine or cross-examine the same witness, unless by leave of the court. Co-counsel may split the main and rebuttal portions of closing argument without leave of the court.

(2) Counsel will be limited to one (1) hour upon each side for the argument of cases to the jury, but the court may, before the commencement of the argument, increase or diminish the time allowed. The plaintiff must open and close the argument to the jury; provided, that if the defendant has the affirmative burden of proof of the issue to be tried, the foregoing order may be reversed.

(F) REQUESTS FOR INSTRUCTIONS TO JURY AND VERDICT FORM

Counsel must present to the court and serve upon each adverse party a jointly prepared single set of requested instructions to the jury and proposed verdict form, at least five (5) business days prior to the commencement of all jury trials and after sincere attempts by counsel to resolve any disagreements about the instructions and verdict form. Counsel may present additional requests for instructions relating to questions arising during the trial at any time prior to the argument. All requests for instructions must be plainly marked with the number of the case, must designate the party submitting the request, and each requested instruction must be numbered and written on a separate page, together with a citation of authorities supporting the proposition of law stated in the instruction. All disagreements about the instructions and verdict form must be briefed with proposed instructions and verdict form and presented to the court at least three (3) business days before the start of the trial.

## RULE 54.1

## TAXATION OF COSTS

(A) STIPULATED BILL OF COSTS; MOTION FOR TAXATION OF DISPUTED COSTS

(1) Within twenty (20) days after notice of the entry of a judgment allowing costs, the prevailing party must (a) confer with the attorney for the adverse party, (b) serve on that attorney and file with the clerk, a Stipulated Bill of Costs and Disbursements, reflecting all undisputed costs and (c) file with the court, if necessary, a Statement of Controverted Costs reflecting all costs disputed by counsel, which shall be treated as a motion pursuant to Rule 7.1 of these rules. The court may refuse to hear any Motion for Taxation of Disputed Costs unless the moving party certifies to the court, in writing, of sincere attempts to actually confer with opposing counsel, either in-person or by telephonic or other electronic means, about the disputed items in order to resolve the differences without court involvement. This certification must recite the conference date, time, place, and the names of the conference participants. The requirement to actually confer is subject to waiver by the court only in exceptional circumstances upon a sworn factual showing of the conference's futility.

(2) The Bill of Costs and Disbursements and any Statement of Controverted Costs must briefly and distinctly set forth each item claimed so that the nature of the charge can be readily understood, and must be verified by the applicant's attorney, stating that the items are correct and that the services were actually and necessarily performed and the disbursements were necessarily incurred in the action or proceeding.

(3) The court may deem all costs waived, based upon a party’s failure to comply with this local rule.

(4) The court in its discretion may grant a hearing on the Motion for Taxation of Disputed Costs. The court must give counsel notice of the time of hearing at least three (3) business days prior to the scheduled hearing.

(B) OBJECTIONS

Opposing counsel may object to any item or items contained in the Statement of Controverted Costs by serving upon the prevailing party and filing with the court written objections, together with any affidavits or other supporting evidence, in accordance with Rule 7.1 of these rules. After due consideration given to the Statement of Controverted Costs, objections thereto, any briefs submitted by counsel, and any oral argument entertained by the court, the court may tax costs and direct the clerk to insert the amount of costs taxed in the judgment and in the docket.

(C) ATTORNEY'S FEES

(1) An applicant for attorney's fees must file and serve a motion for fees within fourteen (14) days after entry of the judgment. Opposing counsel may have ten (10) days from service of the motion for fees to respond. The court will then take the matter under advisement.

(2) Where recovery of attorney's fees is sought against the United States, application must be made as provided in 28 U.S.C. § 2412(d)(1)(B). The United States may have twenty (20) days from service of the application to respond. The court will then take the matter under advisement or refer the matter to a master or a magistrate judge.

## RULE 65.1

## BONDS

(A) ATTORNEY NOT TO BE SURETY

No attorney or counsel of this court, no member of the bar, nor any other officer of this court may be accepted as surety on any bond or undertaking in any action or proceeding in this court.

(B) BOND MUST BE PROVED OR ACKNOWLEDGED

All bonds must be proved or acknowledged in the manner prescribed by the North Dakota statutes for the execution and acknowledgment of instruments. See, N.D. Cent. Code §§ 47-19-01 through 47-19-50. The qualification of sureties must be as follows: Each surety must be a resident of this state and worth double the amount specified in the bond or undertaking, over and above the surety's debts and liabilities and exclusive of the surety's property exempt from execution, except where North Dakota or United States statutes or these rules otherwise provide. The sureties must justify by affidavit, and may be further required to answer under oath respecting their property and liabilities. In any case in which the court has entered its order fixing the amount of bond, the clerk is directed to take the bond, justify the sureties and administer the necessary oaths.

(C) COST BONDS

(1) Non-Residents. Every non-resident filing a complaint with this court must within ten (10) days after demand by an adverse party, file a bond for costs in the sum of five hundred dollars ($500.00) unless for good cause, on motion, which may be made *ex parte*, the court dispenses with the bond or fixes a different amount. The bond must have sufficient surety and must be conditioned to secure the payment of all costs of the action which that party may ultimately be required to pay to any other party. After the bond is filed, any opposing party may raise objections to its form or to the sufficiency of the surety. The clerk will determine sufficiency of the surety and report findings to the court. Upon a finding of insufficiency of the surety, the court may order that a new bond be filed within specified time, and if the order is not complied with, the court may order dismissal of the action for want of prosecution.

(2) Other Parties. On motion, or of its own initiative, the court may at any time order any other party to file a bond for costs in such amount and so conditioned, as the court may designate.

(D) TAKING OF BONDS TO SECURE APPEARANCE IN CRIMINAL CASES

(1) All bonds in non-capital criminal cases for appearance before the court must be taken by a United States magistrate judge or other officer acting as a committing magistrate judge pursuant to 18 U.S.C. § 3141, endorsed with the officer's approval, and immediately forwarded to the clerk, together with any money deposited as security. Any money deposited may be forwarded to the clerk by cashier's or certified check.

(2) A receipt must be given by the magistrate judge for any money deposited.

## RULE 65.2

## SERVICE OF INJUNCTIVE ORDERS

Unless otherwise ordered by the court, the clerk must deliver a certified copy of all temporary restraining orders, preliminary injunctions or permanent injunctions to the United States Marshal or other person, as designated by the court. The Marshal or other designated person must exhibit the certified copy of said order to the party being served, make the marshal's return of service on the certified copy and return the certified copy to the clerk's office as soon as may be practicable after service.

## RULE 66.1

## RECEIVERSHIPS

This local rule prescribes the administration of estates by receivers or by other similar officers appointed by the court in accordance with Fed. R. Civ. P. 66. Matters other than administration of the estate are governed by the Federal Rules of Civil Procedure.

(A) INVENTORIES

Unless the court otherwise orders, a receiver or similar officer as soon as practicable after the officer's appointment and not later than twenty (20) days after the officer has taken possession of the estate, must file an inventory of all the property and assets in the officer's possession or in the possession of others who hold possession as the officer's agent, and in a separate schedule, file an inventory of the property and assets of the estate not reduced to possession by the officer but claimed and held by others.

(B) REPORTS

Within six (6) months after filing the inventory, and at regular intervals of six (6) months thereafter until discharged, or at such other times as the court directs, the receiver or other similar officer must file reports of the receipts and expenditures and of the officer's official acts and transactions.

(C) COMPENSATION OF RECEIVERS, ATTORNEYS AND OTHERS

The court will determine and award at its discretion the compensation of receivers or similar officers, of their counsel, and of all those who have been appointed by the court to aid in the administration of the estate, the conduct of its business, the discovery and acquirement of its assets, the formation of reorganization plans, and the like. The court at its discretion may provide notice to creditors and other persons in interest prior to disbursement of compensation. The notice must state the amount claimed by each applicant.

(D) ADMINISTRATION OF ESTATES

The receiver or similar officer must administer the estate as nearly as may be in accordance with the practice in the administration of estates in bankruptcy, except as otherwise ordered by the court.

## RULE 67.1

## QUALIFIED SETTLEMENT FUNDS

(A) ESTABLISHMENT

A registry is a designated or qualified settlement fund only, if:

(1) There has been a settlement agreement in the case.

(2) The court has entered an order establishing or approving a deposit into the registry as a settlement fund.

(3) The liability resolved by the settlement agreement is of a kind described in 26 U.S.C. § 468B or 26 C.F.R. § 1.468B-1(c).

It is the responsibility of the depositing party to identify any registry deposit intended to be a designated or qualified settlement fund.

(B) WHEN A FUND IS NOT QUALIFIED OR DESIGNATED

A registry account is not a designated or qualified settlement fund, if:

(1) The account comprises only funds that a person deposited with the court pursuant to law or court order in the absence of a settlement agreement, or;

(2) The account has a judicial purpose other than to serve as a designated or qualified settlement fund.

Bond moneys, cash collateral, interpleader deposits, condemnation deposits, contempt fines, and any moneys paid into court in a criminal case can never be designated or qualified settlement funds.

(C) PROCEDURE FOR ESTABLISHMENT OF FUND

If the court establishes or approves a designated or qualified settlement fund that will be held in the registry, the court must also designate or approve a person outside the court as an administrator, responsible for obtaining the tax identification number of the fund, filing all fiduciary tax returns, and paying any tax. The court must either approve the person that the settlement agreement names as an administrator or designate the party that deposited the funds into the court.

(D) INTEREST INCOME

All interest income on a designated or qualified settlement fund must be reported by the depositary for the current year using the fund's own tax identification number. This includes interest income assessed by the court as a registry fund fee. The tax identification numbers of the litigants and the court cannot be used with respect to a designated or qualified settlement fund.

(E) REPORTING

Interest in registry accounts that are not designated or qualified settlement funds will be reported by the depositary using the court's tax identification number. When the court awards the interest at the conclusion of the case, the court will report the interest of $10 or more that is paid to each recipient on a Form 1099-INT as a single payment by the court in the year of the award using each recipient's tax identification number in accordance with 26 U.S.C. § 6049, 26 C.F.R. § 1.6049-4(d)(6). The court may arrange for the depositary to produce the Form 1099. The interest assessed by the court as a registry fund is not included on any recipient's Form 1099. No further reporting is required with respect to the interest assessed by the registry fund fee.

(F) WITHDRAWAL

As with any disbursements from the registry account, a court order is required for any withdrawal of funds from a registry account to pay or withhold tax in accordance with 28 U.S.C. § 2042.

(G) ASSISTANCE TO ADMINISTRATOR

The court may make available to the administrator any information respecting the fund that the administrator needs to fulfill fiduciary duties.

## RULE 67.2

## MONEYS PAID INTO COURT

(A) REGISTRY OF FUNDS

All funds coming into the registry of this court, excluding those deposited pursuant to Fed. R. Civ. P. 67, must be deposited by the clerk in the depository designated by this court in its name and to its credit.

(B) INTEREST AND ASSESSMENT

(1) If deposited as prescribed by Fed. R. Civ. P. 67, the funds must be deposited in an interest bearing account or invested in an interest bearing instrument as stipulated by counsel and approved by the court.

(2) The clerk must collect a registry fee assessment. The provisions setting forth the court's registry fee are published in the Federal Register, a copy of which is available for review in the clerk's office. The clerk may use discretion in determining the timing for collecting the fee, subject only to payment before any other distribution of the account.

(C) ESTABLISHING A DEPOSIT WITH THE COURT

When any party seeks a court order to deposit money with the clerk in an interest-bearing account or instrument as provided by Fed. R. Civ. P. 67, the party must deliver a proposed order to the clerk or financial deputy, who will inspect the proposed order for proper form and content and compliance with this rule prior to presentment to the court for signing.

(D) PROCEDURE

Any order directing the clerk to invest deposits in an interest-bearing account or instrument must include:

(1) The amount to be deposited;
(2) The name of the local depository approved by the Treasurer of the United States as a depository in which funds may be deposited;
(3) A designation of the type of account or instrument in which the funds are to be deposited;
(4) Wording which directs the clerk to deduct the registry fee from the income earned on the investment, without further order of the court; a fee not exceeding that authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office.

## RULE 72.1

## UNITED STATES MAGISTRATE JUDGES

Except as hereinafter provided, each United States magistrate judge appointed by this court is authorized to exercise powers and duties consistent with the United States Constitution, 28 U.S.C. § 636, other statutes as may be applicable, and the Federal Rules of Criminal and Civil Procedure. Such powers and duties may include, but are not limited to those enumerated in this rule.

(A) ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

(1) General Assignment. The assignment of cases or duties in a case to a magistrate judge and the allocation of duties among the several magistrate judges of the court will be made in accordance with this rule, standing orders of the court, or by special reference of a district judge, which reference may be by formal order or informal request. Nothing in this rule shall preclude the court, or an individual district judge, from reserving any proceeding for conduct by a district judge rather than a magistrate judge. Assignment of duties or cases to a particular magistrate judge will generally be based on geographic location of the magistrate judge's chambers.

(2) Criminal Case Assignment.

(a) Misdemeanor Cases. All misdemeanor cases (including petty offenses and infractions) will be assigned to a magistrate judge upon filing of the charges. The magistrate judge will handle all proceedings in cases where consent of the defendant is not required. In other cases, the magistrate judge will handle all pretrial proceedings and, upon consent of the defendant, conduct trial or guilty plea proceedings, sentence the defendant, enter judgment and conduct any post-conviction proceedings.

(b) Felony Cases. All pre-indictment preliminary proceedings will automatically be conducted before a magistrate judge. Upon filing of an indictment, the case will be assigned to a district judge and referred to a magistrate judge to conduct an arraignment and such other duties as the court may designate by general reference or by specific order of reference or informal request in a particular case.

(3) Civil Case Assignment. Powers and duties of magistrate judges in civil cases will be exercised by the court's full-time magistrate judges unless specific reference to a part-time magistrate judge is made. Each civil case will be automatically assigned to a district judge for disposition and referred to a full-time magistrate judge for pretrial management upon filing of the complaint. The referred magistrate judge will conduct case management duties, rule on all non-dispositive motions, and rule on such dispositive motions as designated by formal order of reference or by informal request of a district judge. If all the parties in a civil case waive disposition by an Article III judge and consent to a magistrate judge

conducting all proceedings and entering final judgment, the case will be reassigned for disposition to the full-time magistrate judge who served as the case manager.

(B) DUTIES IN CRIMINAL MATTERS

(1) All proceedings in misdemeanor cases (including petty offenses and infractions), including conduct of jury or non-jury trial, acceptance of guilty plea, sentencing, entry of judgment and post-conviction proceedings, with dispositive authority limited where required by law to cases in which the defendant consents to proceed before a magistrate judge;

(2) All preliminary proceedings (pre-indictment and post-indictment through arraignment) in felony investigations and cases, including extradition, consent to transfer, and Fed. R. Crim. P. 40 removal proceedings;

(3) Pretrial matters in felony criminal cases, including determining non-case dispositive motions (28 U.S.C. § 636(b)(1)(A)), and conducting case management conferences, if requested by the district judge;

(4) Issuing reports and recommended findings, including conducting evidentiary hearings where necessary, on case dispositive motions (28 U.S.C. § 636(b)(1)(B)) in felony cases and misdemeanor cases proceeding before a district judge, upon special reference by a district judge;

(5) Accept guilty pleas in felony cases and in misdemeanor cases proceeding before a district judge, if requested by the district judge and upon consent of the defendant;

(6) Preliminary proceedings on felony probation or supervised release revocation or modification petitions, and if requested by a district judge, conduct the final hearing and submit a report and recommended findings to the district judge;

(7) Receive grand jury returns and empanel grand juries; and,

(8) Jury *voir dire* and selection in felony cases, upon designation by the district judge and upon consent of the parties.

(C) DUTIES IN CIVIL MATTERS

(1) Case management matters, including supervising discovery and holding pretrial conferences, such as scheduling conferences and final pretrial conferences;

(2) Alternative dispute resolution proceedings, including mediation/settlement conferences, early neutral evaluation, mini-trials and summary jury trials;

(3) All non-case dispositive motions (28 U.S.C. § 636(b)(1)(A)) unless otherwise requested by a district judge;

(4) Case dispositive motions (28 U.S.C. § 636(b)(1)(B)) by issuance of a report and recommendations upon request of a district judge, or by final order and judgment upon consent of all parties (28 U.S.C. § 636(c)) for final disposition of the motion (as opposed to disposition of the entire case) by a magistrate judge;

(5) All proceedings in cases brought by prisoners challenging conditions of confinement, including conducting non-jury trial with submission of a report and recommended findings to the district judge (28 U.S.C. § 636(b)(1)(B)) (if all parties do not consent to final disposition by the magistrate judge);

(6) Trial of any civil case and entry of final judgment on consent of all parties (28 U.S.C. § 636(c)), including all pretrial and post-trial motions;

(7) Service as a special master upon designation by the district judge;

(8) Jury *voir dire* and selection upon request of a district judge, and in the absence of the trial judge, preside over return of jury verdicts in civil cases;

(9) All proceedings in post-conviction relief proceedings under 28 U.S.C. §§ 2254 or 2241, including a report and recommended findings to the district judge (28 U.S.C. § 636(b)(1)(B)), or entry of final judgment upon consent of all the parties (28 U.S.C. § 636(c)); and,

(10) Supervise proceedings conducted pursuant to 28 U.S.C. § 1782 with respect to foreign tribunals and to litigants before such tribunals.

(D) PROCEDURE BEFORE MAGISTRATE JUDGES

(1) Forfeiture of Collateral in Lieu of Appearance. Payment of a fixed sum in lieu of appearance in a petty offense or infraction case is hereby authorized. By special order of this court, conditions and schedules for the forfeiture of collateral in lieu of appearance must be kept on file in the office of the clerk of court.

(2) Civil Case Consent Procedure.

(a) Notice Upon Filing of Complaint. The clerk of court must notify the parties in all civil cases that they may consent to have a full-time magistrate judge conduct any or all proceedings in the case and order the entry of final judgment (28 U.S.C. § 636(c)). Upon the filing of the complaint, the clerk will mail to the plaintiff, who in turn shall serve the notice and consent form upon the defendants together with the summons and complaint. The clerk may not accept a consent form for filing unless it has been signed by all the parties in the case, and may not make any consent form, nor its contents, known to any judge or magistrate judge unless all parties have consented to disposition by a magistrate judge.

(b) Scheduling Plan. The parties must also address in their Federal Rule of Civil Procedure 16(b) Scheduling Plan whether or not they will unanimously consent to disposition by a magistrate judge. The parties may state in the plan only whether or not they unanimously consent, and may not identify which parties will or will not consent.

(E) REVIEW AND APPEAL

(1) Appeal from Judgments in Misdemeanor Cases. A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal with the clerk within ten (10) days after entry of judgment, and by serving a copy of the notice upon the United States Attorney. The scope of review upon appeal will be the same as appeal from a judgment of the district court to the court of appeals. See, Fed. R. Crim. P. 58.

(2) Appeal from Judgments in Civil Consent Cases. Upon entry of judgment in a civil case by a magistrate judge on consent of the parties, appeal will lie directly to the Eighth Circuit Court of Appeals in the same manner as an appeal from any other judgment of this court.

(3) Appeal from Non-Dispositive Orders. Any party may appeal from a magistrate judge's determination of a non-dispositive matter in either a criminal or civil case (other than a civil consent case) within ten (10) days after being served with a copy of the magistrate judge's order, unless a different time is prescribed by the magistrate judge. (28 U.S.C. § 636(b)(1)(A) & Fed. R. Civ. P. 72(a)). The appealing party shall file with the clerk and serve on all interested parties a written notice of appeal, which must specifically designate the order or part thereof from which the appeal is taken and the grounds for appeal. The party filing an appeal must file with the clerk a transcript of that portion of the hearing before the magistrate judge wherein findings of fact were made. A district judge must consider the appeal and set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The filing of such an appeal does not operate to stay the magistrate judge's order. A stay of a magistrate judge's order pending appeal must be sought in the first instance from the magistrate judge upon due notice to all interested parties.

(4) Objections to Report and Recommendations or Proposed Findings. Any party may

object to a magistrate judge's report and recommendations or proposed findings on a dispositive matter in a civil or criminal case within ten (10) days after being served with a copy thereof, unless a different time is prescribed by the magistrate judge. (28 U.S.C. § 636(b)(1)(B) & Fed. R. Civ. P. 72(b)). The objecting party must file with the clerk of court and serve on all interested parties written objections, which must identify the portions of the proposed findings, recommendations or report to which objection is made and the basis of such objection. The party filing objections must file with the clerk a transcript of the specific portions of any evidentiary proceeding to which objection is made. A district judge must make a *de novo* determination of those portions to which specific objection is made and may accept, reject, or modify in whole or in part the findings or recommendations made by the magistrate judge. The district judge will not normally conduct a new hearing, but in appropriate circumstances may receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

(F) PRACTICE OF LAW BY PART-TIME MAGISTRATE JUDGES

Any part-time magistrate judge appointed by this court is permitted to engage in the private practice of law, but may not be permitted to appear as counsel in any criminal matter before any court of the United States.

## RULE 77.1

## ORDERS, FINDINGS, AND JUDGMENTS

(A) ORDERS GRANTABLE BY THE CLERK

The clerk may grant, sign, and enter the following orders without further direction by the court, but any order so entered may be suspended, altered, or rescinded by the court for cause shown:

(1) Orders specially appointing persons of suitable discretion, and eighteen years of age or over, to serve the summons and complaint, and garnishment summons.

(2) Any other of the orders referred to in Fed. R. Civ. P. 77(c) which do not require allowance or order of the court.

(B) ENTRY OF JUDGMENTS AND ORDERS

(1) The clerk must record judgments and orders in the civil docket at the earliest practicable time. The clerk must not delay the recording of judgments pending taxation of costs, but instead may insert a blank space in the judgment form for posting costs after they have been taxed, or the clerk may insert in the judgment a clause reserving jurisdiction to tax and apportion costs by subsequent order.

(2) After signing, the clerk must immediately record in the civil docket orders entered under subdivision (A)(2) of this rule.

(3) Only upon direction of the court may the clerk record in the civil docket any judgment or order other than orders entered under subdivision (A)(2) of this rule or judgments which the clerk is authorized to enter without direction of the court by the Federal Rules of Civil Procedure. The court may give its direction to the clerk in open court, noted in the minutes or by the signature or initials of the judicial officer on the form of judgment or order.

(4) The entry in the docket of the judgment, settled and signed by the judicial officer, will constitute the entry of judgment as provided by Fed. R. Civ. P. 58 and 79(a). Where counsel is to prepare and settle the written order of judgment, no memorandum of decision or opinion or any minutes made by the clerk's decision may constitute entry of judgment under these local rules.

(5) Every order and judgment must be filed in the office of the clerk.

## RULE 77.2

## THE CLERK

(A) OFFICES

Offices of the clerk are maintained in the cities of Bismarck and Fargo and must be open during regular business hours each day, Monday through Friday, with the exception of the following legal holidays: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day. Whenever these legal holidays fall on a Saturday or Sunday, the clerk's offices will be closed on the preceding Friday or the following Monday, respectively.

(B) BISMARCK FILINGS

The clerk must maintain the files and records in cases arising in the Southwestern and Northwestern Divisions of this District in the clerk's office at Bismarck, North Dakota.

(C) FARGO FILINGS

The clerk must maintain the files and records in cases arising in the Southeastern and Northeastern Divisions in the clerk's office at Fargo, North Dakota.

(D) HEADQUARTERS

The clerk's headquarters office is located at Bismarck, North Dakota.

## RULE 77.3

## FAIR TRIAL - FREE PRESS

(A) LAWYERS DUTY

A lawyer or law firm must not release or authorize the release of information or opinion which a reasonable person would expect to be disseminated, by any means of public communication, in connection with pending or imminent criminal litigation with which the lawyer or law firm 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.

(B) PENDING MATTERS

With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation must refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated, by any means of public communications, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

(C) EXTRAJUDICIAL STATEMENTS

From the time of arrest, issuance of an arrest warrant or the filing of the complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense must not release or authorize the release of any extrajudicial statement which a reasonable person would expect to be disseminated, by any means of public communication, relating 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 or law firm 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 the accused's apprehension or to warn the public of any dangers the accused may present;

(2) The existence of 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 examination 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

or law firm 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; and,

(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.

(7) The foregoing must not be construed to preclude the lawyer or law firm during this period, in the proper discharge of official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made.

(8) During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense may give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that the lawyer or law firm may quote from or refer without comment to public record of the court in the case.

(9) 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, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against that lawyer.

(D) SUPPORTING PERSONNEL

All court supporting personnel, including, among others, marshals, deputy marshals, court clerks, bailiffs, court reporters and employees or subcontractors retained by the court-appointed official reporters, are prohibited from disclosing to any person without authorization by the court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the court. The divulgence of information concerning grand jury proceedings, *in camera* arguments and hearings held in chambers or otherwise outside the presence of the public is also forbidden.

(E) SENSATIONAL CASES

In a widely publicized or sensational criminal case, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order. Such a special order may be addressed to some or all of the following subjects:

(1) A proscription of extrajudicial statements by participants in the trial (including lawyers, parties, witnesses, jurors and court officials) which might divulge prejudicial matter not of public record in the case;

(2) Specific directives regarding the clearing of entrances to and hallways in the courthouse and respecting the management of the jury and witnesses during the course of the trial, to avoid their mingling with or being in the proximity of reporters, photographers, parties, lawyers and others, both in entering and leaving the courtroom or courthouse and during recesses in the trial;

(3) A specific direction that the jurors refrain from reading, listening to, or watching news reports concerning the case, and that they similarly refrain from discussing the case with anyone during the trial and communicating with others in any manner during their deliberations;

(4) Sequestration of the jury on motion of either party or by the court, without disclosure of the identity of the movant;

(5) Direction that the names and addresses of jurors or prospective jurors not be publicly released except as required by statute, and that no photograph be taken or sketch made of any juror within the environs of the court;

(6) Sequestration of witnesses during the trial; and,

(7) Specific provisions regarding the seating of spectators and representatives of news

media, including:

(a) An order that no member of the public or news media representative be at any time permitted within the bar railing;

(b) The allocation of seats to news media representatives in cases where there are an excess of requests, taking into account any pooling arrangement that may have been agreed to among the media personnel.

(8) The list of subjects mentioned above is not intended to be exhaustive, but is merely illustrative of some of the matters which may appropriately be dealt with by special order.

(F) CLOSURE OF PRETRIAL PROCEEDINGS

Unless otherwise provided by law, all preliminary criminal proceedings, including preliminary examinations and hearings on pretrial motions, must be held in open court and be available for attendance and observation by the public; provided that, upon motion made or agreed to by the defense, the court, in the exercise of its discretion, may order a pretrial proceeding be closed to the public in whole or in part on the grounds:

(1) that there is a reasonable likelihood that the dissemination of information disclosed at such proceeding would impair the defendant's right to a fair trial; and,

(2) that reasonable alternatives to closure will not adequately protect the defendant's right to a fair trial.

If the court so orders, it must state for the record its specific findings concerning the need for closure.

(G) USE OF PHOTOGRAPHY, RADIO, TELEVISION EQUIPMENT, TAPE RECORDERS, LAPTOP COMPUTERS, PAGERS, CELLULAR/DIGITAL TELEPHONES AND VIDEO CONFERENCING

(1) The taking of photographs and operation of tape recorders in the courtroom or its environs, and radio and television broadcasting from the courtroom or its environs during the progress of or in connection with judicial proceedings, including proceedings before a United States magistrate judge, whether or not court is actually in session, is prohibited. A judicial officer may, however, permit (a) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (b) the broadcasting, televising, recording, or photographing of ceremonial or naturalization proceedings.

(2) Persons may use laptop computers in all areas of the courthouse, including courtrooms. Persons may be required by Court Security Officers to demonstrate the operability of the computer. If the computer is to be used in the courtroom, the user must configure the machine to disable all computer-generated sounds and noises prior to entry into a courtroom.

(3) Persons must not use personal paging devices in the courtroom or its environs. Pagers must be temporarily surrendered to Court Security Officers upon entering court facilities and will be returned upon exit. Persons may use cellular/digital telephones in all areas of the courthouse, other than courtrooms. All cellular/digital telephones must be switched off prior to entry into a courtroom.

(4) Parties wishing to take testimony of witnesses from remote locations must obtain prior approval of the court to use video conferencing equipment. Parties must coordinate approved video conferences with the clerk's office to facilitate scheduling and ensure equipment compatibility.

## RULE 79.1

## ATTORNEYS

(A) ROLL OF ATTORNEYS

The bar of this court consists of those who have been admitted to practice before this court, taken the oath and paid the admission fee.

(B) ELIGIBILITY

(1) Any member of the bar of the Supreme Court of the United States, or of any United States Circuit Court of Appeals, or of any District Court of the United States, or a member in good standing of the bar of the highest court of any state of the United States is eligible for admission to the bar of this court.

(2) Attorneys serving as members of the armed forces of the United States may be admitted to the bar of this court under such terms and conditions as the court may prescribe.

(C) PROCEDURE FOR ADMISSION

(1) Each applicant for admission to the bar of this court must file with the clerk a written petition, setting forth: (a) the attorney's residence; (b) office address; (c) courts in which the attorney has been admitted to practice; (d) the attorney's legal training; and, (e) experience at the bar. When the court calls for a hearing on the petition, a member of the bar of this court must move the admission of the petitioner and vouch for the petitioner's qualifications, integrity, and good character. If admitted, the petitioner must, in open court, take an oath to support the Constitution and laws of the United States, to discharge faithfully the duties of a lawyer, and to maintain an upright demeanor and according to law and the recognized ethics of the profession, and must pay the admission fee required by law. The court may permit admission to the bar by application submitted by mail for attorneys, who reside out-of-state.

(2) Each applicant for admission to the bar of the United States District Court for the District of North Dakota must pay the admission fee set by the Judicial Conference plus an additional thirty dollars ($30.00) fee, which must be deposited into the non-appropriated District Court Fund. The court may waive admission fees for attorneys of the United States government.

(3) The District Court Fund may be used only for purposes to benefit the bench and bar in the administration of justice. These funds must not be used to supplement appropriated funds or to supplement the salary of any court officer or employee.

(4) Since this non-appropriated fund is not required to be deposited in the Treasury of the

United States, it must be deposited in a federally insured bank or savings institution, segregated from all other money held in the custody of the court. An advisory committee with the clerk appointed as custodian must, maintain the District Court Fund.

(5) The clerk must maintain a written plan for the administration and operation of the District Court Fund on file in the office of the clerk.

(D) APPEARANCES

(1) An attorney who is not admitted to practice before this court may appear for, or represent, a party in any case in this court only by permission of the presiding judicial officer. Whenever any attorney who is not a member of the bar of this court first appears in any case before this court, that attorney must present a motion to the court requesting leave to appear as the attorney for the client in the case. In support of the motion, counsel must affirm to submit to these Local Rules and to the jurisdiction of the court in matters of discipline. In addition, the attorney must pay a thirty dollar ($30.00) admission fee, which the clerk must deposit into the non-appropriated District Court Fund. Admission for appearance under this local rule, *pro hac vice*, may be for the limited purposes of the pending litigation.

(2) No attorney, except an attorney appointed by the court to represent a defendant financially unable to obtain adequate defense counsel, may appear for a defendant in a criminal case until that attorney has filed with the clerk a written appearance, giving the name and address of the attorney and the name and address of the client. The attorney must serve the United States with a copy of the appearance before it is filed, and should the attorney cease to act for the defendant for any reason, the attorney must serve the United States with notice. When a defendant is represented by multiple counsel, each attorney must file a Notice of Appearance, with proof of service upon the United States Attorney.

(3) An attorney cannot participate in any proceedings in a civil case until the attorney's name has been entered with the court as counsel of record.

(4) An attorney cannot withdraw from any case, civil or criminal until the attorney has served notice of withdrawal on opposing counsel and the client, has filed the notice and proof of service with the clerk, and the court has entered an order authorizing the withdrawal.

(5) Any attorney representing the United States Government, or any agency thereof, and who has been admitted to practice in any court of the United States or in the highest court of any state, but who is not qualified under this rule to practice in this court, may appear and participate in a case in an official capacity. If the government representative is not a resident of this district, that attorney must designate the United States Attorney for this district for the purpose of receiving service of notices, with service on the United States Attorney constituting service upon the government representative.

(E) DISCIPLINARY ENFORCEMENT

(1) Any member of the bar of this court may be disbarred, suspended from practice for a definite time, reprimanded or subjected to such other discipline as the court may deem proper, upon a showing of good cause and after the court has afforded the opportunity for a hearing on the matter.

(2) Where it is shown to the court that any attorney admitted to practice before this court may have been convicted of a serious crime, subject to public discipline, disbarred in any court of the United States, or District of Columbia, or any state, territory, commonwealth or possession of the United States, or otherwise breached standards of professional conduct, the court may enter an order requiring the attorney to appear before the court and show good cause why that attorney should not be suspended from practice before the court, pending formal commencement of disciplinary proceedings and final disposition of such proceedings. The clerk must immediately serve a copy of the show cause order upon the attorney.

(3) To initiate formal disciplinary proceedings, the court may refer the matter to the United States Attorney or other counsel appointed by the court for investigation and prosecution or the formulation of other recommendations as may be appropriate. The clerk must serve any suspension order of the court on the attorney by personal service or by registered or certified mail at the address shown in the clerk's records. The order may require the respondent-attorney to show cause within thirty (30) days after service, why the attorney should not be disciplined. If the attorney responds, the matter must promptly be set for a hearing before one or more judges of this court. If the attorney fails to respond within the required time, the court may take disciplinary action as is appropriate under the circumstances.

(4) An attorney is guilty of contempt of court and subject to appropriate punishment if, before admission to the bar of this court or after disbarment or suspension, the attorney exercises any of the privileges of a member of the bar in any action or proceedings in this court or who pretends to be entitled to do so.

(5) Prosecuting counsel may make application to this court for an order awarding reasonable fees and reimbursing costs expended in the course of a disciplinary investigation or prosecution, at the conclusion of the proceedings. Reasonable fees and costs, if awarded, may be taxed against the respondent-attorney for immediate payment or as ordered by the court.

(6) The clerk must promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline on any attorney admitted to practice before this court.

(F) REINSTATEMENT

(1) A disbarred or suspended attorney may file petitions for reinstatement with the clerk. Upon receipt of the petition, the court may refer the petition to the United States Attorney or other counsel appointed by the court for investigation and report. The matter must promptly be set for a hearing before one or more judges of this court. The petitioner has the burden of demonstrating by clear and convincing evidence that the attorney maintains the moral qualification, competency and learning in the law required for admission to practice law before this court. The petitioner must also demonstrate that the attorney's resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive to the public interest.

(2) An attorney who has been suspended or permanently disbarred by the Supreme Court of the State of North Dakota and thereafter reinstated by that court to practice in the state courts, may not, solely by reason of that reinstatement, be permitted to practice in this court.

(3) An attorney, who has been reinstated to practice in the state courts, may file a petition for reinstatement to the bar of this court supported by a certified copy of the order of reinstatement by the Supreme Court of the State of North Dakota with the clerk in the division where the petitioner resides.

(4) The petitioner must set forth in a brief, the grounds of the suspension or disbarment, the reason for reinstatement by the Supreme Court, and any other fact in substantiation of the petition for reinstatement to practice in this court.

(5) Upon receiving the final determination by the court of the petition for reinstatement, the clerk must file and enter the order and advise all interested parties.

## RULE 79.2

## MANDATES

Upon receipt of a mandate from an appellate court, the clerk must immediately indicate the time of receipt, file and record that judgment or decree and notify the court and counsel for the respective parties of the action taken.

## RULE 80.1

## COURT REPORTERS' TRANSCRIPTS

(A) FILING

An official court reporter must file with the clerk a certified copy of any transcript produced under the requirements of 28 U.S.C. § 753(b). The public may obtain from the clerk copies of transcripts filed and docketed as part of any official file by paying a fee at the rate fixed by the Judicial Conference of the United States, or in the alternative, from the official court reporter at the rate fixed by the Judicial Conference of the United States.

(B) FEES

When a transcript is ordered in accordance with applicable statutes and rules of court for the preparation or perfection of appeals, the party or attorney requesting the transcript (unless appellant is proceeding *in forma pauperis*) must pay to the reporter, a fee at the rate fixed by the Judicial Conference of the United States. The clerk may not release the file copy of the transcript, except on order of the court or receipt from the court reporter indicating that the reporter has been paid for the portions of the transcript to be released.

(C) REPORTER'S DUTY

Upon receipt of an order for a transcript, the court reporter must acknowledge at the foot of the order: (1) the date the order was received; and, (2) the date on which the reporter expects to have the transcript completed. The reporter must return the endorsed order to the clerk for the court of appeals. If the transcript cannot be completed within thirty (30) days of the receipt of the order, the reporter must request an extension of time from the appellate clerk. The appellate clerk will enter on the docket and notify the parties of any extension granted. In the event of the failure of the reporter to file the transcript within the time allowed, the appellate clerk must notify the presiding judicial officer, who may take action as deemed appropriate. The reporter must file completed transcripts with the clerk for the court of appeals.

## RULE 83.1

## SESSIONS AND PLACES OF HOLDING COURT

(A) DISTRICT

The State of North Dakota constitutes one (1) judicial district divided into four (4) divisions. The clerk maintains an office in each division, but all papers and correspondence relative to cases in the Northwestern and Southwestern Divisions should be mailed to the clerk at Bismarck, North Dakota, and all papers and correspondence relative to cases in the Northeastern and Southeastern Divisions should be mailed to the clerk at Fargo, North Dakota.

(B) SESSIONS

This court is in continuous session in each of the four (4) divisions. The city at which sessions are held and the counties comprising each division are as follows:

(1) **Southwestern Division**, Bismarck, North Dakota: Adams, Billings, Bowman, Burleigh, Dunn, Emmons, Golden Valley, Grant, Hettinger, Kidder, Logan, McIntosh, McLean, Mercer, Morton, Oliver, Sioux, Slope and Stark;

(2) **Northeastern Division**, Grand Forks, North Dakota: Benson, Cavalier, Grand Forks, Nelson, Pembina, Ramsey, Rolette*, Traill, Towner and Walsh;

(3) **Southeastern Division**, Fargo, North Dakota: Barnes, Cass, Dickey, Eddy, Foster, Griggs, LaMoure, Ransom, Richland, Sargent, Steele and Stutsman;

(4) **Northwestern Division**, Minot, North Dakota: Bottineau, Burke, Divide, McHenry, McKenzie, Mountrail, Pierce, Renville, Sheridan, Ward, Wells and Williams.

*By Standing Order of the court, dated October 19, 1995, as approved by the Judicial Council of the Eighth Circuit, dated October 29, 1996, cases originating in Rolette County are assigned to the District Judge of the Western Division, venued at Minot, North Dakota.

## RULE 83.2

## CONDUCT

(A) OPENING COURT

The presiding judicial officer may determine the regular convening hours of the court.

(B) DECORUM

An attorney appearing in this court must comply with all rules of decorum established by the presiding judicial officer and the following minimum standards:

(1) Be punctual in attendance upon the court.

(2) Stand when the judicial officer and jury enters or leaves the courtroom.

(3) Conduct examinations of witnesses from the counsel table or podium, except when necessary to approach a witness or the clerk's desk for the purpose of presenting or examining exhibits.

(C) GENERAL PROVISIONS

(1) A person may only enter an area of a courthouse building if they have submitted to inspection of their person or any items in their possession, if requested by an United States Marshal or a Court Security Officer.

(2) Jurors, parties, attorneys, witnesses and other persons having business in the building may enter and leave the courthouse or its environs only through the doorways designated by the Court Security Officers.

(3) A person may not interfere with or obstruct judicial proceedings or act in an unseemly or disorderly manner in the courthouse or its environs.

(4) All persons must take a seat immediately upon entering the courtroom while the court is in session and must conduct themselves in a quiet and orderly manner. Persons must be fully clothed in attire suitable to the maintenance of the dignity of the court. Persons may not read newspapers, books or magazines, or chew gum or food in the courtroom while court is in session. A person may not enter or leave the courtroom while the court is charging a jury, except in an emergency. Spectators leaving a courtroom while court is in session or at any recess may not loiter in the halls and must abide by the provisions of this rule to gain readmittance.

(5) Persons may not televise, record, or take photographs in the courtroom or its environs,

including areas where grand jury proceedings are being conducted. The presiding judicial officer may authorize the use of electronic or photographic means for the presentation of evidence, the perpetuation of a record, or the broadcasting, televising, or recording of a ceremonial, or naturalization proceeding.

(D) ASSIGNMENT OF CASES

(1) Counsel must observe the assignment of cases and keep advised of the progress of business in court and be ready when cases are reached.

(2) Counsel must obtain prior approval by the court of arrangements modifying the time or order of trial.

## RULE 83.3

## CONTEMPT PROCEDURE (CIVIL)

(A) INITIATION

A proceeding to adjudicate a person in civil contempt of court may be initiated by filing an affidavit with the clerk, which sets out with particularity the misconduct complained of and a concise statement of the claim, setting out any items of damage. Upon filing, the clerk must present the affidavit to a judge of this court, and if deemed sufficient, the judge may issue an order to show cause. In the order to show cause, the court may direct the United States Marshal to arrest the alleged contemnor and hold the alleged contemnor for bail in an amount fixed by the order. The court may also order that bail be conditioned upon the alleged contemnor's appearance at all hearings and that the alleged contemnor be held amenable to all orders of the court for surrender. The clerk must cause to be personally served (not by substituted service) the show cause order with a copy of the affidavit upon the alleged contemnor.

(B) ANSWER

The alleged contemnor may answer the affidavit and place in issue all matters regarding the alleged misconduct and any related damages. The court may identify the issues to be determined by trial, as provided for by statute.

(C) FINDINGS

If the court finds the alleged contemnor to be in contempt of court, the court must enter an order adjudicating that fact, containing: (1) findings of fact upon which the adjudication is based; (2) the amount of damages that the complainant is entitled; (3) the amount of fine, if any, imposed by the court; (4) the name of the person to whom damages or a fine is payable; and, (5) any other conditions, which may operate to purge the contempt. In the order the court may also direct the Unites States Marshal to arrest the contemnor and hold the contemnor in confinement until completion of performance of the conditions fixed in the order, payment of the fine, or until the contemnor is otherwise discharged pursuant to law. No party may be required to pay, or to advance to the marshal, any expenses for the upkeep of the prisoner. A certified copy of the order committing the contemnor is a sufficient warrant for the marshal to arrest and confine the contemnor. The complainant may exercise the same remedies against the property of the contemnor as if the order awarding the fine were a final judgment.

(D) DISCHARGE IF NOT GUILTY

If the alleged contemnor is found not guilty, the court must discharge the alleged contemnor from the proceedings and permit entry of judgment against the complainant for costs and disbursements, including a reasonable attorney's fee.

## RULE 83.4

## GUARDIANS AD LITEM

(A) PROCEDURE FOR THE APPOINTMENT OF GUARDIANS AD LITEM

The court may appoint guardians *ad litem*, at any time upon *ex parte* presentation to the court or sworn petition showing proper cause for the appointment. A person seeking the appointment of a guardian must file the petition with a proposed order of appointment.

(B) GUARDIANS AD LITEM, WHO MAY BE

A person may not be appointed guardian *ad litem*, if that person: (1) has an interest adverse to that of the infant or incompetent person; (2) is connected in business with the adverse party or with the attorney or counsel of the adverse party; or, (3) does not possess sufficient pecuniary ability to answer to the infant or incompetent person for any damage or injury caused by the guardian's negligence or misconduct in the case.

(C) BOND OF GUARDIAN AD LITEM

If a guardian *ad litem* is to receive money or property of an infant or incompetent person, the court may require the guardian *ad litem* to post a bond in an amount fixed by the court. The guardian must file a bond with the clerk which is secured by at least two (2) sureties, who have been approved by the court. Exoneration of the bond is conditioned upon the faithful performances of the duties as guardian *ad litem*. If the guardian does not desire to receive money or property of the infant or incompetent, the money or property may be paid or delivered to the clerk or to others persons as appointed by the court.

## RULE 83.5

## STIPULATIONS

(A) REQUIREMENTS

No agreement or consent between the parties or their attorneys in respect to proceedings in this court is binding, unless:

(1) reduced to writing as a single document;

(2) signed by all parties or their attorneys; and,

(3) filed with the clerk of court; or,

(4) made in open court on the record.

(B) EXTENSIONS OF TIME

Stipulations for extensions of time or continuances must be submitted to the court for approval. All requests for extensions or continuances must be accompanied by a proposed order.

## RULE 83.6

## STUDENT PRACTICE RULE

(A) GENERAL PROVISIONS

A student who meets the requirements of this rule may exercise all privileges as a member of the bar of this court, in the particular case for which the student is admitted. The student may only practice under the immediate supervision of a member of the bar of this court who has moved the student's admission. The supervising attorney remains as attorney of record in the case until further order of the court or until entry of a final order disposing of the case.

(B) STUDENT REQUIREMENTS

To be qualified for admission to practice as a student member of the bar of this court, the applicant must:

(1) Be a full time student at the University of North Dakota School of Law or other American Bar Association accredited law school and have completed at least four semesters or equivalent time of law study, or be a graduate of the University of North Dakota School of Law or other American Bar Association accredited law school, studying to write the state's bar examination or awaiting bar examination results;

(2) Be certified by the Dean of the law school as being of good moral character, competent legal ability and adequately trained to perform as a legal intern;

(3) Be knowledgeable regarding the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the code of professional responsibility approved by the Supreme Court of North Dakota, and these Local Rules; and,

(4) Be moved for admission to the bar by the attorney who will supervise the student in all proceedings before the court.

(C) ADMISSION PROCEDURE

(1) A member of this bar who has entered an appearance in a case may make a motion to admit *pro hac vice* a student who is qualified under this rule.

(2) The attorney's client must attach to the motion written consent to student representation.

(3) Unless made in open court, a copy of the motion must be furnished to all other counsel of record in the case.

(4) The court will inform the movant, the student applicant, and all counsel of record of its ruling on the motion.

(D) STUDENT PRACTICE LIMITATIONS

(1) A student practicing under this rule may not have more than four (4) cases pending in this district.

(2) A student may neither request nor receive compensation or remuneration of any kind from the client. This limitation does not preclude payment of compensation to the student by the supervising attorney, or by that attorney's law firm or employing institution, in the manner in which compensation is normally paid to law-student clerks; nor does this limitation preclude the supervising attorney from receiving payments under the Criminal Justice Act or similar statutes for work performed by an admitted student under supervision.

(E) SUPERVISING ATTORNEY REQUIREMENTS

(1) Actively and personally attend to supervisory responsibilities including professional responsibility for the student;

(2) Be present with the student at all appearances in court or at depositions;

(3) Read, approve and co-sign all pleadings, documents, or other papers prepared in the case by the student;

(4) Limit supervision to no more than three (3) admitted students concurrently;

(5) Possess sufficient trial practice experience and competence to assure that supervision of the student's work is constructive and likely to be of educational value of the student; and,

(6) Be available to the judicial officers of this court to assist them in administration of this rule and in their continuing evaluation of the student practice program.

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