

Proposed Revisions to the District of North Dakota's Local Rules

The District of North Dakota has proposed revisions to seven of the Court's Local Rules. The proposed rules are now available for public comment.

The public is encouraged to review and comment on the proposed rules. The proposed rules and a summary of the proposed revisions are attached to this notice. Comments may be made using the e-mail hyperlink at the bottom of each page of the rules (ndd_public@ndd.uscourts.gov) or sent to:

Kari Knudson, Chief Deputy Clerk
United States District Court
P.O. Box 1193
Bismarck, ND 58502

Comments must be received by **Friday, October 26, 2018**. The revised Local Rules will be effective **December 1, 2018**.

Summary of 2018 Proposed Rule Changes	
General Rules	
1.3 Attorneys	<p>Throughout: Removed references to “petition” or “petitioning” and changed to “application” or “applying.”</p> <p>(D) Deleted provision allowing federal government attorneys to appear PHV.</p> <p>Removed references to “filing a motion” and replaced with references to detailed instructions available on the Court’s website.</p>
1.11 Bonds	<p>Throughout: Removed the word “surety” and replaced with “security provider” to conform to proposed Fed. R. Civ. P 65.1</p> <p>Throughout: Added the phrase “or other security” after the word “bond” to conform to proposed Fed. R. Civ. P. 62</p>
Civil Rules	
5.1 Files and Filing	<p>(A) Removed language duplicative of proposed Fed. R. Civ. P 5(d)(3)(A) and (D)</p> <p>(B)(4) Clarified that filings by <i>pro se</i> individuals must have an original signature.</p> <p>(E) Deleted as duplicative of proposed Fed. R. Civ. P. 5(d)(1)(B)</p>
37.1 Civil Discovery Motions	(C) Deleted as unnecessary in light of subsection B setting forth the obligation to confer with a Magistrate Judge
72.1 United States Magistrate Judges	<p>(D)(2) Added response time and brief length for responses to appeals from non-dispositive orders</p> <p>(D)(3) Added reference for time to file a response to an to an objection to a Report and Recommendation as prescribed in current Fed. R. Civ. P. 72(b)(2).</p>
Criminal Rules	
49.1 Files and Filing	(A) Removed language duplicative of proposed Fed. R. Crim. P. 49(b)(3)(A) and 49(b)(2)(A).

	(B)(4)	Clarified that filings by <i>pro se</i> individuals must have an original signature.
	(E)	Deleted as duplicative of proposed Fed. R. Crim. P. 49(b)(1)
59.1 United States Magistrate Judges	(B)(9)	Removed due to the interpretation that it suggests a Magistrate Judge can review the decision of the Magistrate Judge in the district of first appearance.
	(D)(2)	Added response time and brief length for responses to appeals from non-dispositive orders.
Appendix		
Deadlines		Added deadline for Response to an Appeal of a Magistrate Judge Decision of a non-dispositive matter
Page Limitations		Added page limitations for a Response to an Appeal of a Magistrate Judge Decision of a non-dispositive matter.

GENERAL RULE 1.3

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

Any member in good standing of the bar of any federal court or of the highest court of any state or the District of Columbia may apply for admission to the bar of this court.

(C) PROCEDURE FOR ADMISSION

- (1) Each applicant for admission to the bar of this court must submit **an application a petition** as required by the clerk. Detailed instructions for ~~submitting a petition for~~ admission may be found on the court's website.
- (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 local admission fee. Any attorney representing the United States, or any agency thereof, or employed by the Office of the Federal Public Defender is exempt from the payment of admission fees.
- (3) The determination of an applicant's character and fitness to practice before this court is a matter within the sole discretion of the court. Before an applicant is denied admission to the bar of this court, the applicant will be given notice and an opportunity to be heard.

(D) *PRO HAC VICE* ADMISSION

An attorney, ~~including any attorney representing the United States, or any agency thereof, or employed by the Office of the Federal Public Defender,~~ who is not admitted to practice before this court may be admitted to practice in a particular case *pro hac vice* by ~~filing a~~

~~motion-seeking admission *pro hac vice*. The motion must include information as required by the clerk.~~

Applying ~~The filing of a motion to appear *pro hac vice* is deemed consent to submit to the jurisdiction of the court in matters of discipline and an agreement to comply with the Local Rules. In addition, the attorney must pay an admission fee. Any attorney representing the United States, or any agency thereof, or employed by the Office of the Federal Public Defender is exempt from the payment of admission fees.~~ Admission to appear *pro hac vice* is for the limited purposes of a particular case. Detailed instructions for **applying to filing a motion to appear *pro hac vice*** may be found on the court's website.

An attorney representing the United States, or any agency thereof, or employed by the Office of the Federal Public Defender is not permitted to appear *pro hac vice* and must apply for full admission.

(E) APPEARANCES

An attorney cannot participate in any proceeding before the court until the attorney's name has been entered with the court as attorney of record, unless the attorney is anticipating appointment by the court or the court has granted the attorney permission to appear.

(F) SUBSTITUTION AND WITHDRAWAL

- (1) Substitution of counsel from same law firm or agency: When one attorney from a law firm or agency replaces another attorney from the same law firm or agency, the attorneys must serve and file a notice of substitution of attorney.
- (2) Change of representation from one law firm or agency to a different law firm or agency: The attorney assuming representation in the case must serve and file a motion for substitution of attorney, establishing good cause for the change of representation. The attorney ceasing representation is not relieved of his or her duties to the court, the client, or to an opposing attorney until the court has granted the motion for substitution.
- (3) Withdrawal of counsel with no substitution of counsel: An attorney who has appeared as attorney of record in a case and is seeking to withdraw from the case must serve and file a motion to withdraw, establishing good cause for withdrawing. The attorney seeking to withdraw must also serve his or her client with the motion. The attorney seeking to withdraw is not relieved of his or her duties to the court, the client, or to an opposing attorney until the court has granted the motion to withdraw.

(G) CONTINUED DUTIES

An attorney admitted to practice under this rule has the continuing duty to promptly notify the clerk of any change of name, business address, telephone number, or e-mail address. An attorney must also remain a member of good standing of the bar used as the basis for admission under D.N.D. Gen. L. R. 1.3(B).

(H) 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. Pending a hearing, the court may temporarily suspend an attorney or impose other restrictions the court deems appropriate under the circumstances.
- (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 by the bar used as the basis for admission under D.N.D. Gen. L. R. 1.3(B), 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 or disbarred from practice before the court. The clerk must immediately serve a copy of the show cause order upon the attorney.
- (3) Following the issuance of a show cause order, the court may refer the matter to the United States Attorney or other attorney 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 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 may be subject to appropriate disciplinary action 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 pretends to be entitled to do so.

- (5) A prosecuting attorney may file a motion requesting the award of reasonable fees and costs expended in the course of a disciplinary investigation or prosecution. Reasonable fees and costs, if awarded, may be taxed against the respondent-attorney for immediate payment.
- (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.

(I) REINSTATEMENT

- (1) A disbarred or suspended attorney may file a petition for reinstatement with the clerk. Upon receipt of the petition, the court may refer the petition to the United States Attorney or other attorney 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 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 bar used as the basis for admission under D.N.D. Gen. L. R. 1.3(B) and thereafter reinstated by that court may not, solely by reason of reinstatement, be permitted to practice in this court.
- (3) An attorney who has been reinstated to practice may file a petition for reinstatement to the bar of this court supported by a certified copy of the order of reinstatement with the clerk in the Bismarck clerk's office.
- (4) The petitioner must set forth in a brief, the grounds of the suspension or disbarment, the reason for reinstatement, 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.

GENERAL RULE 1.11

BONDS

(A) ATTORNEY NOT TO BE **SECURITY PROVIDER SURETY**

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

(B) CORPORATE **SECURITY PROVIDER SURETY**

A corporate **security provider surety** upon any undertaking in which the United States is the obligee must be qualified in accordance with the provisions of 31 U.S.C. §§ 9301-9309. The parties must consult with the Department of Treasury listing of certified companies to confirm that a **security provider surety** is qualified. In all other instances, a corporate **security provider surety** qualified to write bonds **or other securities** in the State of North Dakota is an acceptable **security provider surety**. In all cases, a power of attorney showing the authority of the agent signing the bond **or other security** must be attached to the bond **or other security**.

(C) PERSONAL **SECURITY PROVIDER SURETY**

The court may accept a personal **security provider surety**, but only upon the execution and filing of a written bond **or other security** containing terms and conditions acceptable to the court, including the sufficiency and amount of collateral that may be required.

(D) CASH BONDS, **OTHER SECURITIES**, AND PERSONAL PROPERTY

Upon execution and filing of a written bond **or other security**, a party must deposit cash, **other security**, **and or** other personal property with the court. Unless otherwise ordered by the court, every deposit of cash, **other security**, or personal property must be accompanied by an affidavit of ownership, which must include the full street address and zip code of the owner. An affidavit of ownership will presumptively establish the identity of the owner of the property. Withdrawal of cash, **other securities**, or other personal property so deposited may be made only upon written order of the court. See D.N.D. Gen. L. R. 1.10(C).

(E) COST BONDS **OR OTHER SECURITIES**

The court on motion or on its own initiative may order any party to file a bond **or other security** for costs or additional security for costs in such an amount and so conditioned as the court may designate.

(F) INSUFFICIENCY AND REMEDY

A party may raise objections to the form or timeliness of a bond **or other security** or the sufficiency of the **security provider** ~~surety~~. If the court finds a bond **or other security** to be insufficient, the court may order that a sufficient bond **or other security** be filed within a stated time. If the party required to file the bond **or other security** does not comply with such order, the case may be dismissed for want of prosecution, or the judge may take other appropriate action.

CIVIL RULE 5.1**FILES AND FILING****(A) USE OF ELECTRONIC CASE FILING (ECF)**

~~Attorneys must use ECF. The specific requirements, procedures, and limitations related to ECF are set out in the “Administrative Policy Governing Electronic Filing and Service.” When the Local Rules require a document to be “written” or “in writing” those terms include both documents filed in paper form and documents prepared and filed electronically. When the Local Rules refer to “pleadings,” “papers,” and “documents” those terms include both items filed in paper form and documents prepared and filed electronically.~~

(B) 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 or equivalent PDF format, properly paginated at the bottom of each page.
- (2) Text must appear on only one side of the page with a minimum margin of one inch (1”). All text must be typeset with 12-point font or larger and must be double spaced, except that the title of the case and quoted material may be single spaced.
- (3) All papers offered for filing, after the initial pleading, except exhibits, must be in pleading format, each containing the venue, case title, and file number.
- (4) All pleadings **filed by *pro se parties*** ~~not filed electronically~~ must have an original signature.

(C) FILING OF PLEADINGS REQUIRING LEAVE OF COURT

A party filing a motion for leave of court to file pleadings must file the proffered pleading as an attachment.

(D) SEALED DOCUMENTS AND SEALED FILES

The filing of sealed documents and sealed files is governed by the “Administrative Policy Governing Electronic Filing and Service.”

~~(E) SERVICE OF DOCUMENTS THROUGH NOTICE OF ELECTRONIC FILING~~

~~A party may serve a paper under Fed. R. Civ. P. 5(b)(2)(E) by using the court’s Case Management/Electronic Case Filing (CM/ECF) System. If a document is served electronically, the Notice of Electronic Filing (NEF) generated by the court constitutes a certificate of service with respect to those persons to whom an NEF is sent, and no separate certificate of service need be filed with respect to those persons.~~

CIVIL RULE 37.1**CIVIL DISCOVERY MOTIONS****(A) OBLIGATION TO CONFER**

The parties may not file a discovery motion (*e.g.*, a motion to compel discovery, motion for sanctions, or motion for protective order) until the parties have conferred, either in person or by telephone, for the purpose of making a reasonable, good faith effort to resolve the dispute without involving the court. A written demand for relief without more is not sufficient; the moving party must make a reasonable effort to confer, and the opposing party must make a reasonable effort to participate.

(B) OBLIGATION FOR TELEPHONIC CONFERENCE WITH MAGISTRATE JUDGE

In addition to the requirements set forth in D.N.D. Civ. L.R. 37.1 (A), the parties must not file a discovery motion until the parties have participated in a telephonic conference with the assigned magistrate judge, unless otherwise ordered by the court.

~~(C) CERTIFICATION OF COMPLIANCE~~

~~All discovery motions must contain a certification that the party has conferred or attempted to confer with the opposing party to resolve the dispute without intervention of the court as required by D.N.D. Civ. L.R. 37.1(A) and Fed. R. Civ. P. 37(a)(1). The certification must recite the date on which the parties conferred, whether the conference was in person or by telephone, and the names of the persons participating in the conference. If the moving party was unsuccessful in engaging the opposing party in the required conference, the certification must recite the date and manner in which the efforts were made to consult with the opposing party.~~

~~(D) SANCTIONS FOR NON-COMPLIANCE~~

~~A party's failure to comply with the requirements of this rule may result in a summary granting or denial of the discovery motion, as appropriate, as well as an award of costs and reasonable attorney's fees.~~

CIVIL 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 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 clerk will assign cases or duties in a case to a magistrate judge and allocate duties among the magistrate judges of the court 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 precludes 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) CIVIL CASE ASSIGNMENT

Each civil case may be referred to a magistrate judge for pretrial management. 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 a district judge and consent to a magistrate judge conducting all proceedings and entering final judgment, the case will be reassigned for disposition to the magistrate judge who served as the case manager or to another magistrate judge as may be designated by the district judge making the reassignment.

(B) DUTIES IN CIVIL MATTERS

The magistrate judges of this court are authorized to exercise the following 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-dispositive motions (28 U.S.C. § 636(b)(1)(A)), unless otherwise requested by a district judge;
- (4) 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 recommendation 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 and 25 U.S.C. § 1303, including a report and recommendation 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));
- (10) Supervise proceedings conducted pursuant to 28 U.S.C. § 1782 with respect to foreign tribunals and to litigants before such tribunals;

- (11) Issue statutory administrative inspection or search warrants on determination of probable cause;
- (12) Preside over naturalization ceremonies and administer the oath required by 8 U.S.C. § 1448(a);
- (13) Conduct examination of judgment debtors in accordance with Fed. R. Civ. P. 69; and
- (14) Authorize alternative process servers under Fed. R. Civ. P. 4 and 4.1 and service of process on an absent defendant pursuant to 28 U.S.C. § 1655.

(C) CIVIL CASE CONSENT PROCEDURE

(1) NOTICE UPON FILING OF COMPLAINT

The clerk must notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of final judgment (28 U.S.C. § 636(c)). Upon the filing of the complaint, the clerk will provide notice and consent forms to the plaintiff, who in turn must serve them upon the defendants together with the summons and complaint.

(2) SCHEDULING PLAN

The parties must also address in their Fed. R. Civ. P. 16(b) scheduling plan whether or not they will unanimously consent to disposition by a magistrate judge. The parties must state in the plan only whether they unanimously consent and must not identify which parties will not consent.

(3) LATER CONSENT

Notwithstanding an initial decision not to consent, the parties may at anytime thereafter consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of final judgment.

(D) REVIEW AND APPEAL

(1) 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.

(2) APPEAL FROM NON-DISPOSITIVE ORDERS

Any party may appeal from a magistrate judge's determination of a non-dispositive matter in a civil case (other than a civil consent case) within fourteen (14) 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 must serve and file 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 adverse party has seven (7) days after service of the notice of appeal to serve and file a response not to exceed ten (10) pages.**

The party filing an appeal must file with the clerk a transcript of the hearing before the magistrate judge wherein findings of fact were made. Upon leave of Court, the party may rely upon an audio recording of the hearing in lieu of a transcript.

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 party must seek a stay of a magistrate judge's order pending appeal in the first instance from the magistrate judge upon due notice to all interested parties.

(3) OBJECTIONS TO REPORT AND RECOMMENDATIONS

Any party may object to a magistrate judge's report and recommendations on a dispositive matter in a civil case within fourteen (14) days after being served with a copy, 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 serve and file 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 any evidentiary proceeding to which objection is made.

A party may respond to an objection as prescribed in Fed. R. Civ. P. 72(b)(2).

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.

CRIMINAL RULE 49.1**FILES AND FILING****(A) USE OF ELECTRONIC CASE FILING (ECF)**

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- (3) All papers offered for filing, after the initial pleading, except exhibits, must be in pleading format, each containing the venue, case title, and file number.
- (4) All pleadings **filed by *pro se parties*** ~~not filed electronically~~ must have an original signature.

(C) FILING OF PLEADINGS REQUIRING LEAVE OF COURT

A party filing a motion for leave of court to file pleadings, must file the proffered pleading as an attachment.

(D) SEALED DOCUMENTS AND SEALED FILES

The filing of sealed documents and sealed files is governed by the “Administrative Policy Governing Electronic Filing and Service.”

~~(E) SERVICE OF DOCUMENTS THROUGH NOTICE OF ELECTRONIC FILING~~

~~A party may serve a paper under Fed. R. Crim. P. 49(b) by using the court’s Case Management/Electronic Case Filing (CM/ECF) System. If a document is served electronically, the Notice of Electronic Filing (NEF) generated by the court constitutes a certificate of service with respect to those persons to whom an NEF is sent, and no separate certificate of service need be filed with respect to those persons.~~

CRIMINAL RULE 59.1**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 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 clerk will assign cases or duties in a case to a magistrate judge and allocate duties among the magistrate judges of the court 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 precludes 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 be conducted before a magistrate judge. Upon filing of an indictment, the case will be assigned to a district judge. The referred magistrate judge will conduct an arraignment and other duties by general reference, specific order of reference, or informal request of a district judge.

(B) DUTIES IN CRIMINAL MATTERS

The magistrate judges of this court are authorized to exercise the following 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 issuing arrest and search warrants, approving complaints, initial appearances and arraignments, preliminary hearings, detention hearings and setting bail, extradition, consent to transfer, and Fed. R. Crim. P. 40 removal proceedings;
- (3) Pretrial matters in felony criminal cases, including determining non-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;
- (8) Jury *voir dire* and selection in felony cases, upon designation by the district judge and upon consent of the parties;
- (9) ~~Motions for review of orders for release or detention issued by a court in the district of arrest when the arrest is made outside the District of North Dakota;~~

- (~~10~~) Issue subpoenas, writs of *habeas corpus ad testificandum* and *habeas corpus ad prosequendum*, and other orders necessary to obtain the presence of parties, witnesses, or evidence needed for court proceedings;
- (~~10~~+) Issue warrants for searches and seizures which are not within the purview of Fed. R. Crim. P. 41;
- (~~11~~ 2) Issue warrants of arrest for persons who have been determined, pursuant 18 U.S.C. § 3144, to be material witnesses; and
- (~~12~~3) Issue orders authorizing the installation and use of devices, such as traps and traces, pen registers, and mobile tracking devices, and issue orders directing a communications common carrier, including a telephone company, to provide assistance to a named federal investigative agency in accomplishing the installation of traps, traces, and pen registers.

(C) FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE

Magistrate judges of this court are authorized to accept payment of a fixed sum in lieu of appearance in a petty offense or infraction case. 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.

(D) 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 fourteen (14) 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 NON-DISPOSITIVE ORDERS

Any party may appeal from a magistrate judge's determination of a non-dispositive matter in a criminal case within fourteen (14) 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. Crim. P. 59(a)). The appealing party

must serve and file 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 adverse party has seven (7) days after service of the notice of appeal to serve and file a response not to exceed ten (10) pages.**

The party filing an appeal must file with the clerk a transcript of the hearing before the magistrate judge wherein findings of fact were made. Upon leave of Court, the party may rely upon an audio recording of the hearing in lieu of a transcript.

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 party must seek a stay of a magistrate judge's order pending appeal in the first instance from the magistrate judge upon due notice to all interested parties.

(3) OBJECTIONS TO REPORT AND RECOMMENDATIONS

Any party may object to a magistrate judge's report and recommendations on a dispositive matter in a criminal case within fourteen (14) 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. Crim. P. 59(b)(2)). The objecting party must serve and file 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 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.

APPENDIX

DEADLINES

Type of Filing	Deadline	General Rule	Civil Rule	Criminal Rule
Amicus Curiae Brief	7 days after the filing of a memorandum in support of a motion or response to a motion		7.1(G)	
Appeal from a Judgment of Conviction by a Magistrate Judge	14 days after entry of judgment			59.1 (D)
Appeal from a Magistrate Judges' Order on a Non-dispositive Motion	14 days after being served with a copy of the magistrate judge's order		72.1(D)	59.1(D)
Civil Jury Instructions	7 days prior to a jury trial		51.1(A)	
Completion of Discovery	30 days prior to trial		26.1	
Criminal Jury Instructions	7 days prior to a jury trial			30.1
Motion for Attorney's Fees	14 days after entry of judgment, unless recovery is sought against the United States. See 28 U.S.C. § 2412(d)(1)(B).		54.1(B)	
Motion for Costs	14 days after entry of judgment or issuance of a mandate by the court of appeals		54.1(A)	
Motion to Reinstate Case	60 days after the date of an order dismissing a settled case		41.1	
Objection to Removal	30 days from notice of removal		3.1	

DEADLINES				
Type of Filing	Deadlines	General Rule	Civil Rule	Criminal Rule
Objection to a Report and Recommendation	14 days after being served with a copy of the Report and Recommendation		72.1(D)	59.1(D)
Reply to Criminal Motion	7 days			47.1(A)
Reply to Dispositive Motion	14 days		7.1(A)(1)	
Reply to Non-dispositive Motion	7 days		7.1(B)(1)	
Response to an Appeal of a Magistrate Judge Decision of a non-dispositive matter	7 days		72.1(D)(2)	59.1(D)(2)
Response to Criminal Motion	14 days			47.1(A)
Response to Dispositive Motion	21 days		7.1(A)(1)	
Response by the USA to a Motion for Attorney's Fees	14 days from service		54.1(B)	
Response to Non-dispositive Motion	14 days		7.1(B)(1)	
Response to an Order to Show Cause re: Attorney Discipline	30 days after service	1.3(H)(3)		
Response to Sentencing Memorandum	2 days prior to the sentencing hearing			32.1(B)
Sentencing Memorandum	7 days prior to the sentencing hearing			32.1(B)

Settlement Papers	30 days after advising the court that an action has been settled		41.1	
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PAGE LIMITATIONS (a table of contents and/or a table of authorities, if included, are excluded from the page limitations)			
Type of Filing	Page Limit	Civil Rule	Criminal Rule
Amicus Curiae Brief	no longer than the maximum length authorized for a party's corresponding brief	7.1(G)(3)	
Memorandum in Support of a Criminal Motion	20 pages		47.1(A)
Memorandum in Support of a Dispositive Motion	40 pages (no more than 25 pages may be argument)	7.1(A)	
Memorandum in Support of a Motion for Leave of Court to Submit Additional Filings	2 pages	7.1(C)	47.1(B)
Memorandum in Support of a Motion for Leave of Court to Submit Filings that Exceed the Page Limitation	2 pages	7.1(C)	47.1(B)
Memorandum in Support of a Motion for Oral Argument	2 pages	7.1(E)	47.1(D)
Memorandum in Support of a Non-dispositive Motion	20 pages	7.1(B)	
Reply to a Criminal Motion	7 pages		47.1(A)
Reply to a Dispositive Motion	10 pages	7.1(A)	
Reply to a Non-dispositive Motion	7 pages	7.1(B)	
Response to an Appeal of a Magistrate Judge Decision of a non-dispositive matter	10 pages	72.1(D)(2)	59.1(D)(2)
Response to a Criminal Motion	20 pages		47.1(A)

Response to a Dispositive Motion	40 pages (no more than 25 pages may be argument)	7.1(A)	
Response to a Non-dispositive Motion	20 pages	7.1(B)	