UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NORTH DAKOTA

LOCAL RULES

Effective November 1, 2016

PREFACE

These rules have been adopted by the court as local rules pursuant to Fed. R. Civ. P. 83 and Fed. R. Crim. P. 57, and may be cited as "D.N.D. Gen. L.R. ___ ," "D.N.D. Civ. L. R. ___," or "D.N.D. Crim. L. R. ___." The general rules apply to all court proceedings in this district, whether civil or criminal, and they regulate the conduct of court personnel, practicing attorneys, parties, members of the public, and members of the press.

The court has also adopted an "Administrative Policy Governing Electronic Filing and Service" for electronically filing documents in civil and criminal cases. If there is any conflict between a local rule and an administrative policy, the administrative policy controls.

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GENERAL RULE 1.1

DIVISIONS

The State of North Dakota constitutes one (1) judicial district divided into two (2) divisions. The counties comprising each division are as follows:

(1) Western Division: Adams, Billings, Bottineau, Bowman, Burleigh, Burke, Divide, Dunn, Emmons, Golden Valley, Grant, Hettinger, Kidder, Logan, McHenry, McIntosh, McKenzie, McLean, Mercer, Morton, Mountrail, Oliver, Pierce, Renville, Sheridan, Sioux, Slope, Stark, Ward, Wells, and Williams.

(2) Eastern Division: Barnes, Benson, Cass, Cavalier, Dickey, Eddy, Foster, Grand Forks, Griggs, LaMoure, Nelson, Pembina, Ramsey, Ransom, Richland, Rolette, Sargent, Steele, Stutsman, Traill, Towner, and Walsh;

GENERAL RULE 1.2

OFFICE OF THE CLERK

The clerk maintains offices in the cities of Bismarck and Fargo, with the headquarters located in Bismarck. The clerk's offices 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.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' 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.

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 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.

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 filing a motion to appear *pro hac vice* may be found on the court's website.

(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 1.4

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. 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. A student admitted to practice under this rule is not required to pay an admission fee.

(B) STUDENT REQUIREMENTS

To be admitted to practice as a student member of the bar of this court, an applicant must meet the following qualifications:

(1) the applicant must be

(a) 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,

(b) currently enrolled in a clinical education program at the University of North Dakota School of Law or other American Bar Association accredited law school and have completed at least three semesters or equivalent time of law study, or

(c) a graduate of the University of North Dakota School of Law or other American Bar Association accredited law school, studying to write a state's bar examination or awaiting bar examination results;

(2) the applicant must be knowledgeable regarding the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, the Rules of Professional Conduct approved by the Supreme Court of North Dakota, and these Local Rules; and,

(3) a supervising attorney must make a motion to admit an applicant.

(C) ADMISSION PROCEDURE

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

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

(3) Unless made in open court, a copy of the motion must be served on all other parties.

(4) The court will inform the movant, the student applicant, and all parties 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 court.

(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

An attorney supervising student practitioners must:

(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) 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 to the student; and,

(5) 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.

GENERAL RULE 1.5

USE OF ELECTRONIC DEVICES

(A) PHOTOGRAPHS AND RECORDINGS

The taking of photographs and operation of recording equipment in the courtroom or its surrounding areas, and radio and television broadcasting from the courtroom or its surrounding areas, during the progress of or in connection with judicial proceedings is prohibited whether or not court is actually in session. 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.

(B) WIRELESS COMMUNICATION DEVICES

Wireless communication devices are allowed and may be used in all areas of the courthouse, including courtrooms. All wireless communication devices must be rendered silent before entering a courtroom. Wireless communication devices may not be used to photograph, record, televise, or otherwise transmit any images or sounds in a courtroom, judge's chambers, jury room, or corridor of the building on the floor on which a courtroom or jury room is located. Wireless communication devices must not be used for voice communication in a courtroom during judicial proceedings without the express permission of the presiding judge.

(C) EXCLUSION AND INSPECTION

The United States Marshal Service and court security officers are authorized to exclude from any courtroom, prohibit from the courthouse, or confiscate any devices they have reason to believe violate this rule. All electronic devices are subject to visual and/or electronic inspection by the United States Marshal Service and court security officers at any time. An inspection may include a demonstration by the person in possession of the device that it is functional.

GENERAL RULE 1.6

DECORUM

(A) INSPECTION

Persons may enter an area of a courthouse building only if they have submitted to inspection of their person or any items in their possession, if requested by a United States Marshal or a court security officer.

(B) COURTROOMS

All persons must take a seat immediately upon entering the courtroom while the court is in session and must conduct themselves in a quiet, orderly, and respectful manner. Persons must be fully clothed in attire suitable to the maintenance of the dignity of the court. Persons may not chew gum or bring food into the courtroom while court is in session. Persons 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.

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devices must not be used for voice communication in a courtroom during judicial proceedings without the express permission of the presiding judge.

GENERAL RULE 1.7

STIPULATIONS

No agreement or consent between the parties or their attorneys in respect to proceedings in this court is binding, unless it is: (1) signed by all parties or their attorneys, filed with the clerk, and approved by the court; or (2) made in open court, on the record, and approved by the court.

GENERAL RULE 1.8

COURT REPORTERS' TRANSCRIPTS

When a party orders a transcript, the party requesting the transcript (unless appellant is proceeding *in forma pauperis*) must pay to the reporter the fee fixed by the Judicial Conference of the United States. 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.

GENERAL RULE 1.9

FEES

A party must pay, in advance, all fees required by statute or by the Judicial Conference of the United States, except when a party is authorized by court order to proceed *in forma pauperis* or in exigent circumstances as authorized by court order.

GENERAL RULE 1.10

DEPOSIT AND WITHDRAWAL OF FUNDS WITH THE COURT

(A) GENERAL

(1) NON-INTEREST BEARING FUNDS

The clerk must deposit all non-interest bearing funds (*e.g.*, bonds in criminal cases, condemnation proceeds) in the local registry of the court.

(2) INTEREST BEARING FUNDS

The clerk must deposit interest-bearing funds (*e.g.*, deposits pursuant to Fed. R. Civ. P. 67) in the registry of this court in the Court Registry Investment System (CRIS), subject to withdrawal upon court order. The Director of the Administrative Office of the United States Courts is designated as custodian for CRIS. The custodian must deduct from the income earned on any deposit a service fee for the management of investments in the CRIS and a registry fee, as set by the Director of the Administrative Office of the United States Courts.

(3) INTERPLEADER FUNDS

Interpleader fund deposited under 28 U.S.C. § 1335 are considered a "Disputed Ownership Fund" (DOF), a taxable entity that requires tax administration. Unless otherwise ordered by the court, interpleader funds shall be deposited in the DOF established within the CRIS and administered by the Administrative Office of the United States Courts, which shall be responsible for meeting all DOF tax administration requirements. The custodian is authorized and directed to deduct the DOF fee on assets on deposit in the DOF for management of investments and tax administration. The custodian is further authorized and directed to withhold and pay federal taxes due on behalf of the DOF.

(4) COMPLIANCE

A party is responsible for supplying the court with the information required by this rule.

(B) DEPOSIT OF FUNDS

(1) NON-INTEREST BEARING FUNDS

Prior to presenting to the clerk any deposit of funds, the party must obtain from the court an order directing that the funds be deposited in the local registry of the court.

(2) INTEREST BEARING FUNDS

(a) Prior to presenting to the clerk any deposit of funds, which are to be interest bearing, the party must obtain from the court an order including the following:

(i) the amount to be invested; and

(ii) language authorizing the custodian to deduct the applicable fees and taxes, without further order of the court.

(b) The instrument to be deposited in the registry must be made payable to the United States District Court. No third–party checks will be accepted. All funds must be forwarded to the Fargo clerk's office for deposit.

(c) The following guidelines will govern the deposit of interest-bearing registry funds.

(i) All interest-bearing registry funds must be invested in CRIS.

(ii) The clerk will deposit the funds as soon as the business of the clerk's office allows.

(C) WITHDRAWAL OF FUNDS

Funds deposited in the registry of the court may be withdrawn only upon order of the court. Unless otherwise ordered by the court, withdrawals of registry funds will be made by check only.

(1) WITHDRAWAL OF NON-INTEREST BEARING FUNDS

Cash bonds are distributed upon order of the court. Cash deposited as security on a bond will be refunded upon order of the court in accordance with the affidavit of

ownership filed pursuant to D.N.D. Gen. L.R. 1.11, unless otherwise ordered by the court.

(2) WITHDRAWAL OF INTEREST BEARING FUNDS

(a) Prior to the court issuing an order disbursing interest-bearing funds, a party must file, under seal, a document setting forth the following:

(i) the full mailing instructions for each disbursement check, including full street address and zip code; and

(ii) a completed IRS Form W-9.

(b) All orders disbursing interest-bearing funds must contain the following:

(i) the principal sum initially deposited;

(ii) direction for the custodian to distribute the interest; and

(iii) the amount of the principal sum to be disbursed to each payee.

(3) COMPLIANCE

Disbursements of funds will not be made until the information set forth above is provided to the clerk.

GENERAL RULE 1.11

BONDS

(A) ATTORNEY NOT TO BE SURETY

No attorney 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) CORPORATE SURETY

A corporate 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 surety is qualified. In all other instances, a corporate surety qualified to write bonds in the State of North Dakota is an acceptable surety. In all cases, a power of attorney showing the authority of the agent signing the bond must be attached to the bond.

(C) PERSONAL SURETY

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

(D) CASH BONDS AND PERSONAL PROPERTY

Upon execution and filing of a written bond, a party must deposit cash and other personal property with the court. Unless otherwise ordered by the court, every deposit of cash 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 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

The court on motion or on its own initiative may order any party to file a bond 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 the sufficiency of the surety. If the court finds a bond to be insufficient, the court may order that a sufficient bond be filed within a stated time. If the party required to file the bond does not comply with such order, the case may be dismissed for want of prosecution, or the judge may take other appropriate action.

GENERAL RULE 1.12

NON-APPROPRIATED FUND

(A) DEPOSIT

The clerk must deposit all local attorney admission and *pro hac vice* fees in a non-appropriated fund.

(B) USE

The non-appropriated fund may be used only to benefit the bar and bench 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.

(C) PLAN

The clerk must maintain a written plan for the administration and operation of the non-appropriated fund on file in the office of the clerk.

CIVIL RULE 3.1

DIVISION ASSIGNMENT

(A) DIVISION ASSIGNMENT AND OBJECTIONS

All civil cases must be assigned to the division where the action arose or where the defendant resides, with the trial to be held within that division. D.N.D. Gen. L.R. 1.1 sets forth the counties comprising each division.

The plaintiff must designate the appropriate division in the caption of the complaint. If a party believes that the case has been assigned to the wrong division, a party must object within the time period for answering either by including an objection in the answer or by filing a motion seeking a change in the division assignment, except in removal cases. In removal cases, a party must object within thirty (30) days from the notice of removal. The failure to make a timely objection constitutes a waiver of any objection to the division assignment.

(B) REASSIGNMENT OR CHANGE OF PLACE OF TRIAL

The court may order a change of division assignment or a change in the place of trial (1) upon timely motion made by a party when the initial division assignment is improper, (2) upon stipulation of the parties with the consent of the court, or (3) at any time in the court's discretion with or without a motion by a party.

CIVIL RULE 4.1

SERVICE OF PROCESS AND COURT ORDERS

(A) SERVICE BY UNITED STATES MARSHAL SERVICE

The United States Marshal Service is relieved from serving civil process and court orders for non-federal litigants, except as required by law or an order of the court for good cause shown.

(B) APPOINTMENT OF SPECIAL PROCESS SERVERS

State sheriffs and their deputies are specially appointed to serve and execute all civil process and court orders pursuant to Fed. R. Civ. P. 4 and 4.1 without court order.

(C) PROOF OF SERVICE OF SUBPOENAS

A party must retain proof of service of subpoenas until the entry of a final non-appealable judgment or dismissal. A party must not file proof of service of subpoenas unless required to support a contested issue or unless ordered by the court.

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 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 6.1

TIME

The method of computing time under the Local Rules is the same as that set forth in Fed. R. Civ. P. 6.

CIVIL RULE 7.1

MOTIONS

(A) DISPOSITIVE MOTIONS

(1) DEADLINES AND PAGE LIMITATIONS

A dispositive motion is one which seeks dispositive relief, whether partial or complete, pursuant to Fed. R. Civ. P. 12 or 56. Upon serving and filing a dispositive motion, the moving party must contemporaneously serve and file a memorandum in support not to exceed forty (40) pages, of which no more than twenty-five (25) pages may be argument. The adverse party has twenty-one (21) days after service of the memorandum in support to serve and file a response subject to the same page limitations. The moving party has fourteen (14) days to serve and file a reply not to exceed ten (10) pages.

DISPOSITIVE MOTION DEADLINES & PAGE LIMITS		
	DAYS	PAGES
Memorandum in Support of Motion		40
Response	21	40
Reply	14	10

(2) MEMORANDUM IN SUPPORT OF A MOTION FOR SUMMARY JUDGMENT

A memorandum in support of a motion for summary judgment must contain, separate from the argument portion of the memorandum, a recitation of the material facts that the moving party claims are uncontested. The statement of facts may be in narrative form, but each significant material fact must be supported by reference to specific pages, paragraphs, or parts of the pleadings, depositions, answers to interrogatories, exhibits, and affidavits that have been served and filed with the court and that conform to the requirements of Fed. R. Civ. P. 56(c). A party's failure to comply with these requirements may result in the denial of the motion.

(3) RESPONSE TO A MOTION FOR SUMMARY JUDGMENT

A response to a motion for summary judgment must also state the facts upon which the party opposing summary judgment relies and must clearly identify those facts that the opposing party claims are contested and that require a trial. The recitation of facts in the response to a motion for summary judgment may be in narrative form, but must be supported by reference to specific pages, paragraphs, or parts of the pleadings, depositions, answers to interrogatories, exhibits, and affidavits that have been served and filed with the court and that conform to the requirements of Fed. R. Civ. P. 56(c). The party opposing summary judgment must clearly explain in the argument portion of the response why the facts claimed to be contested are material to the issues to be resolved. A party's failure to comply with these requirements may result in a motion for summary judgment being granted.

(B) NON-DISPOSITIVE MOTIONS

A non-dispositive motion is any motion not set forth in D.N.D. Civ. L.R. 7.1(A) or otherwise designated by the court as a dispositive motion. Upon serving and filing a non-dispositive motion, the moving party must contemporaneously serve and file a memorandum in support not to exceed twenty (20) pages. The adverse party has fourteen (14) days after service of a memorandum in support to serve and file a response not to exceed twenty (20) pages. The moving party has seven (7) days to serve and file a reply not to exceed seven (7) pages.

NON-DISPOSITIVE MOTION DEADLINES & PAGE LIMITS		
	DAYS	PAGES
Memorandum in Support of Motion		20
Response	14	20
Reply	7	7

(C) REQUESTS FOR ADDITIONAL FILINGS OR TO EXCEED PAGE LIMITATIONS

Parties must serve and file a motion to obtain leave of court to submit any additional filings or filings that exceed the page limitations. Leave of court will be granted only upon a showing of good cause. A memorandum in support of a motion for leave of court to submit an additional filing or to submit

a filing that exceeds the page limitation is not required and, if filed, must not exceed two (2) pages in length.

(D) FORM OF FILINGS AND EXHIBITS

(1) A party must serve and file in PDF a complete copy of a deposition or other transcript offered in support of or in opposition to a motion.

(2) A party must serve and file each exhibit offered in support of or in opposition to a motion as a separate attachment with a description of sufficient detail to make the attachment readily identifiable to the court. A party must not attach as an exhibit any pleading or other document already on file with the court, but must instead refer to the docket number assigned to the document.

(3) A table of contents and a table of authorities, if a party chooses to include them in documents filed with the court, are excluded from the page limitations set forth in these rules.

(4) All filings must comply with the form requirements of D.N.D. Civ. L.R. 5.1 and the "Administrative Policy Governing Electronic Filing and Service."

(E) MOTIONS FOR ORAL ARGUMENT

The court may order oral argument on its own or upon motion of either party. A memorandum in support of the motion for oral argument is not required and, if filed, must not exceed two (2) pages in length.

(F) FAILURE TO FILE A MEMORANDUM OR A RESPONSE

A party's failure to serve and file a memorandum or a response within the prescribed time may subject a motion to summary ruling. A moving party's failure to serve and file a memorandum in support may be deemed an admission that the motion is without merit. An adverse party's failure to serve and file a response to a motion may be deemed an admission that the motion is well taken.

(G) *AMICUS CURIAE* BRIEFS

(1) The United States or its officer or agency, or a State, Territory, Commonwealth, or the District of Columbia may file an *amicus curiae* brief without the consent of the parties or leave of court. Any other *amicus curiae* may file a brief only by leave of court or if the brief states that all parties have consented to its filing. A motion for leave to file an *amicus curiae* brief must state the movant's interest, the reason why an *amicus curiae* brief is desirable, and why the matters asserted are relevant to the disposition of the case. A motion for leave to file an *amicus curiae* brief must also be accompanied by the proposed brief.

(2) An *amicus curiae* must serve and file its brief no later than seven (7) days after the filing of a party's memorandum in support of a motion or response to a motion, unless otherwise ordered by the court.

(3) An *amicus curiae* brief must comply with the form requirements of D.N.D. Civ. L.R. 5.1 and the "Administrative Policy Governing Electronic Filing and Service." Unless otherwise ordered by the court, an *amicus curiae* brief may be no longer than the maximum length authorized by these rules for a party's corresponding brief. (i.e., if the *amicus curiae* brief is supporting a dispositive motion, the *amicus curiae* brief may be no longer than forty (40) pages in length; if the *amicus curiae* brief is in response to a non-dispositive motion, the *amicus curiae* brief may be no longer than twenty (20) pages in length).

CIVIL RULE 16.1

CIVIL CASE MANAGEMENT

The court will schedule pretrial conferences as required by Fed. R. Civ. P. 16(b) and as otherwise ordered by the court. 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. §§ 2241, 2254, 2255 and 25 U.S.C. § 1303);

(5) Freedom of Information Act proceedings;

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

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

(8) actions brought by the United States to collect debts or recover benefit payments;

(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) motions for attorneys fees or costs;

(16) actions to enforce or quash administrative summons or 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);

(18) foreclosure actions;

(19) mandamus actions (28 U.S.C. § 1361).

A party in any case may request that the court hold a pretrial conference.

CIVIL RULE 16.2

ALTERNATIVE DISPUTE RESOLUTION ("ADR")

(A) AUTHORIZATION

(1) The court authorizes the use of ADR in civil cases, including adversary proceedings in bankruptcy, pursuant to 28 U.S.C. § 651.

(2) The primary form of ADR offered by the court is mediation in the form of 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, such as early neutral evaluation. The court also encourages, but does not require, private ADR 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. The parties must include in their Fed. R. Civ. P. 26(f) Report a recitation of their discussion about participating in early ADR and must indicate in their Fed. R. Civ. P. 16(b) Scheduling/Discovery Plan the ADR option they choose and the appropriate timing. 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 settlement judge will not inform the trial judge of any positions taken by parties during the ADR process and will only advise whether or not the case settled. The trial judge will not ordinarily serve as the settlement judge, unless the parties jointly agree otherwise in an appropriate jury case.

(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 to 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 court's ADR program.

(E) DISQUALIFICATION

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

(2) Any party who believes that a judicial officer conducting an ADR proceeding has a conflict of interest must serve and file a motion 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.

CIVIL RULE 26.1

CIVIL DISCOVERY

(A) SCOPE AND TIMING

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.

(B) FORM

The response to an interrogatory, document request, or request for admissions must set out the interrogatory or request in full, followed by the response. Parties are encouraged to provide an electronic courtesy copy of the discovery request to the opposing party.

(C) FILING

A party must not file discovery materials except when required for a pending motion or when otherwise ordered by the court.

(D) EXEMPTIONS

The following types of proceedings are exempt from the requirements of Fed. R. Civ. P. 26(a)(1), unless otherwise ordered by the court:

(1) those proceedings set forth in Fed. R. Civ. P. 26(a)(1)(B);

(2) bankruptcy appeals;

(3) consent cases:

(4) collection actions: and

(5) foreclosures.

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 41.1

DISMISSAL OF SETTLED CIVIL CASES

Within thirty (30) days after advising the court that an action has been settled or a longer time as the court may set, the parties must serve and file the documents necessary to terminate the action, unless the United States is a party. If the United States is a party to the action, the parties must serve and file the documents necessary to terminate the action within sixty (60) days. If the parties fail to do so, the court may order dismissal of the action, but a party may seek reinstatement of the case by serving and filing a motion to reinstate the case within sixty (60) days after the date of the order. The motion must show good cause as to why the case should be reinstated.

CIVIL RULE 43.1

EXHIBITS

(A) MARKING EXHIBITS

Parties must complete the physical marking and numbering of all papers and objects that are expected to be introduced as exhibits prior to any proceedings before the court following the requirements of any pretrial order that may govern the marking of exhibits. Unless otherwise provided by a pretrial order, the parties must number the exhibits consecutively, with each party using a separate number with sufficient gaps for unanticipated or rebuttal exhibits (*e.g.*, the plaintiff using numbers P1-P20 and the defendant using numbers D50-D70).

(B) CUSTODY OF EXHIBITS

The clerk must retain custody of all exhibits which have been offered in evidence, unless the court orders otherwise. Parties retaining custody of exhibits of unusual bulk or weight must permit their inspection by any party after a reasonable request and bear the responsibility of the exhibits' safekeeping and transportation to all subsequent proceedings, if necessary.

(C) RETURN OF EXHIBITS

Upon notice to all parties, the clerk must return exhibits to the party who produced them. The party who receives the exhibits must execute a receipt prepared by the clerk. The party is responsible for retention and safekeeping for the duration of all subsequent proceedings.

(D) SENSITIVE EXHIBITS

(1) Drugs, legal or counterfeit money, articles of high monetary value, explosives, weapons, or contraband of any kind (including child pornography) are considered sensitive exhibits.

(2) A party offering a firearm must render the firearm inoperable whenever possible through the use of a trigger guard, and the United States Marshal Service must inspect the firearm at the time it is brought into the courthouse. The party offering

other sensitive exhibits must present the exhibits in a sealed evidence bag. The sealed evidence bag must not be opened except upon direction of the court.

(3) At the conclusion of a hearing or trial, the party offering a sensitive exhibit must take custody of it and must execute a receipt prepared by the clerk.

CIVIL RULE 45.1

SUBPOENA

The Clerk must not issue blank subpoenas to a pro se party except upon order of the court.

CIVIL RULE 47.1

CIVIL JURY TRIALS

(A) SELECTION OF JURORS

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

(B) DISCLOSING THE NAMES OF JURORS

After a petit jury is drawn, the clerk must send a list of prospective jurors' names to each party in the case 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 Fed. R. Civ. P. 48.

(2) The initial panel for *voir dire* examination must consist of the number of jurors and alternate jurors to try the case, plus the number of persons equal to the total number of peremptory challenges.

(3) Unless otherwise ordered by the court, each party may exercise challenges, beginning with the plaintiff, striking one (1) juror until each side has exhausted or waived its challenges.

(4) If all parties exercise all of their peremptory challenges, the trial jury will consist of those unchallenged jurors, following the dismissal of jurors for cause and the exercise of peremptory challenges. If a party declines to exercise all of its challenges, the trial jury will consist of those unchallenged jurors in the order drawn, following the dismissal of jurors for cause and the exercise of peremptory challenges.

(D) EXAMINATION OF WITNESSES AND ARGUMENTS TO JURY

(1) Only one attorney for a party may examine or cross-examine the same witness, unless otherwise ordered by the court.

(2) Only one attorney for a party may argue any question to the court or jury, except by special permission of the court before the argument opens. Attorneys may split the main and rebuttal portions of closing argument without leave of court.

(3) The court may impose time limits on the length of opening statements or closing arguments. The plaintiff must open and close the argument to the jury, unless otherwise ordered by the court.

CIVIL RULE 51.1

CIVIL JURY INSTRUCTIONS

(A) DEADLINES

Each party must serve and file requested instructions to the jury and a proposed verdict form, at least seven (7) days prior to the commencement of a jury trial, unless a different procedure is ordered by the court. A party may present additional requests for instructions relating to issues arising during the trial at any time prior to argument.

(B) FORM OF REQUESTED INSTRUCTIONS

All requests for instructions must be plainly marked with the number of the case and must designate the party submitting the request. 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. A party requesting an Eighth Circuit or North Dakota pattern jury instruction need only designate the pattern jury instruction number and name, unless the pattern instruction is modified. If the pattern instruction is modified, the entire instruction must be submitted and must be clearly identified as modified.

CIVIL RULE 54.1

COSTS AND ATTORNEY'S FEES

(A) COSTS

(1) DISTRICT COURT COSTS

The parties must serve and file any voluntary agreement with respect to taxable costs in the form of a written stipulation. In the event the parties are unable to stipulate to the costs, the court will apply the following procedures, unless otherwise ordered by the court.

A party seeking an award of costs must serve and file a motion for costs no later than fourteen (14) days after entry of judgment. The motion must be accompanied by a verified statement of costs that contains, for each category of costs being claimed, a detailed breakdown of each item of claimed costs within the category with sufficient description so that the item can be readily understood, together with a brief citation to the statutory or other legal authority that provides for recovery of the category of claimed costs, and any supporting documents that will be relied upon to establish the claim of costs.

The applicant's attorney must verify the statement of costs by affirming that the items are correct, the services were actually and necessarily performed, and the disbursements were necessarily incurred. A party's failure to comply with the foregoing procedures may be deemed a waiver of any or all of the claim for costs.

Each party objecting to the claimed costs must serve and file a response within fourteen (14) days of being served that (1) sets forth specific objections to each item of cost being disputed, along with citation to any authority for not awarding the item or category of cost, and (2) has attached to it as exhibits any supporting documents that will be relied upon to contest the claim of costs. A party's failure to object to a specific item of cost may be deemed a waiver of any objection to the claimed item.

Within seven (7) days after being served with the response, the moving party may file a reply.

The clerk will only tax as part of a judgment those costs that are awarded by the court or that have been agreed upon by the parties in a stipulation filed with the clerk. The parties need to be aware that the filing of a motion for costs may not affect the finality and appealability of the final judgment previously entered.

(2) COSTS ON APPEAL TAXABLE IN THE DISTRICT COURT

The court will tax costs allowable pursuant to Fed. R. App. P. 39(e) in accordance with D.N.D. Civ. L.R. 54.1(A) (1), provided a verified statement of costs is filed within fourteen (14) days of the issuance of the mandate by the court of appeals.

(B) ATTORNEY'S FEES

(1) The time periods and other procedures set forth in D.N.D. Civ. L.R. 54.1(A)(1) above, including submitting a verified statement of fees and expenses along with any supporting documents, will apply to any claim for attorney's fees and related nontaxable expenses pursuant to Fed. R. Civ. P. 54(d)(2) unless the recovery of attorney's fees and expenses is sought against the United States.

(2) When recovery of attorney's fees is sought against the United States, a party must make a motion as provided in 28 U.S.C. § 2412(d)(1)(B). The United States may have fourteen (14) days from service of the motion to respond. Within seven (7) days after being served with the response, the moving party may file a reply, but no additional documents may be filed unless upon order of the court for good cause.

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 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 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 6.1

GRAND JURIES

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

CRIMINAL RULE 17.1

SUBPOENA

The Clerk must not issue blank subpoenas to a pro se party except upon order of the court.

CRIMINAL RULE 23.1

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 "Plan for Random Jury Selection."

(B) DISCLOSING THE NAMES OF JURORS

After a petit jury is drawn, the clerk must send a list of prospective jurors' names to each party in the case 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 Fed. R. Crim. P. 23 and 24.

(2) The initial panel for *voir dire* examination in all criminal cases must consist of the number of jurors and alternate jurors to try the case, plus the number of persons equal to the total number of peremptory challenges.

(3) Unless otherwise ordered by the court, the parties must exercise challenges in the following manner:

(a) Misdemeanors. The United States may have three (3) peremptory challenges and the defendant may have three (3) peremptory challenges, exercised by the United States first striking one (1), the defendant then striking one (1), and so on until each side has exhausted or waived its challenges.

(b) Felonies Not Punishable by Death. The United States may have six (6) peremptory challenges and the defendant may have ten (10) peremptory challenges, exercised in the following order until each side has exhausted or waived its challenges: the first by the United States, the next two (2) by the defendant, the next by the United States, the next two (2) by the defendant, the next by the United States, the next two (2) by the defendant, the next by

the United States, the next two (2) by the defendant, the next by the United States, the next by the defendant, the next by the United States, and the last by the defendant.

(c) Capital Offenses. The United States may have twenty (20) peremptory challenges and the defendant may have twenty (20) peremptory challenges, exercised in the following order: the first by the United States, the next by the defendant, the next by the United States, and so on until each side has exhausted or waived its challenges.

(4) If all parties exercise all of their peremptory challenges, the trial jury will consist of those unchallenged jurors, following the dismissal of jurors for cause and the exercise of peremptory challenges. If a party declines to exercise all of its challenges, the trial jury will consist of those unchallenged jurors in the order drawn, following the dismissal of jurors for cause and the exercise of peremptory challenges.

(D) EXAMINATION OF WITNESSES AND ARGUMENTS TO JURY

(1) Only one attorney for a party may examine or cross-examine the same witness, unless otherwise ordered by the court.

(2) Only one attorney for a party may argue any question to the court or jury, except by special permission of the court before the argument opens. Attorneys may split the main and rebuttal portions of closing argument without leave of the court.

(3) The court may impose time limits on the length of opening statements or closing arguments. The United States must open and close the argument to the jury, unless otherwise ordered by the court.

CRIMINAL RULE 26.1

EXHIBITS

(A) MARKING EXHIBITS

Parties must complete the physical marking and numbering of all papers and objects that are expected to be introduced as exhibits prior to any proceedings before the court following the requirements of any pretrial order that may govern the marking of exhibits. Unless otherwise provided by a pretrial order, the parties must number the exhibits consecutively, with each party using a separate number with sufficient gaps for unanticipated or rebuttal exhibits (*e.g.*, the plaintiff using numbers P1-P20 and the defendant using numbers D50-D70).

(B) CUSTODY OF EXHIBITS

The clerk must retain custody of all exhibits which have been offered in evidence, unless the court orders otherwise. Parties retaining custody of exhibits of unusual bulk or weight must permit their inspection by any party after a reasonable request and bear the responsibility of the exhibits' safekeeping and transportation to all subsequent proceedings, if necessary.

(C) RETURN OF EXHIBITS

Upon notice to all parties, the clerk must return exhibits to the party who produced them. The party who receives the exhibits must execute a receipt prepared by the clerk. The party is responsible for retention and safekeeping for the duration of all subsequent proceedings.

(D) SENSITIVE EXHIBITS

(1) Drugs, legal or counterfeit money, articles of high monetary value, explosives, weapons, or contraband of any kind (including child pornography) are considered sensitive exhibits.

(2) A party offering a firearm must render the firearm inoperable whenever possible through the use of a trigger guard, and the United States Marshal Service must inspect the firearm at the time it is brought into the courthouse. The party offering

other sensitive exhibits must present the exhibits in a sealed evidence bag. The sealed evidence bag must not be opened except upon direction of the court.

(3) At the conclusion of a hearing or trial, the party offering a sensitive exhibit must take custody of it and must execute a receipt prepared by the clerk.

CRIMINAL RULE 30.1

CRIMINAL JURY INSTRUCTIONS

(A) DEADLINES

Each party must serve and file requests for instructions to the jury and a proposed verdict form at least seven (7) days prior to the commencement of a jury trial. A party may present additional requests for instructions relating to issues arising during the trial at any time prior to the argument.

(B) FORM OF REQUESTED INSTRUCTIONS

All requests for instructions must be plainly marked with the number of the case and must designate the party submitting the request. 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. A party requesting an Eighth Circuit or North Dakota pattern jury instruction need only designate the pattern jury instruction number and name, unless the pattern instruction is modified. If the pattern instruction is modified, the entire instruction must be submitted and must be clearly identified as modified.

CRIMINAL RULE 32.1

PRESENTENCE INVESTIGATIONS AND SENTENCING MEMORANDA

(A) PRESENTENCE INVESTIGATIONS

(1) CONFIDENTIALITY

Presentence Investigations (PSI) and other reports by Probation and Pretrial Services officers are confidential. The court authorizes the defendant, defendant's attorney and the United States to retain their copies of the PSI. The court also authorizes Probation and Pretrial Services officers to provide a copy of the PSI to the United States Federal Bureau of Prisons, the United States Sentencing Commission, other agencies providing placement, training or treatment services to persons sentenced by the court, and to others as ordered by the court. With the exception of use by the United States in collecting an assessment, criminal fine, forfeiture, or restitution imposed by the court, the confidentiality of the PSI must be maintained at all times. Any copy of a PSI or other report prepared by Probation and Pretrial Services officers must not be reproduced or redistributed without the express approval of the court.

(2) REQUEST FOR DISCLOSURE

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

(B) SENTENCING MEMORANDA

A party may, but is not required to, file a sentencing memorandum. If a party files a sentencing memorandum, it must be served and filed no later than five (5) days prior to the sentencing hearing. A party may file a response to a sentencing memorandum. If a party files a response to a sentencing memorandum, it must be served and filed no later than two (2) days prior to the sentencing hearing.

CRIMINAL RULE 45.1

TIME

The method of computing time under the Local Rules is the same as that set forth in Fed. R. Crim. P. 45.

CRIMINAL RULE 47.1

MOTIONS

(A) MOTIONS

Upon serving and filing a motion, the moving party must contemporaneously serve and file a memorandum in support not to exceed twenty (20) pages. The adverse party has fourteen (14) days after service of a memorandum in support to serve and file a response not to exceed twenty (20) pages. The moving party has seven (7) days to serve and file a reply not to exceed seven (7) pages.

MOTION DEADLINES AND PAGE LIMITATIONS		
	DAYS	PAGES
Memorandum in Support of Motion		20
Response	14	20
Reply	7	7

(B) REQUESTS FOR ADDITIONAL FILINGS OR TO EXCEED PAGE LIMITATIONS

Parties must serve and file a motion to obtain leave of court to submit any additional filings or filings that exceed the page limitations. Leave of court will be granted only upon a showing of good cause. A memorandum in support of a motion for leave of court to submit an additional filing or to submit a filing that exceeds the page limitation is not required and, if filed, must not exceed two (2) pages in length.

(C) FORM OF FILINGS AND EXHIBITS

(1) A party must serve and file in PDF format a complete copy of a deposition or other transcript offered in support of or in opposition to a motion.

(2) A party must serve and file each exhibit offered in support of or in opposition to a motion as a separate attachment with a description of sufficient detail to make the attachment readily identifiable to the court. A party must not attach as an exhibit any

pleading or other document already on file with the court, but must instead refer to the docket number assigned to the document.

(3) A table of contents and a table of authorities, if a party chooses to include them in documents filed with the court, are excluded from the page limitations set forth in these rules.

(4) All filings must comply with the form requirements of Crim. D.N.D. L. R. 49.1 and the "Administrative Policy Governing Electronic Filing and Service."

(D) MOTIONS FOR ORAL ARGUMENT

The court may order oral argument on its own or upon motion of either party. A memorandum in support of the motion for oral argument is not required and, if filed, must not exceed two (2) pages in length.

(E) FAILURE TO FILE A MEMORANDUM OR A RESPONSE

A party's failure to serve and file a memorandum or a response within the prescribed time may subject a motion to summary ruling. A moving party's failure to serve and file a memorandum in support may be deemed an admission that the motion is without merit. An adverse party's failure to serve and file a response to a motion may be deemed an admission that the motion is well taken.

CRIMINAL RULE 49.1

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 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;

(11) Issue warrants for searches and seizures which are not within the purview of Fed. R. Crim. P. 41;

(12) Issue warrants of arrest for persons who have been determined, pursuant 18 U.S.C. § 3144, to be material witnesses; and

(13) 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 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.

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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 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	5 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	

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 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)	