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## Rules of Procedure of the United States District Court for the District of Montana

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# Rules of Procedure of the United States District Court for the District of Montana

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# Rules of Procedure of the United States District Court for the District of Montana

## RULE 1

### ATTORNEYS

(a) *Eligibility.* Any person who has been admitted to practice in the Supreme Court of the United States, any Federal Court of Appeals, the highest appellate court of a sister state, the highest court of an organized Territory of the United States, or the Supreme Court of the State of Montana, is eligible for admission to the Bar of this court.

(b) *Procedure on Admission.* Persons applying for admission must personally appear in Court at the time the motion therefor is made, and no application will be heard unless there has been previously filed with the Clerk of the Court a certificate signed by two members of the Bar of this court to the effect that the applicant has been admitted to practice in one of the above-mentioned courts, and that he is a person of good moral character and fair professional standing. Before any certificate of admission shall be issued, the applicant must sign the roll of attorneys and take and subscribe the following oath or affirmation:

“I solemnly swear (or affirm) that I will support the Constitution of the United States; that I will bear true faith and allegiance to the Government of the United States; that I will maintain the respect due to the Courts of Justice and Judicial Officers, and that I will demean myself as an attorney and counselor of this Court uprightly.”

(c) *Permission to Appear in a Particular Case.* Should a party in any cause not appear in person, and should his attorney not be a resident of this State, even though admitted to practice in this court, there shall be joined of record in such appearance an associate attorney who is a resident of this District and admitted to practice in this court.

(d) *Government Attorneys:* Attorneys admitted to practice in any United States District Court may practice before this court in any proceeding in which they are representing the United States or any of its officers or agencies.

(e) *Appearances:* No attorney, except an attorney appointed by the Court to represent an indigent defendant, shall appear for a defendant in a criminal case until he has filed with the Clerk a written appearance, giving the name and address of himself and his client. The United States Attorney shall be served with a copy of the appearance before it is filed, and, should the attorney cease to act for the defendant for any reason, the United States Attorney shall be served with notice.

No attorney, unless his name appears on the pleadings in the case, may participate in any proceedings in said case until his name has been entered of record as one of counsel.

No attorney may withdraw from any case, civil or criminal, except by leave of Court after notice served on his client.

(f) *Professional Conduct and Ethics*: The standards of professional conduct of attorneys practicing in this Court shall include the American Bar Association's Canons of Professional Ethics. For a willful violation of any of these canons in connection with any matter pending before this Court an attorney may be subjected to appropriate disciplinary action by the Court.

(g) *Disbarment and Discipline*: For good cause and after an opportunity to be heard, any member of the Bar of this court may be disbarred, suspended for a definite time, reprimanded, or disciplined as the Court may deem proper, except that where it is shown that any member of the Bar of this Court has been disbarred from practice in any State, District, Commonwealth or possession, or Court of the United States, he will be forthwith suspended from practice before this Court. He will thereupon be afforded the opportunity to show good cause, within forty days, why he should not be disbarred.

(h) *Reinstatement*: Any attorney who has been disbarred by this Court may petition for reinstatement.

(i) *Advisory Committee*: The Court may appoint a Committee of the Bar to assist it in matters involving the professional conduct of attorneys arising in or connected with any matter pending before the Court, whether such conduct occurred before or after the Court acquired jurisdiction of the cause. Such Committee shall, upon order of the Court, or a Judge thereof, conduct such investigations as the Court may direct and report the results of their investigation to the Court and their recommendations. Such report and recommendations shall be advisory only.

(j) *Attorney, Etc., as a Witness—Summing Up*: If an attorney or counsel of any party be examined as a witness in a cause, and give testimony on the merits, he shall not argue the merits of the cause, either to the Court or Jury, except by permission of the Court, and as limited by the Court, in the case.

(k) *Agreements of Attorneys*: No executory agreement or stipulation by an attorney, not made in open court, the existence of which is not conceded, will be enforced, unless the same was in writing and signed by the attorney of record; and no executory agreement by an attorney in open court, the existence of which is not conceded, will be enforced unless the same be either made as above provided, or appear from the minutes of the Clerk, or from the minutes of the notes of the reporter, or be within the clear recollection of the Judge. Agreements during a trial or hearing in open court may be made by the counsel conducting the trial, though he be only one of the attorneys of record.

(l) *Attorney Under Appointment of the Court*: It shall be the duty of every attorney and counsel to act as such without compensation, whenever he is appointed by the Court to act for any person accused of crime,

who has no attorney and no funds with which to employ one, and to act upon any committee appointed by the Court under subdivision (i) of this Rule 1.

## RULE 2

(a) The District Court of Montana is hereby divided into Divisions as follows:

Billings Division, comprised of the Counties of Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Golden Valley, Mussellshell, Powder River, Prairie, Richland, Rosebud, Stillwater, Sweetgrass, Treasure, Wheatland, Wibaux and Yellowstone, and court shall be held in the Billings Division at the courtroom in the Post Office building, Billings, Montana.

Butte Division, comprised of the Counties of Beaverhead, Deer Lodge, Madison, Powell and Silver Bow, and court shall be held in the Butte Division at the courtroom in the Post Office building, Butte, Montana.

Great Falls Division, comprised of the Counties of Cascade, Choteau, Fergus, Glacier, Garfield, Judith Basin, Petroleum, Pondera, Teton and Toole, and court shall be held in the Great Falls Division at the courtroom in the Post Office building, Great Falls, Montana.

Havre-Glasgow Division, comprised of the Counties of Blaine, Daniels, Hill, Liberty, McCone, Phillips, Roosevelt, Sheridan and Valley, and court shall be held in the Havre-Glasgow Division at the courtroom in the Post Office building, Havre, Montana, and the courtroom in the Post Office building, Glasgow, Montana, as designated by the Judge assigned that Division.

Helena Division, comprised of the Counties of Broadwater, Gallatin, Jefferson, Lewis and Clark, Meagher and Park, and court shall be held in the Helena Division at the courtroom in the Post Office building, Helena, Montana.

Missoula Division, comprised of the Counties of Flathead, Granite, Lake, Lincoln, Mineral, Missoula, Ravalli and Sanders, and court shall be held in the Missoula Division at the courtroom in the Post Office building, Missoula, Montana.

## RULE 3

### *ASSIGNMENT OF CASES*

(a) The Chief Judge of the District shall, by order, assign each of the divisions of the court to one of the Judges thereof. All applications for orders in causes pending in any division shall be made to the Judge to whom such division is assigned, unless by order of the Chief Judge a particular cause is specifically assigned to a Judge other than the one regularly assigned, in which case application for orders shall be to the Judge so specifically assigned.

(b) In those cases where the Judge who is regularly or specially assigned is unavailable, any Judge of the District shall have power where such is otherwise proper, to grant such orders as may be necessary for the proper conduct of any business, including criminal matters.

**RULE 4****VENUE**

(a) *Civil Cases.* All causes shall be assigned to that division of the District wherein they properly belong by conformity as near as may be to the laws of the State of Montana governing the place of trial in the Courts thereof, and the trial of all cases shall be at the place where Court is held within the division to which the cause is so assigned, unless by agreement of the parties with the consent of the Court, or by order of the Court in its discretion, or for good cause shown, such trial is ordered elsewhere. The plaintiff shall endorse on the complaint or bill the division wherein the cause is assignable. The endorsement of the plaintiff's attorney as to the division where such cause is assignable shall constitute a certificate by him to the effect that in his opinion the cause is properly assignable under these rules to such division.

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

(b)(1) *Criminal Cases.* Venue in criminal cases is in accordance with the Federal Rules of Criminal Procedure.

(2) Appeals to the District Court from a judgment of conviction by a United States Commissioner under Chapter 219 of Title 18, U.S.C.A., shall be taken to that division of the District Court wherein the offense was committed.

**RULE 5****THE CLERK**

(a) Offices of the Clerk shall be maintained in the Cities of Helena, Butte, Great Falls and Billings, and shall be opened between the hours of 8:30 A.M. and 5:00 P.M., Monday through Friday. All papers in causes assignable to any division may be filed with the Clerk of any of the above named cities. It shall be the duty of the Clerk to forward all papers to the Clerk's office of the assignable division, and if there be no Clerk's office in the assignable division, then to the office handling matters for such division.

(b) The files and records in cases arising in the Billings Division will be maintained in the Clerk's office at Billings, Montana; the files and records in cases arising in the Butte Division and the Missoula Division will be maintained in the Clerk's office at Butte, Montana; the files and records in cases arising in the Great Falls Division and the Havre-Glasgow Division will be maintained in the Clerk's office at Great Falls, Montana; and the files and records of cases arising in the Helena Division will be maintained in the Clerk's office at Helena, Montana.

(c) No record or paper belonging to the files of the Court shall be taken from the custody of the Clerk except upon the written order of one of the Judges of the Court and a receipt given by the party obtaining it,

specifying the record or paper, the date of its receipt, and the date it is to be returned.

However, if it is necessary for a Judge, Master, Examiner, Commissioner or Court Reporter to use, in connection with their official duties at places other than the Clerk's offices, courtroom or Judge's Chambers, pleadings, files or other papers, the same may be taken from the Clerk's office upon the delivery to him of a receipt signed by the officer who desires the use of said papers.

## **RULE 6**

### *TERMS OF COURT AND CALENDAR*

(a) Terms of court shall be set for the trial of civil and criminal cases in each Division of the Court by the Judge to whom such division is assigned at such times, as in the discretion of such Judge, the matters pending in such division are sufficient to warrant such a term.

(b) A Grand Jury shall be impaneled in Butte, Montana, by a Judge of the District on the Tuesday following the second Monday of January of each year, or as soon thereafter as the business of the court requires or permits, to be in attendance for service from time to time as ordered by said Judge, until the second Monday in May of each year, at which time it will be discharged.

A Grand Jury shall be impaneled in Great Falls, Montana, by a Judge of the District on the Tuesday following the second Monday in May of each year, or as soon thereafter as the business of the court requires or permits, to be in attendance for service from time to time as ordered by said Judge, until the third Monday in September of each year, at which time it will be discharged.

A Grand Jury shall be impaneled in Billings, Montana, by a Judge of the District on the Tuesday following the third Monday in September of each year, or as soon thereafter as the business of the court requires or permits, to be in attendance for service from time to time as ordered by said Judge, until the second Monday in January of each year, at which time it will be discharged.

Any matter in the District of Montana may be presented to any Grand Jury in the said District.

In grand jury matters, praecipes, subpoenas and returns will not be disclosed nor the records thereof be subject to inspection without an order of Court.

(c) The law and motion calendar shall be set as provided in Rule 7.

## **RULE 7**

### *MOTIONS*

(a) Upon serving and filing a motion, or within five days thereafter, the moving party shall serve and file a brief. The adverse party shall have ten days thereafter within which to serve and file an answer brief. Upon the filing of briefs, the motion shall be deemed submitted and taken under advisement by the Court, unless the Court orders oral argument on said motion. The Court will, in its discretion, order oral argument on its own motion, or upon application of either party filed within five days after



the time has expired for filing briefs. Each motion upon which oral argument is so ordered shall be set by the Clerk for hearing on the first law and motion day occurring more than 10 days after the date of the order for oral argument in the division wherein said motion is pending.

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

(b) Extensions of time for filing briefs, or for continuance of the hearing on a motion beyond the law and motion day designated by this Rule 7, shall be granted only by written order of Court. All requests for extension of time or continuance, whether written or oral, shall be accompanied by an appropriate form order.

(c) Law and motion days shall be held in the respective divisions as follows:

Billings Division:	10:00 A.M. on the third Mondays of March, June and September, and the first Monday of December of each year.
Butte Division:	10:00 A.M. on the first Mondays of March and June, the second Monday of September and the first Monday of December of each year.
Great Falls Division:	10:00 A.M. on the second Tuesdays of March, June, September and December of each year.
Havre-Glasgow Division:	10:00 A.M. on the Thursdays following the second Tuesdays of March, June, September and December of each year.
Helena Division:	10:00 A.M. on the Wednesdays following the first Mondays of March and June; the Wednesday following the second Monday of September, and the Wednesday following the first Monday of December of each year.
Missoula Division:	2:00 P.M. on the Thursdays following the first Mondays of March and June, the Thursday following the second Monday in September, and the Thursday following the first Monday of December of each year.

Additional law and motion days may be held in any Division of the court, when, in the discretion of the Judge presiding therein, the business of the Division so requires.

(d) All informal matters not appearing upon the Court's calendar, except matters requiring immediate attention of the Court, must be presented upon convening of the court at 10:00 A.M. in the forenoon, or at

2:00 P.M. in the afternoon. All informal matters shall be accompanied by a proposed order to be made when informal matter is passed on by the Court.

### RULE 8

#### FILE AND FILINGS

(a) *Form of Papers:*

- (1) All papers shall be filed flat and unfolded, and firmly bound together.
- (2) All papers shall be typewritten, printed, or reproduced, without erasures or interlineations materially defacing them, on white opaque paper of good quality.
- (3) Matter shall appear on one side of the page only, and shall be double spaced, except quoted material. Names shall be typed or printed under all signatures.
- (4) Papers not in the required form shall not be filed without leave of the Judge to whom the cause is assigned.

(b) *Filing of Pleadings Requiring Leave of Court:* Upon the filing of a motion for leave to file an amended complaint or answer, a complaint in intervention, or other pleading requiring leave of court to file, the movant shall file with the motion a copy of the proposed pleading or amendments and lodge the original with the Clerk of the Court. If leave to file is granted, the Clerk shall file the original forthwith.

(c) *Filing of Depositions:* Upon receipt of a deposition, the Clerk shall open it and file it in the open file unless otherwise ordered.

(d) *Filing of Briefs:* All briefs shall be filed with the Clerk who shall deliver them to the Judge.

### RULE 9

#### SERVICE OF PROCESS AND PAPERS

(a) *Issuance and Service of Process:* The issuance and service of process shall be in conformity with the Federal Rules of Civil Procedure.

(b) *Service of Papers:* All papers required under these rules or the Federal Rules of Civil Procedure to be served shall be served in conformity with the Federal Rules of Civil Procedure.

(c) *Proof of Service:* Proof of service of all papers required or permitted to be served, other than those for which a particular method of proof is prescribed in the Federal Rules of Civil Procedure, shall be filed in the Clerk's office promptly and in any event before action is to be taken thereon by the Court or the parties. The proof shall show the day and manner of service and may be by written acknowledgment of service, by certificate of a member of the Bar of this court, by affidavit of the person who served the papers, or by any other proof satisfactory to the Court.

If an affidavit of mailing or of service is attached to the original pleading, it shall be attached underneath the same so that the character of the pleading is easily discernible.

Failure to make the proof of service required by this subdivision does not affect the validity of the service; and the Court may at any time allow

the proof of service to be amended or supplied unless it clearly appears that so to do would result in material prejudice to the substantial rights of any party.

(d) In those cases where the Secretary of State of the State of Montana is appointed as an agent for certain persons, or corporations, under the Revised Codes of Montana, 1947, as amended from time to time, service of process and proof thereof may be made in the manner provided by the Revised Codes of Montana, 1947, as amended from time to time.

### RULE 10

(a) *Pre-Trial Conferences*: Pre-Trial Conferences shall be held in all civil cases unless otherwise ordered by the Court.

(b) *Setting of Cases for Trial*: At each term in the respective Divisions of the court, the Judge assigned to such Division will set for trial all causes then at issue in such Division. Causes coming to issue during the term may be set in the discretion of the Court upon the application of all parties.

(c) *Notification of Parties*: Whenever any cause is set for trial, the Clerk of the court shall promptly notify all parties, except those against whom a default has been taken, through their attorney, of the setting.

(d) *Trial Memoranda*: In civil cases, unless otherwise ordered by the Court, the Clerk shall, at the time of notification of the setting, likewise order the parties to file with the Court, and serve upon opposing counsel, at least five (5) days before the day on which such case is set for trial, a trial memorandum which shall contain: a general statement of the case, the issues of law, citation of the authority upon which the party relies, the issues of fact and a general statement of the evidence to be offered, and any statement of evidence or procedural problem expected to arise, with citations of authority.

(e) *Impanelment of Trial Jury*: Unless otherwise stipulated by the parties, juries in all cases shall be impaneled as follows: The box shall be filled and examination had and challenges for cause taken and determined. Peremptory challenges shall then be exercised by plaintiff and defendant alternately and in writing.

In criminal cases, in which the government has six and the defense ten challenges, they shall be exercised in the following order: the first by the government, the second by the defense, the next by the government, the next two by the defense, the next by the government, the next two by the defense, the next by the government, the next two by the defense, the next by the government and the last by the defense. The passing of a peremptory challenge by either party constitutes a waiver of the challenge so passed but shall not constitute a waiver of the right thereafter to exercise the remaining challenges against any juror, unless both parties pass successive challenges. The box shall be filled from time to time, in the discretion of the Court. After all peremptory challenges have been taken, or the parties are satisfied, the jury will be sworn as a body.

Examination of jurors in civil and criminal cases shall be in accord-

ance with the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure respectively.

Alternate jurors may be impaneled in civil and criminal cases in the discretion of the Court in accordance with the provisions of the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

(f) *Requests for Instructions to Jury*: Requests for instructions to the jury shall be presented to the Court, and served upon each adverse party, at the opening of the trial before the taking of evidence, but the Court may receive additional requests relating to questions arising during the trial at any time prior to the argument. Each requested instruction shall be numbered and written on a separate page, together with a citation of authorities supporting the proposition of law stated in the instruction.

(g) *Number of Expert Witnesses*: In any trial, before the commencement of testimony, the Court or Master may indicate the number of expert witnesses who will be allowed each side, and no greater number shall be examined unless leave is first obtained.

## RULE 11

### *SETTLEMENT OF ORDERS, JUDGMENTS AND FINDINGS*

(a) In all civil cases tried by a jury, it shall be the duty of the prevailing party, immediately upon the return of the verdict, to request the Court to give directions with respect to the method of entry of judgment and the form thereof.

(b) Whenever the Court by opinion, findings of fact or otherwise indicates the nature of the judgment to be made in a civil case, the prevailing party shall within ten (10) days, unless additional time is granted by the Court, prepare and file a draft of the judgment and serve a copy thereof upon each other party. Each other party shall then have ten (10) days within which to serve and file objections to the proposed judgment. When the time for objections has expired the Clerk shall deliver the proposed judgment, together with all objections thereto to the Judge.

(c) In all cases tried to the Court without a jury, or with a jury which is advisory only, each party shall within the time permitted for the filing of briefs file and serve proposed findings of fact and conclusions of law unless otherwise ordered by the Court.

(d) The Court may after decision request the prevailing party to prepare findings of fact and conclusions of law in accordance with the decision. Such findings, unless otherwise ordered, shall be filed and served and objected to as provided in subdivision (b) hereof.

(e) If a prevailing party fails within ten (10) days, or the additional time granted, to prepare the orders or judgments required by subdivision (b) hereof, or the findings of fact and conclusions of law required by subdivision (d) hereof, any other party may do so.

## RULE 12

### *GUARDIANS AD LITEM*

(a) *Procedure for the Appointment of Guardians Ad Litem*: Guardians Ad Litem may be appointed ex parte, at any time upon the presenta-

tion to the court or Judge of a sworn petition showing a proper case for the appointment. The petition shall be filed with the order of appointment.

(b) *Guardian Ad Litem, Who May Be*: No person shall be appointed guardian ad litem who has an interest adverse to that of the infant, or who is connected in business with the adverse party or with the attorney, or counsel of the adverse party; or who has not sufficient pecuniary ability to answer to the infant for any damage or injury which may be sustained by the infant for his negligence or misconduct in the case.

(c) *Bond of Guardian Ad Litem*: No bond shall ordinarily be necessary from a guardian ad litem; provided, that no such guardian shall receive any money or other property of the infant until he has filed with the Clerk a bond in an amount to be fixed by the Judge, with at least two sureties, to be approved by the Judge, conditioned for the faithful performance of his duties as guardian ad litem. If he shall not desire to receive any such money or property, the same shall be paid or delivered to the Clerk of the court, or to such person as may be directed by the court or Judge, with like effect as if paid or delivered to the guardian ad litem.

### RULE 13

#### WAIVING CLERK'S NOTICE OF ENTRY OF STIPULATED ORDERS

When an order is made upon stipulation, if no request is made that notice of the entry of the order be mailed by the Clerk, the mailing of notice as required by Rule 77(d) Federal Rules of Civil Procedure shall be deemed waived.

### RULE 14

#### (a) *Taxation of Costs*:

(1) *Application to the Clerk*. Within ten days after notice of the entry of a judgment allowing costs, the prevailing party shall serve on the attorney for the adverse party and file with the Clerk an application for the taxation of costs. The application shall contain an itemized schedule of the costs and a statement signed by the attorney for the applicant that the schedule is correct and that the costs were necessarily incurred. The application shall be heard by the Clerk not less than one, nor more than three days after it is served, and notice of the time of hearing shall be endorsed upon it.

Upon failure to comply with this rule, all costs, other than the Clerk's costs, which may be inserted in the judgment without application, shall be waived.

(2) *Objections*. Upon the hearing, specific objections, supported by affidavits or other evidence, may be made to any item of costs. The Clerk shall thereupon tax the costs, and if there is no appeal, shall insert the amount of costs taxed in the blank left in the judgment, and also in the docket.

(3) *Review*. A dissatisfied party may take an immediate oral appeal to the Court from the decision of the Clerk if the op-

posing party is present; or may appeal upon written motion served within five days of the Clerk's decision, as provided in Rule 54(d) Federal Rules of Civil Procedure. Appeals shall be heard upon the same papers and evidence submitted to the Clerk.

(b) *Security for Costs:*

(1) *Non-Residents.* Every non-resident filing a complaint or removing a case to this Court shall within ten days after demand of an adverse party file with the complaint a bond for costs in the sum of \$500.00 unless for good cause, on motion, which may be made ex parte, the Court dispenses with the bond or fixes a different amount. The bond shall have sufficient surety and shall be conditioned to secure the payment of all costs of the action which he may ultimately be required to pay to any other party. After the bond is filed, any opposing party may raise objections to its form or to the sufficiency of the surety for determination by the Clerk. If the bond is found to be insufficient, the Court may order that a sufficient bond be filed within a specified time, and if the order is not complied with, the Clerk shall enter dismissal of the action as in case of dismissal for want of prosecution.

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

(c) *Costs on Removal.* The bond required by 28 U.S.C. 1446(d) to secure costs in removal proceedings shall be in the sum of \$500.00 and, if the party removing the action is a non-resident, the same bond may also be conditioned as required in sub-section (b) (1) of this rule to secure the costs of unit.

## RULE 15

### SECURITY

(a) *Form.* Whenever a security is required to be given, in unspecified form, except in bankruptcy proceedings and when given to secure the appearance of a defendant in a criminal case, it shall be given in substance and form as provided by the laws of Montana. Unless approval of the bond of individual sureties is endorsed thereon by the opposing party or his attorney, the party offering the bond shall, upon reasonable notice, apply to the Court for approval. Corporate sureties must comply with 6 U.S.C. 6-13.

Bonds in criminal cases to secure the appearance of a defendant before this Court, or after judgment, before the Court of Appeals shall be conditioned to require the defendant to obtain the consent of this Court before departing from this District.

(b) *Persons Not to Act as Sureties.* No officers of the Court, nor any member of the Bar, nor his office associates or employees shall act as a surety.

(c) *Judgment Against Sureties.* Regardless of what may be provided in any security judgment, every surety by entering into it submits himself to the Jurisdiction of the Court and irrevocably appoints the Clerk as his

agent upon whom any papers affecting his liability on the instrument may be served. His liability shall be joint and several and may be enforced summarily on motion without an independent action. The motion may be served upon the Clerk who shall forthwith mail a copy to the surety if his address is known. Such motion shall be heard as provided in Rule 7.

(d) *Deposit of Money or United States Obligations in Lieu of Surety.* In lieu of surety in any case there may be deposited with the Clerk lawful money or negotiable bonds or notes of the United States. The depositor shall execute a suitable bond, and, if negotiable bonds or notes of the United States are deposited, shall also execute the agreement required by 6 U.S.C. 15, authorizing the Clerk to collect or sell the bonds or notes in the event of default.

If such deposit is not forfeited for default upon the bond, and was made by the party required to give security, or is shown to the Court to be his property though deposited in another name, it may be applied successively to the satisfaction of: (1) Claims of the United States in the proceeding, such as fines, costs, or costs of prosecution under 28 U.S.C. 1918; (2) Fees and expenses of the Marshal and Clerk; (3) Pecuniary conditions imposed upon the grant of probation. Upon exoneration of the bond, the residue shall be returned to the depositor, and title to such residue shall be unaffected by the Court's determination, for the purposes of this rule, of the ownership of the deposit.

(e) *Taking of Bonds to Secure Appearance in Criminal Cases.* All bonds in non-capital criminal cases for appearance before the Court or a United States Commissioner shall be taken by a United States Commissioner or other officer acting as a committing magistrate pursuant to 18 U.S.C. 3041, endorsed with his approval, and immediately forwarded to the Clerk, together with any money or negotiable bonds or notes of the United States deposited as security. Any money deposited may be forwarded to the Clerk by cashier's or certified check.

A receipt shall be given by the Commissioner or other magistrate for any money or bonds or notes deposited with him and a copy forwarded to the Clerk. When the bond is exonerated the depositor of the money, bonds, or notes may receive them from the Clerk by surrendering the receipt and furnishing satisfactory proof of his identity.

## RULE 16

### ORDERS WHICH MAY BE GRANTED BY CLERK

In addition to those powers conferred by Rule 77(c) Federal Rules of Civil Procedure, the Clerk of this court is authorized to grant, sign and enter the following orders without further direction by the Court, but any such order may be suspended, altered, or rescinded by the Court for cause shown:

(a) *Extending time to plead.* Orders, on written consent, extending from time to time the time to plead or otherwise defend, or to make any motion except a motion for a new trial or a motion in arrest of judgment, if the time originally prescribed to plead, defend, or modify has not expired, not to exceed fifteen days, any other extension of time requiring approval by the Court.

(b) *Substitution of Attorneys.* Orders, on written consent, for the substitution of attorneys.

(c) *Satisfying Judgments, etc.* Orders, on written consent, satisfying a judgment or for the payment of money, or annulling bonds and exonerating surety.

## **RULE 17**

### **CONTINUANCES**

In granting an application for a continuance, the Court may impose costs and conditions.

A motion to postpone or continue a trial on the grounds of absence of a witness or evidence shall be made upon affidavit showing the nature and materiality of the expected testimony or evidence; that diligent effort was timely made to secure the witness or the evidence; and, that reasonable grounds exist for the production of the witness or evidence if postponement or continuance is granted. If the testimony or the evidence would be admissible upon the trial, and the adverse party stipulates that it shall be considered as actually given on the trial, there shall be no postponement or continuance, unless, in the opinion of the Court, a trial without the witness or evidence would work an injustice on the moving party.

## **RULE 18**

### **STATUTORY THREE JUDGE CASES**

Any party drawing in question the unconstitutionality of a State statute or of an order made by an Administrative Board or Commission or any Act of Congress for repugnancy to the Constitution of the United States, as a basis for relief sought, or who draws in question the constitutionality of an Act of Congress affecting the public interest, shall notify the Chief Judge of the District in writing stating the title of the action, the statute or order in question, and specifying the respects in which relief is claimed.

In Statutory three Judge cases, all pleadings, depositions, affidavits, briefs and papers for submission to the Court so convened, shall be filed in triplicate.

## **RULE 19**

### **TIME**

The time within which an act is required to be done by these rules shall be computed as provided in Rule 6 of the Federal Rules of Civil Procedure. Where service is by mail, the time shall be extended as provided in Rule 6(e) of the Rules of Civil Procedure.

## **RULE 20**

### **EXHIBITS**

(a) *Custody.* Every exhibit placed on file shall be held in the custody of the Clerk; but unless there be good reason why the original should be retained, upon application, the Court may order a copy filed in its place.

(b) *Disposition.* Upon filing of a stipulation waiving the right to an



appeal, and to a rehearing or a new trial, or after judgment has become final, any party may withdraw any exhibit which he has filed, unless some other party or witness files notice with the Clerk that he is entitled to such exhibit, in which case the Clerk shall not deliver the exhibit, except with the consent of both the party who filed it and the claimant, until the Court has determined the person entitled thereto. If exhibits are not withdrawn within 30 days after the judgment has become final, the Clerk may dispose of them within a reasonable time after notice to the party offering the exhibit of his intention to do so.

## RULE 21

### RECEIVERS OTHER THAN IN BANKRUPTCY

(a) *Appointment of Receivers.* Application for the appointment of a receiver shall be made after complaint has been filed and summons issued.

(1) *Temporary Receivers.* A temporary receiver may be appointed by the Court without notice for good cause shown by affidavit or pleading verified positively.

(2) *Permanent Receivers.* A permanent receiver shall be appointed after notice and hearing upon an order to show cause why such appointment should not be made. The order to show cause shall be issued by the Court concurrently with the appointment of a temporary receiver, or, if no temporary receiver is appointed, upon application by the plaintiff. The temporary receiver, or, if there be none, the plaintiff securing the order, shall immediately serve a copy on all parties. Within ten days thereafter, he shall be furnished by the defendant with a list of the defendant's creditors, their addresses, and the amounts due them, and, at least five days before the hearing, shall mail them notice thereof, and file proof of mailing.

(3) Either a temporary receiver or a permanent receiver, appointed by the Court under the provisions of this rule, shall furnish bond in such sum as the Court may, in its discretion, order.

(b) *Employment of Attorneys, Accountants, or Investigators.* A receiver shall not employ an attorney, accountant, or investigator without obtaining an order of the Court. The compensation of such persons shall be fixed by the Court.

(c) *Application for Fees.* All applications for fees for services rendered in connection with a receivership proceeding shall be made upon petition setting forth in reasonable detail the nature of the services and shall be heard in open court.

If the applicant is a party in interest, whether as a debtor, creditor, receiver, trustee or representative of any of them, or is an attorney for such party, he shall state under oath in his petition that he has not entered into any agreement, written or oral, express or implied, with any other party in interest, or any attorney for such party for the purpose of fixing any compensation to be paid from the assets of the estate.

(d) *Deposit of Funds by Receiver.* A receiver shall deposit all funds received by him in a depository designated by the Court, entitling the ac-

count with the name and number of the action. At the end of each month the receiver shall deliver the statement of account and cancelled checks to the Clerk. All checks drawn by the receiver shall be countersigned by the Clerk or a designated deputy.

(e) *Reports.* Within thirty days after his appointment, every permanent receiver shall file with the Court a verified report and petition for instructions, which shall be heard upon ten days' notice by mail to all known creditors and parties. The report shall contain a summary of the operations of the receiver, an inventory of the assets and their appraised value, a schedule of all receipts and disbursements, and a list of all creditors, with their addresses and the amount of their claims. The petition for instructions shall contain the receiver's recommendations for a continuance or discontinuance of the receivership and his reasons therefor. At the hearing, the Court shall determine whether the receivership shall be continued, and, if so, shall fix the time for future reports by the receiver.

(f) *Notice to be Given of Hearings.* The receiver shall give all interested parties at least ten days' notice by mail of the time and place of hearings of:

- (1) All petitions for the payment of dividends to creditors;
- (2) All petitions for confirmation of sales of real and personal property, unless the Court, for good cause, orders otherwise;
- (3) All reports of the receiver;
- (4) All applications for fees of the receiver, or of any attorney, accountant or investigator. The notice shall state the services performed and the fee requested;
- (5) All applications for the discharge of receivers.

## RULE 22

### *DEPOSITIONS FOR USE IN FOREIGN JUDICIAL PROCEEDINGS*

Application may be made ex parte for the designation pursuant to 28 U.S.C. 1782 of a Commissioner to take the deposition of a person within this District for use in a judicial proceeding pending in the court of a foreign country. If the Court in which the proceeding is pending has appointed a person to take the deposition, that person will be designated, unless there be good cause for refusing such designation.

The Commissioner shall certify and mail the deposition to the foreign court in accordance with the provisions of Rule 30(f) or 31(b) Federal Rules of Civil Procedure, and file proof of mailing with the Clerk of this court.

## RULE 23

### *APPEALS FROM JUDGMENT OF UNITED STATES COMMISSIONERS*

An appeal from a judgment of a United States Commissioner having been certified to this Court in accordance with the Rules of Procedure for Trials before Commissioners (18 U.S.C. 3402), the appellant shall, within fifteen days, serve and file a brief, which may be typewritten. The United

States Attorney shall serve and file a brief, which may be typewritten, within fifteen days after receipt of a copy of the appellant's brief. The appellant may serve and file a reply brief within five days after receipt of the appellee's brief.

Forty days after the filing of the Commissioner's certificate the appeal shall be placed by the Clerk upon the calendar to be set for hearing.

Venue in such appeals is in accordance with Rule 4(b)(1) of these rules.

### **RULE 24**

#### ***DECORUM***

(a) *Opening Court.* When the Court first convenes in the morning and after the noon recess, the Court Crier shall, in an appropriate manner, announce the opening of Court, and all persons in attendance in the courtroom shall rise until the Judge has taken the bench.

(b) The Judges of the court shall, when presiding in open court, wear judicial robes.

### **RULE 25**

#### ***COPIES TO BE FURNISHED TO CLERK OF PLEADINGS AND OTHER PAPERS***

Parties shall furnish to the Clerk forthwith upon demand, all necessary copies of any pleading, judgment or order, or other matter filed of record in a cause, so as to permit such Clerk to comply with the notice of service provisions of any applicable statute or rule.

### **RULE 26**

The foregoing rules of Court supplement the Federal Rules of Civil Procedure, Title 28, U.S.C.A., and the Federal Rules of Criminal Procedure, Title 18, U.S.C.A., and will become effective on and after March 1, 1958. All local rules of Court governing Civil and Criminal Procedure heretofore adopted are hereby revoked effective February 28, 1958.

Dated this 29th day of November, 1957.

W. D. MURRAY

Chief Judge

W. J. JAMESON

United States District Judge.

To the following attorneys, who are the members of the Committee on Rules, the Court wishes to acknowledge and express its appreciation for their able and conscientious assistance in preparing for adoption the foregoing Rules:

Russell E. Smith, Missoula, Chairman

Emmett C. Angland, Great Falls

Cale Crowley, Billings

Krest Cyr, Butte

Newell Gough, Helena

John M. Kline, Glasgow

A. G. Shone, Butte.