IN THE UNITED STATES DISTRICT AND BANKRUPTCY COURT

FOR THE DISTRICT OF IDAHO

In re:	
LOCAL RULES OF THE UNITED STATES DISTRICT AND BANKRUPTCY COURT FOR THE DISTRICT OF IDAHO	GENERAL ORDER #72 ORDER ADOPTING LOCAL RULES OF PRACTICE

The United States District and Bankruptcy Court Advisory Committees on Local Rules for the District of Idaho having recommended that the Courts adopt the Local Rules as published as the Local Rules of United States District and Bankruptcy Court for the District of Idaho; and

The Court having reviewed the proposed Local Rules and having found that these rules are not inconsistent with the United States Code, the Federal Rules of Civil and Criminal Procedure, or the Federal Bankruptcy Rules;

IT IS HEREBY ORDERED that the Local Rules as published are adopted as the Local Rules of this Court effective the 1st day of June, 1991, and the same shall serve as the Local Rules of practice for the United States District and Bankruptcy Court for the District of Idaho from and after that date.

DATED this 22 day of May, 1991.

HAROLD L. RYAN, Chief Judge
United States District Court

ALFRED C. HAGAN, Chief Judge
United States Bankruptcy Court

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CLERK'S CERTIFICATE OF MAILING

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

The Library of the
United States Court of Appeals
for the Ninth Circuit
PO Box 5731
San Francisco, CA 94101

DATED: June 11, 1991

CAMERON S. BURKE, CLERK

By: Suzanne M. Butler
Deputy Clerk

UNITED STATES DISTRICT & BANKRUPTCY COURTS
DISTRICT OF IDAHO
U.S. COURTHOUSE, BOX 039
550 W. FORT STREET
BOISE, IDAHO

CAMERON S. BURKE
Clerk

FTS 554-1361
208-334-1361
FAX 208-554-9215

Jerry L. Clapp
Court Consultant

May 22, 1991

MEMORANDUM

TO: Members of the Bar and public

FROM: Cameron Burke, Clerk

SUBJECT: New Local Rules and correction

Enclosed is a copy of the new U.S. District and Bankruptcy Court Local Rules which become effective on June 1, 1991, pursuant to General Order 72.

I certainly would appreciate it if you would replace pages 53 and 54 of your new Local Rules with the enclosed correction. Despite our best efforts, an error was made in regard to Deposits in the Registry fund of this court.

I apologize for this error. Thank you.

RULE 67.2
DEPOSITS

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

(b) The following form of standard order shall be used for the deposit of registry funds into interest bearing accounts or the investment of such funds in an interest bearing instrument:

> IT IS ORDERED that the clerk invest the amount of $_____ in an automatically renewable (type of account or instrument, i.e., time certificate, treasury bill, passbook), in the name of the clerk, U.S. District Court, at (name of bank, savings and loan, brokerage house, etc.), said funds to remain invested pending further order of the court.
>
> IT IS FURTHER ORDERED that the clerk shall be authorized to deduct a fee from the income earned on the investment equal to 10 percent of the income earned while the funds are held in the court's registry fund, regardless of the nature of the case underlying the investment and without further order of the court. The interest payable to the U.S. courts shall be paid prior to any other distribution of the account. Investments having a maturity date will be assessed the fee at the time the investment instrument matures.
>
> IT IS FURTHER ORDERED that counsel presenting this order personally serve a copy thereof on the clerk or his financial deputy. Absent the aforesaid service, the clerk is hereby relieved of any personal liability relative to compliance with this order.

RELATED AUTHORITY

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

(b) Approval of Bonds by Attorneys and Clerk (or Judge).
All personal surety bonds must be presented to the judge for approval. When the party is represented by counsel, there shall be appended thereto a certificate of the attorney for the party for whom the bond is being filed substantially in the following form:

This bond has been examined by counsel (for plaintiff/defendant) and is recommended for approval as provided in this rule.

Dated this _____ day of _____, ____.

_____
Attorney

Such endorsement by the attorney will signify to the court that said attorney has carefully examined the said financial information of the personal surety, that the attorney knows the contents thereof; that the attorney knows the purposes for which it is executed; that in the attorney's opinion the same is in due form; and that the attorney believes the affidavits of qualification to be true.

RELATED AUTHORITY

Fed. R. Civ. P. 65(c), 65.1
28 U.S.C. § 1446

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

LOCAL RULES

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

DISTRICT JUDGES

Harold L. Ryan, Chief Judge, Boise, Idaho Judy Gillam, Secretary Mary Ellen Kalange, Law Clerk Jim Martin, Law Clerk Kathleen Butterfield, Death Penalty Law Clerk	Chambers	334-9111
Edward J. Lodge, District Judge, Boise, Idaho Marilyn Slabaugh, Secretary Leslie Fleming, Law Clerk Rich Rayhill, Law Clerk	Chambers	334-9270
Marion J. Callister, Senior Judge, Boise, Idaho Camille Ridenour, Secretary Dave Metcalf, Law Clerk Ron Reed, Law Clerk	Chambers	334-1693

United States Magistrate Judges

Mikel H. Williams, Boise, Idaho Le Parker, Secretary Debbie Young, Law Clerk	Chambers	334-9330
Stephen Ayers, Coeur d'Alene, Idaho (Part-time)	Office	667-9574
Stephen S. Dunn, Pocatello, Idaho (Part-time)	Office	232-2286

United States Clerk of Court

U.S. Courthouse & Federal Building
550 West Fort Street, Room 612
(208) 334-1361
FTS 554-1361
FAX (208) 334-9215

Mailing Address: Federal Building, Box 039
Boise, ID 83724

Cameron S. Burke, Clerk of Court Jerry L. Clapp, Clerk Consultant		334-1361
Ron Haberman	(Judge Ryan Courtroom Deputy)	334-9387
Carol Vaughn	(Judge Lodge Courtroom Deputy)	
Rod Briggs	(Judge Callister Courtroom Deputy; Supervisor)	
Sharla Worthen	(Magistrate Judge Williams Courtroom Deputy)	
Jeanie Loera	(Financial; Supervisor)	334-1361
Judy Buratto	(Civil-Judge Ryan)	
Mackie Nydegger	(Civil-Judge Lodge)	
Anne Wade	(Civil-Judge Callister; Appeals)	
Glenda Longstreet	(Civil-Magistrate Williams)	
Suzanne Butler	(Criminal)	
Chris Dreps	(Appeals)	

Lynette Case	(Jury; Electronic Sound Recorder)	334-1595
Joann Cook	(Jury; Electronic Sound Recorder)	
Sheri Diebert	(Jury; Electronic Sound Recorder)	
Irene Dunbar	(Jury; Electronic Sound Recorder)	
Doug Ward	(Systems Manager)	334-9097
Kathy Stutzman	(Systems Administrator)	

Pocatello Office
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Diane Hutchinson, Deputy Clerk
Tammy Pickens, Deputy Clerk

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Boise Office

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Steve J. Cole, Senior USPO
M.T. (Tim) Kitch, USPO
Marilyn Manning, USPO
Karl L. Richins, USPO
Timothy M. Messuri, USPO

Nelda McAndrew, Chief Probation Clerk
Juanita (Belvie) Ritter, Statistical Clerk
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Shirley Friel, Probation Clerk

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Charles L. Gray, USPO
Sharlene Partner, Senior Probation Clerk

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Barbara Ogden, Senior Probation Clerk

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Twin Falls, ID 83301

Cal W. Erbaugh, USPO
Peggy Harris, Senior Probation Clerk

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

Effective Date: June 1, 1991

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RULE 1.10
SCOPE OF THE RULES

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

(b) Effective Date. These rules become effective on _____.

(c) Scope of Rules. These rules shall apply in all proceedings in civil, criminal, and bankruptcy actions. Rules governing proceedings before magistrate judges are incorporated herein.

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

(e) Rule of Construction and Definitions.

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

(2) The following definitions shall apply:

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

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

RELATED AUTHORITY

NONE

RULE 1.2
AVAILABILITY OF THE LOCAL RULES

Copies of these rules, as amended and with any appendices attached hereto, are available from the clerk's office at no charge. Every attorney, upon admission to the bar will be provided a copy of the Local Rules, with appendices, in force at the time of admission.

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

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

RELATED AUTHORITY

Fed. R. Civ. P. 83

RULE 1.3
SANCTIONS

(a) The court may sanction for violation of any local rule governing the form of pleadings and other papers filed with the court only by the imposition of a fine against the attorney or a person proceeding *pro se*. Local rules governing the form of pleadings and other papers filed with the court include, but are not limited to, those local rules regulating the paper size, the number of copies filed with the court, and the requirement of a special designation in the caption.

(b) Other sanctions for non-technical violations are provided through the Federal Rules of Civil Procedure including but not limited to, imposition of costs, allowance of attorneys fees, dismissal or default in the action, contempt proceedings, and suspension or disbarment of counsel.

RELATED AUTHORITY

Fed. R. Civ. P. 11, 16(f), 26(g), 37, 61
28 U.S.C. § 1927

RULE 3.1
CIVIL COVER SHEET

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

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

RELATED AUTHORITY

Fed. R. Civ. P. 3, 79(a)

RULE 3.2
VENUE

The calendar areas of the United States District Court for the District of Idaho shall consist of the following counties:

Southern Calendar:

Ada	Gooding
Adams	Jerome
Blaine	Lincoln
Boise	Minidoka
Camas	Owyhee
Canyon	Payette
Cassia	Twin Falls
Elmore	Valley
Gem	Washington

Eastern Calendar:

Bannock	Franklin
Bear Lake	Fremont
Bingham	Jefferson
Bonneville	Lemhi
Butte	Madison
Caribou	Oneida
Clark	Power
Custer	Teton

Northern Calendar:

Benewah	Kootenai
Bonner	Latah
Boundary	Lewis
Clearwater	Nez Perce
Idaho	Shoshone

Cases that have venue in one of the above calendar areas will be assigned by the clerk upon the filing of the complaint or petition to the appropriate calendar area. Juries will be selected from the calendar areas in accordance with the Jury Selection Plan adopted by the court.

RELATED AUTHORITY

28 U.S.C. § 92

RULE 5.1
GENERAL FORMAT OF PAPERS PRESENTED FOR FILING

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

(b) The name, address, and telephone number of counsel (or, if *in propria persona*, of the party) and a specific identification of the party represented by name and interest in the litigation (i.e., plaintiff, defendant, etc) shall appear in the upper left-hand corner of the first page of each paper presented for filing, except that in multi-party actions or proceedings, reference may be made to the signature page for the complete list of parties represented. Following the counsel identification and commencing four inches below the top of the first page, (except where additional space is required for identification) there shall appear:

(1) The title of the court;
(2) The title of the action or proceeding;
(3) The file number of the action or proceeding;
(4) The category of the action or proceeding as provided hereinafter in these rules;
(5) A title describing the pleading; and
(6) Any other matter required by this rule.

(c) The clerk shall file all pleadings presented for filing upon payment of the appropriate fee, if any. In the event of a failure to comply with these rules, the clerk may require the prompt refiling of the paper in a form complying with these rules, or bring the failure to comply to the attention of the filing party and of the judge to whom the action or proceeding is assigned.

RELATED AUTHORITY

Fed. R. Civ. P. 5, 8(e)(1), 10(a)

RULE 5.2
PROOF OF SERVICE WHEN SERVICE IS REQUIRED BY FED. R. CIV. P. 5.

Whenever any pleading presented for filing is required or permitted by any rule or other provision of law to be served upon any party or person, it shall bear or have attached to it (a) an acknowledgement of service by the person served, or (b) proof of service stating the date, place and manner of service and the names of the persons served, certified by the person who made service.

RELATED AUTHORITY

Fed. R. Civ. P. 4(g), 5

RULE 5.4
COPIES OF ORDERS

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

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

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

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

RELATED AUTHORITY

NONE

RULE 5.5
NON-FILING OF DISCOVERY

Interrogatories, requests for documents, requests for admission, and answers and responses thereto shall be served upon other counsel and parties but shall not be filed with the court unless on order of the court or for use in the proceeding. Any certificates of service related to discovery documents shall not be filed with the clerk. A party may file notices of taking of depositions with the clerk to obtain witness subpoenas. The party responsible for service of the discovery material shall retain the original and become the custodian. The original of all depositions upon oral examination shall be retained by the party taking such deposition.

If relief is sought under any of the Federal Rules of Civil Procedure, pertinent portions of discovery matters in dispute may be attached to the motion filed under these rules by the party seeking to invoke the court's relief.

If depositions, interrogatories, requests for documents, requests for admissions, answers, or responses are to be used at trial or are necessary to a pretrial or post trial motion, those portions to be used shall be lodged with the clerk at the outset of the trial or at the filing of the motion insofar as their use can be reasonably anticipated by the parties.

When documentation of discovery not previously in the record is needed for appeal purposes, upon an application and order of the court, or by stipulation of counsel, the necessary discovery papers shall be lodged with the clerk. Discovery lodged with the court shall be returned to appropriate counsel after final disposition of the case. Discovery lodged with the court will be treated as exhibits and returned pursuant to Local Rule 79.1.

RELATED AUTHORITY

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

RULE 7.1
MOTION PRACTICE

(a) **Requirements for Submission.**

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

(2) There shall be served and filed with all motions and other applications, and as a part thereof, (a) copies of all photographs and documentary evidence which the moving party intends to submit in support of the motion or other application, in addition to the affidavits required or permitted by Fed. R. Civ. P. 6(d), and (b) a brief containing a written statement of all reasons in support thereof, including the points and authorities relied upon by the moving party. Each party opposing the motion or other application shall, within fourteen (14) days thereafter, serve and file a response brief containing a written statement of all the reasons in opposition thereto and the points and authorities relied upon, or a written statement that the party will not oppose said motion, and not later than fourteen (14) days after the service of the motion, serve and file copies of all photographs, documentary evidence and affidavits upon which the party intends to rely. If the moving party so desires, such party may, within fourteen (14) days after the service upon the party of the points and authorities of the adverse party, file a reply brief. Briefs in support of and in opposition to motions filed shall be no longer than twenty (20) pages in length.

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

(4) Any party, either proposing or opposing a motion or other application, who does not intend to urge or oppose the same, or who intends to move for a continuance, shall immediately notify opposing counsel and the clerk. Time limitations specified in this rule may be extended or shortened by a judge of the court upon written motion evidencing good cause.

(b) **Hearings on Motions.**
Motions and applications will be heard orally only when permitted by the court upon notice given as provided in these rules. Generally, motions shall be submitted and determined upon the motion pleadings herein referred to, except in the event of motions for summary judgment. Motions for summary judgment will be heard by the court, unless the court determines, based on the record, that oral argument is unnecessary and would delay resolution of the proceedings.

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

RELATED AUTHORITY

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

RULE 7.2
EX PARTE ORDERS

All applications to a judge of this court for *ex parte* orders may be made by a party appearing *in propria persona* or by an attorney of this court. All applications shall be accompanied by a memorandum and/or affidavit outlining the necessity and authority for issuance of the order *ex parte*. When the opposing party is represented by counsel, the application must recite whether opposing counsel has been notified of the application for an *ex parte* order or set forth the reasons why opposing counsel has not been notified.

RELATED AUTHORITY

Fed. R. Civ. P. 5, 7, 78

RULE 7.3
ORDERS TO SHORTEN OR EXTEND TIME

When by these rules or by notice given thereunder an act is required or allowed to be done at or within a specified time, the court, for cause shown, may at any time, with or without motion or notice, order the period be shortened or extended.

RELATED AUTHORITY

Fed. R. Civ. P. 6

RULE 7.4
STIPULATIONS

Except as otherwise provided, stipulations shall be recognized as binding only when made in open court or filed in the case. Written stipulations shall not be effective unless approved by the judge or clerk as applicable. A proposed order shall be submitted with every stipulation and shall be filed as separate documents.

RELATED AUTHORITY

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

RULE 9.1
SOCIAL SECURITY NUMBER IN SOCIAL SECURITY CASES

Any person seeking judicial review of a decision of the Secretary of Health and Human Services under Section 205(g) of the Social Security Act (42 U.S.C. § 405(g)) shall provide, on a separate paper attached to the complaint served on the Secretary of Health and Human Service, the social security number of the worker on whose wage record the application for benefits was filed. The person shall also state, in the complaint, that the social security number has been attached to the copy of the complaint served on the Secretary of Health and Human Services. Failure to provide a social security number to the Secretary of Health and Human Services will not be grounds for dismissal of the complaint.

RELATED AUTHORITY

42 U.S.C. § 405(c)(2)(B)
42 U.S.C. § 405(g)

RULE 9.2
REQUEST FOR THREE-JUDGE COURT

(a) In any action or proceeding which a party believes is required to be heard by a three-judge district court, the words "Three-Judge District Court Requested" or the equivalent shall be included immediately following the title of the first pleading in which the cause of action requiring a three-judge court is pleaded. Unless the basis for the request is apparent from the pleading, it shall be set forth in the pleading or in a brief statement attached thereto. The words "Three-Judge District Court Requested" or the equivalent on a pleading is a sufficient request under 28 U.S.C. § 2284.

(b) In any action or proceeding in which a three-judge court is requested, parties shall file the original and three copies of every pleading, motion, notice, or other document with the clerk until it is determined either that a three-judge court will not be convened or that the three-judge court has been convened and dissolved, and the case remanded to a single judge. The parties may be permitted to file fewer copies by order of the court.

(c) A failure to comply with this local rule is not a ground for failing to convene or for dissolving a three-judge court.

RELATED AUTHORITY

28 U.S.C. § 2284

RULE 9.3
HABEAS CORPUS PETITIONS (STATE CUSTODY) AND MOTIONS (FEDERAL CUSTODY)

(a) All petitions for writs of habeas corpus filed pursuant to 28 U.S.C. § 2254 and motions filed pursuant to 28 U.S.C. § 2255 shall be subject to the provisions of this rule unless otherwise ordered by the court.

(b) The petition or motion shall be in writing, accompanied by all state court opinions and judgments in the case, and signed under penalty of perjury and, if presented *in propria persona*, upon the form and in accordance with the instructions approved by the court. Copies of the forms and instructions shall be supplied by the clerk upon request. A petitioner who is unable to furnish the opinions and judgments in the case shall state why they are unavailable and where they may be obtained. If they are not furnished by petitioner, the respondent shall furnish them to the court or state why such documents are not supplied. In a capital case, the petition shall set forth any scheduled execution date.

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

(d) If relief is granted on a petition of a state prisoner or if any stay of execution of a state court judgment is issued by the court, the clerk shall forthwith notify the state authority having jurisdiction over the prisoner of the action taken.

RELATED AUTHORITY

28 U.S.C. §§ 2241-2256
Rules Governing Section 2254 Cases in United States District Court
Rules Governing Section 2255 Cases in United States District Court

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

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

(b) **Notices from Idaho Attorney General.** The Idaho Attorney General shall send to the clerk of this Court (1) prompt notice whenever the Idaho Supreme Court affirms a sentence of death; (2) at least every other month, a list of scheduled executions; and, (3) at least once every other month, a list of the death penalty appeals pending before the Idaho Supreme Court.

(c) **Notice from Petitioner's Counsel.** Whenever counsel determines that a petition will be filed in this court, he shall promptly file with the Clerk of Court and send to the Idaho Attorney General a written notice of his intention to file a petition. The notice shall state the name of the petitioner, the place of petitioner's incarceration, and the status of petitioner's state court proceedings. The notice is for the information of the court only, and the failure to file the notice shall not preclude the filing of the petition.

(d) **Counsel.**

(1) Appointment of Counsel: Each indigent petitioner shall be represented by counsel unless petitioner has clearly elected to proceed *pro se* and the court is satisfied, after hearing, that petitioner's election is intelligent and voluntary. Unless petitioner is represented by retained counsel, counsel shall be appointed in every such case at the earliest practicable time. A panel of attorneys qualified for appointment in death penalty cases will be certified by the court.

When a death judgment is affirmed by the Idaho Supreme Court and any subsequent proceedings in the state courts have concluded, the court will contact the most recent state counsel to determine if counsel would be willing to continue representation into the federal courts, and if he is deemed qualified to do so by the court.

If the most recent counsel is willing to continue representation and has been certified by the court as qualified to do so, counsel would ordinarily file a motion for appointment of counsel on behalf of his client together with the client's federal habeas corpus petition. If, however, counsel for any reason wishes to confirm his appointment before preparing the petition, counsel may move for appointment, as described above, before filing the petition.

If the most recent state counsel is not available to represent petitioner on federal habeas corpus or if appointment of such counsel would be inappropriate for any reason, the court shall appoint counsel upon application of petitioner. Counsel shall be appointed from the panel of qualified attorneys certified by the court. If application for appointed counsel is made before a petition has been filed, the application shall be assigned to a district judge in the same manner that a petition would be assigned, and counsel shall be appointed by the assigned judge. The judge so assigned shall be the judge assigned when counsel files a petition for writ of habeas corpus.

(2) Second Counsel: Appointment and compensation of second counsel shall be handled in accordance with the provisions of Section 2.11 of Volume VII of the Guide to Judiciary Policies and Procedures, Appointment of Counsel in Criminal Cases, except that the provisions concerning maximum compensation shall not apply.

(e) **Filing.** As used herein, the term "finalized petition" shall refer to the petition filed by retained or appointed counsel or by a petitioner who has expressly waived counsel and elected to proceed *pro se* under paragraph (d)(1) of this rule. Finalized petitions shall be filled in by printing or typewriting. In the alternative, the finalized petition may be in legible typewritten or written form which contains all of the information required by that form. All finalized petitions:

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

(2) shall set forth any scheduled execution date.

An original and three copies of the finalized petition shall be filed by counsel for petitioner. A *pro se* petitioner need file only the original. No filing fee is required.

The Clerk of Court will immediately notify the Idaho Attorney General's Office when a petition if filed.

When a petition is filed by a petitioner who was convicted outside of this district, the Clerk of Court will immediately advise the Clerk of Court of the district in which petitioner was convicted.

(f) **Stays of Execution on a First Petition for Habeas Corpus.**

(1) First Petition Defined. A first petition for habeas corpus shall include the original filing relating to a particular conviction and may include a subsequent filing if the original filing was not dismissed on the merits.

(2) Stay Pending Final Disposition. Upon the filing of a finalized habeas corpus petition, unless the finalized petition is patently frivolous, the district court shall issue a stay of execution pending final disposition of the matter.

(3) Temporary Stay for Appointment of Counsel. Where counsel in state court proceedings withdraws at the conclusion of the state court proceedings or is otherwise not available or qualified to proceed, the court will designate an attorney from the panel who will assist an indigent petitioner in filing *pro se* applications for appointment of counsel and for temporary stay of execution. This application shall be deemed to be a petition for writ of habeas corpus with leave having been granted to amend the petition upon appointment of counsel. Upon the filing of this application the district court shall issue a temporary stay of execution and appoint counsel from the panel of attorneys certified for appointment. The temporary stay will remain in effect for forty-five (45) days unless extended by the court.

(4) Temporary Stay for Preparation of the Finalized Petition. Where counsel new to the case is appointed, upon counsel's application for a temporary stay of execution accompanied by a specification of non-frivolous issues to be raised in the petition, the district court shall issue a temporary stay of execution unless no non-frivolous issues are presented. If no filing was made under paragraph (g)(3) above, the specification of non-frivolous issues required under this paragraph shall be deemed to be a petition for writ of habeas corpus with leave having been granted to amend the petition. The temporary stay will remain in effect for one hundred twenty (120) days to allow newly appointed counsel to prepare and file the finalized petition. The temporary stay may be extended by the court upon subsequent showing of good cause.

(5) Stay Pending Appeal. If the petition is denied and a certificate of probable cause for appeal is issued, the court will grant a stay of execution which will continue in effect until the court of appeals acts upon the appeal or the order of stay.

(6) Notice of Stay. Upon the granting of any stay of execution, the Clerk of Court will immediately notify the warden of Idaho State Correctional Institution and the Idaho Attorney General. The Idaho Attorney General shall assure that the Clerk of Court has a twenty-four (24) hour telephone number to the warden.

(g) **Procedures for Considering the Finalized Petition.** Unless the judge summarily dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the following schedule and procedures shall apply subject to modification by the judge. Requests for enlargement of any time period in this rule shall comply with the applicable local rules of the court.

(1) Respondent shall as soon as practicable, but in any event on or before twenty (20) days from the date of service of the finalized petition, lodge with the court one copy of the following:

(A) Transcripts of the state trial court proceedings.

(B) Appellant's and respondent's briefs on direct appeal to the Idaho Supreme Court, and the opinion or orders of that court.

(C) Petitioner's and respondent's briefs in any state court habeas corpus proceedings, and all opinions, orders and transcripts of such proceedings.

(D) Copies of all pleadings, opinions and orders in any previous federal habeas corpus proceeding filed by petitioner which arose from the same conviction.

(E) An index of all materials described in paragraphs (A) through (D) above. Such materials are to be marked and numbered so that they can be uniformly cited. Respondent shall serve this index upon counsel for petitioner.

If any items identified in paragraphs (A) through (D) above are not available, respondent shall state when, if at all, such missing material can be filed.

(2) If counsel for petitioner claims that respondent has not complied with the requirements of paragraph (1), or if counsel for petitioner does not have copies of all the documents lodged with the court, counsel for petitioner shall immediately notify the court, in writing, with a copy to respondent. Copies of any missing documents will be provided to counsel for petitioner by the respondent.

(3) Respondent shall file an answer to the finalized petition with accompanying points and authorities within thirty (30) days from the date of service of the finalized petition. Respondent shall include in the answer the matters defined in Rule 5 of the Rules Governing § 2254 Cases and shall attach any other relevant document not already filed.

(4) Within thirty (30) days after respondent has filed the answer, petitioner may file a traverse.

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

(6) Any request for an evidentiary hearing by either party shall be made within fifteen (15) days from the filing of the traverse, or within fifteen (15) days from the expiration of the time for filing the traverse. The request shall include a specification of which factual issues require a hearing and a summary of what evidence petitioner proposes to offer. Any opposition to the request for an evidentiary hearing shall be made within fifteen (15) days from the filing of the request. The court will then give due consideration to whether an evidentiary hearing will be held.

(h) **Evidentiary Hearing.** If an evidentiary hearing is held, the court will order the preparation of a transcript of the hearing, which is to be immediately provided to petitioner and respondent for use in briefing and argument. Upon the preparation of the transcript, the court may establish a reasonable schedule for further briefing and argument of the issues considered at the hearing.

(i) **Oral Argument.** Except in cases where the petition is patently frivolous, if no evidentiary hearing is held, the court, at its discretion, may set the matter down for oral argument within ninety (90) days after the time to request an evidentiary hearing has passed or within ninety (90) days after the court has denied a request for an evidentiary hearing.

(j) **Rulings.** The court's rulings may be in the form of a written opinion which will be filed, or in the form of an oral opinion on the record in open court, which shall be promptly transcribed and filed.

The Clerk of Court will immediately notify the warden of Idaho State Correctional Institution and the Idaho Attorney General whenever relief is granted on a petition.

The Clerk of Court will immediately notify the Clerk of the United States Court of Appeals for the Ninth Circuit by telephone of

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

(2) the denial of a stay of execution.

When a notice of appeal is filed, the Clerk of Court will transmit the record to the Court of Appeals immediately.

(k) **Duty of Respondent in Subsequent Proceedings.** All documents, including petitions, motions, orders and opinions, filed in any proceeding following this court's denial of a first petition shall be lodged by respondent in this court as soon as possible after they are filed in such other proceeding. Respondent shall similarly lodge a copy of any transcript of any proceeding following this court's denial of a first petition.

RELATED AUTHORITY

NONE

RULE 15.1
FORM OF A MOTION TO AMEND AND ITS SUPPORTING DOCUMENTATION

A party who moves to amend a pleading shall include the portion of the proposed amended pleading in the motion. Any amendment to a pleading, whether filed as a matter of course or upon a motion to amend, may reproduce the entire pleading as amended or may refer back to the original pleading. A failure to comply with this rule is not grounds for denial of the motion.

RELATED AUTHORITY

Fed. R. Civ. P. 15(a)

RULE 16.1
PRE-TRIAL PROCEDURES

(a) Scheduling (Status) Conference.
At any time after the commencement of an action, but in no event more than 60 days after the appearance of the defendant, the assigned judge may, with or without written request of any party, order the holding of a status conference. Status conferences may be telephonic or in person. All parties shall be prepared to discuss any particular subjects specified in the status conference notice, in addition to the following:

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

(2) Jurisdiction and venue;

(3) Anticipated motions;

(4) Anticipated or remaining discovery;

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

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

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

(8) Prospects for settlement;

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

At the conclusion of the status conference, or anytime thereafter, the assigned judge or magistrate judge may enter such order governing further proceedings in the action as he may deem appropriate, including provision for discovery and pretrial motions cut-off dates, initiation of pretrial proceedings, and trial settings. Copies of any such orders shall be served on all parties who have appeared in the action or proceeding.

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

(b) Pretrial Conference.
One or more pretrial conferences shall be held in any action or proceeding at such time as the assigned judge may order (i) by a status conference order, or (ii) by any other order issued at the written request of any party or on the judge's own motion. If any party files such a request, a copy shall be served upon all other parties who shall have fourteen (14) days within which to respond to said request.

Not less than twenty (20) days prior to the date on which the pretrial conference is ordered to be held, counsel shall meet and discuss:

(1) preparation of a joint pretrial statement;

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

(3) settlement of the action.

(c) Pretrial Conference Agenda.

(1) A pretrial conference shall be held on the date and at the time scheduled. The agenda for the pretrial conference shall consist of the matters covered by Fed. R. Civ. P. 16, and the foregoing local rule and any other matters germane to the trial of the action or proceeding. Each party shall be represented at the pretrial conference by counsel having authority with respect to all matters on the agenda, including settlement of the action or proceeding.

(2) Except as otherwise provided by a status conference order prepared under the rules or by stipulation of all parties approved by the assigned judge, the parties shall, not less than five (5) days prior to the date of the pretrial conference, file a joint pretrial statement or, if after a good faith attempt they are unable to agree to a joint statement, serve and file separate pretrial statements, which shall follow the form and contain the information specified in this rule:

(A) **Party.** The names of the parties or party in whose behalf the statement is filed.

(B) **Jurisdiction and Venue.** The claimed statutory basis of federal jurisdiction and venue and a statement as to whether any party disputes jurisdiction or venue.

(C) **Substance of the Action.** A brief description of the substance of the claims and defenses presented.

(D) **Undisputed Facts.** A plain and concise statement of all material facts not reasonably disputable. Counsel are expected to make a good faith effort to stipulate to all facts not reasonably disputable for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(E) **Disputed Factual Issues.** A plain and concise statement of all disputed factual issues.

(F) **Relief Prayed.** A detailed statement of the relief claimed, including an itemization of all elements of damages claimed.

(G) **Points of Law.** A concise statement of each disputed point of law with respect to liability and relief. Reference shall be made to statutes and decisions relied upon, but extended legal argument is not to be included in the pretrial statement.

(H) **Witnesses to be Called.** A list of all witnesses likely to be called at trial, except for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given.

(I) **Exhibits, Schedules and Summaries.** A list of all documents and other items to be offered as exhibits at the trial, except for impeachment or rebuttal, with a brief statement following each describing its substance or purpose and the identity of the sponsoring witness.

(J) **Further Discovery or Motions.** A statement of all remaining discovery or motions.

(K) **Stipulations.** A statement of stipulation requested or proposed for pretrial or trial purposes.

(L) **Amendments, Dismissals.** A statement of requested or proposed amendments to pleadings or dismissals of parties, claims, or defenses.

(M) **Settlement Discussion.** A statement summarizing the status of settlement negotiations and indicating whether further negotiations are likely to be productive.

(N) **Agreed Statement.** A statement as to whether presentation of the action or proceeding, in whole or in part, upon an agreed statement of facts, is feasible and desired.

(O) **Bifurcation, Separate Trial of Issues.** A statement whether bifurcation, or a separate trial of specific issues, is feasible and desired.

(P) **Reference to Magistrate Judge or Master.** A statement whether reference of all or a party of the action or proceeding to a magistrate judge or master is feasible and desired.

(Q) **Appointment and Limitation of Experts.** A statement whether appointment by the court of an impartial expert witness, or limitation of the number of expert witnesses, is feasible and desired.

(R) **Trial Date.** Except where the trial date has been previously set, a statement of the proposed trial date.

(S) **Estimate of Trial Time.** An estimate of the number of court days expected to be required for the presentation of each party's case. Counsel are expected to make a good faith effort to reduce the time required for trial by all means reasonably feasible, including stipulations, agreed statement of facts, expedited means of presenting testimony and exhibits, and the avoidance of cumulative proof.

(T) **Claims of Privilege or Work Product.** A statement indicating whether any of the matters otherwise required to be stated by this rule are claimed to be covered by the work product or other privilege. Upon such indication, such matters may be omitted subject to further order at the pretrial conference.

(U) **Miscellaneous.** Any other subjects relevant to the trial of the action or proceeding, or material to its just, efficient, and economical determination.

(d) Pretrial Order, Submission of Pretrial Material.
The assigned judge or magistrate judge may make such pretrial order or orders, at or following the pretrial conference, as may be appropriate. Such order shall control the subsequent action or proceeding as provided in Fed. R. Civ. P. 16. Unless otherwise ordered, the parties shall, not less than fourteen (14) calendared days prior to the date on which the trial is scheduled to commence:

(1) Serve and file briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues, setting forth briefly the parties' positions and the supporting arguments and authorities.

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

(3) Serve and file statements designating excerpts from depositions (specify the witness and page and line reference), from interrogatory answers, and from responses to requests for admissions, to be offered at the trial other than for impeachment or rebuttal.

(4) Exchange copies of all exhibits to be offered and all schedules, summaries, diagrams, and charts to be used at the trial, other than for impeachment or rebuttal.

(5) On a standard form, obtainable from the Clerk of Court, all parties shall furnish a list of their intended trial exhibits. In addition to physical and documentary exhibits, this list will include any deposition or document containing answers to interrogatories and requests for admissions to be offered or used in trial. The completed exhibit list shall contain a brief description of each intended trial exhibit. To the extent possible, exhibits are to be listed in the sequence in which the parties propose to offer them. No exhibit is to be assigned a number without first contacting the clerk. After assignment of numbers, the exhibit list is to be furnished to the opposing party or parties and three copies submitted to the clerk. Each party shall also prepare sufficient copies of their documentary exhibits to provide copies to the opposing party or parties. Additionally, each party must lodge with the clerk an original and two copies of their documentary trial exhibits. All copies shall be bound with metal paper fasteners and tabulated for marking.

Each party appearing shall present to the clerk their intended trial exhibits, except for impeachment and rebuttal materials. This will include depositions, answers to interrogatories, and requests for admissions, as well as all other documents and things intended to be used or offered by such party as trial exhibits.

If, however, a pretrial order is filed in lieu of a pretrial conference, the exhibits must be lodged with the clerk ten (10) days prior to the date of the trial. Finally, when presented to the clerk, the exhibits shall be in the same sequence as they appear on the exhibit list, but shall not be assigned a number without first contacting the clerk. In complying with this rule, counsel may discuss the matter and obtain assistance from the judge's law clerk and/or the judge's courtroom deputy.

RELATED AUTHORITY

Fed. R. Civ. P. 16

RULE 17.1
INFANTS AND INCOMPETENT PERSONS

(a) **Infants and Incompetent Persons.**

(1) No claim of an infant or incompetent person shall be settled or compromised without leave of the court, embodied in an order approving the stipulation of settlement.

(2) Whenever an infant or incompetent person has recovered a sum of money, whether by settlement or judgment, such money, whether collected upon execution or otherwise, shall be deposited with the clerk, unless otherwise ordered by the court, to abide the further order of the court in the premises. Such money shall not be withdrawn except as hereinafter provided.

(3) Upon production of a certified copy of letters of guardianship of the property of the infant or incompetent person, or like commission, or of an order approving the compromise of a disputed claim of a minor, as contemplated by Idaho Code § 15-5-409a issued out of any court of competent jurisdiction of the state, county, or district where the infant or incompetent person resides, an application may be made on behalf of the infant or incompetent person for an order directing the clerk to pay over to such guardian or other named or authorized person the amount so deposited. Such application must be made either by the attorney of record of the infant or incompetent person, or on notice to such attorney.

(4) On such application the amount of the attorney's lien on the fund, if any, shall be fixed and determined by the court, which determination shall be embodied in the order directing the disposal of the fund . The clerk shall thereupon pay out the monies as directed.

(b) **Bond of Guardian Ad Litem.** In cases in which an infant or incompetent person is represented by a next friend or by a guardian *ad litem*, no such next friend or guardian *ad litem* shall receive money or other property of the infant or incompetent person until the next friend or guardian *ad litem* has given such security for the faithful performance of such duties as the court shall prescribe. If such next friend or guardian *ad litem* shall not desire to receive any such money or property, the same may be paid or delivered to the clerk, or to such persons as may be directed by the judge, with like effect as if paid or delivered to the next friend or guardian *ad litem*, subject to payment of the clerk's fees.

RELATED AUTHORITY

Fed. R. Civ. P. 17(c)

RULE 26.1
FORM OF CERTAIN DISCOVERY DOCUMENTS

The party answering, responding, or objecting to written interrogatories, requests for production of documents or things, or requests for admission shall quote each such interrogatory or request in full immediately preceding the statement of any answer, response, or objection thereto. The parties shall also number each interrogatory, request, answer, response, or objection sequentially, regardless of the number of sets of interrogatories or requests.

RELATED AUTHORITY

Fed. R. Civ. P. 26, 33, 34, 36

RULE 37.1
INFORMAL CONFERENCE TO SETTLE DISCOVERY DISPUTES

(a) Unless otherwise ordered, the court will not entertain any discovery motion, except those motions brought by a person appearing *pro se* and those brought pursuant to Rule 26(c) by a person who is not a party, unless counsel for the moving party files with the court, at the time of filing the motion, a statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion.

(b) The party filing the motion shall specify separately and with particularity each issue that remains to be determined at the hearing and the contentions and points and authorities of each party as to each issue. The motion must be set forth in one document and contain all such issues in dispute and the contentions and points and authorities of each party. The motion shall not refer the court to other documents in the file. For example, if the sufficiency of an answer to an interrogatory is in issue, the motion shall contain, verbatim, both the interrogatory and the allegedly insufficient answer, followed by each party's contentions, separately stated.

RELATED AUTHORITY

Fed. R. Civ. P. 26(f)

RULE 37.2
FORM OF DISCOVERY MOTIONS

Any discovery motion filed pursuant to Fed. R. Civ. P. 26 and 37 shall include, in the motion itself or in an attached memorandum, a verbatim recitation of each interrogatory, request, answer, response, and objection which is the subject of the motion or a copy of the actual discovery document which is the subject of the motion.

RELATED AUTHORITY

Fed. R. Civ. P. 26(c), 37(a), 78

RULE 38.1
NOTATION OF "JURY DEMAND" IN THE PLEADING

If a party demands a jury trial by endorsing it on a pleading, as permitted by Fed. R. Civ. P. 38(b), a notation shall be placed on the front page of the pleading, immediately following the title of the pleading, stating "Demand For Jury Trial" or an equivalent statement. This notation will serve as a sufficient demand under Rule 38(b). Failure to use this manner of noting the demand will not result in a waiver under Rule 38(d).

RELATED AUTHORITY

Fed. R. Civ. P. 38(b)

RULE 39.1
OPENING STATEMENTS AND CLOSING ARGUMENTS

(a) **Opening Statements.**
Prior to offering any evidence, counsel for the plaintiff shall make a statement of the facts which counsel intends to establish in support of plaintiff's claim, unless such statement is waived with permission of the court. Such waiver or statement shall be made as a matter of record. Following the statement of plaintiff or at the opening of defendant's case, at the election of counsel for the defendant, the defendant's counsel shall make a statement of facts which defendant's counsel intends to establish, unless such statement is waived with permission of the court. Such waiver or statement shall be made as a matter of record.

(b) **Arguments.**
Only one attorney shall open and one attorney shall close, except with the permission of the court; provided that if the opening attorney does not intend to close, the opening attorney shall so inform the court so that the court may appropriately apportion the arguments between the counsel.

RELATED AUTHORITY

NONE

RULE 40.1
ASSIGNMENT OF CASES

With the exception of death penalty cases, all actions, causes, and proceedings, civil and criminal, shall be assigned by the clerk to the respective judges of the court by lot. However, all cases to be heard in the northern or eastern calendar areas shall be automatically assigned by the clerk to the judge currently in charge of the calendar for that particular calendar area. If it appears that a case has been improperly assigned for any reason, the court may, in its discretion, reassign the case to another calendar area without prior notice.

RELATED AUTHORITY

28 U.S.C. § 137

RULE 41.1
DISMISSAL OF ACTIONS

Actions or proceedings which have been pending in this court for more than six (6) months without any proceedings having been taken therein during such period may, after notice, be dismissed by the court for lack of prosecution. Such dismissal shall be without prejudice, unless otherwise ordered.

RELATED AUTHORITY

Fed. R. Civ. P. 41

RULE 43.1
EXAMINATION OF WITNESSES

Only one attorney for each party shall examine or cross-examine a witness except with the permission of the court.

RELATED AUTHORITY

NONE

RULE 47.1
VOIR DIRE OF JURORS

(a) The jury box shall be filled before examination on voir dire. The court will examine the jurors as to their qualifications and, if permitted, will direct the order and manner of examination by counsel. Not less than five (5) days before trial, attorneys may submit written requests for voir dire questions.

(b) Unless otherwise ordered by the court, six jurors plus a number of jurors equal to the total number of peremptory challenges which are allowed by law shall be called in the first instance. These jurors constitute the initial panel. As the initial panel is called, the clerk shall assign numbers to the jurors in the order in which they are called. If any juror in the initial panel is excused for cause, an additional juror shall be immediately called to fill out the initial panel. A juror called to replace a juror excused shall take the number of the juror who has been excused. When the initial panel is qualified, the parties shall exercise their peremptory challenges secretly and alternately, with plaintiff exercising the first challenge. When peremptory challenges have all been exercised or waived, the court shall call the names of the selected jurors having the lowest assigned numbers. These jurors shall constitute the trial jury.

RELATED AUTHORITY

Fed. R. Civ. P. 47
28 U.S.C. § 1870

RULE 48.1
SIX-MEMBER JURIES

The jury in a civil case at law, or in a non-criminal case in which a right to trial by jury is otherwise granted by statute, shall consist of not more than twelve (12) and not less than six (6) jurors unless the parties stipulate to a lesser or greater number, or upon motion of the court.

RELATED AUTHORITY

Fed. R. Civ. P. 48

RULE 51.1
INSTRUCTIONS TO JURY

(a) Submission of Proposed Jury Instructions.
In the case of a jury trial, written proposed jury instructions and any request for special interrogatories and special verdict forms shall be prepared and presented by counsel at least ten (10) days prior to the date of trial, but the court may, in its discretion, receive additional requests during the course of the trial. Counsel shall file one copy of proposed instructions and requests for special interrogatories and/or special verdict forms with the Clerk of Court; the original and one copy of same shall be presented to the trial judge in the format specified below or in machine readable format specified by the Clerk of Court. The original of each proposed instruction, requests for special interrogatory, and/or special verdict shall not be numbered or indicate the identity of the party presenting the same and shall not contain citations of authority. Each copy shall be numbered, shall indicate the party presenting the same, and shall have such citations to authority as counsel will rely on. Individual instructions shall embrace one subject only, and the principle of law so embraced in any request for instruction shall not be repeated on subsequent requests.

(b) Objections to Requested Instructions.
Copies of requested instructions together with any requests for special interrogatories and/or special verdicts shall be served upon the adverse party at the time of filing a copy with the clerk as hereinabove provided. The adverse party shall, at least one day prior to trial, specify objections to any of said instructions. Such objections shall be submitted in writing (or orally, if permitted by the court), shall be numbered, and shall identify the instructions objected to by number, and specify distinctly the matter to which said adverse party objects; said objection shall be accompanied by citations of authority in support thereof.

(c) Objections to the Instructions Given by the Court.
The trial judge shall fix the time, place, and procedure for making objections to the judge's charge to the jury. Objections shall be made outside the presence of the jury and shall be reported by the court reporter in the transcript or, in the absence of a transcript, by the clerk in the minutes of the trial.

(d) Instructions to the Jury.
The jury shall be instructed by the court, as provided in Fed. R. Civ. P. 51 either before or after arguments by counsel, or both, at the court's election.

RELATED AUTHORITY

Fed. R. Civ. P. 51

RULE 54.1
TAXATION OF COSTS

(a) Within ten (10) days after entry of judgment, under which costs may be claimed, the prevailing party may serve and file a cost bill requesting taxation of costs itemized thereon. Said party shall also submit copies for all parties on which the clerk shall endorse the clerk's action and which shall be mailed to all such parties when costs have been taxed. The cost bill shall itemize the costs claimed and be supported by a certificate of counsel that the costs are correctly stated, were necessarily incurred, and are allowable by law. The court will enforce the provisions of 28 U.S.C. § 1927 in the event an attorney or other person admitted to practice in this court causes an unreasonable increase in costs. Not less than twenty (20) days after receipt of a party's cost bill, the clerk, after consideration of any objections thereto, shall tax costs and shall serve copies of the cost bill upon all parties of record. The cost bill should reflect the clerk's action as to each item contained therein. Within ten (10) days after service by any party of its cost bill, any other party may serve and file specific objections to any items setting forth the grounds therefor.

(b) Costs shall be taxed in conformity with the provisions of 28 U.S.C. §§ 1920-1923 and such other provisions of law as may be applicable and such directives as the court may from time to time issue. Taxable items include:

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

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

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

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

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

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

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

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

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

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

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

RELATED AUTHORITY

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

RULE 54.2
JURY COST ASSESSMENT

When a civil action has been settled or otherwise disposed of in or out of court, it is the duty of counsel to inform the clerk by 3 p.m. of the day immediately prior to trial. Costs may be assessed against counsel for failure to do so. In the event that failure to give notice hereunder results in the reporting of prospective jurors for service in the case, costs may include one day's fees for prospective jurors so reporting.

RELATED AUTHORITY

NONE

RULE 54.3
AWARD OF ATTORNEY'S FEES

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

(b) Within thirty (30) days after entry of final judgment, a party claiming the right to allowance of attorney fees may file and serve a petition for such allowance. The petition shall state the amount claimed and cite the legal authority relied on. The petition shall be accompanied by an affidavit of counsel setting forth the hours reasonably expended; the hourly rate claimed; a statement of attorney fee contract with the client; and information, where appropriate, as to other factors which might assist the court in determining the dollar amount of fee to be allowed. Petitions for attorneys fees and cost bills shall be filed as separate documents. Failure to comply with this requirement will result in delay in processing.

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

RELATED AUTHORITY

28 U.S.C. § 2412

RULE 56.1
SUMMARY JUDGMENT PROCEDURE

(a) There shall be served and filed with each motion for summary judgment a concise statement of the material facts as to which the moving party contends there are no genuine issues of dispute.

(b) Any party opposing the motion may, not later than fourteen (14) days after the service of the motion on such opposing party, serve and file a concise statement setting forth all material facts as to which it is contended there exists genuine issues necessary to be litigated.

RELATED AUTHORITY

Fed. R. Civ. P. 7(b), 56, 78

RULE 58.1
ENTRY OF JUDGMENT

In every action or proceeding terminating in a judgment, there shall be filed, separate from any findings of fact, conclusions of law, memorandum, opinion, or order, a judgment which shall state in simple and direct terms the judgment of the court, shall be signed by the judge or the clerk as allowed by Local Rule 77.2 and shall comply in other respects with Fed. R. Civ. P. 58.

RELATED AUTHORITY

Fed. R. Civ. P. 58

RULE 58.2
SATISFACTION OF JUDGMENT

Whenever the amount directed to be paid by any judgment or order, together with interest (if interest accrues) and the clerk's statutory charges, shall be paid into court by payment to the clerk, the clerk shall enter satisfaction of said judgment or order. The court shall enter satisfaction of any judgment or order on behalf of the United States upon the filing of a written acknowledgment of satisfaction thereof by the United States Attorney, and in other cases, upon the filing of a written acknowledgment of satisfaction made by the judgment-creditor and the judgment-creditor's attorney, and by the legal representatives or assigns of the judgment-creditor with evidence of their authority, within two years after the date of entry of the judgment or order, and thereafter upon written acknowledgement by the judgment-creditor or by the judgment-creditor's legal representatives or assigns with evidence of their authority.

RELATED AUTHORITY

Fed. R. Civ. P. 54, 58, 79(a)(b)

RULE 62.2
SUPERSEDEAS BONDS

(a) **Approval, Filing, and Service.** If eligible under Local Rule 67.1, the bond may be approved and filed by the clerk. A copy of the bond plus notice of filing shall be served on all affected parties promptly.

(b) **Objections.** The court shall determine objections to the form of the bond or sufficiency of the surety.

(c) **Execution.** Except where otherwise provided by Fed. R. Civ. P. 62, or order of the court, execution may issue after ten (10) days from the entry of a judgment unless a supersedeas bond has been approved by the judge or the clerk.

RELATED AUTHORITY

NONE

RULE 65.1
SECURITY; PROCEEDING AGAINST SURETIES

(a) **The Judgment.** Every bond within the scope of these rules will contain the surety or sureties' consent that in case of the principal's or sureties' default, upon notice of not less than seventeen (17) days, the court may proceed summarily and render judgment against them and award execution.

(b) **Service.** Any indemnitee or party in interest who seeks the judgment provided by these rules will proceed by motion and with respect to personal sureties and corporate sureties will make the service provided by Fed. R. Civ. P. 5(b) or 31 U.S.C. § 9306, respectively.

RELATED AUTHORITY

Fed. R. Civ. P. 65.1

RULE 67.1
BONDS AND OTHER SURETIES

(a) Bonds and Sureties.

(1) When Required. A judge may, upon demand of any party, where authorized by law and for good cause shown, require any party to furnish security for costs which may be awarded against such party in an amount and on such items as are appropriate.

(2) Qualifications of Surety.

(A) Every bond must have as surety either: (1) a corporation authorized by the Secretary of the Treasury of the United States to act as surety on official bonds under 31 U.S.C. §§ 9301-9308; (2) a corporation authorized to act as surety under the laws of the state of Idaho; (3) two individual residents of the district, each of whom owns real or personal property within the district of sufficient equity value to justify twice the amount of the bond; or (4) a cash deposit of the required amount made with the Clerk and filed with a bond signed by the principals.

(B) An individual who executes a bond as a surety pursuant to this subsection will attach an affidavit which gives the individual's full name, occupation, residence, and business addresses and demonstrates ownership of real or personal property within this district. After excluding property exempt from execution and deducting liabilities (including those which have arisen by virtue of suretyship on other bonds or undertakings), the real or personal property must be valued at no less than twice the amount of the bond.

(3) Court Officers as Sureties. No clerk, marshal, or other employee of the court nor any member of the bar representing a party in the particular action or proceeding shall be accepted as surety on any bond or other undertaking in any action or proceeding in this court. Cash deposits on bonds may be made by members of the bar on certification that the funds are the property of a specified person who has signed as surety on the bond. Upon exoneration of the bond, such monies shall be returned to the owner and not to the attorney.

(4) Examination of Sureties. Any party may apply for an order requiring any opposing party to show cause why it should not be required to furnish further or different security or requiring personal sureties to justify their financial status in support of their bond.

(b) Approval of Bonds by Attorneys and Clerk (or Judge).
All personal surety bonds must be presented to the judge for approval. When the party is represented by counsel, there shall be appended thereto a certificate of the attorney for the party for whom the bond is being filed substantially in the following form:

This bond has been examined by counsel (for plaintiff/defendant) and is recommended for approval as provided in this rule.

Dated this _____ day of _____, ____.

_____
Attorney

Such endorsement by the attorney will signify to the court that said attorney has carefully examined the said financial information of the personal surety, that the attorney knows the contents thereof; that the attorney knows the purposes for which it is executed; that in the attorney's opinion the same is in due form; and that the attorney believes the affidavits of qualification to be true.

RELATED AUTHORITY

Fed. R. Civ. P. 65(c), 65.1
28 U.S.C. § 1446

RULE 67.2
DEPOSITS

The following form of standard order shall be used for the deposit of registry funds into interest bearing accounts or the investment of such funds in an interest bearing instrument:

IT IS ORDERED that the clerk invest the amount of $_____ in an automatically renewable (type of account or instrument, i.e., time certificate, treasury bill, passbook) in the name of the clerk, U.S. District Court, at (name of bank, savings and loan, brokerage house, etc.), said funds to remain invested pending further order of the court.

IT IS FURTHER ORDERED that the clerk shall be authorized to deduct a fee from the income earned on the investment equal to the first 45 days income earned on the investment, whenever such income becomes available for deduction in the investment so held and without further order of the court.

IT IS FURTHER ORDERED that counsel presenting this order personally serve a copy thereof on the clerk or his chief deputy. Absent the aforesaid service, the clerk is hereby relieved of any personal liability relative to compliance with this order.

RELATED AUTHORITY

Fed. R. Civ. P. 67
28 U.S.C. § 2041-2042

RULE 67.3
WITHDRAWAL OF A DEPOSIT PURSUANT TO FED. R. CIV. P. 67.

(a) Funds may only be withdrawn upon an order of this court. Such order shall specify the amounts to be paid and the names of any person or company to whom the funds are to be paid.

(b) Any person seeking withdrawal of money which was deposited in the court pursuant to Rule 67 and which was subsequently deposited into an interest-bearing account or instrument as required by Rule 67, shall provide, on a separate paper attached to the motion seeking withdrawal of the funds, the social security number or tax identification number of the ultimate recipient of the funds. This separate paper shall be forwarded by the court directly to the institution holding the money.

RELATED AUTHORITY

Fed. R. Civ. P. 67
28 U.S.C. § 2041-2042

RULE 68.1
SETTLEMENT CONFERENCES

(a) At any time after an action or proceeding is at issue, any party may file a request for, or the assigned judge on his own initiative may order, a settlement conference. The settlement conference may be ordered held in conjunction with any status or pretrial conference or independent thereof. Such conference may be held before the assigned judge, or at the request of a party, or again on the assigned judge's own motion, before such other judge or magistrate judge (hereafter the settlement judge) as may be designated for the purpose.

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

(1) The requirement that each party to such conference be represented by counsel authorized to participate in settlement negotiations;

(2) The principals to the litigation be in attendance or available by telephone;

(3) The representatives of all involved carriers be in attendance or available by telephone where insurance coverage is being provided;

(4) The counsel for each party, each representative of a party, and each representative of an insurance carrier be knowledgeable about the facts of the case and be prepared to candidly discuss the same with the settlement judge;

(5) Each party prepare and submit to the settlement judge, *in camera*, a candid and fair written summation of the facts as understood by that party.

(6) All information provided to the settlement judge shall be held in confidence and all written material submitted shall be returned to the submitting party upon termination of the settlement proceedings. No oral statement, written document, or other material considered during the settlement procedure may be used against any party in litigation; and

(7) The settlement conference may be continued from time to time until settlement is reached or the settlement judge determines that the settlement conference should be terminated.

RELATED AUTHORITY

Fed. R. Civ. P. 16

RULE 71A.1
CONDEMNATION CASES

(a) In eminent domain proceedings, additional pretrial disclosure shall be made as follows:

(1) Not later than ten (10) days in advance of the pretrial conference each party appearing shall lodge with the clerk, under seal, the original and sufficient additional copies for the judge and all parties appearing, of a summary "Statement of Comparable Transactions." Said summary shall contain the relevant facts as to each sale or other transaction to be relied upon as comparable to the taking, including the alleged date of such transaction, the names of the parties thereto, and the consideration thereof; together with the date of recordation and the book and page or other identification of any record of such transaction; and such statement shall be in form and content suitable to be presented to the jury as a summary of evidence on the subject. As soon as such statement shall have been lodged by all parties appearing in connection with a particular parcel or parcels of property in issue, the clerk shall unseal the statements, regularly file the originals, and forthwith serve copies of each party's statement by United States Mail on the attorneys for the other parties appearing. Each copy so served shall bear the clerk's stamp showing the filing date of the original;

(2) Not later than the date of filing of the statements required under the foregoing paragraph, each party shall lodge with the clerk, under seal, for examination by the judge *in camera*, the original and one copy of "Schedule of Witnesses as to Value," setting forth:

(A) The names of all persons, including expert appraisers, owners, and former owners, intended to be called to give opinion evidence as to the value, and

(B) The opinion to be given by each.

(3) The provisions of this subsection do not preclude prior or additional discovery as provided in the Federal Rules of Civil Procedure.

RELATED AUTHORITY

Fed. R. Civ. P. 71A
33 U.S.C. § 594
40 U.S.C. § 258
42 U.S.C. § 2222

RULE 72.1
MAGISTRATE JUDGE RULES

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

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

(2) Prisoner Cases Under 28 U.S.C. §§ 2254 and 2255. The magistrate judge may perform any or all of the duties imposed upon a judge by the rules governing proceedings in the United States district courts under § 2254 and § 2255 of Title 28 United States Code. In so doing, the magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceedings and shall submit to a judge a report containing proposed findings of fact and recommendations for disposition of the petition or motion by the judge except in cases where the death penalty has been imposed; in which case, the district judge shall conduct the evidentiary hearing, if necessary. Any order disposing of the petition or motion may only be made by a district judge.

(3) Prisoner Cases Under 42 U.S.C. § 1983. The magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceedings and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of petitions or complaints filed by prisoners challenging the conditions of their confinement.

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

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

(6) Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties. A full-time magistrate judge specially designated by the court may conduct any and all proceedings, including pretrial and post-trial motions, in any civil case which is filed in this court pursuant to 28 U.S.C. § 636(c) provided all parties have consented to trial by the magistrate judge and after the court has reviewed the case and determined that it should be reassigned to the magistrate judge and a reassignment order has been entered by the court. A part-time magistrate judge, specifically designated by the district court to try civil cases, may, upon the specific request of the parties and if the Chief Judge of the district certifies that a full-time magistrate judge is not reasonably available to try the case, conduct any and all proceedings in the case, including pretrial and post-trial motions.

(7) A magistrate judge is also authorized to:

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

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

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

(D) Preside when the Grand Jury reports and accept for the court any indictments returned, issue warrants and summonses as appropriate, and establish the terms of release pending trial, continue the same if previously fixed or modify the terms of release as he shall see fit;

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

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

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

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

(I) Order the exoneration or forfeiture of bonds;

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

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

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

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

(1) Criminal Cases.

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

(B) Felony Cases: Upon the return of an indictment or the filing of an information, all felony cases shall be assigned by the Clerk of Court to one of the district judges and then delivered to the magistrate judge to conduct an arraignment, appointment of counsel when appropriate, and other preliminary matters pursuant to Federal Rules of Criminal Procedure. Upon receipt of a not guilty plea, the magistrate judge shall calendar the case for the assigned judge for the purpose of trial setting, enter an order scheduling any pretrial motions to be heard before the judge, and notify the parties and counsel. If the defendant advises the magistrate judge that he wishes to enter a plea of guilty or *nolo contendere*, the magistrate judge shall calendar the case for the assigned district judge for the entry of a plea of guilty or *nolo contendere*.

(2) Civil Cases. Upon filing, all civil cases shall be assigned by the Clerk of Court to the district judge, who may refer the same to the magistrate judge to conduct scheduling conferences and may also refer pretrial motions to him pursuant to these rules. When directed by a judge of the court, either by general reference or by specific reference in any case, the magistrate judge may conduct additional pretrial conferences and hear dispositive and non-dispositive motions and perform any other duties set forth in these rules. When the parties consent to trial and disposition of a case by a magistrate judge, such case shall, with the approval of the district judge to whom it was assigned at the time of filing, be referred to the magistrate judge to conduct all further proceedings and the entry of judgment and resolution of post-judgment motions.

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

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

(1) Notice. The Clerk of Court shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. The consent notice and election to proceed form shall be handed or mailed to the initiating party or his representative at the time an action is filed and initiating party shall cause a copy of the consent notice and election to proceed form to be served on all opposing parties with the complaint and summons. Additional consent notices and election to proceed forms may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

(2) Reassignment. After the election to proceed form has been executed and filed by all parties, the clerk shall transmit it to the judge to whom the case has been assigned for consideration of reassignment of the case to a magistrate judge. Once the case has been reassigned to a magistrate judge, the magistrate judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the Clerk of Court to enter a final judgment in the same manner as if a district judge had presided.

(d) **Review and Appeal.**

(1) Appeal of Non-Dispositive, Dispositive, and Prisoner Litigation--28 U.S.C. § 636(b)(1)(A). A district judge may reconsider any motion or matter heard by a magistrate judge within ten (10) days after receipt of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a district judge. Such party shall file with the Clerk of Court and serve on the magistrate judge and all parties a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any such appeal together with points and authorities in support thereof. The opposing party shall within ten (10) days thereafter file and serve upon the appealing party a memorandum of points and authorities responding to the objections. The district judge shall consider the appeal under the appropriate standard of review (i.e., clearly erroneous, de novo). The judge may also reconsider sua sponte any matter determined by a magistrate judge under this rule. The district judge may affirm, reverse, or modify, in whole or in part, the ruling made by the magistrate judge. The district judge may also remand the same to the magistrate judge with directions.

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

RELATED AUTHORITY

Fed. R. Civ. P. 72 and 73

RULE 77.1
HOURS OF THE COURT

(a) **Location and Hours.** The office of the Clerk of Court shall be at the United States Courthouse, Box 039, 550 West Fort Street, Room 612, Boise, Idaho 83724. The regular hours shall be from 8 a.m. to 5 p.m. each day except Saturday, Sunday, and legal holidays or other days so ordered by the court. Matters to be filed with the Clerk of Court may be filed at any time in Boise, Moscow or Pocatello, Idaho or in Coeur d'Alene, Idaho, when the Clerk of Court or a deputy clerk is available at that location.

(b) Emergency filings may be made before and after regular office hours or on Saturdays, Sundays, and legal holidays by contacting the Clerk of Court or any deputy clerk.

RELATED AUTHORITY

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

RULE 77.2
ORDERS AND JUDGMENTS GRANTABLE BY THE CLERK OF COURT

Orders Grantable by Clerk. The clerk is authorized to sign and enter orders specifically allowed to be signed by the clerk under the Federal Rules of Civil Procedure and is, in addition, authorized to sign and enter the following orders without further direction of a judge:

(a) Orders specifically appointing persons to serve process or for service of process by publication in accordance with Fed. R. Civ. P. 4;

(b) Orders by stipulation noting satisfaction of a judgment, providing for the payment of money, withdrawing stipulations, annulling bonds, exonerating sureties or setting aside a default;

(c) Order of dismissal by stipulation, with or without prejudice, except in cases to which Rules 23, 23.1, or 66 of Fed. R. Civ. P. apply;

(d) Orders entering default for failure to plead or otherwise defend in accordance with Fed. R. Civ. P. 55;

(e) Any other orders which pursuant to Fed. R. Civ. P. 77(c) do not require direction by the court;

(f) Orders for extension of time may be entered by the clerk upon stipulation of all parties. An *ex parte* motion for extension of time not to exceed fifteen (15) days may be granted once, at the discretion of the clerk, if accompanied by a statement showing specific reasons for the extension of time and that opposing counsel has been contacted and does not object. Any opposing party may move to have the extension of time set aside. Orders for extension of time shall be limited to:

(1) Motion to dismiss or answer to complaint;

(2) Answer or objection to interrogatories under Fed. R. Civ. P. 31 and 33;

(3) Response to requests for production or for inspection under Fed. R. Civ. P. 34; and

(4) Response to requests for admissions under Fed. R. Civ. P. 36.

(g) Orders granting application by attorneys to proceed pro hac vice pursuant to Rule 83.5.

RELATED AUTHORITY

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

RULE 77.4
SESSIONS OF THE COURT

(a) This court shall be in continuous session for transacting judicial business in Boise, Idaho, on all business days throughout the year and shall hold sessions of court in Coeur d'Alene, Moscow, and Pocatello, Idaho, at such times as the judicial workload of this court may warrant.

(b) Any judge of this court may, in the interest of justice or to further the efficient performance of the business of the court, conduct proceedings at a special session at any time, anywhere in the district, on request of a party or otherwise.

RELATED AUTHORITY

28 U.S.C. §§ 138-139
28 U.S.C. § 141

RULE 77.6
COURT LIBRARY

A law library is located on the sixth floor of the Federal Building and United States Courthouse in Boise, Idaho. The library is for the primary use of judges and personnel of this court and for the resident circuit judge and his personnel.

In addition, attorneys admitted to practice in this court may use the library when circumstances require. The library is operated in accordance with such rules and regulations as the court may from time to time adopt.

RELATED AUTHORITY

NONE

RULE 77.7
EX PARTE COMMUNICATION WITH JUDGES

Attorneys or parties to any action or proceeding should refrain from writing letters to the judge, or otherwise communicating with the judge unless opposing counsel is present. All matters to be called to a judge's attention should be formally submitted as hereinafter provided.

RELATED AUTHORITY

NONE

RULE 79.1
CUSTODY OF FILES AND EXHIBITS

(a) Files. All files of the court shall remain in the custody of the clerk and no court pleadings, discovery documents, exhibits, etc, shall be taken from the custody of the clerk without a special order of a judge and a proper receipt signed by the person obtaining the pleading or court document. Orders shall be granted only in extraordinary circumstances.

(b) Exhibits and Transcripts.

(1) All exhibits offered by any party in civil or criminal proceedings, whether or not received as evidence, shall be retained after trial by the party or attorney offering the exhibits until time for appeal is exhausted, unless otherwise ordered by the court.

(2) In the event an appeal is prosecuted by any party, each party to the appeal shall promptly file with the clerk any exhibits which that party wants to be transmitted to the appellate court as part of the record on appeal. Those exhibits not transmitted as part of the record on appeal shall be retained by the parties who shall make them available for use by the appellate court upon request.

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

RELATED AUTHORITY

NONE

RULE 83.2
FREE PRESS - FAIR TRIAL PROVISIONS

(a) **Publicity.** Courthouse supporting personnel, including, among others, clerks and deputies, law clerks, messengers, and court reporters, shall not disclose to any person information relating to any pending criminal or civil proceeding that is not part of the public records of the court without specific authorization of the court, nor shall any such personnel discuss the merits or personalities involved in any such proceeding with any members of the public. United States Marshals coming into possession of confidential information obtained from the court shall not disclose such information unless necessary for official law enforcement purposes.

(b) **Confidentiality.** All courthouse support personnel are specifically prohibited from divulging information concerning arguments and hearings held in chambers or otherwise outside the presence of the public.

(c) **Conduct of Proceedings in a Widely Publicized or Sensational Case.**

(1) In a widely publicized or sensational case likely to receive massive publicity, the court, on its own motion, or on motion of either party, may issue a special order governing such matters as extrajudicial statements by lawyers, parties, witnesses, jurors, and court officials likely to interfere with the rights of the accused to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matter which the court may deem appropriate for inclusion in such an order.

(2) Nothing in this rule or in any other criminal rule of this court is intended to restrict the media's right to full pretrial coverage of news pursuant to the First Amendment to the United States Constitution.

(d) **Photographs, Broadcasts, Video Tapes, and Tape Recordings Prohibited.**

(1) All forms, means, and manner of taking photographs, tape recordings, video taping, broadcasting, or televising are prohibited in a United States courtroom or its environs during the course of, or in connection with, any judicial proceedings whether the court is actually in session or not. This rule shall not prohibit recordings by a court reporter or staff electronic recorder. No court reporter, staff electronic recorder, or any other person shall use or permit to be used any part of any recording of a court proceeding on or in connection with any radio, video tape or television broadcast of any kind. The court may permit photographs of exhibits or use of video tapes or tape recordings under the supervision of counsel.

(2) A judge may, however, permit (1) the use of electronic or photographic means for the presentation of evidence or the perpetuation of a record, and (2) the broadcasting, televising, recording, or photographing of investiture, ceremonial, or naturalization proceedings.

(3) In a complex case, counsel, with the prior permission of the court, may bring into court an unobtrusive hand-held dictating machine for use in dictating notes or reminders during trial. It is not to be used to record any part of the proceedings.

(e) For purposes of this rule, *environs* means:

(1) In Boise, Idaho, the sixth floor of the Federal Building and United States Courthouse located at 550 West Fort Street, and the second floor of the Borah Station Post Office assigned for court use, including the corridor area adjacent to the courtroom doors;

(2) In Moscow, Idaho, the third floor of the Federal Building and Courthouse located at 220 East Fifth Street;

(3) In Pocatello, Idaho, that portion of the second floor of the Federal Building and Courthouse at 250 South Fourth Street assigned for court use, including the corridor area adjacent to the courtroom doors; and

(4) In Coeur d'Alene, Idaho, the second floor of the Federal Building and Courthouse located at 205 North Fourth Street assigned for court use, including the corridor adjacent to the courtroom doors.

RELATED AUTHORITY

45 F.R.D. 391 (1969)
51 F.R.D. 135 (1971)
87 F.R.D. 519 (1980)

RULE 83.3
COURTROOM AND COURTHOUSE DECORUM

Position of Counsel. Counsel for the respective parties shall be seated in accordance with instructions of the court bailiff. In examining a witness or addressing the court, counsel shall remain at counsel table or lectern, if one is available, except when permission is granted by the court to approach the bench, the clerk's desk, or a witness. All papers and exhibits shall be sent from counsel table to the court, courtroom clerk or witness by and through the bailiff unless permission is otherwise granted.

RELATED AUTHORITY

NONE

RULE 83.4
SECURITY IN THE COURTHOUSE

The court, or any judge, may from time to time make such orders or impose such requirements as may be reasonably necessary to assure the security of the court and of all persons in attendance. To the extent deemed necessary, the court or judge may coordinate any orders relating to the security of the court and public with the U.S. Marshals Service.

RELATED AUTHORITY

NONE

RULE 83.5
BAR ADMISSION

(a) **Admission to the Bar of this Court.** Admission to and continuing membership in the bar of this court is limited to attorneys of good moral character who are active members in good standing of the Idaho State Bar. Each applicant for admission shall present to the clerk a written petition for admission, stating the applicant's residence and office addresses and by what courts he has been admitted to practice and the respective dates of admission to those courts. The petition shall be accompanied by a certificate of a member of the bar of this court, stating that the bar member knows the applicant and can affirm that the applicant is of good moral character. Upon qualification, the applicant may be admitted upon written or oral motion as determined by the court. Before any certificate of admission shall issue, the applicant must sign the prescribed oath. Generally, the applicant must personally appear before the court; however, in exceptional circumstances the court may waive this requirement.

(b) **Practice in this Court.** Except as herein otherwise provided, only members of the bar of this court shall practice in this court. Only a member of the bar of this court may appear for a party, sign stipulations, or receive payment or enter satisfactions of judgment, decree, or order.

(c) **Attorneys for the United States.** An attorney who is not eligible for admission under Local Rule 83.5(a) hereof but who is a member in good standing of and eligible to practice before the bar of any United States court or of the highest court of any state or of any territory or of any insular possession of the United States and who is of good moral character may practice in this court in any matter in which the attorney is employed or retained by the United States or its agencies and is representing the United States or any of its officers or agencies. Attorneys so permitted to practice in this court are subject to the jurisdiction of the court with respect to their conduct to the same extent as members of the bar of this court.

(d) **Appearances by Corporations.** Whenever a corporation desires or is required to make an appearance in this court, the appearance shall be made only by an attorney of the bar of this court or an attorney permitted to practice under these Rules.

(e) **Pro Hac Vice/Local Counsel.** An attorney not eligible for admission under Local Rule 83.5(a) hereof, but who is a member in good standing of and eligible to practice before the bar of any United States court or of the highest court of any state or of any territory or insular possession of the United States, who is of good moral character and who has been retained to appear in this court, may, upon written application and in the discretion of the court, be permitted to appear and participate in a particular case and no certificate of admission shall be issued by the clerk.

The *pro hac vice* application shall be presented to the clerk and shall state under penalty of perjury (1) the attorney's residence and office addresses, (2) by what court(s) the attorney has been admitted to practice and the date(s) of admission, (3) that the attorney is in good standing and eligible to practice in said court(s), and (4) that the attorney is not currently suspended or disbarred in any other court(s). The attorney shall also (1) designate a member of the bar of this court who does maintain an office within this court as co-counsel with the authority to act as attorney of record for all purposes and (2) file with such designation the address, telephone number, and written consent of such designee.

The designee shall personally appear with the attorney on all matters heard and tried before this court unless such presence is excused by the court. Original proceedings may be filed by an attorney before admission *pro hac vice*, but the time for the responsive pleading shall not begin to run until the appearance of associated local counsel is filed with the clerk.

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

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

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

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

(g) **Legal Interns.** Legal interns are permitted to appear in this court. An Order and Plan for the appearance of Legal Interns has been approved by the court and interested parties may obtain a copy of the Plan from the clerk. The Order and Plan are made a part of these rules by reference.

(h) **Notice of Change of Status.** An attorney who is a member of the bar of this court or who has been permitted to practice in this court under Local Rule 83.5(c) or (d) hereof shall promptly notify the court of any change in his status in another jurisdiction which would make him ineligible for membership in the bar of this court under Local Rule 83.5(a) hereof or ineligible to practice in this court under Local Rule 83.5(c) and (d) hereof. In the event the attorney is no longer eligible to practice in another jurisdiction by reason of his suspension for nonpayment of fees or enrollment as an inactive member, he shall forthwith be suspended from practice before this court without any order of court and until he becomes eligible to practice in such other jurisdiction.

(i) **Notice of Change of Address.** Any attorney who has been permitted to appear and participate in an action before this court must advise the court, in writing, if that attorney has a change in name, firm, firm name, or office address.

RELATED AUTHORITY

NONE

RULE 83.6
ATTORNEY DISCIPLINE

(a) Standard of Professional Conduct. All members of the bar of this court and all attorneys permitted to practice in this court shall familiarize themselves with and comply with the standards of professional conduct required of members of the Idaho State Bar and decisions of any court applicable thereto which are hereby adopted as standards of professional conduct of this court. These provisions shall not be interpreted to be exhaustive of the standards of professional conduct. In that connection, the Idaho Rules of Professional Conduct for the Idaho State Bar should be noted. No attorney permitted to practice before this court shall engage in any conduct which degrades or impugns the integrity of the court or in any manner interferes with the administration of justice therein.

(b) Discipline.

(1) In the event any attorney engages in conduct which may warrant discipline or other sanctions, the court or any district judge may, in addition to initiating proceedings for contempt under Title 18 U.S.C. and Fed. R. Cr. P. 42, or imposing other appropriate sanctions pursuant to the court's inherent powers or the Fed. R. Cr. P., refer the matter to the disciplinary body of any court before which the attorney has been admitted to practice. A United States magistrate judge shall refer and certify any contempt proceedings to a district judge pursuant to 28 U.S.C. § 636(e).

(2) Any attorney admitted to practice in this court, who is convicted of a felony shall immediately be suspended from practice before this court. Upon the felony conviction becoming final, an order of disbarment will be entered. The disbarred attorney may make a motion in this court within sixty (60) days after the date of disbarment for an order of modification of the disbarment as justice may require.

RELATED AUTHORITY

NONE

RULE 83.7
APPEARANCE AND SUBSTITUTION OF ATTORNEYS

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

(b) **Substitutions.** When an attorney of record for any person ceases to act for a party, such party shall appear in person or appoint another attorney by a written substitution of attorney signed by the party, the attorney ceasing to act, and the newly appointed attorney or by a written designation filed in the cause and served upon the attorney ceasing to act unless said attorney is deceased, in which event the designation of the new attorney shall so state. Until such substitution is approved by the court, the authority of the attorney of record shall continue for all proper purposes.

(c) **Withdrawal.**

(1) No attorney of record for a party may withdraw from representing that party without leave of the court. Before an attorney is to be granted leave to withdraw, the attorney shall present to the court a proposed order permitting the attorney to withdraw and directing the client to appoint another attorney to appear, or to appear in person by filing a written notice with the court stating how the party will be represented. After the court has entered such order, the withdrawing attorney shall forthwith and with due diligence serve all other parties and either personally serve copies of the same upon his client or mail said notices by first class mail, return receipt requested. The order shall provide that the withdrawing attorney shall continue to represent the client until proof of service of the withdrawal order on the client has been filed with the court. The client shall have twenty (20) days from filing of proof of service by the attorney to file written notice with the court stating how the client will be represented. If the party represented by the withdrawing attorney is a corporation, the order must advise the corporation that it cannot appear without being represented by an attorney in accordance with Local Rule 83.5(d).

(2) Upon entry of the order and the filing of proof of service on the client, no further proceedings can be had in the action which will affect the right of the party represented by the withdrawing attorney for a period of twenty (20) days. If the said party fails to appear in the action, either in person or through a newly appointed attorney within such twenty (20) day period, such failure shall be sufficient grounds for the entry of a default against such party or dismissal of the action of such party with prejudice and without further notice, which shall be stated in the order of the court.

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

RELATED AUTHORITY

NONE

CRIMINAL RULES

CRIMINAL RULE 11.1
PLEAS

(a) **Changing Not Guilty Plea.** Except where there has been filed with the court a written waiver of jury trial or upon a showing of good cause, the following pleas shall not be accepted on the day of trial unless the court has been advised of the defendant's desire to enter such a plea at least two (2) days prior to the day of trial:

(1) A plea of guilty to a lesser offense;

(2) A plea of guilty to a superseding information;

(3) A plea of guilty to less than all counts in the indictment; or

(4) A plea of guilty to all counts contained in the indictment accompanied by the United States Attorney's recommendation of leniency at sentencing or other such recommendation.

(b) **Impositions of Costs.** Failure of counsel to comply with this rule which results in non-utilization of a jury that has been called for the case, may result in the assessment of jury costs to the offending party or his attorney.

RELATED AUTHORITY

Fed. R. Cr. P. 11

CRIMINAL RULE 12.1
PROCEDURAL ORDERS AND MOTIONS

(a) **Procedural Orders.** At the arraignment, the magistrate judge or district judge shall set cutoff dates for the filing of requests for discovery, pretrial motions, and submission of jury instructions. These dates will be strictly adhered to unless an extension of time is granted by the court upon good cause shown.

(b) **Motions.** Criminal motions shall be served upon the adverse party, or his attorney, and filed with the Clerk of Court. Each motion shall be accompanied by a separate written memorandum containing all the reasons in support thereof, including the points and authorities in support of the motion, if the legal authority is relevant to the particular motion, along with copies of all documentary evidence relied upon. Each party opposing the motion shall serve upon the adverse party, or his attorney, and file with the clerk a memorandum containing all the reasons in opposition thereto, including the points and authorities relied upon and copies of all documentary evidence upon which the party in opposition relies; or a written statement that he will not oppose the motion. An additional copy of all briefs shall be submitted to the Clerk of Court for use by the court.

RELATED AUTHORITY

Fed. R. Cr. P. 12 and 47

CRIMINAL RULE 16.0
NON-FILING OF DISCOVERY IN CRIMINAL CASES

All written requests for notice or discovery under Fed. R. Cr. P. 12 and 16 and all responses thereto shall be filed with the Clerk of Court unless otherwise ordered. However, copies of documents and other items of discovery attached to or included with a response to discovery or notice request may be retained by the party who prepared the response and need not be attached to the original response filed with the clerk.

RELATED AUTHORITY

NONE

CRIMINAL RULE 17.1
PRETRIAL CONFERENCES

On request of any party or on his own motion, the assigned judge, or a designated magistrate judge, may hold one or more pretrial conferences in any criminal action or proceeding. At the discretion of the judge, the conference may be informal or formal. The defendant shall have the right to be present at any formal pretrial conference held on the record, unless the right is waived. The agenda at the pretrial conference shall consist of any of the following items, to the extent consistent with applicable statutes, i.e., Jencks Act, 18 U.S.C. § 3500, and the Federal Rules of Criminal Procedure. The court may add other items to the agenda if they would tend to promote the fair and expeditious trial of the action or proceedings:

(a) Production of statements or reports of witnesses;

(b) Production of grand jury testimony of witnesses intended to be called at the trial;

(c) Stipulation of facts which may be deemed proved at the trial without further proof by either party;

(d) Dismissal of certain counts and elimination from the case of certain issues;

(e) Severance of trial as to any co-defendant or joinder of any related case;

(f) Pretrial exchange of lists of witnesses, including experts, intended to be called in person or by deposition to testify at trial, except those who may be called only for impeachment or rebuttal;

(g) Pretrial exchange, with opportunity for mutual inspection of lists of documents, exhibits, summaries, schedules, models, or diagrams intended to be offered or used at trial;

(h) Premarking of intended trial exhibits, except for impeachment and rebuttal materials. No exhibit is to be assigned a number without first contacting the clerk, and the exhibits shall remain in the same sequence as they appear on the exhibit list;

(i) Pretrial resolution of objections to exhibits or testimony to be offered at trial;

(j) Preparation of trial briefs on disputed points of law likely to arise at trial; or

(k) Any other matter which may tend to promote a fair and expeditious trial.

RELATED AUTHORITY

Fed. R. Cr. P. 11

CRIMINAL RULE 28.1
INTERPRETERS

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

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

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

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

RELATED AUTHORITY

Fed. R. Cr. P. 28

CRIMINAL RULE 30.1
PRETRIAL BRIEFS AND JURY INSTRUCTIONS

(a) **Trial Briefs.** Unless otherwise ordered by the court, counsel for the government and for each defendant may file a trial brief not less than five (5) calendar days prior to the date on which the trial is scheduled to commence. Copies shall be provided for the trial judge and adverse counsel. The brief should set forth any reasonably foreseeable point of law bearing on the issues upon which either party relies and the foreseeable evidentiary problems that are unusual or which otherwise require support, with citation of relevant statutes, ordinances, rules, cases, or other authorities.

(b) **Jury Instructions.** Jury instructions shall be filed pursuant to Rule 51.1.

RELATED AUTHORITY

Fed. R. Cr. P. 30

CRIMINAL RULE 32.0
INVESTIGATIVE REPORTS BY UNITED STATES PROBATION OFFICE

(a) **Presentence Report Confidentiality.** The presentence report is a confidential document; however, during the sentencing hearing, it will be filed with the Clerk of Court under seal. The presentence report is not available for public inspection. It also shall not be reproduced or copies distributed to other agencies or other individuals unless permission is granted by the court or the Chief United States Probation Officer.

(b) **Presentence Report.** The court will set a date of sentencing to occur no less than seventy (70) days following the entry of a guilty plea or nolo contendere plea or verdict of guilty. At the time the sentencing date is set, the court will advise counsel and the probation office of the dates the presentence report will be disclosed to counsel, the date counsel is to submit any objections to the probation office, the date on which the presentence report, and any amendments thereto, will be submitted to the court and counsel. Should counsel or the probation office be unable to comply with the court's specified dates, they will notify the court forthwith and request a continuance of the sentencing hearing. It is contemplated that in most circumstances, the court will not formally accept a finding of guilty of a plea until after review of the presentence report.

(1) In the event a plea agreement has been entered into between the attorney for the government and the attorney for the defendant, it must be reduced to writing and submitted to the court prior to entry of the plea of guilty or *nolo contendere*.

(2) Not less than twenty-eight (28) days prior to the date of sentencing, on the date specified by the court, the probation officer shall disclose the presentence investigation report to the defendant and to counsel for the defendant and the government. Within fourteen (14) days thereafter, on the date specified by the court, counsel shall file with the Clerk of Court and submit a copy to the probation officer any objections they may have as to any material information, sentencing classifications, sentencing guideline ranges, and policy statements contained in or omitted from the report.

(3) After receiving counsel's objections, the probation officer shall conduct any further investigation and make any revisions to the presentence report that may be necessary. The officer may require counsel for both parties to meet with the officer to discuss unresolved factual and legal issues.

(4) Seven (7) days prior to the date of the sentencing hearing, on the date specified by the court, the probation officer shall submit the presentence report to the sentencing judge. The report shall be accompanied by an addendum setting forth any objections counsel may have made that have not been resolved, together with the officer's comments thereon. The probation officer shall certify that the contents of the report, including any revisions thereof, have been disclosed to the defendant and to counsel for the defendant and the government; that the content of the addendum has been communicated to counsel; and that the addendum fairly states any remaining objections.

(5) Except with regard to any objection made under subdivision (a) that has not been resolved, the report of the presentence investigation may be accepted by the court as accurate. The court, however, for good cause shown, may allow a new objection to be raised at any time before the imposition of sentence. In resolving disputed issues of fact, the court may consider any reliable information presented by the probation officer, the defendant, or the government.

(6) The times set forth in this rule may be modified by the court for good cause shown, except that the fourteen-(14)-day period set forth in subsection (2) may be diminished only with the consent of the defendant.

(7) Nothing in this rule requires the disclosure of any portions of the presentence report that are not disclosable under Fed. R. Cr. P. 32.

(8) The presentence report shall be deemed to have been disclosed (i) when a copy of the report is physically delivered, (ii) one (1) day after the report's availability for inspection is orally communicated, or (iii) three (3) days after a copy of the report or notice of its availability is mailed.

(c) **Probation Records.** Investigative reports and supervision records of this court maintained by the probation office are confidential and not available for public inspection. The Chief Probation Officer may disclose these records to federal, state, or local courts; correctional and law enforcement agencies; or paroling authorities who have a legal, investigative, or custodial interest in that individual. Any other party seeking access to the confidential records maintained by the probation office shall do so by written petition to the court establishing with particularity the need for specific information in the records.

(d) **Rule Not to Supersede or Void Provisions of Fed. R. Cr. P. 32(c)** Nothing in this rule shall be construed to supersede or void the provisions of Fed. R. Cr. P. 32(c).

RELATED AUTHORITY

Fed. R. Cr. P. 32

CRIMINAL RULE 44.1
RIGHT TO AND APPOINTMENT OF COUNSEL

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

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

Unless such leave is granted, the attorney shall continue to represent the defendant until the case is dismissed or the defendant is acquitted. In the event the defendant is convicted, unless leave is granted, the attorney shall continue to represent the defendant until the time for making post-trial motions and for filing notice of appeal, as specified in Fed. R. App. P. 4(b), has expired. If an appeal is taken, the attorney shall continue to serve until leave to withdraw is granted by that court as provided in 18 U.S.C. § 3006A and in "Provisions for the Representation on Appeal of Defendants Financially Unable to Obtain Representation" as adopted by the Judicial Council of the Ninth Circuit.

RELATED AUTHORITY

Fed. R. Cr. P. 44

CRIMINAL RULE 46.1
RELEASE FROM CUSTODY/BAIL

(a) **Release from Custody.** Eligibility for release prior to and after trial shall be in accordance with 18 U.S.C. §§ 3142, 3143, and 3144.

(b) **Bail.** If the court sets as a condition of release a monetary bail under the Bail Reform Act, the bond or equivalent security shall comply with Local Rule 67.1 unless the court specifically orders otherwise.

(c) **Motion to Modify Bail.** Except as otherwise ordered by a judge of this court, magistrate judges shall, subject to the provisions of 18 U.S.C. § 3141, *et seq.*, hear and determine all motions to modify bail.

RELATED AUTHORITY

18 U.S.C. §§ 3142-3144
Fed. R. Cr. P. 46

CRIMINAL RULE 46.2
PRETRIAL SERVICES

Pursuant to the Pretrial Services Act of 1982 (18 U.S.C. §§ 3152-3155), the court authorizes the United States Probation Office for the District of Idaho to establish a Pretrial Services Division as provided for by the Act.

At the discretion of the Chief United States Probation Officer, personnel within the probation office shall be designated as pretrial service officers pursuant to the Act.

Upon notification that a defendant has been charged with an offense, either felony or misdemeanor, pretrial service officers will conduct a pre-release interview as soon as practicable. The judicial officer setting bail or reviewing a bail determination shall receive and consider all reports submitted by pretrial service officers.

Pretrial service reports shall be made available to the attorneys for the accused and the attorneys for the government and shall be used only for the purpose of fixing conditions of release, including bail determinations. Otherwise, the reports shall remain confidential, as provided in 18 U.S.C. § 3153, subject to the exceptions provided therein. In the event a pretrial service report is received in evidence at a hearing on terms and conditions of release, it shall be sealed by the court and not made a matter of public record.

Pretrial service officers shall supervise persons released on bail at the discretion of the judicial officer granting the release or conditions of the release.

RELATED AUTHORITY

18 U.S.C. §§ 3152-3155

CRIMINAL RULE 61.1
APPEAL FROM CONVICTION

(a) **Notice of Appeal.** Pursuant to Rule 7, Rules of Procedure for the Trial of Misdemeanors before the United States magistrate judges, a defendant who has been convicted by a magistrate judge may appeal to a judge by filing a timely notice of appeal within ten (10) days after entry of judgment with the Clerk of Court and by serving a copy on the United States Attorney.

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

Within thirty (30) days after a transcript has been ordered, the original and one copy shall be filed with the magistrate judge and all recordings shall be returned to the magistrate judge. All other documents and exhibits shall be held by the magistrate judge pending the receipt of the transcript. Upon its receipt, the record on appeal shall be deemed complete and the magistrate judge shall forthwith transmit the record to the Clerk of Court.

If no transcript is ordered within ten (10) days after the notice of appeal is filed, the record on appeal shall be deemed complete and the magistrate judges shall forthwith transmit the record to the Clerk of Court without a transcript.

(c) **Assignment to a District Judge.** The Clerk of Court shall assign the appeal to a judge in the same manner as any indictment or felony information. The magistrate judge shall provide the clerk with a copy of the transcript, if any, for the use of the assigned judge.

(d) **Notice of Hearing.** After assignment, the clerk shall promptly notify the parties of the time set for oral argument. Argument shall be scheduled not less than sixty (60) nor more than ninety (90) days after the date of the notice. However, an earlier date may be set upon application to the judge to whom the appeal has been assigned.

(e) **Time for Serving and Filing Briefs.** The appellant shall serve and file his brief within twenty-one (21) days after the notice of hearing. The appellee shall serve and file his brief within twenty-one (21) days after service of the brief of the appellant. The appellant may serve and file a reply brief within seven (7) days after service of the brief of the appellee. These periods may be altered by order of the assigned judge upon application of a party for good cause shown.

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

RELATED AUTHORITY

NONE

CRIMINAL RULE 62.1
RELEASE OF INFORMATION BY ATTORNEYS IN CRIMINAL CASES

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

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

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

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

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

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

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

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

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

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

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

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

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

RELATED AUTHORITY

NONE

CRIMINAL RULE 63.1
VIOLATION NOTICES, FORFEITURE OF COLLATERAL IN LIEU OF APPEARANCE

For certain scheduled offenses committed within the territorial and subject matter jurisdiction of a United States magistrate judge within the District of Idaho, collateral may be posted in the scheduled amount, in lieu of an accused's appearance before the magistrate judge.

If the accused fails to appear before the magistrate judge after posting collateral in the scheduled amount, the collateral shall be forfeited to the United States and such forfeiture shall be accepted in lieu of appearance and as authorizing the termination of the proceedings.

No forfeiture of collateral will be permitted for certain listed offenses described in the General Order adopting the Uniform Collateral Forfeiture Schedule for this court.

Copies of current schedules of offenses for which collateral may be posted in lieu of appearance, and of the amounts of required collateral shall be available for public inspection at the office of each magistrate judge and at the office of the Clerk of Court.

RELATED AUTHORITY

NONE

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

LOCAL RULES

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

Bankruptcy Judges

Alfred C. Hagan, Chief District Judge	
Jo Ann Canderan, Secretary	334-9341
Kirsten Ocker, Law Clerk	334-9340
Jim D. Pappas, Bankruptcy Judge	
Sylvia Wirth, Secretary	334-9369
Paul Samuelson	334-9371

United States Clerk of Court

U.S. Post Office and Federal Building	208-334-1074
304 N. 8th St.	FAX 208-334-9362
Box 2600	
Boise, Idaho 83701	
Cameron S. Burke, Clerk of Court	334-1539
Ladora L. Butler, Deputy in Charge	334-9337
Cecelia Ashinhurst, Supervisor	334-1284

Customer Service

Barbara Keck	334-1074
Darlene Bideganeta	334-1074
Dana McWhood	334-1074

Noticing (CAPS)

Irene Rosen	334-1473
Joyce Lakey	334-1473
Melanie Hopkins	334-1473
Wendy Stevens	334-1473

Case Administrators

Kathy Carter	334-9427
Bob Raeder	334-1155
MaryAnne Titus (Calendar)	334-9343
Berta Stogsdill	334-1172
LaDonna Garcia (Calendar)	334-9343
Tamie Campbell	334-9423
Kandie Clark (Calendar)	334-9343
Gale Clarke	334-9419
Vicki Jones	334-9399
Leslie McCumber	334-1168
Jerry Parker	334-1178

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

Continued

Courtroom Deputies

Randall French	334-9396
LaDonna Garcia	334-9396
MaryAnne Titus	334-9396

Financial/Procurement

Terry McMorrow	334-9397
Chris Tennant	334-9398

Systems

Doug Ward, Systems Manager	334-9342
Sue Beitia, Systems Administrator	334-9342
Maria Richardson, Data Quality Analyst	334-1474

Electronic Sound Recorders

Lynette Case	334-1595
Joanne Cook	334-1595
Sheri Deibert	334-1595
Irene Dunbar	334-1595

Pocatello Office

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

Effective Date: June 1, 1991

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LOCAL BANKRUPTCY RULE 101
SCOPE, APPLICABILITY AND PROMULGATION OF LOCAL RULES

(a) **Scope.**
These Local Bankruptcy Rules govern practice and procedure in the United States Bankruptcy Court for the District of Idaho. A judge, sua sponte or on the motion of any party, may for cause shown dispense with any of these Local Rules in a particular case or proceeding. These rules shall be cited as "LBR ____." The term "judge," as used in these rules, includes a U.S. Bankruptcy Judge, a U.S. District Judge, or any other judicial officer to which a bankruptcy case or proceeding has been referred.

(b) **Applicability.**
Unless otherwise indicated, each of these Local Rules applies to cases commenced under Chapters 7, 9, 11, 12 and 13 of the Bankruptcy Code.

(c) **Promulgation.**
Promulgation of local rules shall be made by the Chief Bankruptcy Judge in accord with Federal Rule(s) of Procedure 9029, and shall be made with the advice of the United States Bankruptcy Court Advisory Committee on Local Rules unless the Chief Bankruptcy Judge determines cause exists for emergency promulgation.

Related Authority:

28 U.S.C. §§ 151, 154
Federal Rule of Bankruptcy Procedure 9029

Advisory Committee Notes:

These Local Rules were promulgated to address certain areas where the Bankruptcy Code and Federal Rules of Bankruptcy Procedure were vague or incomplete, or where experience dictated a need for further clarification or modification of practice in this District. The Local Bankruptcy Rules are based upon prior Local Rules, the local rules of other Districts, and the efforts of the court and practitioners to improve the quality and efficiency of bankruptcy practice.

The United States Bankruptcy Court Advisory Committee on Local Rules was formed by Order entered on July 29, 1985, by the United States Chief District Judge, with the concurrence of the United States Bankruptcy Judge, for the District of Idaho. The members of the Advisory Committee at the time of original promulgation were:

T. N. Ambrose, Chairman
Terry L. Myers, Reporter
L. D. Fitzgerald
Gary L. McClendon
Janice D. Newell
Jim D. Pappas
R. Wayne Sweeney
Vicki L. Yrazabal

Major revisions to the Local Bankruptcy Rules were made in 1990-1991, at which time the Committee Members included Ambrose, Myers, Fitzgerald, Sweeney, Ford Elsaesser, Steven Hoskins, Larry Prince, R. Michael Southcombe, Asst. U.S. Trustee Jeff Howe, ex-officio members from the Clerk of Court, Cameron Burke and Jerry Parker; the court's law clerks Kirsten Ocker and Paul Samuelson; and the Chairman of the Board of Governors of the Commercial Law and Bankruptcy Section, Celeste Miller.

The "Advisory Committee Notes" following the rules are designated to provide explanation regarding the need for, as well as guidance regarding the anticipated operation of, the Local Rules. Constructions of the rules as contained in such Advisory Committee Notes, however, are not controlling, and in some instances may not reflect unanimity of belief by the members of the Advisory Committee.

LOCAL BANKRUPTCY RULE 102
ESTABLISHMENT OF BUSINESS HOURS

The standard business hours of the office of the Clerk of Court in Boise, Pocatello, and Moscow will be from 8:00 a.m. to 5:00 p.m., local time, all days except Saturday, Sunday, and legal holidays.

Related Authority:

None

Advisory Committee Notes:

The offices of the Clerk of the District and Bankruptcy Court in Moscow and Pocatello will accept bankruptcy pleadings, including case and adversary proceeding filings, during such hours as those offices may be open. All bankruptcy files and records, however, are maintained at the Bankruptcy Court in Boise. Bankruptcy pleadings should not be filed with the District Court in Boise. See, LBR 105(b).

LOCAL BANKRUPTCY RULE 103
FILES, RECORDS AND EXHIBITS

(a) **Custody and Withdrawal.**
All files and records of the court shall remain in the custody of the clerk, subject to examination by the public without charge. No record or paper or article belonging to the files of the court shall be taken from the custody of the clerk without a special order of the court and a receipt given by the party obtaining it describing the item and date of receipt, except as otherwise provided in this rule. Withdrawal orders will be made only in exceptional circumstances.

(b) **Exhibits Part of Files.**
Every exhibit offered in evidence, whether admitted or not, becomes a part of the files.

(c) **Substitution of Copies.**
Unless there be some special reason why original exhibits should be retained, the Bankruptcy Court may, on stipulation or application, order them returned to the party to whom they belong upon filing of a copy either certified by the clerk or approved by counsel for all parties concerned.

(d) **Disposition of Exhibits.**

(1) Delivery to Person Entitled. In all proceedings in which final judgment has been entered, and the time for filing a motion for new trial or rehearing and for appeal has passed, or in which a final order on appeal has been entered, any party or person may withdraw any exhibit or deposition originally produced by him, without court order, upon ten (10) days written notice to all parties, unless within that time another party or person files notice of claim thereto with the clerk. In the event of competing claims, the court shall determine the person entitled and order delivery accordingly. For good cause shown, the court may allow withdrawal or determine competing claims in advance of the time above specified.

(2) Unclaimed Exhibits. If exhibits and depositions are not withdrawn within thirty (30) days of the time when notice may be given under subdivision (1) of this subdivision (d), the clerk may destroy them or make other disposition as appears proper.

(e) **Retention of Electronic Recordings.**

(1) Section 341(a) Meetings. Electronic sound recordings of the Section 341(a) meeting of creditors shall be retained and preserved for two (2) years from the date of such meeting, unless otherwise ordered by the court. Retention and preservation of electronic sound recordings of the Section 341(a) meeting of creditors is the responsibility of the United States Trustee. Copies of the recordings may be obtained from the U.S. Trustee.

(2) Court Hearings and Proceedings. Electronic sound recording and/or court reporter's stenographic records of any Bankruptcy Court proceeding shall be retained and preserved by the clerk. Copies of the recordings may be obtained from the clerk upon payment of the tape duplication fee. Transcripts may be obtained upon written request. Requests for either duplicate tapes or transcripts shall identify the name, address and phone number of the requesting attorney, the case name and case number, and the date of the subject hearing or proceeding.

Related Authority:

11 U.S.C. § 107,
28 U.S.C. § 156(e)
Federal Rule of Bankruptcy Procedure 5007

Advisory Committee Notes:

Subsection (e) reflects the current administrative requirements which control the clerk's and U.S. Trustee's retention of electronic recordings of meetings and proceedings. Transcription from the duplicate tape of the Section 341(a) meeting is the responsibility of counsel, while the clerk will obtain the transcript of court hearings and charge counsel therefor. The Advisory Committee determined to not address issues of "certification" or the evidentiary use of such transcriptions.

LOCAL BANKRUPTCY RULE 104
HEARINGS, MEETINGS, AND FILING

(a) **Hearings and Meetings.**
Bankruptcy Court hearings and meetings are regularly scheduled in Boise, Coeur d'Alene, Moscow, Pocatello, Twin Falls and Jerome.

(b) **Filing of Pleadings and Papers.**
All pleadings, motions and other pertinent papers may be filed with the office of the Clerk of Court in Boise, Pocatello and Moscow. When a judge is sitting elsewhere in the District, such papers may be filed with the deputy clerk at such place.

(c) **Form.**
All pleadings or other papers presented for filing shall be on 8 1/2 by 11 inch paper. Documents more than 1/2 inch thick shall be two-hole punched at the top edge.

Related Authority:

28 U.S.C. § 156
Federal Rule of Bankruptcy Procedure 5005

Advisory Committee Notes:

Hearings and Section 341(a) meetings are held in various sites depending upon the county of the debtor's residence or principal place of business. The court's designation of counties within each area is as follows:

Eastern Calendar (Pocatello):

Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power, Teton.

Central Idaho Calendar (Twin Falls for court hearings and Jerome for Section 341(a) meetings)):

Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls.

Southern Calendar (Boise):

Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, Washington (and all Malheur County Oregon cases).

Central Calendar (Moscow);

Clearwater, Idaho, Latah, Lewis, Nez Perce.

Northern Calendar (Coeur d'Alene):

Benewah, Bonner, Boundary, Kootenai, Shoshone.

This rule contemplates continuation of the current practice of not allowing the filing of any pleadings at the time of the Section 341(a) meeting of creditors. It further eliminates the practice of allowing the filing of amendments to schedules, etc., at the Section 341(a) meeting since the same are not time-critical and can be mailed to the court. It also reflects the fact that the United States Trustee, and panel Trustees, and not the clerk, conduct such meetings.

LOCAL BANKRUPTCY RULE 105
ATTORNEYS

(a) **Eligibility for Admission.**

(1) Any attorney who has been admitted to practice in the Supreme Court of the State of Idaho is eligible for admission to the Bar of this court. Any attorney admitted to practice before the District Court for the District of Idaho is admitted to the bar of the Bankruptcy Court without further process.

(2) Each applicant for admission shall present to the clerk a written petition or admission, stating the applicant's residence and office addresses and by what courts he has been admitted to practice and the respective dates of admission to those courts. The petition shall be accompanied by a certificate of a member of the Bar of this court, stating that such member knows the applicant and can affirm that the applicant is of good moral character.

(3) Each applicant for admission shall pay to the clerk the requisite admission fee.

(b) **Practice in this court.**
Only a member of the Bar of this court may enter appearances for a party, sign stipulations or receive payment or enter satisfactions of judgment, decree, or order.

(c) **Attorneys for the United States.**
An attorney who is not admitted under this rule but who is a member in good standing of and eligible to practice before the Bar of any United States court or of the highest court of any state or any territory or insular possession of the United States, and who is of good moral character, may practice in this court in all actions and proceedings in which such attorney is employed or retained by, and is representing, the United States government or any of its officers or agencies. Attorneys so permitted to practice in this court are subject to the jurisdiction of the court with respect to their conduct to the same extent as members of the Bar of this court.

(d) **Admission Pro Hac Vice of Attorneys.**

(1) Any member in good standing of the Bar of any United States court, or of the highest court of any state or any territory or insular possession of the United States, who is of good moral character and has been retained to appear in this court, and who is not admitted to the Bar of this court, may be permitted, after written application and without previous notice, to appear and participate in a particular case and related proceedings.

(2) The application shall be presented to the clerk and shall state under penalty of perjury the attorney's residence and office addresses, by what court(s) the attorney has been admitted to practice and the date(s) of admission, that the attorney is in good standing and eligible to practice in said court(s), and that the attorney is not currently suspended or disbarred in any other court(s).

(3) Such applicant shall also designate, in his or her application to so appear, a member of the Bar of this court who maintains an office in this District for the practice of law. The applicant shall also file with such application the address, telephone number and written consent of such designee. Unless otherwise ordered, the designee shall personally appear with the attorney on all matters heard and tried before the court. Original proceedings may be filed by an attorney before admission pro hac vice, but the time for filing of any responsive pleading shall not begin to run until the appearance of associated local counsel is filed with the clerk.

(4) The application shall be accompanied by the requisite admission fee made payable to the clerk.

(e) **Appearances.**

(1) All appearances in this court must be made by an attorney of this court, unless the party appears in propria persona. Whenever a party has appeared by an attorney, he may not thereafter appear or act in his own behalf in the action, or take any step therein, unless a request for substitution or withdrawal, in accord with this rule, shall first have been made by that party and filed with the clerk, and after notice to the attorney of such party and to any opposing party; provided that a judge may in its discretion hear a party in open court notwithstanding the fact that he has appeared or is represented by an attorney. When an attorney of record for any reason ceases to act for a party, such party should appoint another attorney or appear in person.

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

(3) Whenever a corporation or partnership desires or is required to make an appearance in this court, the appearance shall be made only by an attorney of the Bar of this court or an attorney permitted to practice under these rules.

(4) In all Oregon cases heard before this court, and in all proceedings related thereto, Oregon counsel not previously admitted to the Bar of this court under subdivision (a) of this rule may appear for the debtor(s) or a creditor or party in interest without compliance with the requirements of pro hac vice admission as set forth in subdivision (d) of this rule.

(f) **Substitutions and Withdrawals.**

(1) When an attorney of record for any person ceases to act for a party, such party shall appear in person or appoint another attorney by a written substitution of attorney signed by the party, the attorney ceasing to act, and the newly appointed attorney or by a written designation filed in the action and served upon the attorney ceasing to act unless said attorney is deceased, in which event the designation of a new attorney shall so state. Until such substitution is approved by the court, the authority of the attorney of record shall continue for all proper purposes.

(2) No attorney of record for a party may withdraw from representation of that party without leave of the court. Before an attorney is to be granted leave to withdraw, he shall present to the court a proposed order permitting the attorney to withdraw and directing his client to appoint another attorney to appear, or to appear in person by filing a written notice with the court stating how he will represent himself, within twenty (20) days from the date the court enters the order authorizing withdrawal. After the court has entered such order, the withdrawing attorney shall forthwith and with due diligence, serve copies of the same upon his client and all parties entitled to notice under the Federal Rule(s) of Procedures or these rules. The order shall provide that the withdrawing attorney shall continue to represent the client until proof of service of the withdrawal order on the client has been filed in the court.

(3) Upon the entry of the order and the filing of proof of service on the client, no further proceedings can be had in the action which will affect the rights of the party represented by the withdrawing attorney for a period of twenty (20) days. If the party fails to appear in the action, either in person or through a newly appointed attorney within such twenty (20) day period, such failure shall be sufficient grounds for the entry of default against such party or dismissal of the action without further notice, which shall be stated in the order.

(g) **Standards of Professional Responsibility.**
The members of the Bar of this court shall adhere to the Rules of Professional Conduct promulgated and adopted by the Supreme Court of the State of Idaho. These provisions, however, shall not be interpreted to be exhaustive of the standards of professional conduct and responsibility. No attorney permitted to practice before this court shall engage in any conduct which degrades or impugns the integrity of the court or in any manner interferes with the administration of justice therein.

(h) **Attorney Discipline.**

(1) Disbarment. When any member of the Bar of this court has been disbarred or suspended from the practice of law by any court of competent jurisdiction, he or she shall have thirty (30) days within which to present compelling reason why he or she should not be disbarred or suspended by this court. Failure to present such reasons, or failure to notify this court of disbarment or suspension, shall result in disbarment or suspension forthwith from practice before this court.

(2) Discipline. In the event any attorney engages in conduct which may warrant discipline or other sanctions, a judge may, in addition to initiating proceedings for contempt under Federal Rule(s) of Procedures 9020 or Title 18 of the United States Code or imposing other appropriate sanctions, refer the matter to the disciplinary body of any court before which the attorney has been admitted to practice.

(i) **Multiple Counsel.**
If more than one attorney represents a party, only one attorney shall examine or cross-examine a single witness and only one attorney shall argue the merits before the court, unless the court otherwise permits.

Related Authority:

Federal Rules of Bankruptcy Procedure 9010, 9011, 9020

Advisory Committee Notes:

Many of the provisions of LBR 105 are substantially identical to Local Rules of the District Court for the District of Idaho.

Legal interns may appear in the Bankruptcy Court to the same extent and by the same procedure as authorized by the Local Rules of the District Court for the District of Idaho.

The provision of (e)(4) are meant to continue current practice under which members of the Bar of the District of Oregon may appear in those eastern Oregon bankruptcy cases and proceedings administered by this court through agreement with the U.S. Bankruptcy Court for the District of Oregon. Such counsel need not be admitted to practice pro hac vice, but the authority to appear is limited solely to the Oregon case and its related proceedings.

A non-appropriated fund has been established in this District, effective September 1, 1989, which is used for various purposes to the benefit of bench and bar. Attorney admission fees are $40.00 and pro hac vice fees are $20.00. See General Order No. 56. This fee includes admission to both the District Court and the Bankruptcy Court.

LOCAL BANKRUPTCY RULE 201
PETITIONS

(a) **Number of Copies.**
In addition to the original, each petition, schedules, and statements of affairs shall be accompanied by the following number of copies:

Chapter 7 . . . . . 3 copies
Chapter 7 (Stockbroker) . . . . . 3 copies
Chapter 7 (Commodity Broker) . . . . . 3 copies
Chapter 9 . . . . . 6 copies
Chapter 11 . . . . . 5 copies
Chapter 11 (Railroad Reorganization) . 6 copies
Chapter 12 . . . . . 3 copies
Chapter 13 . . . . . 3 copies

(b) **Number of Plans.**

(1) In reorganization cases, in addition to the original (or any amended) plan, the following number of copies are required for filing by the clerk.

Chapter 9 . . . . . 3 copies
Chapter 11 . . . . . 1 copy
Chapter 12 . . . . . 2 copies
Chapter 13 . . . . . 2 copies

(2) In addition to the original plan and the required copies as set forth above for filing with the clerk, in cases where the plan is filed with the petition, the debtor shall provide sufficient copies of the plan for mailing purposes. This shall be in an amount equal to the number of names listed on the mailing matrix, together with the number of copies listed below:

Chapter 12 . . . . . 8 copies
Chapter 13 . . . . . 8 copies

(3) If the plan is not filed with the petition, the debtor shall be responsible for service, as required by LBR 313. However, the original and number of copies set forth in subdivision (b)(1) of this rule shall still be filed.

(c) **Captions of Petitions and Identity of Debtors.**
In regard to all cases filed under Sections 301 and 302 of the Code, the caption of such cases shall be in the following style:

(1) If the debtor is an individual, not filing a joint petition with his/her spouse: "John A. Doe."

(2) If the debtor is an individual filing a joint petition with his/her spouse: "John A. Doe and Mary A. Doe." No "joint" petition, other than those of married individuals under Section 302, will be accepted for filing by the clerk.

(3) If the debtor is a general [or limited] partnership: "Name of entity, a general [limited] partnership."

(4) If the debtor is a corporation: "Name of entity, a corporation" (unless the word "Inc.," "Incorporated" or "Corporation" is a part of the name).

(d) **Other Names.**
Immediately after the debtor's name as set forth in accordance with subdivision (c) of this rule, the petitioner shall list in accordance with Federal Rule of Bankruptcy Procedure 1005 all other names, assumed names, trade names, or other designations under which the debtor has been known or conducted business within the six (6) years preceding the filing of the petition.

(e) **Petition Filed by a Corporation or Partnership.**
Though a voluntary petition may be filed by a corporation or by a general or limited partnership, it must be executed by an authorized corporate officer or general partner, and the corporation or partnership shall be represented by an attorney, and such attorney shall also sign the petition.

(f) **Refusal of Petition.**
The clerk need not accept for filing a voluntary petition which is not accompanied by a cover sheet, matrix, filing fee, and required exhibits, or which is not in compliance with these rules. A voluntary Chapter 9 or 11 petition need not be accepted for filing unless also accompanied by a list of the twenty (20) largest unsecured creditors. Acceptance of a petition does not constitute a waiver of any provision of these rules.

Related Authority:

11 U.S.C. §§ 101(12), 101(35), 109, 301, 302
Federal Rules of Bankruptcy Procedure 1002, 1004, 1005, 1007

Advisory Committee Notes:

This rule attempts, in subdivisions (c) and (d), to address the problems caused by petitions either improperly or confusingly captioned, as well as those caused by petitions improperly purporting to be "joint" petitions outside the limited authority of Section 302 of the Code -- i.e., an individual and a corporation. Should such a petition be accepted by the clerk, the rule contemplates that the precedent of Fitzgerald v. Hudson, 29 B.R. 3, 82 I.B.C.R. 205 (Bkrtcy. D. Id. 1982) will be followed.

The rule in (e) addresses the problem of so-called "pro se" corporate or partnership cases. See also LBR 106(e)(3) regarding appearances for such entities.

Subdivision (b)(2) of this rule reflects the clerk's service of plans together with Section 341(a) notices, in cases where the plan is filed with the petition. In other cases, LBR 313 governs service, though the filing and copy requirements of (b)(1) still apply.

LOCAL BANKRUPTCY RULE 202
FILING FEES

Filing fees required for the initiation of a voluntary case shall be accepted by the clerk if in the form of cash, cashier's check, money order, or a check drawn on an attorney's trust fund. Two party checks, or personal checks of the debtor(s) will not be accepted.

Related Authority:

11 U.S.C. §§ 301, 302
28 U.S.C. § 1930
Federal Rule of Bankruptcy Procedure 1006

Advisory Committee Notes:

This rule addresses an obvious problem encountered by the clerk when debtors present petitions for filing. A fee schedule is included in Appendix VI., Page 169.

LOCAL BANKRUPTCY RULE 203
MASTER ADDRESS LIST

(a) **Filing of Matrix.**
At the time of filing a petition initiating a proceeding under the Bankruptcy Code, a master address list shall accompany the petition, which list shall include the name, address, and zip code of every scheduled creditor, and other parties in interest. The mailing matrix shall not include the names or addresses of the debtor, joint debtor, or counsel for the debtor(s).

(b) **Form of Matrix.**
The matrix shall be prepared in the form as required by the clerk of the court.

(c) **Accuracy of Matrix.**
The clerk need not check to insure that the matrix accurately reflects the names and addresses of creditors, equity security holders, and/or parties in interest listed on the debtor's schedules. For purposes of notice by the clerk or by any party in interest, an error or omission on the matrix shall be deemed an error or omission on the debtor's schedules, unless such creditor or party in interest should have been added as a result of a filed proof of claim or a written request to the court.

(d) **Amendments to Matrix.**
Any additions to the matrix subsequent to its initial filing shall include only those names added in the matrix form required by the clerk. Any deletions from the matrix are to be set forth in a cover letter. Do not delete names from the matrix by submitting a new matrix with the names deleted.

Related Authority:

11 U.S.C. § 521
Federal Rules of Bankruptcy Procedure 1007, 2002(g)

Advisory Committee Notes:

This rule has been modified consistent with internal changes in the office of the clerk effective September 17, 1990. These changes, in large part, are due to increased computer automation under the BANCAP system. The clerk has detailed information on how to prepare a matrix so that it can be read by the court's optical scanner; that information will be provided by the clerk upon request.

LOCAL BANKRUPTCY RULE 204
BANKRUPTCY PETITION COVER SHEET

Each debtor seeking relief under the Bankruptcy Code shall file with the clerk, at the time the petition is filed, a signed Bankruptcy Petition Cover Sheet containing such information as required by the clerk. Blank forms for compliance with this rule will be furnished by the clerk upon request.

Related Authority:

None

Advisory Committee Notes:

While the required information has been changed, this rule continues the practice under prior local rule.

LOCAL BANKRUPTCY RULE 205
SCHEDULES

(a) **Debtor Engaged in Business.**
Where any debts scheduled were incurred while the debtor was engaged in business even though he is not so engaged at the time of filing of the petition, the Statement of Affairs for a Debtor Engaged in Business shall be filed.

(b) **No Blank Items.**
Each item in the schedules and statement of affairs not otherwise filled out, shall be completed by the entry of "none" or "not applicable," as appropriate.

Related Authority:

11 U.S.C. § 521
Federal Rule of Bankruptcy Procedure 1007
Bankruptcy Official Form No. 8

Advisory Committee Notes:

This addresses two problems consistently encountered by the clerk and trustees.

LOCAL BANKRUPTCY RULE 206
EXTENSION OF TIME AND DISMISSAL

(a) **Extension of Time.**
An extension of time under Federal Rule of Bankruptcy Procedure 1007(c) for filing schedules, statement of affairs, or other required documents will not be granted beyond the date set for the meeting of creditors under Section 341(a) unless a judge orders otherwise for cause shown. An extension beyond the date set for the Section 341(a) meeting will not be granted unless the debtor has also arranged for a continuance of the Section 341(a) meeting, and confirmation hearing if applicable, pursuant to Local Bankruptcy Rule 301 and provided appropriate notice thereof.

(b) **Dismissal.**
The United States Trustee may apply for an order of dismissal in a voluntary case, where the debtor fails to timely pay all applicable court fees or file the required schedules, statements, lists and/or Chapter 13 plan provided that the file contains proof that the debtor was notified, 1) of the deadline for filing said documents, and 2) that failure to file the documents in a timely manner may result in dismissal of the case.

Related Authority:

11 U.S.C. § 521
Federal Rule of Bankruptcy Procedure 1007

Advisory Committee Notes:

This rule is similar to the former local rule, but reflects the responsibility of the United States Trustee to make a request for dismissal when the filing requirements are not met. See § 707(a)(3), § 1112(e), § 1208 and § 1307(c)(9) and (10).

LOCAL BANKRUPTCY RULE 207
AMENDMENTS OF PETITIONS, LISTS, SCHEDULES AND STATEMENTS OF FINANCIAL AFFAIRS

The debtor(s) shall give notice of an amendment of or to the petition, schedules, statement of affairs, or other lists or documents filed pursuant to Federal Rule of Bankruptcy Procedure 1007 or these rules, to the trustee and to any entity affected thereby.

An original, and the following number of copies of the amendment, must be filed with the clerk:

Chapter 7 . . . . original and 2 copies
Chapter 11 . . . . original and 1 copy
Chapter 12 . . . . original and 2 copies
Chapter 13 . . . . original and 1 copy

The amendment shall bear, on its face, the debtor's name and case number, and the notation "amendment".

Where the amendment adds additional creditors, the debtor(s) shall send to the creditor(s) so added a copy of the notice of the Section 341(a) meeting of creditors, and plan if applicable, and file a certificate of such service with the clerk, request the clerk to add such creditor(s) to the master address list, and submit the applicable filing fee. The clerk need not verify or confirm that the additional creditor(s) receive notice.

Related Authority:

Federal Rules of Bankruptcy Procedure 1007, 1009, 2002(g)

Advisory Committee Notes:

This rule continues current practice in those situations where the debtor or debtor's counsel causes notice of the amendment to be served.

LOCAL BANKRUPTCY RULE 208
BANKRUPTCY NOTICING FEE

(a) Type of Notices to Which the Fee Applies.
A bankruptcy noticing fee shall be charged for all notices sent by the clerk pursuant to Federal Rule of Bankruptcy Procedure 2002 and these Local Rules.

(b) **Amount of Fee.**
The fee shall be fifty (50) cents for each copy of each notice, regardless of the number of pages in the notice. Where more than one copy of a notice is sent in the same envelope the court shall charge fifty (50) cents for each notice sent. Multiple notices may be consolidated into one formal notice so long as the notice is not misleading; in such situations, only one fee of fifty (50) cents will be charged for each copy of each notice sent.

(c) **Assessment of Bankruptcy Noticing Fee.**
The clerk shall assess the noticing fee at the time the notice is sent out by the court. The clerk shall send an invoice reflecting the amount of the noticing fee to the trustee in a Chapter 7, 12 or 13 case and to the debtor in possession in a Chapter 11 case, unless a trustee has been appointed in such Chapter 11 case.

(d) **Time for Payment of the Bankruptcy Noticing Fee.**

(1) Chapter 7 Cases. Any noticing fee charged to the estate shall be paid by the trustee as an administrative expense at the time of any interim or final disbursement. In the event there are not sufficient funds to pay all allowed administrative expenses in full, then the noticing fee will be paid pro rata along with all other administrative expenses allowed in the case.

(2) Chapter 11 Cases. Any noticing fee charged to the estate shall be paid within thirty (30) days of assessment or at the effective date of the confirmed plan, whichever is earlier. In the event the noticing fee is not paid within the time required, the court shall dismiss the case upon thirty (30) days notice unless a judge for cause shown, extends the time.

(3) Chapter 12 Cases. Any noticing fee charged to the estate shall be paid at the time of confirmation of the plan, when the estate has sufficient funds to pay the fee, or within thirty (30) days after assessment of the fee, whichever is later.

(4) Chapter 13 Cases. Any noticing fee charged to the estate shall be paid at the time of confirmation of the plan, when the estate has sufficient funds to pay the fee, or within thirty (30) days after assessment of the fee, whichever is later.

(e) **Effective Date of Rule.**
This rule will be effective to all Chapter 7 cases which have their initial final accounting filed after January 1, 1987, and to all Chapter 11, 12 and 13 cases which are filed, or have plans confirmed, after January 1, 1987.

Related Authority:

28 U.S.C. § 1930

Advisory Committee Notes:

This rule was necessitated by changes in the internal practices of the federal courts, as the same are reflected in guidelines issued by the Administrative Office of the United States courts.

Operation of subdivision (d)(4) of this rule requires additional or increased payments in Chapter 13 cases and thus may affect confirmation. Similar circumstances exist in Chapter 12 cases. In both instances, provision of sufficient funds to make such payments would be a precondition to confirmation.

LOCAL BANKRUPTCY RULE 209
CLOSING OF CASES

The clerk may close any open case which is otherwise eligible for closing despite a motion pending therein if a hearing date on such motion has not been obtained from the clerk within twenty (20) days of the filing of the motion, or where an order has not been submitted by the moving party within twenty (20) days of the date when such an order could properly be executed.

The clerk may close an open Chapter 11 case subsequent to entry of an Order confirming a plan of reorganization upon provision of not less than thirty (30) days written notice to the debtor(s), to counsel for debtor(s), and to the U.S. Trustee.

Related Authority:

11 U.S.C. § 350
Federal Rules of Bankruptcy Procedure 3022, 5009

Advisory Committee Notes:

Many cases otherwise eligible to be closed have pending motions never brought on for hearing, or stipulations concerning which orders never have been presented. This rule is designed to encourage the prompt noticing of matters and submission of orders. Note, further, that the court may close a Chapter 11 case subsequent to entry of confirmation. See also LBR 210.

LOCAL BANKRUPTCY RULE 210
REOPENING FEES AND PROCEDURES

Once a case is properly closed by the clerk, any party wishing to file a pleading or other document therein must submit a motion and order reopening the case and pay the attendant fee.

Related Authority:

11 U.S.C. § 350(b)
Federal Rules of Bankruptcy Procedure 5009, 5010

Advisory Committee Notes:

There are only limited circumstances where the court may act without reopening a case. See Federal Rule of Bankruptcy Procedure 9024. The "attendant fee" is the same as the filing fee for a case under such Chapter in effect as of the time of the motion to reopen.

LOCAL BANKRUPTCY RULE 301
SECTION 341(a) MEETING OF CREDITORS

(a) **Applications for Continuance.**
A continuance of the Section 341(a) first meeting of creditors must either be requested of the Presiding Officer at the time of the Section 341 meeting or, not later than ten (10) days after the scheduled meeting, by written application to the United States Trustee accompanied by an affidavit identifying the circumstances necessitating the delay. A continuance will not be allowed except where extenuating circumstances render the debtor(s) unable to appear. A continuance will not be allowed for a conflict involving the debtor's attorney.

(b) **Notice and Service.**
If a continuance of the Section 341(a) meeting is granted by the Presiding Officer or United States Trustee, the debtor or debtor's attorney must mail notice of the continuation to the creditors at least seven (7) days prior to the date of the continued meeting. The notice must include the date, time and location of the continued meeting, and, if the case is a Chapter 13, the notice must also include the date, time and location of the continued confirmation hearing. Proof of service of the continuation notice must be filed with the clerk and must list each party served and their mailing address.

(c) **Dismissal.**
If the debtor fails to appear at the first meeting and, if either no continuance is requested within ten (10) days after the scheduled meeting, or no continuance is granted by the Presiding Officer or United States Trustee, the United States Trustee may apply for an order of dismissal provided that the file contains proof that a notice of the meeting was mailed to the debtors.

Related Authority:

11 U.S.C. §§ 341, 343
Federal Rules of Bankruptcy Procedure 2003, 2004, 4002, X-1006

Advisory Committee Notes:

This is similar to the former local rule, but reflects the responsibilities of the United States Trustee in conducting Section 341(a) meetings. It follows General Order No. 61 effective April 1, 1990.

While not as significant a problem as in many Districts, failure to appear and/or failure to advise the court of the need for a continuance are still common and require a mechanism to control abuse.

Under subdivision (c) of the rule, the U.S. Trustee may request that the case be dismissed. However, the U.S. Trustee or Panel Trustee may elect to have the case remain open, for example, to administer assets or oppose entry of the debtor's discharge based on the failure to appear. See 11 U.S.C. §§ 704, 727.

Note also that dismissal on this ground falls within the scope of the prohibition of Section 109(g)(1) on filing of a subsequent petition for relief.

For purposes of planning and avoiding potential conflicts, note that the court's calendar for Section 341(a) meeting dates is set some six to nine months in advance. Copies of this calendar are available, without charge, from the calendar clerk.

LOCAL BANKRUPTCY RULE 302
EXEMPTIONS

(a) **Claim of Exemptions.**
A debtor shall claim exemptions, as required by Section 522, on schedule B-4, or on the statements filed in Chapter 12 and 13 cases, pursuant to Federal Rule(s) of Procedure 1007. The Idaho Code section under which the exemption is claimed, and each item of property claimed as exempt, shall be described with specificity, without reference to other schedules.

(b) **Claim of Exemption by Joint Debtors.**
If joint debtors claim separate exemptions under Section 522(m), each debtor must make and file a separate itemization in the manner prescribed by subdivision (a) of this rule.

(c) **Objections to Exemptions.**
An objection to a claimed exemption shall state the specific exemption objected to and state the grounds upon which the objection is based. Notice of the objection must be given to the trustee, the debtor(s) and the debtor's attorney. The objection may be granted and the exemption disallowed without a hearing, unless a hearing is requested and set by the debtor(s), the trustee, or a party in interest.

Related Authority:

11 U.S.C. § 522
Idaho Code §§ 11-604, 11-605 and 55-1001, et seq.
Federal Rules of Bankruptcy Procedure 1007, 4003

Advisory Committee Notes:

This rule addresses the common problem of failure of the debtors to provide sufficient information regarding the exemptions claimed. It also reflects, in subdivision (c), the fact that hearings in many cases are not needed or demanded by debtors after review of the objection. The debtor's right to a hearing is preserved, however. The trustee may also request and set a hearing. This may be necessary, for example, in cases where the debtor amends the claim of exemption but such amendment is itself objectionable or does not fully resolve the original objection.

LOCAL BANKRUPTCY RULE 303
PROPERTY IN NEED OF ATTENTION OR PROTECTION

(a) **Inventory or Equipment.**
When a stock of goods or business equipment is scheduled, the debtor shall, immediately after the general description thereof, list a present inventory, append a brief explanation of its exact location, the name and address of the custodian thereof, the protection being given such property, and the amount of fire and theft insurance, if any, and state whether prompt additional attention or protection is necessary.

(b) **Need for Immediate Action.**
If a stock of goods includes perishables, or if property or the business premises otherwise requires immediate attention or protection, the debtor or the debtor's attorney, when relief is ordered under Chapter 7 or 13 or a trustee is appointed under Chapter 11, shall notify the trustee of the need for immediate action. Notification shall be by personal communication or by telephone.

Related Authority:

11 U.S.C. §§ 521(4), 704

Advisory Committee Notes:

While this rule reflects current practice in many cases which fall within its scope, it is anticipated that the rule will provide the trustee with additional necessary information in a timely manner in other cases.

LOCAL BANKRUPTCY RULE 304
REAFFIRMATIONS

(a) **Where Debtor(s) Not Represented by Counsel.**
Applications for approval of reaffirmation agreements in cases in which the debtor is proceeding pro se shall be accompanied by a copy of the reaffirmation agreement signed by both the creditor and the debtor(s).

(b) **Where Debtor(s) Represented by Counsel.**
Applications for approval of reaffirmation agreements in cases in which the debtor is represented by counsel shall be accompanied by a copy of the reaffirmation agreement signed by both the creditor and the debtor(s) and by the attorney's declaration or affidavit pursuant to Section 524(c)(3).

(c) All applications under either (a) or (b) above shall be accompanied at the time of filing with either (i) a notice of hearing, or (ii) a waiver of hearing and proposed order. The court may require a hearing despite a waiver being filed.

Related Authority:

11 U.S.C. § 524
Federal Rule of Bankruptcy Procedure 4008

Advisory Committee Notes:

This rule attempts to reflect current practice, including the lack of mandatory "discharge hearings," in this District. The rule contemplates, in subdivision (c), that a hearing will be held only upon the request of a party, and that notice of such hearing will be filed with the application and an executed agreement. Hearings, under Section 524(c) and (d) are permissive except in those situations where an agreement is made after entry of discharge, or when the waiver and agreement are not provided.

LOCAL BANKRUPTCY RULE 305
AVOIDANCE OF LIENS ON EXEMPT PROPERTY

(a) **Specificity.**
All Section 522(f) lien avoidance motions and attendant orders must contain a specific description of the subject lien interest, the property upon which the lien is claimed and to be avoided, the extent to which such lien is to be avoided, and the exemption which is impaired.

(b) **Nature of Relief.**
The language contained in such motions to avoid lien, and attendant orders, should be substantially identical to the language of Section 522(f).

(c) **Notice.**
Notice of such a motion to avoid a lien pursuant to Section 522(f) need be given only to the trustee and to the creditor claiming the lien.

Related Authority:

11 U.S.C. § 522(f)
Federal Rules of Bankruptcy Procedure 4003(d), 9014

Advisory Committee Notes:

Many Section 522(f) lien avoidance motions and orders are factually incomplete, vague or ambiguous. Additionally, the court has found that many of the proposed orders granting relief improperly recite that the lien is absolutely "void," rather than avoided "to the extent that such lien impairs an exemption to which the debtor would have been entitled."

LOCAL BANKRUPTCY RULE 306
DEBTOR'S FAILURE TO PERFORM ACCORDING TO STATED INTENTION

(a) **Request for Hearing.**
In the event a debtor required to file a statement of intention with respect to consumer debts secured by property of the estate shall fail to timely perform according to his stated intention, as provided by Section 521(2), then upon request of either the trustee or a creditor affected thereby, the debtor(s) shall be required to appear before a judge to provide an explanation for such failure to perform. Such a request shall be made by motion in accordance with Federal Rules of Bankruptcy Procedure 9013 and 9014 and shall be served upon the debtor(s), debtor's attorney, the trustee, and the creditor affected thereby, if applicable.

(b) **Hearing and Order.**
At the hearing on the motion, a judge may order the debtor(s) to perform or may provide such other relief to the estate and creditor as may be appropriate, including granting relief from the automatic stay in favor of the affected creditor and/or imposing sanctions.

Related Authority:

11 U.S.C. §§ 521(2), 522(b), 524(c), 704(3), 722
Federal Rules of Bankruptcy Procedure 4002, 4003(f), 4008, 6008
Bankruptcy Official Form No. 8A

Advisory Committee Notes:

This rule is designed to allow enforcement without unduly burdening the trustee to determine whether the stated intentions have been fully and properly performed by the debtor(s). Much of the referenced authority concerns alternatives available to the debtor(s) in dealing with property under Section 521, but is not intended to be limiting.

LOCAL BANKRUPTCY RULE 307
SALE OF PROPERTY OF THE ESTATE

(a) **Contested Matter.**
A sale pursuant to Section 363(b), including a sale free and clear of any interest of an entity other than the estate, is initiated by notice and is subject to LBR 310. An action to determine the validity, priority, or extent of any interest of an entity other than the estate shall be brought separately as an adversary proceeding.

(b) **Notice of Sale.**

(1) The notice of sale shall include, without limitation, the following information:

(A) A description of the property to be sold;

(B) The time and place of sale;

(C) The terms of sale;

(D) Whether the property is to be sold free and clear of liens;

(E) The estimated fair market value of the property, and a brief statement of the basis for the estimate;

(F) If known, the amounts of each lien or encumbrance claimed against the property and the identity of each lienholder;

(G) The proposed disposition of the proceeds of sale;

(H) The subdivision of Section 363(f) which authorizes the sale; and

(I) The date by which objections to the sale must be filed, pursuant to Federal Rule of Bankruptcy Procedure 6004(b), and the name and address of any entity to be served with the objection.

(2) All interests in the property sold free and clear shall attach to the proceeds of the sale, except as otherwise provided in the notice.

(c) **Order.**
A party moving for an order approving or confirming an unopposed sale shall support the motion with an affidavit showing the necessity for the order.

Related Authority:

11 U.S.C. § 363(f)
Federal Rules of Bankruptcy Procedure 2002(a),
2002(c)(1), 6004, 7001

Advisory Committee Notes:

Certain controls on the sale of property of the estate, including a requirement of specificity in notice, were deemed advisable by the Committee especially in regard to sales free and clear of claims, liens and interests.

LOCAL BANKRUPTCY RULE 308
USE OF CASH COLLATERAL

A motion for authority to use or otherwise make disposition of cash collateral shall include the following:

(a) A statement describing with particularity the amount and source of the cash collateral sought to be used;

(b) Financial or other information demonstrating the need for and the projected use or disposition of the cash collateral;

(c) The identity of all entities, known to the debtor or trustee, holding or claiming to hold an interest in the cash collateral, and a description of such interest(s); and

(d) A description of the nature and extent of any adequate protection to be provided to entities holding or claiming to hold an interest in said cash collateral.

Related Authority:

11 U.S.C. § 363
Federal Rules of Bankruptcy Procedure 4001, 9014

Advisory Committee Notes:

The information required by this rule is generally provided by movants since it is essential to the granting of relief by the court. However, it was determined that specifying what information was necessary, and requiring its provision at a time prior to actual hearing, was advisable. See also, the Advisory Committee Notes to the 1987 Amendments of Federal Rule of Bankruptcy Procedure 4001(b). Issues regarding notice and service of the motion are not addressed here due, in part, to the amendments to Federal Rule of Bankruptcy Procedure 4001. See also LBR 310 and LBR 316.

LOCAL BANKRUPTCY RULE 309
MOTIONS REQUESTING RELIEF FROM THE AUTOMATIC STAY

(a) **Motions.**
A request by a party in interest for relief from the automatic stay pursuant to Section 362(d), Section 1201(c), or Section 1301(c) shall be made by filing a written motion filed with the court, and paying the applicable fee.

(b) **Requisite Information.**
The motion shall identify the nature of the stay relief sought; provide the details of the underlying obligation or liability upon which the motion is based; shall contain an itemization of amounts claimed to be due upon the obligation; and, if appropriate, shall state the estimated value of any collateral for the obligation, and the method used to obtain the valuation. If applicable, there shall be attached to the motion accurate copies of all documents evidencing the obligation, and the basis of perfection of any lien or security interest.

(c) **Service.**

(1) Co-debtor stay. If relief is sought under Section 1201(c) or Section 1301(c), the motion shall be served upon the debtor, debtor's attorney, the trustee, any codebtor affected thereby, and on any other party known to the movant claiming an interest in any property subject of the motion.

(2) Other Motions. If relief is sought under Section 362(d), the motion shall be served upon the debtor, debtor's attorney, the trustee if one has been appointed, upon any committee or its authorized agent, and on any other party known to movant claiming an interest in any property subject of the motion.

(d) **Hearings.**

(1) Objections. Any party in interest may oppose the motion by filing and serving on the moving party a written objection thereto at least five (5) days prior to the preliminary hearing. The objection shall reasonably identify those matters contained in the motion which are to be at issue, and any other basis for opposition to the motion. Absent the filing of a timely response, the court may grant the relief sought without a hearing. The written objection need not be filed if the moving party sets the preliminary hearing for less than twenty (20) days after the filing of the motion, however, the opposing party must be prepared to present the information required by this rule at the preliminary hearing.

(2) Scheduling. The moving party may schedule a preliminary hearing on any motion, and shall serve notice thereof upon those parties on whom service of the motion is required above. Absent such a hearing, at the time of filing of any objection to a motion, the objecting party shall schedule a preliminary hearing and shall serve notice thereof upon the moving party.

(3) Procedure. At the preliminary hearing, the parties shall be prepared to make specific representations to the court as to the proof and evidence to be submitted at any final hearing. In particular, the parties shall advise the court with specificity as to the issues to be presented at final hearing, and of the identity of any witnesses expected to testify, and a summary of the expected testimony. The court shall have the right to impose appropriate sanctions against any party who fails to prosecute or defend the motion in good faith contrary to the representations made at the preliminary hearing.

(e) **Section 362(e) Notice.**
In any motion filed under this rule, the movant shall serve with the motion a written notice of the requirement of the filing of a response as provided in this rule. In addition, if relief is sought from the automatic stay against acts against property of the estate under Section 362(d) and (e), the notice shall also advise the party against whom relief is sought of the requirements of Section 362(e). Absent such a notice, it will be presumed by the court that the moving party intends to waive the requirements of paragraph (d)(1) of this rule and Section 362(e).

(f) **Proof of Service.**
Any motion filed under this rule shall be accompanied by an appropriate written proof of service of the motion and notice and compliance with the terms hereof.

Related Authority:

11 U.S.C. § 362
Federal Rules of Bankruptcy Procedure 4001, 9013, 9014

Advisory Committee Notes:

This rule specifically requires certain information to be included in a motion for relief from stay. A response must fairly meet the grounds of the motion. Both of these requirements are enhanced by the requirement of specificity in representation at preliminary hearing. The Advisory committee considered and rejected, requiring affidavits in regard to factual issues presented. (See, e.g., Rule 7056). However, even though the current practice of allowing representation of counsel is continued, in order to achieve the goal of productive preliminary hearings, factual detail in such representation is mandated. Failure of counsel to adhere to this standard may lead to sanction under the rule. See also, Rule 9011 (F.R.C.P. 11).

LOCAL BANKRUPTCY RULE 310
NOTICE AND HEARING

(a) **Applicability.**
All contested matters under Federal Rule of Bankruptcy Procedure 9014, all motions under Federal Rule of Bankruptcy Procedure 9013, and all other matters requiring or with provision for a hearing under the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, shall be subject to the following requirements and conditions.

(b) **Notice.**

(1) By whom given. Except for notices specified in Federal Rules of Bankruptcy Procedure 2002(a)(1), (a)(2), (a)(4), (a)(8), (b), (d), (e) and (f)(1-10), all notices shall be given by the party requesting an order or other relief.

(2) To whom given.

(A) "Notice," as used in this rule shall mean notice by mail to all creditors, equity security holders, trustees and indenture trustees, the debtor, the chairman of any committee appointed in the case, and any other parties in interest. A different method or less inclusive notice may be given only if allowed by the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, or if authorized by a judge.

(B) The addresses of notices shall be in accordance with Federal Rule of Bankruptcy Procedure 2002(g).

(i) A master mailing list of names and addresses, as filed with the court, and updated in accordance with said Rule 2002(g), may be obtained from the clerk upon written request and payment of the attendant fee.

(ii) Notice required to be given to all creditors is presumed to be appropriate if mailed to all entries on the master mailing list which has been provided by the clerk within twenty (20) days of the notice.

(iii) Notices sent by the clerk pursuant to 11 U.S.C. § 341(a) which are determined undeliverable by the U.S. Postal Service will be noted on the clerk's docket but no future notices will be sent to that address. Any notice other than a Section 341(a) notice which is returned to the court shall be destroyed.

(3) Proof of Service. After giving notice, the moving party shall file within five (5) days the notice, an affidavit of mailing with a list of the persons, and their addresses, to whom the notice was sent. If notice to all creditors is required, the affidavit of service must certify mailing (or other services) on all parties included on the certified master list described in subdivision (b)(2)(B) of this rule.

(c) **Objection.**
If the notice provides for the filing of an objection, a party objecting to an act or the entry of an order shall file with the clerk and serve on the moving party, a written objection within the time set forth in the notice. The objection shall state, with specificity, the grounds therefor.

(d) **When hearing is not required.**
If authorized by the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, or if allowed by the court, an actual hearing may not be required. In all such instances, the moving party shall, in the notice, so advise all parties receiving notice that an order may be entered without hearing. The moving party shall provide not less than fifteen (15) days within which any party in interest may object, unless a longer period is required by order of a judge or under applicable Federal Rule of Bankruptcy Procedure, or such period is shortened by order of a judge.

(e) **Hearing.**

(1) By moving party. Counsel for the party who desires or is required to set a matter for hearing shall be responsible for contacting the Calendar clerk and obtaining a date for such hearing. Unless a hearing date is provided by the calendar clerk after such contact, the matter will not be scheduled for hearing and will not be heard. Counsel obtaining a hearing date shall be responsible for providing notice to all parties as provided by this rule.

(2) By objecting party. If a party objects to an act or the entry of an order and the matter is not previously set for hearing, counsel for the objecting party shall be responsible for contacting the calendar clerk and obtaining a hearing date, as provided in subdivision (e)(1) of this rule and notifying the moving party and all other parties as required by this rule. Failure to obtain and notice a hearing within thirty (30) days after filing the objection will waive the objection and allow entry of the Order.

(3) Any party requesting a hearing date from the calendar clerk (or in open court) shall file the notice of hearing and related pleadings at least five (5) days prior to the scheduled hearing date. Failure to do so may result in the hearing being removed from the calendar.

(f) **Vacation or continuance of hearing.**
A hearing may be vacated or continued by order of a judge entered:

(1) on a judge's own motion;

(2) upon agreement of the parties; or

(3) on the request of a party after notice to all opposing parties filed and served at least three (3) days prior to the scheduled hearing, accompanied by an affidavit stating the grounds for such request, unless a judge for cause shown waives the requirements of this rule.

Related Authority:

11 U.S.C. § 102(1)
Federal Rules of Bankruptcy Procedure 2002, 9006, 9007, 9008

Advisory Committee Notes:

Note that subdivision (b)(1) requires a party to serve notice in certain circumstances where previously the clerk provided notice.

Subdivision (b)(2)(B)(ii) has been changed to eliminate the process of "certification" of the matrix. Copies of the mailing list will be provided at a cost of $.50 per page (for copying) plus the cost of labels if so requested. All requests, however, for an updated matrix should still be in writing.

Subdivision (e) reflects current practice and emphasizes the necessity of setting matters through the calendar clerk. It further, in (e)(3), requires the filing of supporting pleadings.

Subdivision (f)(3) is designed to cure problems presently encountered by the court where counsel vacates hearing without advising the court and/or opposing counsel.

LOCAL BANKRUPTCY RULE 311
FORM OF ORDERS

(a) **Separate Documents.**
All orders must be submitted on a document separate from any attendant motion or stipulation. All orders shall contain the proper case caption, the name, address and telephone number of the submitting attorney(s), and the name of the party(s) represented.

(b) **Requisite Information.**
All orders submitted must identify with specificity the application, motion or other pleading to which it corresponds, and the court hearing, if any, from which it resulted. The order must also specifically identify the property or interest with which it deals.

Related Authority:

Federal Rules of Bankruptcy Procedure 9004(b), 9013

Advisory Committee Notes:

Motions which contain orders within the same pleading cause filing and case control issues for the clerk. Additionally, some "separate" orders presently submitted are incomplete, misleading or confusing. Certain orders, such as those regarding lien avoidance, sale, abandonment or relief from stay, must adequately describe the subject property or interest.

LOCAL BANKRUPTCY RULE 312
NON-CONFORMING PLEADINGS

Any pleading not in conformance with the Federal Rules of Bankruptcy Procedure or these Local Rules, may be placed in the court file but no action thereupon or in regard thereto will be taken. Non-conforming pleadings may be returned to the submitting party.

Related Authority:

Federal Rules of Bankruptcy Procedure 9004, 9013

Advisory Committee Notes:

This rule is a corollary to the other restrictions on form of pleading and practice before the court. Additionally, the general requirements of "form" and required number of copies as set forth in the Local Rules of the District Court are applicable, though not duplicated in this rule.

LOCAL BANKRUPTCY RULE 313
MAILING OF PLANS

(a) **Chapter 13 Cases.**
Plans filed with the petition in Chapter 13 cases will be mailed by the clerk with the Section 341(a) notice to creditors. Sufficient copies must be provided by the debtor in compliance with LBR 201(b)(2). The debtor shall mail copies of the Chapter 13 plan in all cases where the plan and required copies are not filed with the petition, and thereafter file an affidavit of mailing. In such cases, the clerk shall continue to send notice of the hearing on confirmation of said plan in accordance with Federal Rule of Bankruptcy Procedure 2002(b)(2).

(b) **Other Cases.**
In all Chapter 11 and 12 cases, the debtor or plan proponent shall give notice of the hearing on confirmation of the plan after obtaining a hearing date from the Calendar clerk in accordance with LBR 310. The debtor or plan proponent shall mail copies of the plan, with such notice, to all creditors and parties in interest prior to the hearing date set for confirmation of the plan. In Chapter 11 cases, the debtor or plan proponent shall also mail copies of the order approving disclosure statement and notice of the confirmation hearing, together with a copy of the disclosure statement, plan, ballot and any amendments or addenda to the original plan or disclosure statement.

Related Authority:

11 U.S.C. §§ 1128, 1224, 1324
Federal Rules of Bankruptcy Procedure 2002(a), 2002(b), 3015

Advisory Committee Notes:

This rule does not address the requisite length of notice. See, e.g., Rule 2002(b), LBR 504(f), LBR 506(d), etc.

LOCAL BANKRUPTCY RULE 314
TAX RETURNS

Except where the court orders otherwise for good cause shown, debtors must file all required tax returns prior to the date set for the initial hearing on confirmation of a plan. Failure to do so is grounds for dismissal.

Related Authority:

None

Advisory Committee Notes:

None

LOCAL BANKRUPTCY RULE 401
CHAPTER 11 CLAIMS

(a) **Time to File.**
The last day to file proofs of claim in a Chapter 11 case shall be ninety (90) days from the first date set for a Section 341(a) meeting of creditors. The clerk shall notify all creditors and parties in interest of such bar date.

(b) **Extension.**
The court may, for cause shown, extend the deadline upon appropriate motion, notice and hearing. If the Section 341(a) notice to creditors has already been mailed by the clerk's office, the notification to creditors of an extension of deadline to file claims will be the responsibility of the debtor in possession and its counsel.

Related Authority:

11 U.S.C. §§ 501, 502, 1111(a)
Federal Rule of Bankruptcy Procedure 3003

Advisory Committee Notes:

By virtue of general Order No. 66 dated June 18, 1990, the court has set a standard bar date under Rule 3003(c)(3) for all Chapter 11 cases. The LBR does not change the operation of Section 1111(a) or Rule 3003(b)(1) or (c)(2) as to claims scheduled by the debtor as undisputed, non-contingent and liquidated.

LOCAL BANKRUPTCY RULE 402
CONVERSION FROM CHAPTER 11

(a) **Applicability.**
This rule applies to a case converted from a case under Chapter 11 to a case under Chapter 7, Chapter 12 or Chapter 13.

(b) **Final Report and Account.**
Upon conversion, the debtor, or trustee if one served in the original Chapter 11 case, shall file and serve on the successor trustee a final report and account within thirty (30) days of the conversion of a Chapter 11 case. The final report and account shall include:

(1) A separate schedule accompanied by a matrix, listing unpaid debts incurred by the debtor after the commencement of the Chapter 11 case.

(2) A schedule of property acquired by the debtor after the commencement of the Chapter 11 case.

(3) A balance sheet as of the date of conversion and a profit and loss statement for the period of the pendency of the case under Chapter 11, unless such balance sheet and profit and loss statements for the period of the pendency of the case under Chapter 11 have been previously filed in accordance with court order.

(4) A statement of the money or property paid or transferred, directly or indirectly, during the pendency of the Chapter 11 case, to the debtor, if the debtor is an individual; or to each partner, if the debtor is a partnership; or to each officer, stockholder, and director, if the debtor is a corporation.

(5) A listing of all matters pending in the case and any adversary proceedings or other litigation pending in which the debtor, debtor in possession or trustee is a party.

(6) Except to the extent otherwise clearly disclosed by the foregoing, amended A and B schedules reflecting the status of assets and liabilities as of the date of conversion.

(c) **Bank Account.**
The debtor, or trustee if one served in the original Chapter 11 case, shall furnish to the Chapter 7, Chapter 12 or Chapter 13 trustee originals or photocopies of all canceled checks and bank statements pertaining to the bank account(s) maintained in the Chapter 11 case.

Related Authority:

11 U.S.C. § 1112
Federal Rule of Bankruptcy Procedure 1019

Advisory Committee Notes:

This rule supplements the requirements of Federal Rule of Bankruptcy Procedure 1019, in particular the "final report and account" under Rule 1019(6). Paragraph (b)(3) eliminates the need for a reconciled balance sheet and a cumulative profit and loss statement upon conversion if the same were maintained and properly filed as a part of the debtor in possession's "monthly financial reports." The schedules required by subdivisions (b)(1) and (b)(2) can be provided by the filing of "amended" A and B schedules under Federal Rule of Bankruptcy Procedure 1007(b) and Official Form No. 6.

LOCAL BANKRUPTCY RULE 501
GENERAL APPLICABILITY OF FEDERAL RULES OF BANKRUPTCY PROCEDURE IN CHAPTER 12 CASES

The Federal Rules of Bankruptcy Procedure and Forms, now in effect or as later amended, as supplemented by these Local Rules, govern procedure in cases under Chapter 12.

Related Authority:

Federal Rules of Bankruptcy Procedure 9029

Advisory Committee Notes:

[The rules of this part are designed to clarify practice under Chapter 12 of the Code until the Federal Rules of Bankruptcy Procedure and Official Forms are promulgated, modified and adopted. Many of the rules of this part are based upon the suggested "Interim Rules" drafted and proposed by the Advisory Committee on Federal Rules of Procedure of the Judicial Conference of the United States.]

[Bracketed and italicized material in the Advisory Committee Notes reflects material prepared by the Advisory Committee on Local Rules for the District of Idaho. The other Advisory Committee Notes to rules in this part are the comments of the Advisory Committee on Federal Rules of Bankruptcy Procedure of the Judicial Conference of the United States.]

Section 305(b) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 100 Stat. 3088, provides that the Federal Rule(s) of Procedures in effect on the day of enactment shall apply to Chapter 12 family farmer's debt adjustment cases "to the extent practicable and not inconsistent" with Chapter 12. Amendments to the Federal Rules of Bankruptcy Procedure are currently under consideration by the Supreme Court. This rule provides that if the proposed amendments become effective, the rules as amended will apply to Chapter 12 cases.

LOCAL BANKRUPTCY RULE 502
VOLUNTARY CHAPTER 12 PETITION

(a) **Commencement.**
A debtor's petition commencing a Chapter 12 case shall be filed with the Bankruptcy Court, shall conform substantially to Official Form No. 1, and shall comply with LBR 201.

(b) **Number of Copies.**
The number of copies of the petition requesting relief under Chapter 12 of the Code shall be in compliance with LBR 201(a).

Related Authority:

11 U.S.C. §§ 301, 302
Federal Rule of Bankruptcy Procedure 1007

Advisory Committee Notes:

[This rule is necessitated by lack of inclusion or cross-reference in the "Interim Rules" other Local Rules. Additionally, though not made the subject of a specific local rule because of the pending adoption of the Interim Rules regarding Chapter 12, LBR 202 (filing fees), LBR 203 (master address list), LBR 204 (case cover sheet), LBR 205 (schedules), LBR 206 (extension of time), LBR 207 (amendments), and the other LBR's of general operation apply also to Chapter 12 cases, except as modified by LBR 504. See generally LBR 101(b).]

LOCAL BANKRUPTCY RULE 503
ADAPTATIONS OF CERTAIN FEDERAL RULES OF BANKRUPTCY PROCEDURE

(a) The following Federal Rules of Bankruptcy Procedure are modified, by reference, to apply to cases under Chapter 12:

(1) The reference in Rule 1002(b)(1) to Chapter 13 shall be read also as a reference to Chapter 12.

(2) The reference in Rule 1007(a)(1) to a Chapter 13 Statement shall be read also as a reference to a Chapter 12 Statement, and the references in Rule 1007(c) and (h) to a Chapter 13 case and a Chapter 13 individual's debt adjustment case shall be read also as references to a Chapter 12 case and a Chapter 12 family farmer's debt adjustment case.

(3) The reference in Rule 1008 to Chapter 13 Statements shall be read also as a reference to Chapter 12 Statements.

(4) The references in Rule 1009 to a Chapter 13 Statement shall be read also as references to a Chapter 12 Statement.

(5) The references in Rule 1016 to an individual's debt adjustment case under Chapter 13 shall be read also as references to a family farmer's debt adjustment case under Chapter 12.

(6) The reference in Rule 1017(a) to Section 1307(b) of the Code shall be read also as a reference to Section 1208(b) of the Code.

(7) The references in Rule 1019 to a Chapter 13 case shall be read also as references to a Chapter 12 case.

(8) The reference in Rule 2004(b) to an individual's debt adjustment case under Chapter 13 shall be read also a reference to a family farmer's debt adjustment case under Chapter 12.

(9) The references in Rule 2009(c)(3) to Chapter 13 individual's debt adjustment cases and Chapter 13 cases shall be read also as references to Chapter 12 family farmer's debt adjustment cases and Chapter 12 cases.

(10) The references in Rule 2015(b)(1) to Chapter 13 trustee and debtor and Chapter 13 individual's debt adjustment case shall be read also as references to Chapter 12 trustee and debtor and Chapter 12 individual's debt adjustment case.

(11) The reference in Rule 2018(b) to a Chapter 13 case shall be read also as a reference to a Chapter 12 case.

(12) The reference in Rule 3002(c) to a Chapter 13 individual's debt adjustment case shall be read also a reference to a Chapter 12 family farmer's debt adjustment case.

(13) The references in the captions of Rule 3010 and Rule 3010(b) to Chapter 13 Individual's Debt Adjustment Cases and CHAPTER 13 CASES shall be read also as references to Chapter 12 Family Farmer's Debt Adjustment Cases and CHAPTER 12 CASES.

(14) The reference in the caption to Rule 3011 to Chapter Individual's Debt Adjustment Cases shall be read also as a reference to Chapter 12 Family Farmer's Debt Adjustment Cases.

(15) The reference in Rule 3013 to Section 1322(b)(1) of the Code shall be read also as a reference to Section 1222(b)(1) of the Code.

(16) The reference in the caption of Rule 4007(c) to CHAPTER 11 REORGANIZATION CASES shall be read also as a reference to CHAPTER 12 FAMILY FARMER'S DEBT ADJUSTMENT CASES.

(17) The reference in Rule 6006(b) to a Chapter 13 individual's debt adjustment case shall be read also as a reference to a Chapter 12 family farmer's debt adjustment case.

(18) The references in Rule 7001(5) and (8) to a Chapter 13 plan shall be read also as references to a Chapter 12 plan.

(19) The reference in Rule 7062 to Section 1301 of the Code shall be read also as a reference to Section 1201 of the Code.

(20) The reference in Rule 9011(a) to a Chapter 13 Statement shall be read also as a reference to a Chapter 12 Statement.

(21) The reference in Rule 9024 to Section 1330 of the Code shall be read also as a reference to Section 1230 of the Code.

Related Authority:

Federal Rule of Bankruptcy Procedure 9029

Advisory Committee Notes:

Many of the Federal Rules of Bankruptcy Procedure apply to cases under all chapters of the Code. Others apply only to specified chapters. Since the procedural aspects of Chapters 12 and 13 are almost identical, the rules applicable to Chapter 13 cases are appropriate for use in Chapter 12 cases, and pursuant to Section 305(b) of the 1986 Act, these rules are applicable to Chapter 12 cases.

This rule provides that references in certain Federal Rules of Bankruptcy Procedure to Chapter 13 or an aspect of a Chapter 13 case shall be read to include a comparable reference to Chapter 12 or an aspect of a Chapter 12 case. [Cross-reference to] Rule 1007(b) is omitted because [Interim] Rule 12-3 [LBR 504] covers the subject of filing schedules and statements.

Paragraph (16) makes Rule 4007(c), which fixes the time for filing a complaint under Section 523(c) to determine the dischargeability of certain debts at 60 days from the first date set for the meeting of creditors, applicable in Chapter 12 cases. Rule 4007(c) does not apply to Chapter 13 cases because the Section 523(c) debts are discharged pursuant to Section 1328(a). Under Section 1228(a), the Chapter 12 discharge does not discharge the Section 523(c) debts.

[Interim] Rule 12-4 [LBR 506] governs the filing and confirmation of a Chapter 12 plan.

LOCAL BANKRUPTCY RULE 504
CHAPTER 12 LISTS, SCHEDULES AND STATEMENTS; TIME LIMITS

(a) **General.**
Unless a judge orders otherwise, the debtor shall file with the court a Chapter 12 Statement conforming to Form No. 12-A or 12-B, whichever is appropriate, and a statement of financial affairs for debtor engaged in business prepared as prescribed by Official Form No. 8. The budget included in the Chapter 12 Statement (as required in subdivision (c)(4) of this rule) shall constitute the schedule of current income and expenditures.

(b) **List of Creditors and Equity Security Holders.**

(1) The debtor shall file with the petition a list containing the name and address of each creditor unless the petition is accompanied by a schedule of liabilities. This list shall comply with LBR 203.

(2) Where the debtor is a limited partnership or corporation, a list of the debtor's equity security holders showing each class by the number and kind of interests registered in the name of each holder and the last known address or place of business of each holder shall be filed by the debtor within fifteen (15) days after the entry of the order for relief.

(c) **Schedules and Statements Required.**

(1) Additional Forms. The debtor in a Chapter 12 case shall file with the clerk, in addition to those documents required by subdivision (a) of this rule, a statement of leases and executory contracts.

(2) Master Address List. LBR 203 applies to all Chapter 12 cases.

(3) Bankruptcy Petition Cover Sheet. LBR 204 applies to all Chapter 12 cases.

(4) Budget Information for the Farming Operation. If the debtor is an individual, the budget contained on Official Form No. 6A must be completed for personal income and expenditures. In addition, a budget for the farming operation must be completed by all debtors who have filed a Chapter 12 case using the official budget form. Corporations and partnerships are not required to complete the budget contained in Official Form No. 6A, but must complete the farming operation budget.

(d) **Time Limits.** The lists, schedules, and statements, required by subdivision (c) above, if not filed with the petition, must be filed within fifteen (15) days after the order for relief is entered. In a case converted from a Chapter 7, 11 or 13, the lists, schedules, and statements required by subdivision (c) above must be filed within fifteen (15) days from the entry of the order of conversion. Any extension of time for filing of the lists, schedules and statements shall be granted only on motion for cause shown and on notice to the trustee and any other party as a judge may direct, as provided under LBR 206.

(e) **Number of Copies.**
The number of copies of the lists, schedules and statements shall correspond to the number of copies of the petition required by LBR 502(b).

(f) **Chapter 12 Plan.**

(1) Amended Plans. Any amended Chapter 12 Plan shall be filed with the clerk and served upon all parties affected by such amendment not less than fifteen (15) days prior to any date set for the confirmation hearing.

Related Authority:

11 U.S.C. § 1201, et seq.
Federal Rules of Bankruptcy Procedure 1007, 9029

Advisory Committee Notes:

[This rule incorporates the suggested "Interim Rule" in subdivision (a). The remainder of the rule reflects the attempt of the Advisory Committee to clarify procedure in light of prior Local Rules and current practice.]

This rule is derived from Federal Rule of Bankruptcy Procedure 1007(b). Under Section 109(f) of the Code, a Chapter 12 debtor must have regular annual income. A plan may be confirmed over an objection only if the plan commits the debtor's projected disposable income for three years to payments under the plan. Section 1225(b)(1)(B). The Chapter 12 Statement (Form No. 12-A or 12-B) required by these rules contains essential information for determining eligibility for commencing a Chapter 12 case and the amount of the debtor's disposable income.

The time for the filing of the Chapter 12 Statement is prescribed by Rule 1007(c). [Interim] Rule 12-2(2). [See LBR 503(a)(2).]

[The number of required copies of the plan or amended plan, and other issues relating to confirmation, are addressed in LBR 506.]

LOCAL BANKRUPTCY RULE 505
CLAIMS IN CHAPTER 12 CASES

(a) **Time for Filing Proof of Claims.**
In a Chapter 12 Case, an original proof of claim together with one (1) duplicate copy (with the duplicate to include copies of all attachments to the original), shall be filed within ninety (90) days after the first date set for the meeting of creditors scheduled pursuant to Section 341(a) except as allowed in Federal Rules of Bankruptcy Procedure 3002(c)(1), (2), (3) and (4), 3004, and 3005. The clerk will forward the copy of the claim to the Chapter 12 trustee.

(b) **Payment of Small Dividends in Chapter 12 Cases.**
In a Chapter 12 case, no payment in an amount less than $15.00 shall be distributed by the trustee to any creditor unless authorized by order of a judge. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15.00. Any funds remaining shall be distributed with the final payment.

Related Authority:

11 U.S.C. § 1226
Federal Rules of Bankruptcy Procedure 3002, 3004, 3005, 3010

Advisory Committee Notes:

[LBR 505(a) reflects, by reference, additional periods within which the debtor, the trustee, or specified third parties (such as co-debtors and guarantors) may file claims. See LBR 503(a)(12).]

[Subdivision (b) of this rule is identical to the corollary provision for payments in Chapter 13 cases contained in Rule 3010(b). See also, LBR 503(a)(13).]

LOCAL BANKRUPTCY RULE 506
FILING AND CONFIRMATION OF PLAN

(a) **Time for Filing.**
The debtor may file a Chapter 12 plan with the petition. If a plan is not filed with the petition, it shall be filed within ninety (90) days thereafter unless a judge, pursuant to Section 1221 of the Code, extends the time for filing the plan.

(b) **Objections.**
Objections to confirmation of the plan shall be in writing and filed with the clerk and served on the debtor, the trustee, and on any other party in interest, not less than seven (7) days prior to any scheduled confirmation hearing. An objection to confirmation must set forth with specificity the grounds for objection and is governed by Federal Rule of Bankruptcy Procedure 9014.

(c) **Hearing.**
After notice as provided in subdivision (d) of this rule, a judge shall conduct and conclude a hearing within the time prescribed by Section 1224 of the Code and rule on confirmation of the plan. If no objection is timely filed, a judge may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on those issues.

(d) **Notice.**
Notice shall be made by the debtor or plan proponent according to LBR 313 (b). Unless a judge fixes a shorter period, notice of such hearing shall be given not less than twenty-five (25) days before the hearing. A copy of the plan shall accompany the notice.

(e) **Order of Confirmation.**
The order of confirmation shall conform to the Official Forms and notice of entry thereof shall be mailed promptly by the clerk to the debtor, the trustee, all creditors, all equity security holders, and other parties in interest.

(f) **Retained Power.**
Notwithstanding the entry of the order of confirmation, a judge may enter all orders necessary to administer the estate.

Related Authority:

11 U.S.C. §§ 1221, 1224, 1225
Federal Rules of Bankruptcy Procedure 2002, 9029

Advisory Committee Notes:

[The Advisory Committee has modified the suggested "Interim Rule" where it was believed to be necessary. The "Note" to Interim Rule 12-4 of the Advisory Committee of the Judicial Conference follows.]

Section 1221 of the Code requires that the plan be filed within 90 days of the order for relief. The date of the order for relief is the date of the filing of the Chapter 12 petition. See Section 301 of the Code. Involuntary petitions are not permitted under Chapter 12. Section 1224 requires that the confirmation hearing be held after "expedited notice". The confirmation hearing must be concluded within 45 days after the plan is filed unless the court extends the period for cause. This rule is derived from Federal Rule(s) of Procedures 3015 and 3020 and supplements the statutory requirements.

Subdivision (a) is derived from Federal Rule of Bankruptcy Procedure 3015. An extension of the time for the filing of a plan may be granted pursuant to Section 1221 if a judge finds "an extension is substantially justified". A summary of the plan may not be distributed unless approved by a judge.

Subdivision (b) is derived from Rule 3020(b)(1). Notice of the time for filing objections shall be included in the notice given pursuant to subdivision (d) of this rule.

Subdivision (c) is derived from Rule 3020(b)(2). Section 1224 requires that the confirmation hearing be concluded within 45 days unless a judge grants an extension for cause.

Subdivision (d). Section 1224 requires that there be "expedited notice" of the confirmation hearing. A judge may shorten this time on its own motion or on motion of a party in interest. The coordination of the hearing date and the date for filing objections is determined by the clerk. The notice should include both dates and be accompanied by a copy of the plan or a court approved summary of the plan.

Subdivisions (e) and (f) are derived from Rule 3020(c) and (d).

[Additionally, the court has adopted the following general guidelines for conducting Chapter 12 confirmation hearings:]

(1) The trustee will present his report. If the trustee does not recommend confirmation, the court will accept the lack of recommendation as prima facie evidence the plan cannot be confirmed.

(2) If the debtor contests the lack of recommendation, debtor's counsel shall make an offer of proof of the evidence upon which the debtor relies to substantiate confirmation.

(3) If the trustee recommends confirmation, objecting creditors will be called upon to make an offer of proof of the evidence the objector intends to present to defeat confirmation.

(4) The process of qualifying expert witnesses and inquiring into the basis of their opinions will be kept to a minimum.

[This Local Rule, and Federal Rule of Bankruptcy Procedure 2002(b), require twenty (25) days notice of hearing on confirmation. The Interim Rule, if adopted, would shorten that period to fifteen (15) days. However, the confirmation hearing must be held within forty-five (45) days of the filing of the plan. See Section 1224. This clearly causes a problem due to the court's travel schedule. Therefore, if there is insufficient time for notice prior to hearing on a "non-Boise" case, (see, LBR 105(a) and the Advisory Committee Notes thereto), the court will sua sponte extend the time limit of Section 1224 and put the matter on the next available calendar. Scheduling should be coordinated with the calendar clerk and the Case Administrator.]

LOCAL BANKRUPTCY RULE 601
FILING OF PROOFS OF CLAIM IN CHAPTER 13 CASES

(a) **Filing.**
All proofs of claims in Chapter 13 cases, filed pursuant to Section 501, shall be filed with the clerk in duplicate (with the duplicate to include copies of all attachments to the original), and a copy will be forwarded by the clerk to the Chapter 13 trustee appointed for that case.

(b) **Time to File.**
A proof of claim shall be filed by all creditors within ninety (90) days after the first date set for the meeting of creditors scheduled under Section 341(a), except as otherwise provided in Federal Rules of Bankruptcy Procedure 3002(c)(1)-(4), 3004 and 3005.

(c) **Objections.**
Debtor(s) and the Chapter 13 Trustee shall have the right to object to claims filed between confirmation of the plan and the bar date set forth in this rule, as well as to untimely claims.

(d) **Distributions.**
If a secured creditor fails to timely file a proof of claim, the Trustee may distribute, to general unsecured creditors, the funds attributable to that claim, and may do so without notice, hearing or court order.

Related Authority:

11 U.S.C. §§ 501, 1305, 1325
Federal Rules of Bankruptcy Procedure 3002, 3004, 3007

Advisory Committee Notes:

This rule has been amended to eliminate initial filing of claims with the Trustee, but is still designed to be consistent with, and necessary to achieve, accelerated confirmation of uncontested Chapter 13 plans. See LBR 602.

Subdivision (b) of the rule applies to secured claims as well as unsecured claims, contrary to Federal Rule of Bankruptcy Procedure 3002(a). Secured creditors should also heed LBR 602(b). Subdivision (c) preserves the right of the debtor or trustee to object to a post-confirmation claim, however, valuation is inherent in confirmation under Section 1325 and creditors may be collaterally estopped from later litigation.

Subdivision (d) makes unnecessary the current practice of a Chapter 13 Trustee seeking a court order to distribute funds to unsecured creditors when a secured creditor fails to file a timely proof of claim. See LBR 601(b). However, since a lien will survive confirmation despite the absence of a claim, debtors may wish to utilize Section 501(c) and Federal Rule of Bankruptcy Procedure 3004.

LOCAL BANKRUPTCY RULE 602
CONFIRMATION OF CHAPTER 13 PLAN

A judge may confirm a Chapter 13 plan without hearing if a written objection to confirmation is not timely filed. This confirmation process is subject to the following requirements.

(a) **Notice to Creditors.**
The clerk shall send to the debtor, debtor's attorney, the trustee, and all creditors and parties in interest, a notice which advises them of the provisions of this rule. This notice shall be sent at the same time as, and may be incorporated within, the notice of the Section 341(a) meeting of creditors.

(b) **Objections to Confirmation of the Plan.**
Any objection to the confirmation of the plan must be in writing and filed with the clerk, the trustee, debtor, and debtor's attorney prior to or on the date of the scheduled Section 341(a) meeting of creditors, or within five (5) days thereafter. An objection to confirmation must set forth with specificity the grounds for objection and is governed by Federal Rules of Bankruptcy Procedure 9014.

(c) **Confirmation of Plan Without Objection.**
Where no objection to confirmation of a Chapter 13 plan is filed within the time limits established by this rule, then a judge, without hearing, may enter an order confirming the plan.

(d) **Amendment of Plans at the Section 341(a) Meeting of Creditors.**
The proposed plan may be amended, at either the Section 341(a) meeting of this rule to resolve an objection. Such amendment must be placed on the Chapter 13 Trustee's Minutes or be included in an amended plan. Where a timely objection has been made, the plan will not be confirmed until the objecting party has withdrawn such objection or a hearing is held as provided in subdivision (e) of this rule. Where the amendment does not affect any other party in interest, a judge may confirm the plan as amended without notice or a hearing. Where the amendment would affect another party in interest, the plan as amended must be mailed to each affected party with a notice providing twenty (20) days to object to the amendment. If no objection is made within the time allowed, a judge may confirm the plan as amended without a hearing.

(e) **Objections not Resolved by Amendment of the Plan.**
Where an objection to a proposed Chapter 13 plan cannot be resolved by an amendment to the proposed plan, or where the trustee does not recommend confirmation, the court shall hold a confirmation hearing to resolve the objection. The clerk shall schedule a tentative confirmation hearing date, in the event actual hearing is required under this rule, and provide notice of such date on the notice of the Section 341(a) meeting of creditors.

Related Authority:

11 U.S.C. §§ 1302, 1322, 1323, 1324, 1325
Federal Rules of Bankruptcy Procedure 2002, 3015

Advisory Committee Notes:

The process of confirmation as structured under this rule is designed to protect interests of objecting creditors while allowing accelerated confirmation of plans and payment to creditors in the large majority of Chapter 13 cases where there are no objections or where objections can be readily resolved. The prior local rule has been amended to conform to current court procedures.

LOCAL BANKRUPTCY RULE 701
COMMENCEMENT OF ADVERSARY PROCEEDINGS

(a) **Cover Sheet.**
Every complaint commencing an adversary proceeding under Federal Rule of Bankruptcy Procedure 7003 shall be accompanied by a completed "Adversary Proceeding Cover Sheet" and a summons prepared in compliance with the Federal Rules of Civil Procedure and practice in U.S. District Court for the District of Idaho, with sufficient copies for service. Blank forms for compliance with this rule will be furnished by the clerk upon request.

(b) **Form.**
All pleadings in an adversary proceeding shall meet the requirements of Federal Rule of Bankruptcy Procedure 7010 and the Official Forms, including identification of the debtor and the debtor's bankruptcy case number.

(c) **Adversary Number and Summons.**
Upon the filing of a complaint under Federal Rule of Bankruptcy Procedure 7003, the clerk will assign the proceeding an adversary number, which number must thereafter appear on all pleadings, and issue the summons which will then be returned to the plaintiff who will be responsible for service according to Federal Rule of Bankruptcy Procedure 7004.

Related Authority:

Federal Rules of Bankruptcy Procedure 7003, 7004, 7010, 9004(b)

Advisory Committee Notes:

This rule continues the practice under former local rule.

LOCAL BANKRUPTCY RULE 702
DISMISSAL OF INACTIVE ADVERSARY PROCEEDINGS

(a) **Dismissal.**
In the absence of a showing of good cause for retention, any adversary proceeding (except one objecting to or seeking to revoke discharge) in which no action has been taken for a period of six (6) months shall be dismissed, without prejudice, at any time.

(b) **Notice.**
At least twenty (20) days prior to such dismissal, the clerk shall give notice of the pending dismissal to all attorneys of record, and to any party appearing on its own behalf, in such adversary proceeding. The notice shall be sent to the last address of such attorneys or parties as shown in the official court adversary proceeding file.

Related Authority:

Federal Rule of Bankruptcy Procedure 7041

Advisory Committee Notes:

Certain changes have been made in this rule from the prior local rule. The period of inactivity has been shortened from one (1) year to six (6) months in order that the court can better control its caseload, and to better reflect the nature of the vast majority of adversary proceedings. The revised rule has eliminated reference to "contested matters" under Federal Rule of Bankruptcy Procedure 9014 since justification for a similar rule is not present for motions within a case.

This rule contains an exception to proceedings objecting to or seeking to revoke the general discharge of the debtor. See LBR 703.

LOCAL BANKRUPTCY RULE 703
DISMISSAL OF ADVERSARY PROCEEDINGS CONTESTING DISCHARGE

An adversary proceeding objecting to entry of discharge of the debtor(s), or seeking to revoke entry of discharge of the debtor(s), shall be dismissed only upon compliance with the following conditions.

(a) **Motion.**
The Plaintiff shall file a motion which sets forth with particularity the grounds upon which the request for dismissal is based.

(b) **Affidavit.**
Contemporaneously with such motion, there must be filed an affidavit of the Plaintiff setting forth any consideration, monetary or otherwise, received in connection with such requested dismissal.

(c) **Service of Pleadings.**
Proof of service of the motion and affidavit provided for in subdivisions (a) and (b) of this rule, reflecting service upon the trustee and upon any committee appointed under the Code, must be filed within five (5) days of the motion.

(d) **Notice to Creditors and Hearing.**
Notice of such intended dismissal, and of the hearing thereon, shall be issued by the moving party and served upon all creditors and parties in interest in the debtor(s)' case, and proof of such service filed with the clerk.

(1) This requirement of notice shall not apply to dismissal of adversary proceedings brought by a trustee to deny or revoke discharge on the grounds of failure to file tax returns, failure to amend schedules, or failure to turn over property or records.

Related Authority:

11 U.S.C. §§ 727, 1141, 1228, 1328
18 U.S.C. § 152
Federal Rules of Bankruptcy Procedure 7001(4), 7041

Advisory Committee Notes:

Federal Rule of Bankruptcy Procedure 7041 and precedent limit voluntary dismissal of complaints generally objecting to discharge of debtors (as contrasted with those actions under Section 523 of the Code contesting dischargeability of individual debts). This rule clarifies the requirements previously imposed by the court in most cases. Subsection (b) is, in part, in reference to the criminal prohibition upon the giving, receiving, offering or seeking to obtain any money, property or other advantage in return for acting or forbearing to act in a case under Title 11, U.S. Code.

LOCAL BANKRUPTCY RULE 704
NON-FILING OF DISCOVERY AND LIMITATIONS ON DISCOVERY

(a) **Adversary Proceedings.**
Pursuant to Federal Rule of Bankruptcy Procedure 7005 and Federal Rule of Civil Procedure 5(d), all papers after the complaint initiating an adversary proceeding which are required to be served upon a party shall be so served and filed with the clerk either before service or within a reasonable time thereafter; provided, however, that discovery, including depositions upon oral examination or written questions, interrogatories, requests for production of documents, requests for admissions, and answers and responses thereto, shall be served but shall not be filed except upon order of a judge following motion by a party in interest.

(b) **Contested Matters.**
All discovery made in a contested matter pursuant to Federal Rule of Bankruptcy Procedure 9014, including depositions upon oral examination or written questions, interrogatories, requests for production of documents, requests for admissions, and answers and responses thereto, shall be served but shall not be filed with the court except upon order of a judge following motion by a party in interest.

(c) **Limitations on Discovery.**
All discovery made in a contested matter pursuant to Federal Rule of Bankruptcy Procedure 9014 is subject to the following limitations absent stipulation of the opposing party or order of a judge upon a showing of good cause waiving or modifying such limitations:

(1) Interrogatories: No party shall serve upon any other party more than fifteen (15) interrogatories, in which sub-parts of interrogatories shall count as separate interrogatories.

(2) Requests for Admission: No party shall serve upon any other party more than fifteen (15) requests for admissions.

Related Authority:

Federal Rules of Bankruptcy Procedure 7005, 7026, 7033, 7036, 9014

Advisory Committee Notes:

Subdivisions (a) and (b) are designed to eliminate the filing burden upon the court in the majority of cases where discovery is never utilized prior to or at trial or prior to disposition of the case, as well as eliminate any potential problems caused by the nature or admissibility of the material included in the discovery requests or responses. This is consistent with District Court practice.

The provision of the rule set forth in subdivision (c) is meant to control abuses of discovery processes in regard to motion practice under the provisions of Rule 9014 regarding "contested matters" while still preserving availability and usefulness of discovery in proper circumstances. If appropriate, and in what are believed to be extraordinary circumstances, the court may modify the limitations. A similar limitation is not imposed in adversary proceedings, though the Advisory Committee considered adoption of the limitations of the Idaho Rules of Civil Procedure. A responding party may still, however, seek protection of the court in regard to burdensome or oppressive discovery. See, e.g., Federal Rule of Civil Procedure 26(b)(1) and 26(c) and Federal Rule of Bankruptcy Procedure 7026.

LOCAL BANKRUPTCY RULE 705
COSTS

Upon entry of judgment in an adversary proceeding, costs shall be claimed, taxed, objected to, and reviewed as provided in the Local Rules of the District Court for the District of Idaho.

Related Authority:

28 U.S.C. §§ 1920-1923
Federal Rule of Bankruptcy Procedure 7054(b)
Federal Rule of Civil Procedure 54(d)

Advisory Committee Notes:

This rule incorporates the Local Rules of the District Court for the District of Idaho.

LOCAL BANKRUPTCY RULE 801
SERVICE OF DOCUMENTS ON UNITED STATES TRUSTEE

(a) **Service of Documents.**
The following documents shall be served upon the Office of the United States Trustee:

(1) Cases. Any document filed in cases under Chapter 7, 9, 11 and 12 of the Bankruptcy Code, *except* proofs of claim, and *except* petitions and accompanying materials that are included in the initial filing with the Bankruptcy Court.

(2) Adversary Proceedings.

(A) Any document filed in any adversary proceeding related to a case under Chapter 9 or 11 if such document is required to be filed with the Bankruptcy Court;

(B) Any document filed in any adversary proceeding objecting to discharge under 11 U.S.C. § 727; or

(C) Any document filed in any adversary proceeding where a Bankruptcy Trustee is named as a party defendant.

(b) **Manner of Service.**
All such documents which are filed with the Bankruptcy Court and which must be served in accordance with this rule shall be accompanied by proof of service on the United States Trustee at the following address:

Office of the United States Trustee
304 N. 8th Street
Room 347
P.O. Box 110
Boise, Idaho 83701

(c) **Applicability.**
The requirements of this rule shall apply to all cases filed on or after November 26, 1986, and to all associated adversary proceedings. One year after the United States Trustee is certified in this District, this rule shall then apply to all pending Bankruptcy Cases filed in this District, including those filed prior to November 26, 1986 unless a final report has been filed or plan confirmed in the case prior to the expiration of the one year period.

(d) **Noncompliance.**
The United States Trustee has exclusive standing to object to noncompliance with any provision of this rule, with the exception of service of those items specifically enumerated in Federal Rule of Bankruptcy Procedure X-1008(a).

Related Authority:

Federal Rules of Bankruptcy Procedure X-1002,
X-1007, X-1008, X-1009(b)

Advisory Committee Notes:

The provisions of LBR 801 are designated to insure that the United States Trustee can perform its statutory functions of case and trustee monitoring. The exclusions in subdivision (1)(a) reflect that the United States Trustee generally does not require proofs of claim, and has already received petitions and accompanying materials directly from the clerk under Federal Rule of Bankruptcy Procedure X-1002(a)(2).

The United States Trustee does not require copies of documents filed in all adversary proceedings, but does in those proceedings identified in subdivision (a)(2).

Note that only documents which are required to be filed must be served upon the United States Trustee under subdivision (a)(2)(A). LBR 704 continues to apply and the United States Trustee would not receive copies of discovery unless (1) the proceeding is brought under Section 727; (2) the United States Trustee is a party, or (3) discovery is required to be filed pursuant to order of the court under LBR 704.

The reference to November 26, 1986 refers to the effective date of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (PL 99-554).

Service can be accomplished by hand delivery to the street address as indicated, or by mail, as provided for in the Federal Rules of Bankruptcy Procedure.

The last subdivision provides that only the United States Trustee has standing to raise objection concerning failure to comply with LBR 801 service requirements. However, any party in interest may raise issues of failure to serve the United States Trustee with notice of or pleadings related to those matters set forth in Federal Rule of Bankruptcy Procedure X-1008(a).

LOCAL BANKRUPTCY RULE 901
DEPOSITS (REGISTRY FUND)

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

(b) The following form of standard order shall be used for the deposit of registry funds into interest bearing accounts or the investment of such funds in an interest bearing instrument:

> IT IS ORDERED that the clerk invest the amount of $_____ in an automatically renewable (type of account or instrument, i.e., time certificate, treasury bill, passbook), in the name of the clerk, U.S. District Court, at (name of bank, savings and loan, brokerage house, etc.), said funds to remain invested pending further order of the court.
>
> IT IS FURTHER ORDERED that the clerk shall be authorized to deduct a fee from the income earned on the investment equal to 10 percent of the income earned while the funds are held in the court's registry fund, regardless of the nature of the case underlying the investment and without further order of the court. The interest payable to the U.S. courts shall be paid prior to any other distribution of the account. Investments having a maturity date will be assessed the fee at the time the investment instrument matures.
>
> IT IS FURTHER ORDERED that counsel presenting this order personally serve a copy thereof on the clerk or his financial deputy. Absent the aforesaid service, the clerk is hereby relieved of any personal liability relative to compliance with this order.

Related Authority:

Federal Rule of Bankruptcy Procedure 7067
Federal Rule of Civil Procedure 67
28 U.S.C. § 2041-2042

Advisory Committee Notes:

See General Order No. 57 dated September 15, 1989 and General Order No. 70 dated December 6, 1990.

LOCAL BANKRUPTCY RULE 902
UNCLAIMED FUNDS

(a) If a party seeks disbursement to it of unclaimed funds from a case, a petition for withdrawal of funds must be executed and filed with the clerk, with copies served on the U.S. Attorney, the U.S. Trustee, and the Trustee in the case.

(b) If the petition is filed by a funds locator or other party, on behalf of a creditor in whose name the claim is filed, a signed limited or general power of attorney from the creditor must accompany the petition (together with such other documentation required of the creditor under subdivisions (c) and (d) below).

(c) If petition is filed by creditor which is a corporation, the petition must be executed by a member of the Board of Directors and accompanied by sufficient verification of capacity, such as Articles of Incorporation, Board Meeting Minutes, or other appropriate documentation.

(d) If a petition is filed by a party other than an assigned creditor or a funds locator or similar party (e.g., a personal representative of a decedent's estate) sufficient proof of legal capacity and entitlement shall be filed with the petition.

(e) Parties in interest may object by filing a written objection within thirty (30) days of the filing of the petition. An order approving the disbursement will be entered if no timely objection is filed.

Related Authority:

11 U.S.C. § 347; 28 U.S.C. §§ 2041, 2042
Federal Rules of Bankruptcy Procedure 3010, 3011

Advisory Committee Notes:

None

APPENDIXES

APPENDIX I
FEE SCHEDULE

The following filing and service fees shall be collected by the clerk of the court:

Ordinary Civil	$	120.00
Habeas Corpus		5.00
Notice of Appeal (including joint notices)		5.00
Docket Fees for Ninth Circuit		100.00
Naturalization:		
Declaration of Intention		70.00
Petition		70.00
Miscellaneous:		
Filing and Indexing any paper not a case		20.00
Registration of Judgments		20.00
Petition to Perpetuate Testimony		20.00
Letters Rogatory		20.00
Letters of Request		20.00
Notice of taking depositions in cases from another district		20.00
Photocopy (does not include certification) (per page)		.50
Requests for and certification of results of search		15.00
Abstract of judgment		15.00
Certification of any document (each certification)		5.00
Exemplifications (3 certifications)		5.00
Admission		20.00
Duplicate certificate of admission		5.00
Certification that attorney is a member of this court		5.00
Retrieving record from Federal Records Center, National Archives, or other storage location removed from place of business of court		25.00
Check paid into court which is returned for lack of funds		25.00
Appeal to district judge from judgment of conviction by magistrate judge in misdemeanor case		25.00

NOTE: Any changes in fees will be printed in The Advocate or other periodicals published by the Idaho State Bar.

APPENDIX II
JURY SELECTION PLAN, CRIMINAL JUSTICE ACT PLAN, AND PLAN FOR PROMPT DISPOSITION OF CRIMINAL CASES

The District of Idaho has published and adopts as part of the Local Rules by reference, the Jury Selection Plan, Criminal Justice Act Plan, and the Plan for Prompt Disposition of Criminal Cases (Speedy Trial Act.)

APPENDIX III
RATE FOR COMPENSATION OF COUNSEL APPOINTED UNDER 21 U.S.C. §848(a)

The rate for compensation of counsel appointed pursuant to 21 U.S.C. §848(q) and 18 U.S.C. §3006A(a)(2)(B) shall be $100.00 per hour for time expended in-court and out-of-court. This rate shall apply only to the portion of the services claimed in the attorney compensation claim which were performed on or after April 1, 1990.

APPENDIX IV
OUT-OF-COURT INTERPRETER RATE OF PAY

The rate of pay for interpreters used for out-of-court time in connection with CJA appointments will be $14.00 per hour for certified interpreters and $12.50 per hour for non-certified interpreters. Interpreters will be allowed to include travel time to and from appointment in their hourly computation.

CJA Form 21, Authorization and Voucher for Expert and Other Services will be used to bill for interpreter services. All CJA Form 21's are to be approved by CJA attorney before submission to the Clerk's Office for approval and forwarding to Administrative Office for payment.

APPENDIX V
TRANSCRIPT FEES

	Original	First Copy To Each Party	Additional Copies To Same Parties
Ordinary Transcript A transcript to be delivered within thirty (30) calendar days after receipt of an order.	$3.00	$ .75	$ .50
Expedited Transcript A transcript to be delivered within seven (7) calendar days after receipt of an order.	$4.00	$ .75	$ .50
Daily Transcript A transcript to be delivered following adjournment and prior to the normal opening hour of the court on the following morning whether or not it actually be a court day.	$5.00	$ 1.00	$ .75
Hourly Transcript A transcript of proceedings ordered under unusual circumstances to be delivered within two (2) hours.	$6.00	$ 1.00	$ .75

NOTE: Any changes in fees will be printed in the annual desk book published by the Idaho State Bar.

APPENDIX VI.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

FILING FEE SCHEDULE

March 5, 1990

I. FILING FEES:

1. Adversary Proceeding (Complaints)	$ 120.00
2. Chapter 7 Proceeding	120.00
3. Chapter 9 Proceeding	300.00
4. Chapter 11 Proceeding	500.00
5. Chapter 12 Proceeding	200.00
6. Chapter 13 Proceeding	120.00

II. REOPENING FEES:

1. Chapter 7 Reopening	$ 120.00
2. Chapter 9 Reopening	300.00
3. Chapter 11 Reopening	500.00
4. Chapter 12 Reopening	200.00
5. Chapter 13 Reopening	120.00
6. Act case (filed prior to 10.1.79) Reopening fee to be the same as original fee.	

III. CONVERSION FEES:

Chapter 7 or Chapter 13 filed after 11.26.86 & converted to Chapter 11 **at the request of the DEBTOR**	400.00

APPENDIX VII.

MISCELLANEOUS
Bankruptcy Court Fee Schedule
(28 U.S.C. § 1930)

Fees to be charged for services to be performed by clerks of the bankruptcy courts (except that no fees are to be charged for services rendered on behalf of the United States or to bankruptcy administrators appointed under Public Law No. 99-554, § 302(d)(3)(I)).

(1) For reproducing any record or paper, 50 cents per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records.

(2) For certification or exemplification of any document or paper, whether the certification is made directly on the document or by separate instrument, $5.

(3) For reproduction of magnetic tape records, either cassette or reel-to-reel, $15 including the cost of materials.

(4) For amendments to a debtor's schedules of creditors or lists of creditors after notice to creditors, $20 for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case.

(5) For every search of the records of the bankruptcy court conducted by the clerk of the bankruptcy court or a deputy clerk, $15 per name or item searched.

(6) For filing a complaint, a fee shall be collected in the same amount as the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus. If the United States, other than a United States trustee acting as a trustee in a case under Title 11, or a debtor is the plaintiff, no fee is required. If a trustee or debtor in possession is the plaintiff, the fee should be payable only from the estate and to the extent there is any estate realized.

(7) For filing or indexing any paper not in a case or proceeding for which a filing fee has been paid, including registering a judgment from another district, $20.

(8) For all notices generated in cases filed under Title 11 of the United States Code, 50 cents each. The fee shall be payable only from the estate and only to the extent there is an estate.

(9) Upon the filing of a notice of appeal with the bankruptcy court in a proceeding arising under the Bankruptcy Act, $5 shall be paid to the clerk of the bankruptcy court by the appellant.

(10) For clerical processing of each claim filed in excess of 10, 25 cents each in asset cases filed under Chapters I-VII of the Bankruptcy Act, in cases filed under the relief chapters of the Bankruptcy Act, and in asset cases filed under the Bankruptcy Code.

(11) For transcribing a record of any proceeding by a regularly employed member of the bankruptcy court staff who is not entitled by statute to retain the transcript fees for his or her own account, a charge shall be made at the same rate and conditions established by the Judicial Conference for transcripts prepared and sold to parties by official court reporters. The party requesting the transcript shall pay the charge to the clerk of the bankruptcy court for deposit to the credit of the referees' salary and expense fund if the proceeding is related to a case commenced prior to October 1, 1979, and to the credit of the Treasury if the proceeding is related to a case commenced on or after October 1, 1979. If the trustee in bankruptcy or the debtor in possession requests a transcript in the performance of his official duties, the charge shall be paid from the estate to the extent there is any estate realized.

(12) For each microfiche sheet of film or microfilm jacket copy of any court record, where available $3.

(13) For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $25.

(14) For a check paid into the court which is returned for lack of funds, $25.

(15) For providing mailing labels, $5 per page or portion thereof.

(16) For docketing a proceeding on appeal or review from a final judgment of a bankruptcy judge pursuant to 28 U.S.C. § 158(a) and (b), $100. A separate fee shall be paid by each party filing a notice of appeal in the bankruptcy court, but parties filing a joint notice of appeal in the bankruptcy court are required to pay only one fee.

(17) For filing a petition ancillary to a foreign proceeding under 11 U.S.C. § 304, $500.

(18) The court may charge and collect fees, commensurate with the cost of printing, for copies of the local rules of court. The court may also distribute copies of the local rules without charge.

(19) The clerk shall assess a charge of up to three percent for the handling of registry funds, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.

(20) When a joint case filed under § 302 of title 11 is divided into two separate cases at the request of the debtor(s), a fee shall be charged equal to one-half the current filing fee for the chapter under which the joint case was commenced.

(21) For filing a motion to terminate, annul, modify, or condition the automatic stay provided under § 362(a) of title 11, a motion to compel abandonment of property of the estate pursuant to Bankruptcy Rule 6007(b), or a motion to withdraw the reference of a case under 28 U.S.C. § 157(d), $60.

(22) For docketing a cross appeal from a bankruptcy court determination, $100.

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