

CIVIL LOCAL RULES OF PRACTICE



**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA**

12/01/ 2015

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**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA**

District Judges:

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605-399-6050

Roberto A. Lange
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225 S. Pierre Street, Room 413
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605-945-4610

Karen E. Schreier
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605-330-6670

John B. Jones
United States District Judge
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United States District Judge
400 South Phillips Avenue, Room 202
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Magistrate Judges:

Veronica L. Duffy
United States Magistrate Judge
400 South Phillips Ave., Room 119
Sioux Falls, SD 57104
605-330-6650

William D. Gerdes
United States Magistrate Judge
104 South Lincoln, Room 111
Aberdeen, SD 57401
605-622-1200

Mark A. Moreno
United States Magistrate Judge
225 S. Pierre Street, Room 419
Pierre, SD 57501
605-945-4620

Daneta Wollmann
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Clerk:

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Clerk of Court
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Sioux Falls, SD 57104
605-330-6600
605-330-6601 (fax)

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605-399-6001 (fax)

Divisional Office at Pierre:

225 S. Pierre Street, Room 405
Pierre, SD 57501
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DIVISIONS OF DISTRICT OF SOUTH DAKOTA

The State of South Dakota constitutes one judicial district divided into four divisions for purposes of case assignment. (28 U.S.C. § 122):

(1) The **NORTHERN DIVISION** comprises the counties of Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Edmunds, Grant, Hamlin, McPherson, Marshall, Roberts, Spink, and Walworth.

The place of holding court is Aberdeen.

(2) The **SOUTHERN DIVISION** comprises the counties of Aurora, Beadle, Bon Homme, Brookings, Brule, Charles Mix, Clay, Davison, Douglas, Hanson, Hutchinson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Turner, Union, and Yankton.

The place of holding court is Sioux Falls.

(3) The **CENTRAL DIVISION** comprises the counties of Buffalo, Dewey, Faulk, Gregory, Haakon, Hand, Hughes, Hyde, Jerauld, Jones, Lyman, Mellette, Potter, Stanley, Sully, Todd, Tripp, and Ziebach.

The place of holding court is Pierre.

(4) The **WESTERN DIVISION** comprises the counties of Bennett, Butte, Custer, Fall River, Harding, Jackson, Lawrence, Meade, Oglala Lakota, Pennington and Perkins.

The place of holding court is Rapid City.

INDIVIDUAL CALENDARS

The court operates on an individual calendar system. Each judge in service assumes responsibility for the cases, both civil and criminal, assigned to him or her. The chief judge assigns responsibility for cases in the event of a recusal. The schedule in each case is fixed by court order. All preliminary motions will be heard insofar as practicable by the district judge or magistrate judge assigned to the case in question. Inquiries as to motions or other matters having to do with a particular case may be addressed to court personnel, as appropriate, for the attention of the judge who is assigned to the case.

LOCAL RULE NUMBERING

These local rules have been numbered consistently with the Federal Rules of Civil Procedure and the conventions of the United States Judicial Conference's Local Rule Project. Generally, the number of each of the local rules is dictated by the number of the corresponding rule in the Federal Rules of Civil Procedure.

LR 1.1 SCOPE OF THE RULES

- A. Citation Form.** The local civil rules are to be cited as "D.S.D. Civ. LR ____."
- B. Scope and Effective Date.** The local civil rules govern all civil proceedings in the District of South Dakota to the extent they are not inconsistent with any statute or law of the United States or any rule or order of the Supreme Court of the

United States. These local civil rules become effective after the comment period expires and upon the placement on court's official website.

- C. 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, other than standing orders. They govern all applicable civil proceedings brought in this court after they take effect. They also 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 injustice, in which event the former rules will govern. Any judge may establish and enforce standard operating procedures not in conflict with these local rules or the Federal Rules of Civil Procedure.

LR 5.1 SERVING AND FILING PLEADINGS AND OTHER PAPERS

A. Service.

- 1. Consent to electronic service.** All attorneys, including attorneys admitted pro hac vice and attorneys authorized to represent the United States, must register with the court's electronic filing system. Attorneys may petition the court for a registration exemption for good cause shown.

Attorneys registered with the court's electronic filing system will receive electronic notice of

documents entered into the system.

Registration constitutes written consent to electronic service of all documents filed in accordance with these rules and the Federal Rules of Civil Procedure.

2. What constitutes service.

Receipt of Notice of Electronic Filing (NEF) that is generated by the Case Management/ Electronic Case Filing (CM/ECF) system constitutes service of pleadings or other papers on any person who has consented to electronic service. Parties who have not consented to electronic service including exempt attorneys and *pro se* parties must be served in accordance with these rules and the Federal Rules of Civil Procedure.

Service of the summons and complaint must not be made electronically, but should proceed according to Fed. R. Civ. P. 4.

B. Filing.

- 1. What constitutes filing/ official record.** Electronic transmission of a document to the Electronic Filing System together with the transmission of a Notice of Electronic Filing from the court constitutes filing of the document for all purposes of the local rules of this court and the Federal Rules of Civil Procedure and constitutes entry of the

document on the docket kept by the clerk of court under Fed. R. Civ. P. 58 and 79. When a document has been filed electronically, the official record is the electronic document as stored by the court and is deemed filed at the date and time stated on the Notice of Electronic Filing from the court. The party filing the document is bound by the document as filed.

2. Method of Filing.

(a) Electronic Filing.

Documents filed by attorneys must be filed electronically subject to subsection A.1. Counsel admitted *pro hac vice* may not file documents with the court.

(b) Traditional Filing.

Documents filed by exempt attorneys and *pro se* parties are filed by delivering the original to the clerk within 14 days after service on the opposing party or parties.

(c) Exceptions. Exceptions to these filing methods are set out in the CM/ECF User Manual and Administrative Procedures found at www.sdd.uscourts.gov.

3. Certificate of Service. A party may serve a paper under Fed. R. Civ. P. 5(b)(3) by using the court's electronic transmission

facilities in accordance with the CM/ECF User Manual and Administrative Procedures. If a document is served electronically in this manner, the notice of electronic filing generated by CM/ECF constitutes a certificate of service with respect to those persons to whom electronic notice of the filing is sent, and no separate certificate of service need be filed with respect to those persons. In all other instances a certificate of service must be attached to the document identifying the persons served and the manner in which service was accomplished.

4. Electronic Filing, Signing, or Verification. The user login and password required to submit documents to the CM/ECF System serve as the filing user's signature on all electronic documents filed with the court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure (including Fed. R. Civ. P. 11), the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. Electronically filed documents must include a signature block and set forth the name, address, telephone number, and e-mail address of the filing user. In addition, the name of the filing user under whose login and password the documents are submitted must be preceded by a "/s/" and typed in the space where the

signature would otherwise appear unless a facsimile of the filing user's signature appears in the signature block.

No filing user or other person may knowingly permit a filing user's login and password to be used by someone other than an authorized agent of the filing user.

Registered Attorneys will protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised. Attorneys may be subject to sanctions for failure to comply with this provision.

5. Documents requiring the signature of more than one party. Documents requiring signatures of more than one party may be electronically filed either by (a) submitting a scanned document containing all necessary signatures; or (b) in any other manner approved by the court. When filing documents that require signatures from other parties, it is not permissible to insert a "/s/" for another person's signature.

6. Restricted Hyperlinks. Because a website address within a court filing becomes a hyperlink to the internet location upon filing in the CM/ECF system, counsel must redact from any filed documents any website address that directs the court to a

website that contains pornography or personal identifiers. After filing the redacted document, counsel must provide an unredacted version to the clerk of court for filing under seal.

LR 5.2 PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

- A.** Pursuant to the E-Government Act of 2002, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all pleadings and papers filed, including exhibits thereto, unless otherwise ordered by the court:
1. Social Security numbers and Taxpayer Identification numbers. Only the last four digits of these numbers may be used.
 2. Name of an individual known to be a minor. Only the initials of the minor may be used.
 3. Dates of birth. Only the year may be used.
 4. Financial account numbers. Only the last four digits of these numbers may be used.
- B.** After filing the redacted document, parties may file under seal with the clerk of court an unredacted copy of the document. Any such filings must contain a cover sheet stating the following, "Document filed under seal pursuant to the E-Government Act."

- C. The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk of court will not review each filing for compliance with this rule.

LR 7.1 MOTIONS

- A. **Motions to Seal.** Any motion seeking the sealing of pleadings, motions, exhibits, or other documents to be filed in the court record must include (a) proposed reasons supported by specific factual representations to justify the sealing and (b) an explanation why alternatives to sealing would not provide sufficient protection. A motion to seal and the documents to which the motion refers must be filed consistent with the CM/ECF User Manual and Administrative Procedures found at www.sdd.uscourts.gov.
- B. **Required Written Brief.** With every motion raising a question of law, except oral motions made during a hearing or trial or motions to amend a scheduling order or motions to withdraw pursuant to D.S.D. Civ. LR 57.4, unless otherwise ordered, the movant must serve and file a brief containing the movant's legal arguments, the authorities in support thereof, and the Federal Rule of Civil Procedure on which the movant relies. Motions in limine and supporting arguments and authorities may be filed as one document. On or before 21 calendar days after service of a motion and brief, unless otherwise specifically ordered by the court, all opposing parties must serve and

file a responsive brief containing opposing legal arguments and authorities in support thereof. The movant may file a reply brief within 14 calendar days after service of the responsive brief.

1. **Page Limitation on Briefs.** Briefs and any attachments other than documentary evidence attached in accordance with D.S.D. Civ. LR 56.1(A) must not exceed 25 pages or 12,000 words unless prior approval has been obtained from the court. If a brief exceeds 25 pages, it must be accompanied by a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief.
2. **Attachments.** A party will submit as exhibits or attachments only those excerpts of the referenced document that are directly germane to the matter under consideration by the court. Excerpted material should be clearly and prominently identified as such. Highlighting or underlining relevant portions is encouraged. Parties who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts. Responding parties may file additional excerpts that they

believe are directly germane. The court may require parties to file additional excerpts or the complete document.

- C. Oral Argument.** Oral argument may be had only upon order of the court. Requests for oral argument must be made by separate statement at the conclusion of the motion or responsive brief, or by any party by a separate document filed within 14 calendar days after the filing of the motion or responsive brief.

LR 10.1 IDENTIFICATION

- A. Caption.** A pleading or other paper presented for filing must begin with the caption of the case, the title of the document, and the name of the party filing the document. All papers presented after the initial pleading must bear the file number assigned to the case.
- B. Signature Block.** All papers must be signed and include the typed or printed name, address, telephone number, and email address of the signer beneath the signature. This information must not appear as a header or footer on each page of the document, or as part of the caption of the case.

LR 12.1 EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND

Without the need for a motion, the parties may agree to an extension of time to answer or otherwise respond to a complaint, counterclaim, or crossclaim, of no more than 21 days from the initial deadline, by the

requesting party filing a notice of unopposed extension of time to answer or otherwise respond. The stated extension of time to answer or otherwise respond will thereupon become effective, unless otherwise ordered by the court.

LR 15.1 MOTIONS TO AMEND PLEADINGS

In addition to other requirements of these local civil rules, any party moving to amend a pleading must attach a copy of the proposed amended pleading to its motion to amend with the proposed changes highlighted or underlined so that they may be easily identified. If the court grants the motion, the moving party must file a clean original of the amended pleading within 7 days.

LR 16.1 SCHEDULING CONFERENCES

Pursuant to Fed. R. Civ. P 16(b), this court has determined that pretrial conference procedures are inappropriate for certain types of cases and hereby exempts the following:

1. Actions for review on an administrative record including bankruptcy appeals and social security reviews;
2. Condemnation Actions;
3. Foreclosures;
4. Deportation Actions;
5. Equal Access to Justice/Fee Award Appeals;

6. Forfeiture and Statutory Penalty Actions;
7. Freedom of Information Actions;
8. Government Collection Actions including actions to recover benefit payments and actions to collect on a student loan guaranteed by the United States;
9. Judgments/Actions to Enforce or Register;
10. Petitions for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;
11. Actions brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;
12. Selective Service Actions;
13. Proceedings ancillary to a proceeding in another court;
14. Actions to enforce or quash a summons or subpoena of any kind;
15. Actions to enforce an arbitration award.

The court may choose to exempt any case from the Fed. R. Civ. P. 16 pretrial conference procedure.

LR 26.1 FILING OF DISCOVERY MATERIALS

- A.** Pursuant to Fed. R. Civ. P. 5(d), depositions, interrogatories,

requests for documents, requests for admissions, and answers and responses thereto must not be filed.

- B.** Fed. R. Civ. P. 26(a)(1) and (2) materials must not be filed unless otherwise ordered by the court.
- C.** Any portions of discovery materials necessary for the disposition of any motion filed (with relevant portions highlighted or underlined) must either be attached as an exhibit to the party's brief in support of such motion or attached to the party's affidavit filed with the brief.
- D.** If a party designates any or all of any deposition as evidence to be offered in the trial of any case, such deposition must be filed at the same time as that party's designation consistent with D.S.D. Civ. LR 5.2.
- E.** Depositions used by a party only for the purpose of contradicting or impeaching the testimony of a deponent as a witness, pursuant to Fed. R. Civ. P. 32(a)(1), will not be filed unless otherwise ordered by the court.

LR 26.2 MEETING OF PARTIES

Unless otherwise ordered by the court in a particular case, the provisions of Fed. R. Civ. P. 26(f), requiring a meeting of and report from the parties, apply to all civil actions in this court except cases exempted under D.S.D. Civ. LR 16.1.

LR 28.1 INDEPENDENCE OF COURT REPORTERS

The officer taking the deposition, or any other person with whom such officer has a principal and agency relationship, will not enter into an agreement for reporting service which does any of the following:

(1) Requires or allows the court reporter reporting the deposition to relinquish control of an original deposition transcript and copies of the transcript before it is certified and delivered to the custodial attorney;

(2) Requires the court reporter to provide special financial terms or other services that are not offered at the same time and on the same terms to all other parties in the litigation, or in any way offers any incentives or rewards to the attorneys, parties to the litigation or to anyone else who has an interest in the litigation;

(3) Gives an exclusive monetary or other advantage to any party;

(4) Compromises the authenticity of the record or the impartiality of the court reporter or results in the appearance that the authenticity of the record or the impartiality of the court reporter has been compromised;

(5) Allows a person, other than the court reporter or reporting firm, to establish the rates charged by the court reporting firm.

Contracts for court reporting services for federal, state, or local governments and subdivisions thereof are excluded. Negotiating or bidding reasonable fees,

equal to all parties, with the court reporter on a case-by-case basis is not prohibited.

These provisions may not be waived by disclosure, agreement, stipulation, or by any other means unless a request for waiver is contained in the notice of deposition.

Any deposition taken in violation of these provisions will result in the court imposing an appropriate sanction.

LR 29.1 STIPULATIONS MADE IN OPEN COURT OR WRITING

To be binding in a proceeding in this court, every stipulation, agreement, or consent between or among parties or their attorneys must be made in open court or reduced to writing and subscribed by the parties or their attorneys. Stipulations or agreements relating to changing the place of trial, continuing cases to a later date, extending time to answer or otherwise plead (except as provided in D.S.D. Civ. LR 12.1), or setting any matter for hearing are not binding unless so ordered by the court.

LR 37.1 CONDITIONS FOR DISCOVERY MOTIONS

A party filing a motion concerning a discovery dispute must file a separate certification describing the good faith efforts of the parties to resolve the dispute. If the court schedules a hearing on the motion, at least 7 calendar days prior to the hearing, or sooner as the court may require, the parties must file a statement setting forth the matters upon which they have been unable to agree.

LR 39.1 TRIALS

- A. Opening Statements in Jury Trials.** After a jury has been sworn, the party with the burden of proof may briefly, and without argument, make an opening statement to the jury. Thereafter, the adverse party may briefly, and without argument, make an opening statement to the jury.
- B. Number of Attorneys.** On the trial of any action only one attorney per party will be permitted to examine or cross-examine each witness, and not more than two attorneys per party may sum up the case to the jury, unless the court otherwise orders.
- C. Motions During Trial.** The moving party will be heard first, followed by the adverse party. The movant may reply. Thereafter, argument on the motion will end unless the court allows further argument.

LR 40.1 CONTINUANCES

- A. Court Approval Required.** A case will not be continued without an order of the court. The parties may file a joint motion for a continuance explaining the reasons for the requested continuance. If the parties disagree over whether there should be a continuance, the party seeking a continuance must file a motion and detail the factual basis on which a continuance is being sought. If the continuance is sought because of the absence of a material witness, the movant must file an affidavit showing that the party applying for the continuance has exercised due diligence to

secure the testimony of the witness, the name and city of residence of the witness, and the substance and relevance of the anticipated testimony of the witness. A party opposing a continuance must file a response no later than 7 days after the motion is served. The moving party may file a reply no later than 3 days after the response.

- B. When Witness Absent.** Unless, in the opinion of the court, justice requires, a trial or evidentiary hearing will not be continued or postponed on account of the absence of a witness.

LR 43.1 EXHIBITS

- A. Marking of Exhibits.** Exhibits in civil trials and hearings must be marked in accordance with instructions from the court.
- B. Custody of Clerk.** All exhibits offered or received into evidence at a trial or hearing must be left in the custody of the clerk of court, except as provided in sections C and E of this rule. Until judgment in a case becomes final, exhibits may not be taken from the custody of the clerk of court, except upon order of the court and the execution of a receipt.
- C. Custody with Offering Party.** Except as provided in section D of this rule, any exhibit not suitable for filing or transmission to the appellate court as part of the appellate record must be retained in the custody of the party offering the exhibit. Such exhibits include, but are not limited to, the following:

1. “Unsafe or Dangerous Exhibits,” as defined in section (H) of this rule;
2. Jewelry, liquor, money, articles of high monetary value, and counterfeit money; and
3. Documents or physical exhibits of unusual sensitivity, bulk, or weight.

Except when such an exhibit is being used in court during a trial or hearing, or is in the custody of a jury or the court during deliberations, the offering party must retain custody of the exhibit. The offering party must preserve the exhibit in an unaltered condition until at least 120 calendar days after the resolution of any appeal to allow for the filing of a writ of certiorari under Rule 13 of the Rules of the Supreme Court of the United States. The exhibit may then be disposed of by the party having custody of the exhibit, but only after the party gives 28 calendar days’ written notice to all other parties. The party retaining custody of such an exhibit must make the exhibit available to the court and to all other parties for use in preparing an appeal, and such party must transmit the exhibit safely to the appellate court, if required. Such party also must maintain and document the chain of custody of the exhibit.

D. Biological Evidence. Biological evidence (for example, blood, saliva, tissue, and items containing bodily fluids upon which DNA or other

forensic tests could be performed) must be retained by the clerk of court until disposed of pursuant to section F of this rule.

E. Substitution of Photographs for Exhibits. If a party has offered into evidence at a trial or hearing an exhibit that is not suitable for filing or transmission to the appellate court as part of the appellate record, the offering party must provide a photograph or digital image of the exhibit to the clerk of court to be substituted for the exhibit, and the party must retain custody of the exhibit as provided in section C of this rule.

F. Disposition of Exhibits. To ensure preservation of exhibits in cases of historical significance and to avoid destruction of exhibits in cases where further proceedings might occur, the Clerk of Court and any party must seek and obtain a court order authorizing destruction of any exhibits received in evidence. The court may order that exhibits such as documents, photographs, or charts be filed in CM/ECF prior to destruction and that exhibits not susceptible to electronic filing be photographed, preserved by the Clerk of Court or a party, or destroyed following notice to all parties

G. Record of Withdrawal or Destruction. A party withdrawing an exhibit must execute a receipt that will be filed by the clerk of court. If exhibits are destroyed, the clerk of court will file notice of destruction of exhibits.

H. Unsafe or Dangerous Exhibits. As used in this rule, the phrase “unsafe or dangerous exhibit” includes narcotics and other controlled substances, firearms, ammunition, explosives, knives, any object capable of use as a weapon, poisons, dangerous chemicals, hazardous substances, and any other item or matter that may present a substantial risk of physical injury or property damage if not properly handled, stored, or protected.

LR 43.2 TAKING TESTIMONY

Pursuant to Fed. R. Civ. P. 43(a), testimony may be taken in open court by contemporaneous transmission from a different location under certain circumstances. These circumstances are set forth in the Protocol for the Use of Interactive Video Conferencing (Civil), which can be found on the court’s website at www.sdd.uscourts.gov.

LR 47.1 EXAMINATION OF POTENTIAL JURORS

The voir dire examination of potential jurors may be conducted by the court or by counsel, or both, as the court may direct.

LR 47.2 RESTRICTION ON INTERVIEWING JURORS

No one may contact any juror before or during the juror’s service on a case. The parties, their lawyers and anybody acting on their behalf must seek and obtain permission from the district judge who tried the case before contacting a juror after the juror served on the case.

LR 48.1 NUMBER OF JURORS

In all civil jury cases, the jury will consist of not fewer than six members nor more than twelve members, to be determined by the court.

LR 51.1 JURY INSTRUCTIONS

A. Pretrial Filing of Instructions.

Each party must file and serve all proposed substantive jury instructions, including a “statement of the case” instruction and “theory of defense.”

B. Form of Instructions.

All proposed jury instructions must identify the party submitting the instruction and specifically cite the authority or authorities upon which it is based.

LR 53.1 ALTERNATIVE DISPUTE RESOLUTION

Parties are encouraged to use alternative dispute resolution procedures to try to settle their cases without a trial. Magistrate judges are available as mediators to facilitate alternative dispute resolution procedures.

LR 54.1 TAXATION OF COSTS

A. Procedure. Before costs may be taxed, the prevailing party entitled to recover costs must file and serve a verified bill of costs within 28 calendar days after entry of judgment or an order of dismissal. The party liable for costs may within 14 calendar days thereafter file exceptions to the costs or any specific item therein.

The clerk of court may then tax costs and, upon allowance, the costs will be included in the judgment or decree. Upon motion of either party within 7 calendar days after the clerk taxes costs, the action of the clerk may be reviewed by the court.

- B. Default Judgment.** In a default judgment case, the clerk of court may tax costs as a matter of course without notice.
- C. Attorney's Fees.** A party moving for attorney's fees must file and serve a motion and an affidavit setting out the time reasonably spent in the litigation and any factual matters pertinent to the motion for attorney's fees. The motion must be filed no later than 28 calendar days after the entry of judgment absent a showing of good cause. The respondent may file and serve a response and counter affidavit controverting or asserting any factual matters bearing on the award of attorney's fees.

Objections to an allowance of attorney's fees must be filed within 21 calendar days after service on the party against whom the award of attorney's fees is sought. The court will then determine the appropriate attorney's fees, if any, without further hearing, unless in the court's opinion a hearing is needed to resolve serious factual disputes between the parties.

On its own motion, the court may grant an allowance of reasonable attorney's fees to a prevailing party in appropriate cases.

The failure to move for an award of attorney's fees within the prescribed time may be considered by the court to be a waiver of any claim for attorney's fees.

LR 56.1 MOTION FOR SUMMARY JUDGMENT

- A. Moving Party's Required Statement of Material Facts.** All motions for summary judgment must be accompanied by a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Each material fact must be presented in a separate numbered statement with an appropriate citation to the record in the case.
- B. Opposing Party's Required Statement of Material Facts.** A party opposing a motion for summary judgment must respond to each numbered paragraph in the moving party's statement of material facts with a separately numbered response and appropriate citations to the record. A party opposing a motion for summary judgment must identify any material facts on which there exists a genuine material issue to be tried.
- C. Use of Documentary Evidence.** A party must attach to an affidavit all relevant documentary evidence in support of or in opposition to a motion for summary judgment. The evidence should be submitted with proper highlighting or underlining as encouraged by D.S.D. Civ. LR 7.1B2.

D. Effect of Omission: Sanction. All material facts set forth in the movant's statement of material facts will be deemed to be admitted unless controverted by the opposing party's response to the moving party's statement of material facts.

LR 58.1 APPELLATE JUDGMENTS, ORDERS, AND MANDATES

Upon receipt from an appellate court of a judgment or order affecting the decision of the district court or a mandate, the clerk of court must forthwith file and enter the same of record. In the event that the mandate provides for costs or directs a disposition other than an affirmance, the prevailing party will timely submit an order to this court in conformity with the appellate court's ruling.

LR 65.1 MOTIONS FOR PRELIMINARY AND PERMANENT INJUNCTION

In all cases wherein a party seeks both a preliminary and permanent injunction, the matters will be deemed consolidated for trial unless otherwise specifically ordered by the court.

LR 67.1 REGISTRY FUND

Any party seeking an order of the court for the deposit of funds pursuant to Fed. R. Civ. P. 67 must file a motion and a draft order, and must serve the same upon the clerk of court.

LR 68.1 SETTLEMENT

The deadline for settling civil cases is 14 calendar days prior to the date set

for trial, unless otherwise ordered by the court. In any case settled after the deadline, the court may impose sanctions including, but not limited to, the costs of assembling and empaneling the jurors, on any or all of the parties or their attorneys for violation of this rule.

LR 77.1 OFFICE OF THE CLERK

- A. Official Station.** The official station of the clerk of the court is in Sioux Falls.
- B. Deputy Stations.** Deputy clerks of court, in such numbers as may be required, are stationed in Sioux Falls, Pierre, and Rapid City.

LR 83.1 RECORDING AND CELLULAR DEVICES

Except by permission of the court, no person will photograph, videotape, televise, broadcast, or record or cause to be photographed, videotaped, televised, broadcast, or recorded any courtroom proceeding, including proceedings of the grand jury. No person will take any photographic, videotape, television, or sound recording equipment into (1) any courtroom except upon the express permission of the presiding judge, or (2) any jury room, or (3) any corridor on the floor on which a courtroom or jury room is located. This paragraph does not apply to (1) the official court reporter who may use a voice-recording device in connection with his or her official duties, or (2) the use of electronic means for the presentation of evidence or the perpetuation of the record as authorized by the court.

Cellular phones and portable devices that contain cellular phones will be permitted in all courthouses in the United States District Court for South Dakota. Cellular devices must be turned off or in silent mode when taken into courtrooms. Individuals who take such devices into courtrooms may be asked by court security personnel to demonstrate that the device is either turned off or in silent mode.

Photographic, videotape, television, and sound recording devices will be permitted in courtrooms and in adjacent corridors for naturalization ceremonies, investitures, attorney admissions, and other ceremonial functions unless specifically prohibited by the court.

LR 83.2 ATTORNEYS

- A. Bar of the Court.** The bar of this court consists of those attorneys admitted to practice before this court.
- B. Eligibility.** Any person of good moral character who is an active member of the State Bar of South Dakota is eligible for admission to the bar of this court as hereinafter provided.
- C. Procedure for Admission.** An attorney who is eligible to practice law as provided in section B of this rule may apply for admission to the bar of this court. The application sequence is as follows:
1. Applicant must complete a written application for admission. Forms are available from the clerk of

court or on the court's website.

2. Applicant must consent to an inquiry concerning applicant's fitness and qualifications for admission. Submission of the completed admission application is consent and a waiver of any privacy regarding the inquiry into fitness and qualifications.
3. The clerk of court will make any inquiry that may be deemed necessary to obtain information concerning an applicant's character and fitness to practice law.
4. At least two active judges in this district must approve the application before an applicant may be admitted.
5. The clerk of court will report to a district judge in the division in which the application for admission is pending the approval or disapproval of the active judges.
6. When the approval or disapproval of the application is recorded, the applicant will be notified of the results.
7. An applicant approved for admission will have a day and time scheduled for applicant's admission ceremony.
8. Applicant for admission must appear in person for applicant's admission

ceremony with a member of this bar who will vouch for applicant's legal qualifications, integrity, and good moral character. Upon oral motion of a member of the bar, taking the prescribed oath, signing the attorney registration form, and paying the required fee, the applicant will be admitted to the bar of this court. The clerk of court will then issue a Certificate of Admission to the new bar member.

D. Oath of Admission. The following oath or affirmation will be administered to an applicant for admission to the bar of this court:

I solemnly affirm that I will support and defend the Constitution of the United States, that I will represent my clients conscientiously and ethically, and that I will conduct myself uprightly and according to law in all cases before this court.

E. Appearance of Attorney Pro Hac Vice. An attorney who is not a member of the bar of this court, but who is a member in good standing of the bar of another United States District Court, may, upon motion and approval by the court, participate in the conduct of a particular case, but such motion may be allowed only if the applicant associates with a member in good standing of the bar of this court as local counsel. Applicants for pro hac vice admission must disclose any prior or pending disciplinary

actions in their application. Local counsel must sign and file all documents, and must continue in the case unless another attorney admitted to practice in this court is substituted. Local counsel must be present during all court proceedings (which include telephone or video conference hearings) in connection with the case, unless otherwise ordered, and must have full authority to act for and on behalf of the client in all matters, including pretrial conferences, trial and any other hearings.

F. Attorneys for the United States and Federal Public Defender.

Except as provided elsewhere by this rule, an attorney who resides within this district and represents the United States government or any agency or instrumentality thereof or the Federal Public Defender's Office must be admitted to the South Dakota bar before the attorney is permitted to practice before this court.

An attorney who is a member of the bar of another United States district court and not admitted to the South Dakota bar, but either is a:

1. resident assistant United States attorney;
2. resident attorney representing agencies of the government; or
3. resident assistant Federal Public Defender

is given 12 months from the date of the attorney's oath of office for the position in South Dakota to be admitted to the South Dakota bar. During this period, the attorney may be admitted

provisionally to practice before this court.

A nonresident attorney who is:

1. designated as “Special Assistant United States Attorney” by the United States Attorney for the District of South Dakota;
2. appointed by the Attorney General of the United States or employed by a federal agency with independent litigation authority to represent the interest of the government;
3. hired by the Federal Public Defender’s Office; or
4. employed by the North Dakota Federal Public Defender’s Office

may be admitted on the attorney’s motion, without payment of fees, to practice in this court during the pendency of the employment, appointment or designation if the attorney is a member in good standing of the highest bar of any state or the District of Columbia. A judge advocate of the armed forces of the United States representing the government in proceedings supervised by judges of the District of South Dakota is not subject to this rule.

G. Attorney Discipline.

1. **Automatic Suspension.** Any member of the bar of this court who has been suspended or disbarred from the Supreme Court of the State of South Dakota or who has been convicted of any criminal offense in any United States

District Court will, upon appropriate notice from the clerk of court, be suspended from practice before this court.

2. Discipline by this Court.

- (a) This court, independent of action taken by the Supreme Court of the State of South Dakota, may disbar or suspend a member of the bar of this court from practice for a definite time, or reprimand for good cause shown, after opportunity has been afforded such member to be heard.
- (b) An application for the disbarment or discipline of a member of the bar of this court will be made to or before the chief judge of this court unless otherwise ordered by the chief judge. At least two district judges of this court will sit at the hearing of such application unless the attorney against whom the disbarment or disciplinary proceeding is brought states in writing or in open court the member’s willingness to proceed before one district judge.
- (c) If an investigation is necessary, the chief judge, with the approval of a majority of the district judges, will appoint a member of the bar (hereinafter referred to as “investigator”) to investigate charges against any member of this bar. If, as a result of the investigation, the investigator will be of the opinion that there has been a

breach of professional ethics by a member of this bar, the investigator, as an officer of the court having special responsibilities for the administration of justice, will file and prosecute a petition requesting that the alleged offender be subjected to appropriate discipline, including disbarment, suspension, or reprimand. The investigator will be paid from the pro hac vice fund.

3. **Disciplinary Record.** The clerk of court keeps a separate attorney discipline docket. Orders of disbarment, suspension and public reprimand are a matter of public record. All other documents, hearings and records required under the provisions of this Rule will not be publicly disclosed or made available for use in any other proceeding, except upon order of this court.

H. Reinstatement of Disbarred and Suspended Attorneys.

1. An attorney who has been disbarred or suspended in this court may petition for reinstatement at any time. Upon the filing of such petition with the clerk of court, the chief judge may appoint an investigator and may enter an order setting a date for the hearing on said petition on providing at least 21 calendar days' notice. An attorney may

be reinstated without a hearing upon a unanimous vote of all district judges who desire to participate in such determinations.

Any investigator appointed will investigate the facts alleged in the petition for reinstatement and will present to the court, in affidavit form or otherwise, any facts in support of or against the granting of said petition. Two district judges of this court will sit at the hearing on said petition, and the order denying or granting reinstatement will be made in writing by said judges.

2. An attorney who has been disbarred or suspended by the Supreme Court of the State of South Dakota and thereafter reinstated by that court to practice in the state courts will not be permitted to practice in this court, notwithstanding such reinstatement, until a petition for reinstatement as prescribed in section 1 above, incorporating a certified copy of the order of reinstatement by the Supreme Court of the State of South Dakota, has been filed in this court and reinstatement ordered after a hearing as above provided. The hearing may be waived by the attorney with the consent of the court.

I. Law Students.

1. **Student Practice.** Any law student acting under a supervising attorney will be allowed to make an appearance and participate in

proceedings in this court pursuant to these rules.

2. Eligibility. To be eligible to appear and participate, a law student must:

- (a) Be a student in good standing in a law school approved by the American Bar Association.
- (b) Have completed legal studies amounting to four semesters or the equivalent if the law school is on some basis other than a semester basis.
- (c) File with the clerk of court:
 - (i) A certificate by the dean of the law school that he or she is of good moral character and meets the requirements of rule 83.I.2 and is qualified to serve as a legal intern. The certificate should be in a form prescribed by the court.
 - (ii) A certificate by the law student stating that he or she has read and agrees to abide by the rules of the court, and all applicable codes of professional responsibility and other relevant federal practice rules. The certificate should be in

a form prescribed by the court.

- (iii) A notice of appearance must be filed in each case in which he or she is participating or appearing as a law student. The notice must be signed by a supervising attorney who is a member of the bar of this court.
- (d) Be introduced to the court in which he or she is appearing by an attorney who is a member of the bar of this court.

3. Certificate of Admission.

Upon the completion and filing of the certificates required by these rules, the clerk of court will issue a certificate of admission to the law student in a form prescribed by the court. This certificate expires contemporaneously with the expiration date of the dean's certificate unless it is sooner withdrawn. Any law student's certificate of admission may be terminated at any time by the court without notice or hearing and without any showing of cause.

4. Restrictions. No law student admitted under these rules will:

- (a) Request or receive any compensation or remuneration of any kind from the client. This will not prevent the supervising

attorney, law school, public defender, or the government from paying compensation to the law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require.

- (b) Appear in court without the presence of the supervising attorney.
- (c) File any documents or papers with the court that he or she has prepared which have not been read, approved, and signed by the supervising attorney.

5. Supervising Attorneys. Any person acting as a supervising attorney under this rule must be a member of the bar of this court and must:

- (a) Assume personal professional responsibility for the conduct of the law student being supervised.
- (b) Sign all pleadings and other papers prepared by the law student.
- (c) Advise the court of the law student's participation, be present with the student at all times in court, and be prepared to supplement oral or written work of the student as requested by the court or as necessary

to ensure proper representation of the client.

- (d) Be available for consultation with the client.

LR 83.3 ASSIGNMENT OF OFFICIAL REPORTERS

The court appoints qualified persons to permanent positions as official reporters. Official reporters serve at the discretion of the court, are not assigned to specific judges, and do not lose their position upon a change in status of a specific judge.

LR 83.4 FORM OF PAPERS

All documents must be on 8½ x 11 inch paper. The text must be double-spaced, but quotations more than two lines long must be indented and single-spaced. Headings and footnotes must be single-spaced. Margins must be at least one inch on all four sides. Fonts must be at least 12-point. Papers not in the required form may not be filed without leave of the court. Exhibits attached to documents must, if feasible, be similarly typewritten, printed, or otherwise reproduced in clear, legible, and permanent form.

LR 83.5 CLERK'S FEES

A. Filing Fees.

- 1. Actions.** Except in seaman's suits, any party commencing any civil action, suit, or proceedings, whether by original process, removal, or otherwise, must pay to the clerk of court the statutory filing fee before the case will be

filed and process issued thereon. (28 U.S.C. § 1914).

2. **Appeals.** The appellant must pay the statutory fee for an appeal to the clerk of the district court. (28 U.S.C. § 1917).
3. **Habeas Corpus.** The petitioner or applicant for a writ of habeas corpus, must pay the statutory filing fee to the clerk of court. (28 U.S.C. § 1914).

B. Miscellaneous Fees. The clerk of court will collect from parties such additional fees only as are prescribed by the Judicial Conference of the United States. Payment of such fees may be required by the clerk of court before furnishing the service therefor.

C. Refusal to File by the Clerk. The clerk of court may refuse to docket or file any suit or proceeding, writ, or other process, pleading or other paper in any suit or proceeding until the required filing fees are paid, except as otherwise ordered by the court in proceedings in forma pauperis. (28 U.S.C. §§ 1914(c) and 1915).

LR 83.6 MARSHALS FEES

A. Prepayment of Fees. Except as otherwise provided by statute or by order of court, the United States Marshal may require a deposit to cover all fees and expenses prescribed by law for performing the services requested by any party. (28 U.S.C. § 1921).

B. USM Form 285. Every party requesting the United States Marshal to serve any process, including an original summons, must furnish with every process delivered to the United States Marshal a completed USM Form 285. Said forms are available through the United States Marshals Service or the clerk of court's office.

LR 83.7 WITHDRAWAL OF COUNSEL

A. In General. An attorney of record in a case may be permitted to withdraw from representation as counsel of record only by order of the court, or as otherwise provided herein.

B. Withdrawal With Substitution. Leave of court is not required where a notice of withdrawal is accompanied by a substitution of counsel, provided that said substitution takes place 90 or more days in advance of trial, the substitution contains a certificate by substituted counsel, and the substitution will not delay the trial or other progress of the case. The notice of withdrawal and substitution must set forth the name and address of the substituted and withdrawing counsel. Withdrawal under this section will be effective upon filing a notice of withdrawal and substitution. Notice of withdrawal must be provided to the client by the withdrawing attorney.

C. Withdrawal Without Substitution. Withdrawal without substitution may be granted only upon motion, for good cause shown. Notice of the motion must be provided to the

client by the withdrawing attorney.

**LR 83.8 WRITS OF HABEAS CORPUS
AND MOTIONS PURSUANT TO 28
U.S.C. § 2255**

A. Filing Requirements. Petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2254 and 28 U.S.C. § 2241, motions to vacate sentence pursuant to 28 U.S.C. § 2255, and applications to proceed in forma pauperis must be signed and legibly written or typewritten on forms prescribed by the court and in accordance with the instructions provided with the forms unless the court finds, in its discretion, that the petition, motion, or application is understandable and that it substantially conforms with federal and local requirements for such actions. Copies of the relevant forms and instructions will be provided by the clerk of court upon request. The court may strike or dismiss petitions, motions, or applications that do not conform substantively or procedurally with federal and local requirements for such actions.

B. In Forma Pauperis Certification. If a habeas corpus petitioner desires to prosecute a petition in forma pauperis, the petitioner must file an application to proceed in forma pauperis on a form prescribed by the court (Motion to Proceed Without Prepayment of Fees and Declaration), accompanied by a certification of the warden or other appropriate officer of the institution in which the petitioner is confined as to the amount of money or securities on

deposit for the petitioner. If the petitioner has in excess of \$25 on deposit, the petitioner must pay the filing fee to proceed with a 28 U.S.C. § 2241 or a 28 U.S.C. § 2254 case.

C. Assignment of Judicial Officer. Once a petition for a writ of habeas corpus is assigned to a district judge, any future pleadings filed by the prisoner will be automatically assigned to the same district judge to whom the earlier case was assigned, unless otherwise ordered by the court. Motions pursuant to 28 U.S.C. § 2255 will be assigned as provided for in Rule 4(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

United States Courts
Judicial Council of the Eighth Circuit
Thomas F. Eagleton United States Courthouse
111 South 10th Street – Suite 26.325
St. Louis, Missouri 63102-1116

Millie B. Adams
Circuit Executive

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EIGHTH CIRCUIT JUDICIAL COUNCIL

ORDER

I hereby certify that the United States District Court for the District of South Dakota has furnished amended civil and criminal local rules to the Judicial Council, in accordance with 28 U.S.C. § 2071(d). The amended local rules have been reviewed by the Judicial Council, and it has determined to take no action with respect to them. These rules, therefore, remain in effect in accordance with 28 U.S.C. §2071(c)(1) and Fed. R. Civ. P. 83(a)(1).


Millie B. Adams
Circuit Executive

St. Louis, Missouri
December 1, 2015

cc: Judicial Council Members
Chief Judge Jeffrey L. Viken
Joseph A. Haas, Clerk of Court

Review was undertaken by the Rules and District Court Committees.

JCO 2682