CRIMINAL
LOCAL RULES OF PRACTICE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

12/01/15

CRIMINAL RULES
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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

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DIVISIONS OF DISTRICT OF SOUTH DAKOTA

The State of South Dakota constitutes one judicial district divided into four divisions (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 Criminal 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 Criminal Procedure.

LR 1.1 GENERAL PROVISIONS

A. Citation Form. The local criminal rules are to be cited as "D.S.D. Crim. LR ___."

B. Scope. The local criminal rules govern all criminal 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.

C. Modification of Local Rules by Presiding Judge. The local rules are subject to modification in any case at the discretion of the presiding judge.

D. Speedy Trials. The court's Speedy Trial Plan governs the scheduling of criminal trials. This plan may be found on the court's web site at www.sdd.uscourts.gov.

E. Assignment of Related Cases.

1. When a pending indictment or information is superseded by an indictment or information charging one or more of the defendants charged in the pending indictment or information and charging one or more of the offenses charged in the original indictment or information growing out of one or more occurrences that gave rise to the original charge, the superseding indictment or information will be assigned to the same judge to whom the first case is assigned.

2. When two or more indictments or criminal informations are filed against the same person or persons, corporation or corporations, charging like offenses or violations of the same statute, each of such cases will be assigned to the judge to whom the first of such cases is assigned.

3. When an indictment or information is pending against a defendant, all subsequent indictments or informations against the same defendant that may be returned or filed will be assigned to the same judge.

LR 3.1 COMPLAINTS

A. Presentation. Complaints ordinarily should be presented to a magistrate judge for review and execution, but a complaint may be presented to a district judge if no magistrate judge is available. If no federal judge is reasonably available, a complaint may be presented to a state judicial officer.

Copies of the complaint and supporting affidavits should be delivered to the judge for his or her private review before a request is made for the judge to sign the complaint. In an emergency situation, the judge may waive this requirement.

B. Emergencies. In an emergency situation, a magistrate judge may be contacted away from the courthouse, including at his or her home, for purposes of considering a proposed complaint. If no magistrate judge is available, a district judge may be contacted away from the courthouse, including at his or her home, for purposes of considering a proposed complaint.

LR 5.1 DETENTION ORDERS

A. Review. After a detention order is issued, a party may request reconsideration of the order based on new evidence or may appeal the order to a district judge. A party requesting review of a detention order must state in the caption whether the request is one for reconsideration or is an appeal to a district judge.

B. Appeals. A party appealing a detention order must file a written motion containing a statement of the grounds for the appeal and a statement that a transcript of the detention hearing has been ordered.

LR 6.1 GRAND JURY RETURN

An indictment must be returned to a federal magistrate judge or district judge in open court by the grand jury or by the foreperson or deputy foreperson of the grand jury. An indictment will be deemed by the court to have been filed on the date it is returned to a federal magistrate or district judge in open court.

LR 6.2 CONTACT WITH GRAND JURORS

A. Contact by Defendants or Witnesses. Except upon leave of court, no actual or potential defendant or witness, and no lawyer or other person acting on his or her behalf, may contact, interview, examine, or question any grand juror or potential grand juror concerning the juror's actual or potential grand jury service.

B. Contact by Lawyers for the Government. Except upon leave of court, no lawyer for the government or other person acting on his or her behalf may contact, interview, examine, or question any grand juror or potential grand juror concerning the juror's actual or potential grand jury service, except that contacts may be made on the record during grand jury proceed-

ings and as necessary in connection with the administration of the grand jury.

LR 10.1 WRITTEN ARRAIGNMENT, PLEA, AND WAIVER OF PERSONAL APPEARANCE

A defendant who has been charged by indictment or misdemeanor information and has had an initial appearance pursuant to Fed. R. Crim. P. 5 may, pursuant to Fed. R. Crim. P. 10(b), waive personal appearance at the arraignment on the charges and plead not guilty by filing a written waiver of personal appearance.

Defendants are encouraged to file a written waiver of personal appearance in lieu of personally appearing at arraignments on superseding indictments and superseding misdemeanor informations.

LR 11.1 PLEAS

A. Plea Agreement. If a defendant is pleading guilty pursuant to a plea agreement with the government, a written plea agreement and a factual basis statement must be filed. A plea agreement supplement must also be filed and must identify any agreements that the defendant has with the government regarding cooperation or state that the defendant has no cooperation agreements with the government. The plea agreement supplement will be sealed in all cases. The defendant, defendant's attorney and government attorney must sign the plea agreement, factual basis statement and supplement.

B. Petition to Plead. The lawyer for the defendant may file a written petition to plead and the factual basis statement. The defendant and defendant's attorney must sign the petition to plead and the factual basis statement.

LR 12.1 PRETRIAL MOTIONS AND REQUESTS

A Scheduling and Case Management Order will set deadlines for motions, notices, and requests.

Requests for discovery or for 404(b) evidence should be filed as requests and not motions.

LR 16.1 DISCOVERY

Certification Required. 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.

LR 17.1 SUBPOENAS AND WRITS

A. Subpoenas to be served by the United States Marshals Service. A defendant must file a motion at least 14 calendar days before hearing or trial for a subpoena to be served within the district by

the United States Marshals Service. A defendant must file a motion at least 21 calendar days before hearing or trial for a subpoena to be served outside the district by the United States Marshals Service.

B. Private Service of Process Not Authorized by CJA. Unless prior approval is obtained from a judge, a lawyer appointed under the Criminal Justice Act may not use private process servers to serve subpoenas for criminal hearings or trials, but must use the United States Marshals Service for such service. If a private process server is used without prior approval, service is valid but reimbursement under the Criminal Justice Act is subject to court approval.

C. Deadline for Delivering Writ of Habeas Corpus Ad Testificandum to United States Marshals Service. A writ of habeas corpus ad testificandum to be served within the district must be delivered to the United States Marshals Service at least 14 calendar days before the hearing or trial at which the witness is to testify, and a writ of habeas corpus ad testificandum to be served outside of the district must be delivered to the United States Marshals Service at least 21 calendar days before the hearing or trial at which the witness is to testify.

D. Confidentiality. All subpoenas and writs of habeas corpus ad testificandum obtained *ex parte* will be confidential. This confidentiality requirement applies to everyone, including court personnel, the United States Marshals Service, and anyone assisting the United States Marshals Service with service of process.

LR 24.1 JURY SELECTION IN MULTI-DEFENDANT CASES

In multi-defendant cases, a request by a defendant for additional peremptory challenges must be made in writing at least 14 calendar days before jury selection.

LR 24.2 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 28.1 INTERPRETERS

A. Responsibility for Obtaining. When interpreters are required for proceedings instituted by the United States, the clerk of court will locate certified or otherwise qualified interpreters for court

proceedings. However, the U.S. attorney's office is responsible for locating, contracting, and paying interpreters for government witnesses. For all other purposes, a party requiring the services of an interpreter must obtain his or her own interpreting services. If the defendant is indigent, prior court approval to hire an interpreter is required as specified in the Guide to Judiciary Policy and 18 U.S.C. § 3006A(e). If counsel for either party believes that interpreter services for court proceedings are needed for more than an hour, counsel must notify the clerk of court as soon as possible.

B. Certified Telephone Interpreters. In criminal cases, the court may use certified interpreters supplied by the Telephone Interpreting Program sponsored by the Administrative Office of the United States Courts for hearings that do not exceed an hour. Any objection to the use of such an interpreter must be made before the commencement of the proceeding being interpreted.

LR 30.1 JURY DELIBERATIONS

A. Availability During Deliberations. Until a verdict is reached and the jury is discharged, the lawyers and the defendant must be readily available to the court. When the jury begins to deliberate, the lawyers must advise the court of where they can be located in the courthouse, or if they intend to leave the courthouse, of a telephone number where they can be reached without delay. A pro se defendant will be treated as counsel for purposes of this rule.

B. Notification. If the jury has a question, or if some other issue arises during jury deliberations, and the court determines the issue merits a conference with the parties, the court will attempt to notify the lawyers. Defense counsel is responsible for communicating any such notification to the defendant.

C. Proceedings. The nature of the proceedings concerning an issue arising during jury deliberations will be determined by the judge. Where the jury has a substantive question, the judge will do the following:

1. Advise the lawyers of the jury's question;

2. Ask the lawyers for suggestions on how to respond to the question;

3. Formulate a response, as warranted;

4. Allow the parties to make a record on the proposed response; and

5. Communicate the response to the jury in an appropriate manner.

LR 32.1 SENTENCING

A. Sentencing Motions. Unless otherwise permitted by the court, any request that the court depart or vary from the advisory United States Sentencing Guidelines range, either upward or downward, must be asserted in a written motion stating with particularity the basis for the requested departure or variance. A motion for departure or variance may be joined with a party's sentencing memorandum.

B. Confidential Sentencing Documents. Whether filed by the U.S. Probation Office or by the parties, documents relating to the sentencing process are confidential and must not be distributed beyond the court, counsel and the defendant through defense counsel, unless otherwise ordered by the court. These documents include, but are not limited to, presentence, supplemental or predisposition reports; objections to such reports; addendums to such reports; letters of support; victim impact statements; evaluations; written allocution statements; and Rule 35 or U.S.S.G. 5K1.1 motions and materials.

LR 41.1 SEARCH WARRANTS

A. Presentation. A search warrant application ordinarily should be presented to a magistrate judge, but it may be presented to a district judge if no magistrate judge is reasonably available. If no federal magistrate or district judge is reasonably available, a search warrant may be presented to a state judicial officer.

Copies of the application, the proposed search warrant, and any supporting affidavits must be delivered to the judge for his or her private review before a request is made for the judge to sign the warrant. In an emergency situation, the judge may waive this requirement.

B. Lawyer for Government. Ordinarily, a law enforcement officer presenting a search warrant application to a judge should be accompanied by a lawyer for the government. If justified by unusual circumstances, a judge may entertain a search warrant application from an officer who is not accompanied by a lawyer for the government.

C. Emergencies. In an emergency situation, a magistrate judge may

be contacted away from the courthouse, including at his or her home, for purposes of entertaining a search warrant application. If no magistrate judge is reasonably available, a district judge may be contacted away from the courthouse, including at his or her home, for purposes of entertaining a search warrant application.

D. Initial Sealing of Search Warrant Documents. When a search warrant is issued, a case is opened. The case is sealed until the warrant is returned, at which time the case is unsealed unless otherwise ordered by the court.

LR 44.1 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 the 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 the 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 proceedings in 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 47.1 MOTIONS

A. Discovery Motions. Before filing a discovery motion, the certification required under D.S.D. Crim. LR 16.1 must be met.

B. Motions to Seal. Any motion seeking the sealing of pleadings, motions, exhibits, or other documents to be filed in the court record must include (1) proposed reasons supported by specific factual representations to justify the sealing, and (2) 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.

C. 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. Crim. 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 Criminal Procedure on which the movant relies. Motions in limine and supporting arguments and authorities may be filed as one document. On or before 7 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 4 calendar days after service of the responsive brief.

LR 49.1 SERVING AND FILING DOCUMENTS

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 Criminal 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 Criminal Procedure.

B. Filing.

1. **What constitutes filing/ official record.** Electronic transmission of a document to the Electronic Case 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 Criminal Procedure. When a document has been filed electronically, the official record is the electronic document as stored by the court and is deemed filed as of 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. Crim. P. 49(e) 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 Signatures and Security.** Electronically filed documents must include a signature block and set forth the name, address, telephone number, and e-mail address of the filer. 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. 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.

The user login and password requires 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 local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court.

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 filer.

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 of the document to the clerk of court for filing under seal.

LR 49.1.1 PERSONAL DATA IDENTIFIERS IN ALL PLEADINGS AND DOCUMENTS

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 documents filed, including exhibits thereto, unless otherwise ordered by the court:

1. Social Security numbers. Only the last four digits of that number should be used.

2. Name of an individual known to be a minor. Only the initials of the minor should be used.

3. Dates of birth. Only the year should be used.

4. Financial account numbers. Only the last four digits of these numbers should be used.

5. Home addresses. Only the city and state should 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.

D. Personal Data Identifiers in Charging Documents

1. The clerk of court will file indictments under seal to prevent public disclosure of the identity of the foreperson of the grand jury. The attorney for the government must provide the clerk's office with a redacted version of the indictment in which the name of the foreperson is omitted. If the indictment includes personal data identifiers, the attorney for the government must also provide the clerk's office with a redacted version of the indictment that omits both personal data identifiers and the name of the foreperson. The clerk's office will file a redacted version of the indictment in addition to the sealed original.

2. Personal data identifiers may be included in informations and complaints if necessary to comply with the requirements of federal law. If personal data identifiers are included, the attorney for the government must provide the clerk's office with a redacted version of the information or

complaint along with the original. The original will be filed under seal to prevent public disclosure of the personal data identifiers.

3. In all other instances charging documents will be filed under seal only upon motion of the government and order of the court. If the court orders the redacted version of a charging document to be sealed temporarily, the clerk of court will, without further direction or order from the court, unseal the redacted version of the charging document immediately after the initial appearance in the district of all of the defendants charged in the charging document.

LR 57.1 RELEASE OF INFORMATION BY COURTHOUSE PERSONNEL IN CRIMINAL CASES

All courthouse personnel, including marshals, deputy marshals, deputy court clerks, court security officers, interpreters, and court reporters, are prohibited from disclosing to any person, without authorization by the court, information relating to a pending criminal case that is not part of the public records of the court. Specifically forbidden is the divulgence of information concerning arguments and hearings held in chambers, at side bars or otherwise outside the presence of the public.

LR 57.2 AVAILABILITY OF ELECTRONIC RECORDINGS

If a proceeding has been recorded electronically and the electronic recording constitutes the official record, the clerk of court will arrange, upon the request of any party, to have a transcript prepared from the electronic recording. The requesting party will be responsible for any costs associated with producing a transcript in accordance with the directives of the Administrative Office of the United States Courts. Recordings will not be released to parties or the public.

LR 57.3 EXHIBITS

A. Marking of Exhibits. Exhibits in criminal trials and hearings must be marked in accordance with instructions from the court.

B. Custody with Clerk of Court. 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, any 28 U.S.C. § 2255 motion is ruled upon, and any appeals are completed, exhibits may not be taken from the custody of the clerk of court, ex-

cept 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 120 days after the resolution of both any appeal and any application for relief under 28 U.S.C. § 2255, or if no application for relief under 28 U.S.C. § 2255 is filed, until two years after the date on which the judgment of conviction becomes final after any appeal. The exhibit then may 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 all other parties for use in preparing an appeal or in connection with any postconviction proceedings, 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 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 to 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.

No one is permitted to bring an unsafe or dangerous exhibit into a courtroom for any purpose, including as evidence at a trial or hearing, without first notifying the federal judge handling the trial or hearing and the United States Marshals Service. Before any such exhibit is brought into a courtroom, the lawyer or pro se party responsible for the exhibit must make certain all reasonable measures have been taken to render the exhibit as safe as possible. Such measures include, but are not limited to, the securing in sealed containers of all controlled substances, poisons, dangerous chemicals, and hazardous substances, and the disabling of all weapons. All such measures should be approved prior to trial by the judge and the United States Marshals Service.

LR 57.4 WITHDRAWAL AND SUBSTITUTION 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 30 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 57.5 RECORDING AND CELLULAR DEVICES

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 to naturalization ceremonies, investitures, attorney admissions, and other ceremonial functions unless specifically prohibited by the court.

Exceptions to this rule may be granted by the district judge handling the proceeding consistent with the

Eighth Circuit Judicial Conference policy.

LR 58.1 SCHEDULE OF FINES

Pursuant to Fed. R. Crim. P. 58(d)(1), the court has, by standing order, fixed sums which may be accepted in lieu of appearances in cases of petty offenses, as defined in 18 U.S.C. § 19. All schedules presently in effect are adopted.

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Judicial Council of the Eighth Circuit
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Millie B. Adams
Circuit Executive

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EIGHTH CIRCUIT JUDICIAL COUNCIL

O R D E R

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