CRIMINAL
LOCAL RULES OF PRACTICE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

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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 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.

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~~.~~.

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 When a pending indictment or information is superseded by an indictment or information charging one or more of the defendants charged in the pending indictment or information and charging one or more of the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. This section does not extend beyond defendants with pending cases.

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, the judge may waive this requirement.

B. Emergencies. In an emergency, 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 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 proceedings and as necessary in connection with the administration of the grand jury.

LR 10.1 ARRAIGNMENT AND 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 informations that do not add new counts or different charges.

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 to protect the safety of all federal defendants regardless of their cooperation with the government, and the integrity of any ongoing investigations or related prosecutions. 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 with a factual basis statement, which must be signed by both the defendant and defendant's counsel.

LR 12.1 PRETRIAL MOTIONS AND REQUESTS

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 12.4 DISCLOSURE STATEMENT

Every organizational defendant in a criminal case must file either a Corporate Disclosure Statement (disclosure statement) or a Certificate that Fed. R. Crim. P. 12.4 is not applicable (certificate of non-applicability). Information provided under this local rule may be used by the judge assigned to a case to determine whether recusal is necessary or appropriate. ~~The disclosure statement or certificate of non-applicability must be filed within twenty-four (24) days of the defendant's initial appearance.~~

LR 16.1 DISCOVERY

A. Stipulation for Entry of Discovery Order. Within 14 days of an initial appearance, the Government and defense counsel must complete and file a joint stipulation for discovery, which can be found on the court's website. The Government is responsible for the timely electronic filing of the joint stipulation. The discovery order restricts dissemination of discovery

materials and precludes defense counsel from giving discovery materials to the defendant without the court's express permission.

B. 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.

C. Expert Witness Disclosure Deadline.

1. The government and the defendant shall disclose to each other no later than twenty-one (21) calendar days before the start of trial the name of any person retained to testify as an expert witness in the case-in-chief and provide a written disclosure containing:

    a. A complete statement of all opinions that the party will elicit from the expert witness in the case-in-chief;

    b. The bases and reasons for them;

    c. The witness's qualifications, including a list of all publications authored in the previous 10 years; and

    d. A list of all other cases in which during the previous 4 years, the witness has testified as an expert at trial or by deposition.

2. Any rebuttal expert to refute testimony from a disclosed expert shall be identified with the same written disclosure provided no later than seven (7) calendar days before trial.

LR 17.1 SUBPOENAS AND WRITS

A. Subpoenas to be served by the United States Marshals Service. A defendant unable to pay must file an ex parte motion at least 14 calendar days before a hearing or trial for a subpoena to be served within the district by the United States Marshals Service. A defendant unable to pay must file an ex parte motion at least 21 calendar days before a hearing or trial for a subpoena to be served outside the district by the United States Marshals Service. All ex parte motions ~~should~~ must be filed with an attached, prepared AO 89 or AO 89B and must include a physical address for service. The form should include the date and time it is reasonably anticipated the witness will be called to testify. Ex parte documents are not part of the public records of the court.

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 or investigators 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 Application for Writ of Habeas Corpus Ad Testificandum. An application for a writ of habeas corpus ad testificandum to be served by the United States Marshals Service within the district must be filed at least 14 calendar days before the hearing or trial at which the witness is to testify, and an application for a writ of habeas corpus ad testificandum to be served by the United States Marshals Service outside of the district must be filed at least 21 calendar days before the hearing or trial at which the witness is to testify. All applications must be filed with an attached proposed writ.

D. Confidentiality. All subpoenas and writs of habeas corpus ad testificandum obtained *ex parte* are 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 RESTRICTIONS ON PHOTOGRAPHING OR INTERVIEWING JURORS

A. Photographing Jurors. To protect the integrity and independence of jurors, no person may photograph or attempt to photograph any juror, grand or petit, without the express approval of the individual juror or the express approval of the presiding judge. This restriction also protects grand jury witnesses. No one other than a juror may photograph or otherwise record his or her motor vehicle or motor vehicle license. Leaflets or other juror information pamphlets may not be given to a juror or placed in any place where a juror might reasonably be expected to obtain the printed matter. Such action may constitute an unlawful attempt to influence, intimidate, or impede a juror or witness, in violation of 18 U.S.C. § 1503 and 18 U.S.C. § 1510.

B. 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 26.1 WITNESS LIST

Each party must file a sealed witness list by noon on the last business day before a scheduled trial. It must include the town/city and state of each witness.

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 most 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.

If participants in federal court proceedings are deaf, hearing impaired or have communication disabilities, the court will provide sign language interpreters.

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 and counsel unless otherwise ordered by the court. Pretrial services reports and related documents are also subject to these restrictions. Counsel or an employee of counsel must review confidential pretrial services and sentencing documents with their clients but may not provide copies to their clients. Clients may not review these documents unless counsel or an employee of counsel is present to ensure that the documents are not copied, photographed, retained, or removed. 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.

C. Procedure. After a guilty plea has been accepted or a guilty verdict is received, a sentencing date will be set. Unless otherwise ordered, the following deadlines apply:

1. The Probation Office must file the draft presentence report in CM/ECF using the Draft Presentence Report event no later than 35 days before sentencing.

2. After the draft presentence report is filed, the parties will have 14 days to file and serve objections. Objections must be filed by counsel in CM/ECF using the Objections to Presentence Report event. If counsel has no objections, counsel must so indicate by using the Notice of No Objections to Presentence Report event.

3. The Probation Office must file the final presentencing report in CM/ECF using the Final Presentence Report event no later than 7 days before sentencing using the Final Presentence Report event. An addendum setting forth any unresolved objections, the grounds for those objections, and the probation officer's response must be filed in CM/ECF on the same date using the Addendum to Final Presentence Report event.

4. Counsel must file all letters of support in CM/ECF using the Sealed Letter(s) of Support event no later than 28 days after the Draft Presentence Report is filed.

5. All other sentencing documents must be filed no later than 7 days before sentencing as follows.

   a. Motions for departure or variance or sentencing memoranda must be filed by counsel in CM/ECF using the appropriate events under Other Filings/Sealed Plea & Sentencing Related Documents.

   b. The filer must manually serve a copy of sealed sentencing documents on those case participants entitled to notice under the federal and local rules per the CM/ECF User Manual and Administrative Procedures. None of these documents should be submitted directly to the Probation Office or the Court.

LR 41.1 SEARCH AND SEIZURE

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. The applicant must complete an application for admission.

2. The applicant must consent to an inquiry concerning the applicant's fitness and qualifications for admission. Submission of a completed

application is consent and waiver of privacy regarding inquiry into the applicant's fitness and qualifications.

3. The clerk of court will make any inquiry that may be deemed necessary to obtain information concerning an applicant's fitness and qualifications to practice law.

4. At least two active judges in this district must approve the application before an applicant may be admitted. In the absence of two active district judges, a senior judge may be the second approving judge.

5. The clerk of court will report to a district judge in the division in which an application for admission is pending the approval or disapproval of the active judges.

6. When an application is approved or disapproved, the applicant will be notified.

7. An applicant approved for admission will be contacted by the court to schedule the applicant's admission ceremony.

8. Within six months of being approved for admission, an applicant must appear for an 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 of admission, signing an oath of admission, and paying the required fee, the applicant will be admitted to the bar of this court. Upon admission, the clerk of court will issue a certificate of admission to the new bar member.

D. Oath of Admission. The following oath/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. 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. Any prior or pending disciplinary actions or actions resulting in sanctions against the attorney seeking admission pro hac vice must be disclosed in the motion.

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.

1. **Resident Attorneys.**

a. **Regular Admission.** 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 State Bar of South Dakota before the attorney is permitted to practice before this court.

b. **Provisional Admission.** An attorney who is a member of the bar of another United States district court and has not yet been admitted to the State Bar of South Dakota, but either is a:

(1) resident assistant United States attorney;

(2) resident attorney representing agencies of the United States government; or

(3) resident assistant federal public defender has 12 months from the date of the attorney's oath of office for the position in South Dakota to be admitted to the State Bar of South Dakota.

(4) If an attorney is on a term fellowship with the United States or Federal Public Defender, that attorney may be admitted provisionally to practice before this court for the period of that fellowship.

During this period, the attorney may be admitted provisionally to practice before this court.

The procedure for provisional admission follows the procedure for admission outlined in Section C of this rule, except that resident attorneys provisionally admitted will not pay the required fee until they are admitted to the State Bar of South Dakota, at which time the clerk of court will issue a certificate of admission to the attorney.

2. **Nonresident Attorneys.**

The following nonresident attorneys may be admitted on the attorney's motion, without payment of fees, to practice in this court during the pendency of the attorney's 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. An application for admission is not required.

a. An attorney designated as "Special Assistant United States Attorney" by the United States Attorney for the District of South Dakota;

b. An attorney 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 United States government;

c. An attorney hired by the Federal Public Defender's Office for the District of South Dakota; or

d. An attorney employed by the Federal Public Defender's Office for the District of North Dakota.

A judge advocate of the armed forces of the United States representing the United States government in proceedings supervised by judges of this court 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:

      (1) A certificate by the dean of the law school that he or she is of good moral character and meets the requirements of rule 44.1 I.2 and is qualified to serve as a legal intern. The certificate should be in a form prescribed by the court.

(2) 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.

(3) 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 or 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, always be present with the student 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, 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.

1. **Page Limitation on Briefs.** Briefs must not exceed 25 pages excluding table of contents and/or authorities, certificate of service, if applicable, and attachments unless prior approval has been obtained from the court.

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.

LR 49.1 SERVING AND FILING DOCUMENTS INCLUDING HIGHLY SENSITIVE DOCUMENTS

A. 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.

B. What constitutes an electronic signature. In addition to the requirements contained in Rule 49(b)(4) of the Federal Rules of Criminal Procedure, 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.

C. Duty to protect login and password. 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. If they learn that their password has been compromised, they must immediately notify the clerk. Attorneys may be subject to sanctions for failure to comply with this provision.

D. 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.

E. 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.

F. Filing Documents outside of CM/ECF. Highly sensitive documents may be filed outside of the court's Electronic Filing System.

1. **Highly Sensitive Documents ~~(HSDs)~~**. A Highly Sensitive Document (HSD) is a document or other material that contains sensitive, but unclassified, information that warrants exceptional handling and storage procedures to prevent significant consequences that could result if such information were obtained or disclosed in an unauthorized way. Although frequently related to law enforcement materials, especially sensitive information in a civil case could also qualify for HSD treatment.~~HSDs are documents that contain highly sensitive non public information that is likely to be of interest to the intelligence service of a foreign government and whose use or disclosure would likely cause significant harm. HSDs may be filed in cases involving the following:~~

    a. **Examples of HSDs:** Examples include *ex parte* sealed filings relating to: national security investigations, cyber investigations, and especially sensitive public corruption investigations; and documents containing a highly exploitable trade secret, financial information, or computer source code belonging to a private entity, the disclosure of which could have significant national or international repercussions.

    b. **Exclusions:** Most materials currently filed under seal do not meet the definition of an HSD and do not merit the heightened protections afforded to HSDs. The form or nature of the document, by itself, does not determine whether HSD treatment is warranted. Instead, the focus is on the severity of the consequences for the parties or the public should the document be accessed without authorization. Most presentence reports, pretrial release reports, pleadings related to cooperation in criminal cases, social security records, administrative immigration records, applications for search warrants, interception of wire, oral, or electronic communications under 18 U.S.C. § 2518, and applications for pen registers, trap, and trace devices would not meet the HSD definition.

    ~~a. national security issues;~~
    ~~b. foreign sovereign interests;~~
    ~~c. cybersecurity or major infrastructure security;~~
    ~~d. ongoing intelligence-gathering operations;~~
    ~~e. safety of public officials or government interests;~~

~~f. non public intellectual property and/or trade secrets of value to the intelligence services of a foreign government;~~
~~g. documents that would give foreign competitors of U.S. corporations a competitive advantage;~~
~~h. the reputational interests of the U.S. or any State, or local government;~~
~~i. false claims or qui tam cases;~~
~~j. applications for production of stored electronic communications under 18 U.S.C. § 2703; or~~
~~k. applications for electronic surveillance under 18 U.S.C. § 2518.~~

~~HSDs are rare.~~ Any dispute as to whether a document is an HSD will be resolved by the presiding judge or, when no presiding judge is assigned, the Chief Judge.

2. **Motion Required.** A represented or pro se party must file a motion to treat a document as an HSD and a proposed order in the same manner as a motion to file under seal pursuant to D.S.D. Civ. LR 7.1 A and Crim. LR 47.1 B. The motion and proposed order must state the duration of the HSD designation or whether the HSD designation should be permanent. The motion must explain why the proposed document constitutes an HSD under paragraph F.1 or why it should otherwise be filed without revealing the highly sensitive information contained within the HSD.

   a. The filing party must deliver to the clerk's office where the presiding judge is chambered two paper copies of the motion and HSD sought be filed along with a certificate of service. These documents must be submitted in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT" and marked with the applicable case number, attorney's name, street address, telephone number, and email address. Upon receipt, the clerk's office will make an informational docket entry that a motion to treat a document as an HSD has been filed~~.~~.

   b. Unless being submitted as an ex parte filing, the filing party must serve the proposed HSD on the other parties by any manner specified in Criminal Rule 49(a), except for service via the court's E~~e~~lectronic F~~f~~iling S~~s~~ystem.

   c. If the court grants the motion, an informational entry will be made on the case docket indicating that the HSD has been filed with the c~~C~~ourt. The clerk's office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

3. **Service of HSD Orders.** The clerk's office will serve paper copies of the order on the parties via mail.

LR 49.1.1 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 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 a document redacted consistent with Fed. R. Crim. P.49.1, a party may submit for filing under seal 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 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.

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 including ex parte documents. 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. Electronically Filing Documentary Exhibits.

1. **By the Clerk.** At the conclusion of a trial or other court proceeding, the Clerk of Court will electronically file all documentary exhibits offered and/or received in CM/ECF. The exhibits electronically filed by the Clerk will be restricted to court users and case participants. After filing, the Clerk will return documentary exhibits to the offering party.

2. **By the Parties.** The parties will have twenty-one (21) days to review their returned documentary exhibits to determine whether redactions are required pursuant to D.S.D. Crim. LR 49.1.1.

   a. **Redactions required.** If redactions are required, the offering party must electronically file all of its documentary exhibits, including redacted exhibits and exhibits that do not require redaction in CM/ECF. This requirement does not apply to exhibits that were sealed when offered and/or received.

   b. ~~b.~~ **Redactions not required.** If no redactions are required, the Clerk will remove the restrictions and enter a Notice of Unrestricting Trial/Hearing Exhibits in CM/ECF.

   c. **Sealing.** If a party moves to seal documentary exhibits after a hearing or trial has concluded and the motion is granted, the movant is responsible for refiling public exhibits.

C. Physical Exhibits. Physical exhibits, including recordings, will be returned to the offering party at the conclusion of a trial or other proceeding for retention and preservation. This includes all physical exhibits submitted to the clerk even those not used at trial or in a hearing.

1. **Duty to Retain**. When physical exhibits are returned, they must be retained by the offering party, who will maintain and document the chain of custody, and make the exhibits available to the court, if necessary, and to other parties for use in preparing an appeal~~.~~.

2. **Duty to Preserve.** Returned physical exhibits must be preserved 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. Before such exhibits may be destroyed, the custodial party must seek and obtain a court order authorizing destruction.

D. Exhibits Necessary for Appeal. Consistent with the Eighth Circuit's local rule on exhibits, the offering party is responsible for ensuring any non-public exhibits or physical exhibits necessary for an appeal are submitted to the appellate court.

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. This does not apply to situations where withdrawal results in continued representation by the same firm or organization.

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

Except by permission of the presiding judge, 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 electronic devices may be brought into courthouses in the United States District Court for South Dakota unless the presiding judge places restrictions on these devices. All cellular and electronic devices must be turned off in the courtroom and any corridor on the floor on which a courtroom or jury room is located unless specifically authorized by order of the court. Cellular and electronic devices are devices capable of communicating, transmitting, receiving, or recording messages, images, sounds, data, or other information by any means, including but not limited to, a computer tablet, cell phone, or Bluetooth device. Individuals who bring such devices into courtrooms may be asked by court security personnel to demonstrate that the device is turned off. Members of the Bar and employees of members of the Bar are exempt from this provision.

Use of any camera or sound recording devices in a courtroom or any corridor on the floor on which a courtroom or jury room is located is prohibited unless specifically authorized by order of the court.

However, an electronic device that is essential to a person's health or welfare (such as an insulin pump) may remain on in the courtroom.

News media personnel who possess recording devices will be allowed entry into a court facility, provided the news media personnel are escorted through the building by a representative of the tenant agency being visited. If no tenant representative is available, entry with the recording devices will be denied~~—~~. In courthouses where jury and grand jury facilities are located contiguous to public access corridors, news media personnel will not be allowed to possess recording devices on the floors housing the jury and grand jury facilities during jury deliberations or grand jury sessions.

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

LR 57.6 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 charging document 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 57.7 TRIAL APPEARANCE

Absent extraordinary circumstances, every defendant in a criminal case may wear civilian clothing during a ~~jury~~ trial. Civilian clothing should be provided to the United States Marshal Service each morning of trial by the defendant's attorney. The United States Marshal Service will take appropriate measures to ensure jurors do not observe the defendant in shackles in or out of the courtroom.

LR 57.8 PAYMENTS PRIOR TO ENTRY OF JUDGMENT

The Clerk of Court may accept special penalty assessment, restitution and fine payments prior to entry of a judgment and commitment in criminal cases. Restitution funds should be held in the deposit fund until further order of the court.

LR 57.9 FORM OF PAPERS

A. **In General.** 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.

B. **Redactions.** If it is necessary to redact documents produced pursuant to discovery and/or filed with the court, redactions must be made in black, making it clear that information was removed.

LR 57.10 ACCESS TO CRIMINAL DOCUMENTS

A. **Purpose.** In order to protect the safety of federal defendants and the integrity of ongoing investigations and related prosecutions, access to certain criminal documents and transcripts is restricted.

B. **Sealed or Restricted Documents.** The court's intent is to make it impossible to determine from examining the record whether a defendant or other witness did or did not cooperate with the government. To implement this intent, the following documents are sealed or otherwise restricted:

1. **Plea Agreement Supplements.** Every plea agreement will include a sealed supplement that either identifies any agreements the defendant has with the government regarding cooperation or states that there is no cooperation.

2. **Sentencing Memorandums and Motions for Departure/Variance.**

3. **Restricted Change of Plea or Sentencing Transcripts.** Every transcript of a change of plea or sentencing hearing will contain a confidential section or reference thereto so that cooperation or the lack thereof may be discussed. If a transcript is prepared, the court reporter or transcriptionist will prepare two versions: a restricted transcript and a public transcript.

    a. The restricted transcript will include the confidential section. Only the Government and counsel for the defendant will have access to restricted transcripts.

    b. The public transcript will include the following reference: Pursuant to D.S.D. Crim. LR 57.10, portions of all change of plea and sentencing transcripts are restricted.

~~4. Restricted Transcripts involving Cooperator Information. If a transcript is prepared of other hearings or trials where a cooperating witness testified or was referenced by name, the court reporter or transcriptionist will prepare two versions: a restricted transcript and a public transcript.~~

~~a. The prosecutor must notify the court, court reporter, clerk, and counsel of cooperating witnesses prior to eliciting their testimony. This notification can be made at the pretrial conference or any other point outside the hearing of the jury.b. The restricted transcript will include the identity of cooperating witnesses.c. The public transcript will exclude the identity of cooperating witnesses and will refer to them as NR 1, etc.d. If there is law enforcement testimony regarding cooperation or statements by counsel or others identifying a person as a cooperator, the prosecutor is to submit a redaction request, either orally at a bench conference or electronically prior to the preparation of the transcript. An order is not required.~~

~~e. If a transcript has been publicly filed containing any information identifying a person as a cooperating witness, the U.S. Attorney's office is to submit a motion to seal and a redaction request identifying where the public transcript needs to be redacted.~~

C. Access to Sealed or Restricted Documents.

1. **Attorneys and others.** Federal court officers or employees (including probation officers and federal public defender staff), retained counsel, appointed CJA panel attorneys, and any other person in an attorney-client relationship with a defendant may, consistent with this rule, review any sealed or restricted portions of the file with their client, but may not provide copies.

2. **Inmates.** When an inmate requests copies of sealed or restricted documents from his/her criminal file, copies will be forwarded to the warden of the appropriate institution, along with a copy of this rule. Inmates may review their documents in an area designated by the warden. Sealed or restricted documents may not be retained by the inmate, nor reviewed in the presence of another inmate.

3. **Post Sentencing Non-Custodial Defendants.** Any defendant whose case is concluded and is not in custody must obtain a court order to receive copies of restricted documents.

D. Serving Restricted or Sealed Documents. If the Clerk of Court or a party need to serve sealed or restricted documents on an inmate, they must follow the procedure outlined in Section C.2 of this rule.

LR 57.11 MAGISTRATE JUDGE DUTIES

A. General Designation. In every criminal case, the court designates the magistrate judge assigned to the case to perform the following duties authorized by 28 U.S.C. § 636:

1. Hear and determine any pretrial matter pending before the court, except a motion to dismiss or quash an indictment or information by the defendant, or to suppress evidence in a criminal case;

2. Conduct hearings, including evidentiary hearings, and submit to the district judge proposed findings and recommendation for the disposition of:

    (a) dispositive pretrial matters such as to dismiss or quash an indictment or information by the defendant, or to suppress evidence in a criminal case;

    (b) applications for posttrial relief made by individuals convicted of criminal offenses.

3. In accordance with 18 U.S.C. § 3401, with respect to misdemeanors committed within the district:

    (a) try a defendant accused of, and sentence a defendant convicted of, a petty offense (Infractions, Class C misdemeanors, and Class B misdemeanors); and

    (b) with the defendant's consent, try a defendant accused of, and sentence a defendant convicted of non-petty offenses (Class A) misdemeanors.

4. Conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and submit to the district judge proposed findings of fact and recommendations for such modification, revocation, or termination by the district judge.

5. Serve as a special master upon consent of the parties in civil cases.

6. Preside over allocution and change of plea proceedings in felony criminal cases upon consent of the parties and submit to the district judge proposed recommendations for de novo review.

B. Specific Designation. The district judge assigned to a case may specifically designate a magistrate judge to perform any of the duties authorized by 28 U.S.C. § 636(b). In performing the designated duties, the magistrate judge must conform to the Local Rules and the instructions of the district judge.

LR 57.12 COURT SECURITY OFFICER DUTIES

When a petit jury has been selected but before deliberations begin, court security officers shall, upon request, escort jurors outside the building provided they remain on courthouse property.

When a petit jury is sequestered to begin deliberations, court security officers shall collect and secure all cellphones and other electronic devices belonging to jurors until such time as the jury has reached a verdict, at which time such devices shall be returned to their owners.

LR 57.14 FORMER LAW CLERKS

An attorney who is a former law clerk to a judge of this Court is prohibited from acting as counsel of record in a case assigned to that judge or otherwise appearing before that judge (a) at any time in any case that was assigned to that judge during the former clerk's tenure with the judge, and (b) in any case for a period of one year following the termination of the law clerk's services.

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.