CRIMINAL
LOCAL RULES OF PRACTICE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

May 2011

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, Pennington, Perkins, and Shannon.

The place of holding court is Rapid City.

INDIVIDUAL CALENDARS

The court operates on an individual calendar system. In a division with more than one judge assigned to it, cases are assigned on a random basis. Each judge in service assumes responsibility for the cases, both civil and criminal, assigned to him/her. The chief judge will assign 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 the clerk of court at Sioux Falls, Rapid City, or Pierre, 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; SCOPE

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

R. 3 now makes clear that the submission of a complaint to a judicial officer need not be done in person; may instead be done by phone or other reliable elec. means

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 entertaining 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 entertaining 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. Contacts 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. Contacts 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 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 with the clerk of court. A plea agreement supplement must also be filed with the clerk of court 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.

B. Petition to Plead. The lawyer for the defendant may file with the clerk of court a written petition to plead and the factual basis statement.

LR 12.1 MOTION, NOTICE, AND REQUEST DEADLINES

A. Refer to each judge's Scheduling and Case Management Order for guidelines on deadlines for all motions, notices, and requests.

B. Requests for discovery or for 404(b) evidence should be entitled as a request and not a motion.

LR 16.1 DISCOVERY

Certification Required. A party filing a motion concerning a discovery dispute will file a separate certification describing the good faith efforts of the parties to resolve the dispute.

LR 17.1 SUBPOENAS AND WRITS

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

hearing or trial at which the witness is to testify, and a subpoena for a hearing or trial to be served outside of the district by the United States Marshals Service must be requested at least 21 calendar days before the hearing or trial at which the witness is to testify. Service of a subpoena requested after these deadlines is not guaranteed.

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.

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 under seal 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 CONTACT WITH JURORS

None of the parties or their lawyers or anybody acting on their behalf may contact jurors after a trial until the jurors have completed their term of service as jurors. Upon request, the court may order exceptions to this rule in various instances, including, but not limited to, the instance of a hung jury.

LR 28.1 INTERPRETERS

A. Responsibility for Obtaining. When interpreters are required in criminal proceedings, the clerk of court will obtain the services of certified or otherwise qualified

interpreters for all court proceedings. For all other purposes, a party requiring the services of an interpreter must obtain his/her own interpreting services. If the defendant is indigent, prior court approval to hire an interpreter is required if the cost for the interpreter exceeds $500.

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. 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, but where the jury has a question, the judge generally 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 HEARINGS; DISCLOSURE OF CONFIDENTIAL RECORDS MAINTAINED BY THE UNITED STATES PROBATION OFFICE

A. Sentencing Hearings. 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 may be included in a party's sentencing memorandum.

B. Disclosure of Confidential Records Maintained by the United States Probation Office. Unless specifically authorized by this rule or by federal law, no confidential records of the court maintained by the United States Probation Office ("USPO") will be disclosed except by permission of a federal judge of the district where the records are maintained.

1. Confidential Records. Confidential records of the court maintained by the USPO include records of an accused or defendant pertaining to the following: (a) pretrial supervision, release, or detention; (b) mental, drug, alcohol, or physical evaluations or treatment; (c) presentence investigations; (d) sentencings; (e) incarceration; (f) parole; (g) probation; and (h) supervised release. Unsealed USPO records maintained in the files of the clerk of court are not confidential records for purposes of this rule.

2. Subpoena or Other Judicial Process. If the USPO receives a subpoena, other judicial process, or a request for records for disclosure of confidential court records, the USPO must seek instructions from the court before responding to the subpoena or other judicial process.

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 miscellaneous 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 this Court. The bar of this court will consist 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 will be 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 by section B may apply for admission to the bar of this court. The application sequence is as follows:

1. Applicants must complete a written application for admission in the division of their residence or in the division where the trial of a case in which they are counsel will be heard. Forms are available from the clerk of court or on the court's website.

2. Applicants must consent to an inquiry concerning their fitness and qualifications for admission. Submission of the completed application for admission will be considered such 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 district judges in this district must approve each applicant before an applicant may be admitted.

5. The clerk of court will report to the active judge in the division in which the application for admission is filed the approval or disapproval of the other active judges.

6. When the approval or disapproval of the application is recorded, the applicant will be notified of the results.

7. Applicants approved will have a day and time scheduled for their admission ceremony.

8. Applicants for admission will appear in person for the admission ceremony with a member of this bar who will vouch for their legal qualifications, integrity, and good moral character of the applicant. Upon oral motion of a member of the bar, taking the prescribed oath, signing the roll of attorneys in the clerk of court's office, 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:

> You do solemnly swear (*or* affirm) that you will support and defend the Constitution of the United States and that you will faithfully demean yourself as an attorney and officer of this court, uprightly and according to law, with all good fidelity to your clients, as well as to the Court. SO HELP YOU GOD. (*or,* If so, please say, "I do.")

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 attorney in good

standing of the bar of this court. Applicants for pro hac vice admission will disclose any prior or pending disciplinary actions in their application.

The associated attorney in this court (local counsel) will sign all documents filed and will continue in the case unless another attorney admitted to practice in this court has been substituted. The attorney admitted to practice in this court will be present during all court proceedings (which include telephone or video conference hearings) in connection with the case, unless otherwise ordered, and will have full authority to act for and on behalf of the client in all matters, including pretrial conferences as well as trial or any other hearings. It will be sufficient to make service of any motion, pleading, order, notice, or any other paper upon the attorney admitted to practice in this court who will assume responsibility for advising the pro hac vice attorney of any such service.

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

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 is required to 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;
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 prepayment of fees,

to practice in this court during the pendency of the case 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. Disbarment and Discipline.

1. Any member of the bar of this court who has been suspended or disbarred from the State Bar 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. The member may thereupon be afforded the opportunity upon notice to show good cause within 21 calendar days why there should be no disbarment or suspension. Upon the member's response to the order to show cause, the member will be entitled to a hearing or, upon the expiration of 21 calendar days if no response is made, the chief judge will enter an appropriate order.

2. Any member of the bar of this court may be disbarred, suspended from practice for a definite time, or reprimanded for good cause shown, after opportunity has been afforded such member to be heard.

3. All applications for the disbarment or discipline of members 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 applications unless the attorney against whom the disbarment or disciplinary proceedings are brought states in writing or in open court the member's willingness to proceed before one district judge.

4. 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 Attorney Admission Fund.

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 will enter an order setting a date for the hearing on said petition on notice of not less than 21 calendar days. The petitioner will cause a copy of said petition and order for hearing to be served on the investigator who will be in attendance on the date of said hearing. The investigator 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 the supervision and in the presence of an attorney of the U.S. Attorney's Office or the Federal Public Defender's Office may 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, meets the requirements above, and is qualified to serve as a legal intern. The certificate will be the 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 will be in a form prescribed by the court.

      iii. A notice of appearance in each case in which he or she is participating or appearing as a law student. The notice will be in the form prescribed by the court and will be signed by the 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 subdivisions (I)(2)(c)(i) and (ii) of this rule, the clerk of court will issue a certificate of admission to the law student in a form to be prescribed by the court. This certificate will expire 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 that have not been read, approved, and signed by the supervising attorney and co-signed by the law student.

5. Supervising Attorneys. Any person acting as a supervising attorney under this rule must be admitted to practice in this court and will:

   a. Assume personal professional responsibility for the conduct of the law student being supervised.

   b. Co-sign all pleadings, papers, and documents 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 45.1 ADDITIONAL TIME AFTER ELECTRONIC SERVICE

The 3-day mailing rule in Fed. R. Crim. P. 45(c) also applies to documents served electronically. (*See* Fed. R. Civ. P. 5(b)(2)(D) and Fed. R. Crim. P. 49(b).) Thus, whenever a party is required to do something

within a prescribed period after service and service is completed electronically under Local Rule 49.2, a period of 3 days is added to the prescribed period, unless contrary to the specific requirements of an order of the court.

The 3-day mailing rule applies only to deadlines precipitated by the service of a notice or other document, and does not extend other deadlines established by the Federal Rules of Criminal Procedure, the Federal Rules of Civil Procedure, a local rule, an order, or a statute.

LR 47.1 MOTIONS

A. Discovery Motions. A party filing a motion concerning a discovery dispute will file a separate certification describing the good faith efforts of the parties to resolve the dispute.

B. Motions to Seal. Any motion seeking the sealing of pleadings, motions, exhibits, or other documents to be filed in the court record will 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 will be filed by delivering the originals to the clerk of court. The documents to which the motion to seal refers will be filed under seal by the clerk of court until the court rules upon the motion.

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 will serve on opposing counsel and file with the clerk of court a brief containing the specific points of law with the authorities in support thereof on which the movant relies, including the Federal Rule of Criminal Procedure on the basis of which the motion is made. On or before 7 calendar days after service of a motion and brief, unless specifically ordered by the court, all opposing parties will serve and file with the clerk of court a responsive brief containing the specific points of law with authorities in support thereof in opposition to the motion. The movant may file with the clerk of court 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.** Pursuant to Fed. R. Crim. P. 49(b) and Fed. R. Civ. P. 5(d) receipt of Notice of Electronic Filing (NEF) that is generated by the Case Management/ Electronic Case Filing (CM/ECF) system will constitute 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, will 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 will be filed electronically subject to subsection A1. Counsel admitted pro hac vice may not file documents with the court.

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

c. **Exceptions.** Complaints, informations, indictments, criminal cover sheets, plea agreements, statements of factual basis, plea agreement supplements, juvenile pleadings, motions to seal and documents to be filed under seal, and all documents containing a defendant's original signature will be filed by delivering the original to the clerk of court.

3. **Certificate of Service.** All documents filed after a case has been initiated will be accompanied by a certificate of service reflecting how service was effectuated on all parties. The court prefers that the certificate of service appear at the end of the document rather than as a separate document

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. In addition, the name of the filer 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 or a facsimile of the filer's signature must appear in the signature block.

The typed name of the filer or the facsimile signature of the filer, in conjunction with the filer's login and password required to submit documents to the CM/ECF System serve as the filer'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 filer or other person may knowingly permit a filer's login and password to be used by someone other than an authorized agent of the filer.

Registered attorneys agree to protect the security of their login and password and

immediately notify the clerk of court if they learn that their login and password have 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; (b) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than 7 calendar days after filing; or (c) 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.

LR 49.1.1 PERSONAL DATA IDENTIFIERS IN ALL PLEADINGS AND DOCUMENTS

A. Pursuant to the E-Government Act of 2002, parties will refrain from including, or will partially redact where inclusion is necessary, the following personal data identifiers from all pleadings and documents filed with the clerk of court, 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. Parties wishing to do so may, in addition to the redacted filing, file under seal with the clerk of court either an unredacted copy of the pleading or a reference sheet containing a key to the redacted personal data identifiers. Any such filings will contain a cover sheet stating the following: "Document filed under seal pursuant to the E-Government Act." Such documents will be retained by the clerk of court as part of the record.

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 may be included in an indictment, information, or complaint if necessary to comply with the requirements of federal law. When personal data identifiers are included, the indictment, information, or complaint will be filed under seal. The attorney for the government must also file a redacted version of the sealed indictment, information or complaint to prevent public disclosure of the personal data identifiers. In all other instances, an information, indictment, or complaint will be filed under seal only upon motion of the government.

E. A federal magistrate judge or district judge may order the redacted version of an indictment, information, or complaint to be sealed temporarily. If the redacted version of an indictment, information, or complaint is ordered sealed temporarily, the clerk of court will, without further direction or order from the court, unseal the redacted version of the indictment, information, or complaint immediately after the initial appearance in the district of all of the defendants charged in the indictment, information, or complaint.

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 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 presiding judge.

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, exhibits may not be taken from the custody of the clerk of court, except upon order of the court and the execution of a receipt.

C. Custody with Offering Party. Except as provided in section D of this rule, any exhibit not suitable for filing or transmission to the appellate court as part of the appellate record must be retained in the custody of the party offering the exhibit. Such exhibits include, but are not limited to, the following:

1. "Unsafe or dangerous exhibits," as defined in section H of this rule;

2. Jewelry, liquor, money, articles of high monetary value, and counterfeit money; and

3. Documents or physical exhibits of unusual sensitivity, bulk, or weight.

Except when such an exhibit is being used in court during a trial or hearing, or is in the custody of a jury or the court during deliberations, the offering party must retain custody of the exhibit. The offering party must preserve the exhibit in an unaltered condition until 30 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 destroyed or otherwise disposed of by the party having custody of the exhibit, but only after the party gives 30 days' written notice to the attorneys of record and to any parties who appeared pro se. The party retaining custody of such an exhibit must make the exhibit available to the court and to opposing counsel for use in preparing an appeal or in connection with any post-conviction proceedings, and that 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 photographic print 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. After judgment has become final in a criminal case, exhibits left in the custody of the clerk of court may be claimed and withdrawn by the party who offered the exhibit. Any exhibits not claimed and withdrawn within 30 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, within two years after the date on which the judgment of conviction becomes final after any appeal, may be destroyed or otherwise disposed of by the clerk of court after giving 30 days' written notice to the attorneys of record in the case and any pro se parties of the clerk of court's intention to destroy or otherwise dispose of the exhibit. If a timely objection is filed, the exhibit will be destroyed or otherwise disposed of only upon an order of the court.

G. Record of Withdrawal or Destruction. A party withdrawing an exhibit must give a receipt to the clerk of court, and the receipt will be filed. Exhibits destroyed or otherwise disposed of by the clerk of court will be accounted for by a statement prepared and filed by the clerk of court showing the date such action was taken and the date notice of intention to do so was given to the attorneys of record and any pro se parties.

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 whose appearance is noted in a cause on file in this court 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 filed with the clerk of court, 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 will 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 with the clerk of court. Notice of withdrawal will be provided to the client.

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

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.