CRIMINAL
LOCAL RULES OF PRACTICE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

October 2008

CRIMINAL RULES

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

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Carlyle Richards
United States Magistrate Judge
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Aberdeen, SD 57402
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Mark A. Moreno
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Veronica L. Duffy
United States Magistrate Judge
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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. Each judge in service assumes responsibility for the cases, both civil and criminal, randomly assigned to him/her. The chief judge shall assign responsibility for cases not randomly assigned or 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 which gave rise to the original charge, the superseding indictment or information shall 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 shall 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 which may be returned or filed shall be assigned to the same judge.

LR 3.1 COMPLAINTS

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

Copies of the complaint and supporting affidavits should be delivered to the magistrate judge for his or her private review before a request is made for the magistrate judge to sign the complaint. In an emergency situation, the magistrate 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 court 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 proceed-

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

LR 7.1 PERSONAL DATA IDENTIFIERS IN ALL PLEADINGS AND DOCUMENTS

A. Parties shall refrain from including, or shall 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 shall 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's office 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.

E. All informations, indictments, or complaints will be filed under seal by the ECF system only upon motion of the government. All informations, indictments, or complaints that contain personal data identifiers must be filed under seal; the lawyer for the government is responsible for filing a motion to have such an information, indictment, or complaint filed under seal. The lawyer for the government also must file, in the public case file, a redacted version of any sealed indictment, information, or complaint modified to prevent

public disclosure of the identity of the foreperson of the grand jury or of any personal data identifiers.

F. A federal magistrate judge or district court 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 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 Federal Rule of Criminal Procedure 5 may, pursuant to Federal Rule of Criminal Procedure 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 Standing 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

Declaration Required. A party filing a motion concerning a discovery dispute shall file a separate declaration 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 magistrate 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 shall 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 shall 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 their 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 provided the title of the memorandum clearly signifies it contains a departure motion. EXAMPLE: Defendant's Sentencing Memorandum and Motion for Downward Departure.

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 magistrate judge for his or her private review before a request is made for the magistrate judge to sign the warrant. In an emergency situation, the magistrate judge may waive this requirement.

B. Lawyer for Government. Ordinarily, a law enforcement officer presenting a search warrant application to a magistrate judge should be accompanied by a lawyer for the government. If justified by unusual circumstances, a magistrate 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. Sealing of Search Warrant Documents. Search warrants, all affidavits filed in support of search warrants, and all search warrant returns will be open records, unless otherwise ordered by the court.

LR 44.1 ATTORNEYS

A. Bar of this Court. The bar of this court shall 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 shall 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. Application for admission forms are available from the clerk of court or on the court's web site at www.sdd.uscourts.gov/docs.html.

2. Applicants must consent to an inquiry concerning their fitness and qualifications for admission. Submission of the completed application for admission shall be considered such consent and a waiver of any privacy regarding the inquiry into fitness and qualifications.

3. The clerk of court's office shall 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 district judges in this district must approve each applicant before an applicant may be admitted.

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

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

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

8. The applicant for admission shall appear in person for the admission ceremony with a member of this bar who will vouch for the 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. The clerk of court shall then

issue a Certificate of Admission.

D. Oath of Admission. The following oath or affirmation shall 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 presiding judge, participate in the conduct of a particular case in this court, but such motion may be allowed only if he or she associates with a member attorney in good standing of the bar of this court. In their application for pro hac vice admission, all applicants shall disclose any prior or pending disciplinary actions.

Such member attorney (local counsel) shall sign all documents filed and shall continue in the case unless another member attorney admitted to practice in this court shall be substituted. The member attorney shall be present in court during all proceedings in connection with the case, unless otherwise ordered, and shall 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 shall be sufficient to make service of any motion, pleading, order, notice, or any other paper upon the member attorney who shall assume responsibility for advising his or her associate of any such service.

F. Government Attorneys. Attorneys admitted to practice in a district court of the United States, but who are not qualified under this rule to practice in the District of South Dakota may, nevertheless, if they are representing the United States of America, or any officer or agency thereof, or are employed by the North Dakota Federal Public Defender's Office, practice before this court in any action or proceeding in this court in which the United States or any officer or agency thereof is a party.

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 shall, upon appropriate notice from the clerk of court, be suspended from practice before this court. The member shall thereupon be afforded the opportunity upon notice to show good cause within 20 calendar days why there should be no disbarment or suspension. Upon the member's response to the order to show cause, the member shall be entitled to a hearing or, upon the expiration of 20 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 shall 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 shall 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, shall 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 shall 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, shall file and prosecute a petition requesting that the alleged offender be subjected to appropriate discipline, including disbarment, suspension, or reprimand. The investigator shall be paid from the pro hac vice fund.

H. Reinstatement of Disbarred and Suspended Attorneys.

1. An attorney who has been suspended or disbarred in this court may petition for reinstatement at any time. Upon the filing of such petition with the clerk of court, the chief judge shall enter an order setting a date for the hearing on said petition on notice of not less than 20 calendar days. The petitioner shall cause a copy of said petition and order for hearing to be served forthwith on the investigator who shall be in attendance on the date of said hearing. The investigator shall investigate the facts alleged in the petition for reinstatement and shall 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 shall sit at the hearing on said petition, and the order denying or granting reinstatement shall be made in writing by said judges.

2. An attorney who has been suspended or disbarred by the Supreme Court of the state of South Dakota and thereafter reinstated by that court to practice in the state courts shall not be permitted to practice in this court, notwithstanding such reinstatement, until a petition for reinstatement as prescribed in paragraph (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 of an attorney of the U.S. Attorney'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 eligibility requirements, and is qualified to serve as a legal intern. The certificate shall be a form prescribed by the court.

ii. A certificate in a form prescribed by the court 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.

iii. A notice of appearance in each case in which he or she is participating or appearing as a law student. Such notice shall be in the form prescribed by the court and shall be signed by the supervising attorney.

d. Be introduced to the court in which he or she is appearing by an attorney admitted to practice by 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 shall issue a certificate of admission to the law student in a form to be prescribed by the court. This certificate shall 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 a judge of this court without notice or hearing and without any showing of cause.

4. Restrictions. No new law student admitted under these rules shall:

a. Request or receive any compensation or remuneration of any kind from the client. This shall not prevent the supervising attorney, law school, public defender,

or the government from paying compensation to the law student, nor shall 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 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 shall:

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 Federal Rule of Criminal Procedure 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 three 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. Before filing a motion concerning a discovery dispute, the parties shall meet, either in person or by telephone, and attempt to resolve their differences through an informal conference. The party filing the discovery motion shall include with the motion a separate declaration describing the 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 shall include (a) proposed reasons supported by specific factual representations to justify the sealing, and (b) an explanation why alternatives to sealing would not provide sufficient protection.

LR 49.1 COPIES OF PLEADINGS AND OTHER PAPERS

A. Filing with the Clerk of Court's Office. The original and one true copy of all pleadings and other papers shall be filed with the clerk of court. It is not necessary to provide copies when documents are filed electronically.

B. Number of Copies for Filing. A sufficient number of copies of all pleadings and other papers prepared by litigants or counsel, including any papers to be signed and certified by the clerk of court, which are required for service, shall be furnished at the time of filing. Copies shall conform to the original as completely as is practicable before submission to the clerk of court.

C. Filings by Pro Hac Vice Counsel. All pleadings and other papers filed with the clerk of court by pro hac vice counsel must also be signed by local counsel.

LR 49.2 SERVING AND FILING PLEADINGS AND OTHER PAPERS

A. All papers after the information, indictment, or complaint required to be served upon a party shall be filed with the clerk of court within 10 days after service on the opposing party or parties.

B. Pursuant to Fed. R. Crim. P. 49(d) and Fed. R. Civ. P. 5(e), documents may be filed, signed, and verified by electronic means to the extent and in the manner authorized by the Case Management/Electronic Case Filing (CM/ECF) Administrative Procedures established by the court. A copy of the CM/ECF Administrative Procedures is available from the clerk of court or on the court's web site at http://www.sdd.uscourts.gov/sdecf.html. A paper filed by electronic means in compliance with this local rule constitutes a

written paper for the purposes of these local rules and the Federal Rules of Criminal Procedure.

LR 49.3 PROOF OF SERVICE

A. An attorney's certificate of service, the written admission of service by the party or the party's attorney, or an affidavit shall be sufficient proof of service of pleadings or papers under Fed. R. Crim. P. 49(a).

B. Pursuant to Fed. R. Crim. P. 49(b) and Fed. R. Civ. P. 5(d), receipt of the Notice of Electronic Filing that is generated by CM/ECF shall constitute service of pleadings or other papers on any person who has consented to electronic service. Registration as a user and the receipt of a login and password providing access to the CM/ECF system shall constitute consent to receive electronic service and as a waiver to the right to receive personal service or service by first-class mail. Any other party or parties shall be served documents according to these rules and the Federal Rules of Criminal Procedure.

LR 49.4 CERTIFICATES OF SERVICE

The certificate of service shall reflect how service was effectuated on all parties. The court prefers the certificate of service to appear at the end of the document.

LR 49.5 SIGNATURES IN DOCUMENTS FILED ELECTRONICALLY

The user login and password required to submit documents to the CM/ECF system serve as the filing user's signature on all electronic documents filed with the court. Electronically filed documents must include a signature block and set forth the name, address, telephone number, and e-mail of the filing user. In addition, the name of the filing user under whose login and password the documents are submitted must be preceded by a "/s/" and typed in the space where the signature would otherwise appear or a facsimile of the filing user's signature must appear in the signature block.

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

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 3 business 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 55.1 CRIMINAL CASE FILES AND DOCKETING

The clerk of court will retain the original paper version of all indictments, informations, and complaints for the length of time required by the Judicial Conference of the United States.

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, but only after the requesting party has made acceptable arrangements with the clerk of court to pay the costs associated with the request 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 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.