

*most recent 9/10/09*

# **LOCAL RULES OF PRACTICE**



**United States District Court  
District of South Dakota**

March 2007

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

**District Judges:**

Karen E. Schreier  
Chief Judge  
515 Ninth Street, Room 318  
Rapid City, SD 57701  
605-399-6020

Lawrence L. Piersol  
United States District Judge  
400 South Phillips Ave., Room 202  
Sioux Falls, SD 57104  
605-330-6640

Charles B. Kornmann  
United States District Judge  
102 Fourth Ave., SE, Room 408  
Aberdeen, SD 57401  
605-377-2600  
605-945-4610 (Pierre)

Andrew W. Bogue  
Senior Judge  
515 Ninth Street, Room 244  
Rapid City, SD 57701  
605-399-6050

John B. Jones  
Senior Judge  
400 South Phillips Ave., Room 303  
Sioux Falls, SD 57104  
605-330-6635

Richard H. Battey  
Senior Judge  
515 Ninth Street, Room 260  
Rapid City, SD 57701  
605-399-6040

**Magistrate Judges:**

John S. Simko  
United States Magistrate Judge  
400 South Phillips Ave., Room 220  
Sioux Falls, SD 57104  
605-330-6650

Myles J. DeVine  
United States Magistrate Judge  
P.O. Box 922  
Britton, SD 57430  
605-448-2742

Mark A. Moreno  
United States Magistrate Judge  
225 South Pierre Street, Room 413  
Pierre, SD 57501  
605-945-4620

Marshall P. Young  
United States Magistrate Judge  
515 Ninth Street, Room 312  
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605-399-6030

**Clerk:**

Joseph A. Haas  
Clerk of Court  
400 South Phillips Ave., Room 128  
Sioux Falls, SD 57104  
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**Divisional Office at Rapid City:**

515 Ninth Street, Room 302  
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225 South Pierre Street, Room 405  
Pierre, SD 57501  
605-945-4600  
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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 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 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 Civil Procedure and the conventions of the United States Judicial Conference's Local Rule Project. Generally, the number of each of the Local Rules is dictated by the number of the corresponding rule in the Federal Rules of Civil Procedure.



## **LR 1.1 SCOPE OF THE RULES**

- (A) **Title and Citation.** These Rules shall be known as the Local Rules of Practice for the United States District Court for the District of South Dakota. They may be cited as "D.S.D. CIV. LR \_\_\_\_\_."
- (B) **Effective Date and Scope of Rules.** These Rules become effective on March 1, 2007, and apply to all civil proceedings.
- (C) **Relationship to Prior Rules; Actions Pending on Effective Date.** These Rules supersede all previous rules promulgated by this Court or any judge of this Court. They shall govern all applicable civil proceedings brought in this Court after they take effect. They also shall apply to all proceedings pending at the time they take effect, except to the extent that, in the opinion of the Court, the application thereof would not be feasible or would work injustice, in which event the former rules shall govern. Any judge may establish and enforce standard operating procedures not in conflict with these local rules or the Federal Rules of Civil Procedure.

## **LR 4.1 COPIES OF PLEADINGS AND OTHER PAPERS**

- (A) **Number of Copies for Filing.** A sufficient number of copies of all pleadings and other papers prepared by litigants or counsel,

including the original summons or any other papers to be signed and certified by the Clerk, which are required for service, shall be furnished at the time of filing. The original and the copies shall conform to the original as completely as is practicable before submission to the Clerk.

- (B) **Filing with the Clerk's Office.** The original and one true copy of all pleadings and other papers shall be filed with the Clerk. It is not necessary to provide copies when documents are filed electronically.
- (C) **Filings by Pro Hac Vice Counsel.** All pleadings and other papers filed with the Clerk by pro hac vice counsel must also be signed by local counsel.

## **LR 5.1 SERVING AND FILING PLEADINGS AND OTHER PAPERS**

- (A) Subject to D.S.D. LR 26.1, all papers after the complaint required to be served upon a party shall be filed with the Clerk within 10 days after service on the opposing party or parties.
- (B) Pursuant to 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. <http://www.sdd.uscourts.gov/sdecf.html>. A copy of the CM/ECF Administrative Procedures is available from the Clerk. 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 Civil Procedure.

#### **LR 5.2 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. Civ. P. 5.
- (B) Pursuant to 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 password and log-in providing access to the 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 Local Rules and the Federal Rules of Civil Procedure. Service of the summons and complaint may not

be made electronically, but should proceed according to Fed. R. Civ. P. 4 and LR 4.1.

#### **LR 5.3 CERTIFICATES OF SERVICE**

The certificate of service shall reflect how service was effectuated on all parties.

#### **LR 5.4 SIGNATURES IN DOCUMENTS FILED ELECTRONICALLY**

The user login and password required to submit documents to the ECF System serve as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure (including Fed. R. Civ. P. 11), the local rules of this Court, and any other purpose for which a signature is required in connection with proceedings before the Court. Electronically filed documents must include a signature block and must 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 is submitted must be preceded by a "/s/" and typed in the space where the signature would otherwise appear.

No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be



used by another other than an authorized agent of the Filing User.

Documents requiring signatures of more than one party must be electronically filed either by (a) submitting a scanned document containing all necessary signatures; (b) representing the consent of the other parties on the document; (c) 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 (d) 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 5.5 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. The Court will not rule upon the motion until at least 7 business days after it is entered on the public docket to permit the filing of objections by interested parties. Materials that are the subject of the motion shall remain temporarily sealed pending a ruling by the Court. If the motion is denied, the party making the filing will be given 3

business days to withdraw the materials. If the materials are not withdrawn within 3 business days, they become unsealed.

#### **LR 7.1 PLEADINGS AND MOTIONS (ORAL ARGUMENT)**

Oral argument shall be had only upon order of the Court. Requests for oral argument shall be made by separate statement at the conclusion of the motion or response, or by any party by a separate document filed within 10 days after the filing of the motion or response.

#### **LR 7.2 MOTIONS (BRIEFS)**

**(A) Required Written Brief.** There shall be served on opposing counsel and filed with the Clerk with every motion raising a question of law, except oral motions made during a hearing or trial, a brief containing the specific points or propositions of law with the authorities in support thereof on which the moving party will rely, including the Federal Rule of Civil Procedure on the basis of which the motion is made. On or before 20 days after service of a motion and brief, unless otherwise specifically ordered by the Court, all opposing parties shall serve and file with the Clerk briefs containing the specific points or propositions of law with authorities in support thereof in

opposition to that motion. The movant may file with the Clerk a reply brief within 10 days after service of the brief in opposition.

- (B) Page Limitation on Briefs.** Briefs and any attachments other than documentary evidence attached in accordance with D.S.D. LR 56.1(A) shall not exceed 25 pages unless prior approval has been obtained from the Court.

### **LR 7.3 ATTACHMENTS TO MOTIONS**

A party must 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 must be clearly and prominently identified as such. Highlighting 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 or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane. The Court may require parties to file additional excerpts or the complete document.

### **LR 8.1 PUBLIC ACCESS TO CERTAIN CASE INFORMATION**

- (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, 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) Names of minor children.  
Only the initials of the child 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.
- (B)** Parties wishing to do so may, in addition to the redacted filing, file under seal with the Clerk 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 Court as part of the record.
- (C)** The responsibility for redacting these personal identifiers rests solely with counsel and the



parties. The Clerk's office will not review each filing for compliance with this rule.

#### **LR 10.1 IDENTIFICATION**

A paper or pleading presented shall plainly show the caption of the case, a description or designation of the contents, and on whose behalf the same is offered for filing. All papers presented after the initial pleading must bear the file number assigned to the case. All pleadings must be signed. Names, addresses, telephone numbers, email addresses, and facsimile numbers shall be typed or printed under all signatures.

#### **LR 15.1 MOTIONS TO AMEND PLEADINGS**

In addition to other requirements of these Local Rules, any party moving to amend documents shall file a copy of the proposed amended pleadings with the motion, with the proposed additions highlighted in bold face and the proposed deletions redlined. If the Court approves the filing of amended documents, the moving party shall file the amended documents with the Clerk without highlighting or redlining within 5 business days.

#### **LR 16.1 SCHEDULING CONFERENCES**

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

- (1) All appeals under the Administrative Procedures Act.
- (2) Bankruptcy Appeals and Withdrawals.
- (3) Condemnation Actions.
- (4) Foreclosures.
- (5) Deportation Actions.
- (6) Equal Access to Justice/Fee Award Appeals.
- (7) Forfeiture and Statutory Penalty Actions.
- (8) Freedom of Information Actions.
- (9) Government Collection Actions.
- (10) Judgments/Actions to Enforce or Register.
- (11) Prisoner actions to vacate sentence, for habeas corpus, or mandamus and for

prisoner actions brought under 42 U.S.C. § 1983.

(12) Selective Service Actions.

(13) Social Security Reviews.

(14) Summons/subpoenas—  
Proceedings to enforce/  
contest government and  
private party depositions.

#### **LR 26.1 FILING OF DISCOVERY MATERIALS**

- (A) Pursuant to Fed. R. Civ. P. 5(d), depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall not be filed with the Clerk.
- (B) Fed. R. Civ. P. 26(a)(1) and (2) materials shall not be filed with the Clerk unless otherwise ordered by the Court.
- (C) Any portions of discovery materials necessary for the disposition of any motion filed with the Clerk (with relevant portions highlighted) shall be either attached as an exhibit to the party's brief in support of such motion, or attached to the party's affidavit filed with the brief.
- (D) If any party designates any or all of any deposition as evidence to be offered in the trial of any case, such deposition shall be filed with

the Clerk at the same time as that party's designation.

- (E) Depositions used by a party only for the purpose of contradicting or impeaching the testimony of deponent as a witness, pursuant to Fed. R. Civ. P. 32(a)(1), shall not be filed unless otherwise ordered by the judge presiding at the hearing or trial.

#### **LR 26.2 PRESERVATION AND DISPOSAL OF DEPOSITIONS**

- (A) All depositions which have been read or offered into evidence by agreement of parties, or at the trial or submission of the case to the Court, shall become a permanent part of the file.
- (B) After the ultimate conclusion of the case, depositions not offered or received into evidence may be withdrawn by the parties taking the deposition. All unclaimed depositions may be disposed of by the Clerk after giving 30 days' notice to the attorneys of record of the Clerk's intention to do so.

#### **LR 26.3 MEETING OF PARTIES**

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



**LR 29.1 STIPULATIONS  
MADE IN OPEN  
COURT OR WRITING**

No stipulation, agreement, or consent between or among parties or their attorneys in respect to any proceeding in this Court shall be binding unless made in open court and entered in the minutes or reduced to writing and subscribed by the parties or their attorneys. Such stipulation or agreement relating to changing the place of trial, continuing cases to a later date, extending time to answer or otherwise plead, or setting any matter down for hearing, shall not be binding unless an order of the Court be made.

**LR 37.1 CONDITIONS FOR  
DISCOVERY MOTIONS**

No objection to interrogatories, or to requests for admissions, or to answers to either or relating to other discovery matters shall be heard unless it affirmatively appears that counsel have met, either in person or by telephone, and attempted to resolve their differences through an informal conference. Counsel for the moving party shall call for such conference before filing any motion relating to discovery matters. At least 3 business days prior to the hearing, or sooner as the Court may require, the counsel for the parties or the parties shall file a statement setting forth the matters upon which they have been unable to agree, together with briefs in support

of or in opposition to their respective contentions.

**LR 39.1 TRIALS**

- (A) Opening Statements in Jury Trials.** After a jury has been selected and sworn, the party upon whom rests the burden of proof may briefly, and without argument, make an opening statement to the jury. Thereafter, the adverse party may briefly, and without argument, make an opening statement to the jury.
- (B) Number of Counsel.** On the trial of any action only one counsel per party shall be permitted to examine or cross-examine each witness, and not more than two attorneys per party shall sum up the case to the jury, unless the Court shall otherwise order. The moving party shall be heard first followed by the respondent's argument. The movant may reply, confining any remarks to the points first stated and a pertinent answer to respondent's argument. Thereafter, discussion on the question shall be closed unless the Court requests further argument.

**LR 40.1 CONTINUANCES**

- (A) Consent of Parties Required.** In no event shall a case be continued without the approval of the Court. Unless the Court shall deem it



unnecessary, any party seeking a continuance shall do so by motion, which shall include the affidavit of the party seeking the continuance or of some person who knows the facts upon which the application is founded. The affidavit shall contain the grounds for the continuance. If the continuance is sought because of the absence of a material witness, the affidavit must show that the party applying for the continuance has a valid cause of action or defense and has used due diligence to prepare for trial, the nature and kind of diligence used, the names and residences of absent witnesses, and the substance of the testimony expected to be given by such witnesses.

**(B) When Witness Absent.** Unless, in the opinion of the Court, justice shall require it, the trial will not be continued or postponed on account of the absence of a witness if the adverse party will admit that the witness, if present, would testify as stated in the affidavit; but in such case, the applicant may read the testimony of such witness as stated in his affidavit, subject to all proper objections which might be interposed if the witness were present. Every continuance or postponement granted upon application shall be upon such terms as the Court may impose.

#### **LR 43.1 TRIAL EXHIBITS**

**(A) Custody of Clerk.** All exhibits offered and received in evidence shall be delivered to the Clerk for filing and shall remain in the custody of the Clerk as part of the record in the case. Exhibits that are offered but refused may be delivered to the Clerk for filing at the option of the party making the offer, unless the Court shall require that such be filed. Before judgment in a case becomes final, exhibits filed in the case may not be taken from the custody of the Clerk without an order of the Court and certified copies of such original exhibits being filed in lieu of the originals. The party withdrawing the original exhibits shall pay to the Clerk any costs incurred.

**(B) Withdrawal or Disposal After Judgment Becomes Final.**

- (1) Civil Cases. After a judgment has become final, or the time for appeal has elapsed, exhibits and items of evidence shall be claimed by the party to whom they belong. Any exhibits or evidence not claimed and withdrawn within 60 days after the ultimate conclusion of a judgment may be destroyed or otherwise disposed of by the Clerk after giving 30 days' notice to the

attorneys of record of the Clerk's intention to do so.

- (2) Record of Withdrawal or Disposal. A receipt specifying the exhibits and items of evidence shall be obtained from the party withdrawing them, and the receipt shall be filed in the case. Exhibits or evidence destroyed or otherwise disposed of by the Clerk shall be accounted for by a statement prepared and filed in the case by the Clerk, stating the date such action was taken and the date notice of intention to do so was given to the attorneys of record.

#### **LR 47.1 EXAMINATION OF JURORS**

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

#### **LR 47.2 QUESTIONING OF JURORS AFTER TRIAL**

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. The Court may order exceptions to this rule in various instances, including but not limited to, the instance of a hung jury.

#### **LR 48.1 NUMBER OF JURORS**

In all civil jury cases, the jury shall consist of not less than six members nor more than twelve members, to be determined by the Court.

#### **LR 51.1 INSTRUCTIONS**

**(A) Required Pretrial Filing of Instructions.** Each party shall file with the Clerk, as ordered by the Court, all proposed substantive jury instructions which reasonably can be anticipated in advance of trial. In all civil cases, each party shall submit a "statement of the case" instruction.

**(B) Form of Instructions.** All proposed instructions shall identify the party submitting the instruction and specifically cite the authority or authorities upon which it is based.

**(C) Service of Instructions.** Copies of such proposed instructions shall be served on all parties.

#### **LR 53.1 ALTERNATIVE DISPUTE RESOLUTION**

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



## **LR 54.1 TAXATION OF COSTS**

- (A) Procedure.** Before costs may be taxed, the prevailing party entitled to recover costs shall file a verified bill of costs within 30 calendar days after entry of judgment or an order of dismissal. Proof of service of a copy upon the party liable for costs shall be endorsed thereon. Opposing counsel may within 10 business days thereafter file with the Clerk exceptions to the costs or any specific item therein.

The Clerk may then tax costs and, upon allowance, the costs shall be included in the judgment or decree. The action of the Clerk may be reviewed by the Court, on motion of either party, served within 7 business days after the Clerk enters costs.

- (B) Default.** In a default case, the Clerk may tax costs as matter of course without notice.
- (C) Attorney's Fees.** In any case in which attorney's fees are recoverable under the law applicable to that case, a motion for attorney's fees shall be filed with the Clerk with proof of service within 30 calendar days after the entry of judgment or after an order of dismissal under circumstances permitting the allowance of attorney's fees, except as provided under the Equal Access to Justice Act, when the motion shall be filed

within 30 days of "final judgment" as defined under the EAJA.

Objections to an allowance of fees must be filed within 20 calendar days after service on the party against whom the award of attorney's fees is sought. The Court will then determine the appropriate attorney's fees, if any, without further hearing, unless in the Court's opinion a hearing is needed to resolve serious factual disputes between the parties.

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

The movant shall attach to the motion an affidavit setting out the time reasonably spent in the litigation and any factual matters pertinent to the motion for attorney's fees. The respondent may by counter affidavit controvert any of the factual matters contained in the motion and may assert any factual matters bearing on the award of attorney's fees.

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

**LR 56.1 MOTION FOR  
SUMMARY JUDGMENT**

- (A) Moving Party's Required Statement of Material Facts.** All motions for summary judgment shall be accompanied by a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Each material fact shall be presented in a separate numbered statement with an appropriate citation to the record in the case.
- (B) Opposing Party's Required Statement of Material Facts.** A party opposing a motion for summary judgment shall respond to each numbered paragraph in the moving party's statement with a separately numbered response and appropriate citations to the record. A party opposing a motion for summary judgment shall identify any material facts as to which it is contended that there exists a genuine material issue to be tried.
- (C) Use of Documentary Evidence.** A party shall attach all relevant documentary evidence in support of or against a motion for summary judgment to an affidavit. The evidence shall be submitted with proper highlighting as encouraged by LR 7.3.

**(D) Effect of Omission: Sanction.**

All material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by the statement required to be served by the opposing party.

**LR 58.1 MANDATE**

Upon receipt of a mandate from an appellate court, the Clerk shall forthwith file and enter the same of record. The Clerk shall serve a notice of the entry by mailing a copy of the mandate to the respective parties affected thereby and shall make a note of the mailing in the docket. In the event that the mandate provides for costs or directs a disposition other than an affirmance, the prevailing party shall submit an order to this Court in conformity with said mandate.

**LR 65.1 MOTIONS FOR  
PRELIMINARY AND PERMANENT  
INJUNCTION**

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



### **LR 67.1 REGISTRY FUND**

It shall be the responsibility of any party seeking an order of the Court for the deposit of funds pursuant to Fed. R. Civ. P. 67 to prepare such an order for the signature of the Court and to serve the same upon the Clerk of this Court.

### **LR 68.1 SETTLEMENT**

The deadline for settling civil cases shall be the close of business hours 10 business days prior to the date set for trial, unless otherwise ordered by the Court. In any case settled after the deadline, the Court may impose sanctions including, but not limited to, the costs of assembling and empaneling the jurors, on the parties or counsel for violation of this Local Rule.

### **LR 77.1 OFFICE OF THE CLERK**

- (A) Official Station.** The official station of the Clerk of the Court shall be at Sioux Falls.
- (B) Deputy Stations.** Deputy Clerks of Court, in such numbers as may be required, shall be stationed at Sioux Falls, Pierre, and Rapid City.

### **LR 83.1 MEDIA COVERAGE**

No camera or other picture-taking device, radio or television broadcasting equipment, or voice-recording instrument, whether or not court actually is in session, shall be brought

into any federal court building or place of holding proceedings before a United States District Judge or Magistrate Judge in this district for use during the trial or hearing of any case, or proceeding incident to any case, or in connection with any session of the United States grand jury. This rule, however, shall not apply to official court reporters in attendance at any trial, hearing, or proceedings and where, in connection with the duties of such court reporters, a voice-recording instrument is used.

### **LR 83.2 ATTORNEYS**

- (A) Bar of the 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 shall be as follows:
- (1) Applicants must complete a written application 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.

- (2) Applicants must consent to an inquiry concerning their fitness and qualifications for admission. Submission of the completed admission application shall be considered such consent and a waiver of any privacy.
- (3) The Clerk'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 active judges in this district must approve each applicant before an applicant may be admitted.
- (5) The Clerk'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 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 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's office, and paying the required fee, the applicant will be admitted. The Clerk 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.

**(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 in good standing of the Bar of this Court. Such member (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, 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 may thereupon be afforded the opportunity upon notice to show good cause within 20 calendar days why there should be no disbarment. 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 Court 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 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 judge.
- (4) It shall be the duty of the United States Attorney, under direction of this Court, to investigate charges against any member of this Bar. If, as a result of the investigations, the United States Attorney shall be of the opinion that there has been a breach of professional ethics by a member of this Bar, the United States Attorney, 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. Such duties may, with approval of a majority of the

judges, be delegated to any member of the Bar of this Court approved by them.

**(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, 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 United States Attorney who shall be in attendance or cause an Assistant U.S. Attorney to be present, on the date of said hearing. The United States Attorney 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 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 in addition 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.

**(I) Law Students.**

- (1) Student Practice. Any law student acting under a supervising attorney shall be allowed to make an appearance and participate in proceedings in this Court pursuant to these rules.
- (2) Eligibility. To be eligible to appear and participate, a law student must:
- (a) Be a student in good standing in a law school approved by the American Bar Association.

- (b) Have completed legal studies amounting to four semesters or the equivalent if the law school is on some basis other than a semester basis.

- (c) File with the Clerk of Court:

- (i) A certificate by the dean of the law school that he or she is of good moral character and possesses the above 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 and client.

- (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 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 83.3 ASSIGNMENT OF OFFICIAL REPORTERS**

The Court appoints qualified persons to permanent positions as official reporters, and these official reporters serve at the discretion of the Court, are not assigned to specific judges, and their tenure is not affected by a change in status of a specific judge.

### **LR 83.4 FORM OF PAPERS**

All papers or pleadings must be on 8½ x 11 inch paper. The text must be double-spaced, but quotations more than two lines long shall be indented and single-spaced. Headings and

footnotes shall be single-spaced. Margins must be at least one inch on all four sides. Fonts must be at least 12-point. To ease the scanning process, all papers or pleadings submitted to the Clerk for filing should not be stapled at the top. Papers not in the required form will not be filed without leave of the Court. Exhibits attached to pleadings shall be similarly typewritten, printed, or otherwise reproduced in clear, legible, and permanent form.

### **LR 83.5 REMOVAL OF FILES OR WITHDRAWAL OF PAPERS**

**(A) Temporary Removal.** No file, or pleading, or paper belonging to the files of the Court shall be taken from the office or custody of the Clerk except upon order of the Court made after a showing of good cause and specifying the time within which the same shall be returned to the Clerk. A receipt for files so taken shall be delivered to the Clerk by the party removing the same.

**(B) Permanent Withdrawal.** Upon such terms as the Court may order, a party may permanently withdraw a paper or record from the files.

### **LR 83.6 CLERK'S FEES**

#### **(A) Filing Fees.**

- (1) Actions. Except in seaman's suits, any party commencing

any civil action, suit, or proceedings, whether by original process, removal, or otherwise, shall pay to the Clerk the statutory filing fee before the case will be filed and process issued thereon. (28 U.S.C. § 1914).

- (2) Appeals. Upon the filing of a separate or joint notice of appeal or application for an appeal or upon the receipt of an order allowing, or notice of the allowance of an appeal or of a writ of certiorari, the statutory fee shall be paid to the Clerk of the District Court by the appellant or petitioner. (28 U.S.C. § 1917).

- (3) Habeas Corpus. Upon the filing of a petition or application for a writ of habeas corpus, the petitioner or applicant shall pay to the Clerk the statutory filing fee. (28 U.S.C. § 1914).

**(B) Miscellaneous Fees.** The Clerk shall collect from parties such additional fees only as are prescribed by the Judicial Conference of the United States and prepayment of such fees may be required by the Clerk before furnishing the service therefor.

**(C) Refusal to File by the Clerk.** The Clerk is authorized to refuse to docket or file any suit or

proceeding, writ, or other process, or any paper or papers in any suit or proceeding until the required filing fees are paid, except as otherwise ordered by the Court in proceedings in forma pauperis. (28 U.S.C. § 1914(c)).

**(D) Citation for Non-Payment.** If any fees or costs are due and payable to the Clerk or United States Marshal, and remain unpaid after demand therefor, the Court may issue its citation to the party, or to counsel for the party, to show cause why such fees or costs should not then and there be paid.

#### **LR 83.7 MARSHALS FEES**

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

**(B) Form 285.** Every party requesting the United States Marshal to serve any process, including an original summons, must furnish with every process delivered to the Marshal an executed United States Marshal Form 285. Said forms are available in the U.S. Marshals Service district office or in the Clerk's office.



**LR 83.8 WITHDRAWAL 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, provided that said substitution takes place 90 or more days in advance of trial, the substitution contains a certificate by substituted counsel, and the substitution shall not delay the trial or other progress of the case. The Notice of Withdrawal and Substitution shall set forth the name and address of the substituted and withdrawing counsel. Withdrawal under this section shall be effective upon filing a Notice of Withdrawal and Substitution with the Clerk. The Notice shall be served on all counsel of record and the judge to whom the case is assigned simultaneously with the District Court filing.

**(C) Withdrawal Without**

**Substitution.** Withdrawal without substitution may be granted only by a motion made before the Court, for good cause shown.

Notice of the motion shall be provided to the client, and the motion shall be scheduled in accordance with LR 7.1.