

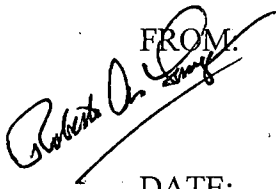
**UNITED STATES DISTRICT COURT
District of South Dakota
400 South Phillips Avenue
Sioux Falls, South Dakota 57104**

ROBERTO A. LANGE
Chief United States District Judge

Phone 605-330-6660
roberto_lange@sdd.uscourts.gov

MEMORANDUM EXPLAINING DSD'S PROPOSED LOCAL RULE CHANGES

TO: Eighth Circuit Judicial Counsel Rules Committee

FROM:  Chief Judge Roberto A. Lange with the approval of Judge Eric Schulte, Judge
Camela Theeler, Senior Judge Karen E. Schreier, Senior Judge Lawrence L. Piersol,
and Senior Judge Charles B. Kornmann

DATE: January 24, 2025

The District of South Dakota reviews its local rules periodically. The most recent review, which began in early 2024, resulted in proposed changes approved by the district judges in September. They were sent to the District of South Dakota's Federal Practice Committee for consideration in October and were discussed and reviewed when the Committee met in November. The proposed rule changes were posted on the Court's website on November 21, 2024, and await consideration by the Eighth Circuit Judicial Counsel Rules Committee.

The proposals include ten changes to the civil local rules and eleven changes to the criminal local rules. They also include minor civil and criminal non-rule changes, most of which are updated addresses. In the civil non-rule changes, the first sentence under Divisions of District of South Dakota "for purposes of case assignment" was struck since civil cases are now randomly assigned district-wide.

Civil Local Rule Changes

1. 5.1 (Highly Sensitive Documents)

Three years ago, we adopted a standing order at the urging of the Administrative Office of the United States Courts to protect highly sensitive documents (HSDs) from security threats to CM/ECF. In 2022, we incorporated the terms of numerous standings orders, including this one, into our local rules. On April 15, 2024, the Committee on Administration and Court Management (CACM) adopted revised guidance, which includes a standardized HSD definition. This proposal replaces much of the existing language found in Section F.1 with the new HSD definition.

2. 7.1.1 (Disclosure Statement)

This proposal brings our local rule into conformity with the federal rule by striking the last sentence thereby defaulting to the time limit contained in Fed. R. Civ. P. 7.1 (“A party, intervenor, or proposed intervenor must . . . file the disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court”).

3. 15.1 (Motions to Amend or Supplement Pleadings)

This rule was changed to include supplements. We found that particularly pro se litigants were avoiding this rule by characterizing their new pleading as a “supplement” rather than as an amended complaint.

4. 39.2 (Witness List)

Witness lists were being filed in some divisions but not others. This new rule requires each party to file a sealed witness list by noon on the last business day before a trial unless otherwise ordered.

5. 43.1 (Exhibits)

The current rule contemplates that parties will move to seal exhibits when they are offered and/or received. Experience has taught us that counsel often forget to do so. This proposal adds a new section (B.2.c.) that establishes a procedure for documentary exhibits to be sealed when a trial or hearing is concluded. It places the burden on the successful movant to refile public exhibits.

6. 83.2 F.1 (Attorneys)

This change was requested by the Federal Public Defender. It allows for the provisional admission of attorneys on a term fellowship with the United States or the Federal Public Defender for the period of the fellowship.

7. 83.4 (Redactions)

The Federal Practice Committee proposed adopting a local rule requiring uniform redactions. The Clerk’s Office drafted revisions to this rule and Crim. LR 57.9 in response. Both provide that “[I]f it is necessary to redact documents produced pursuant to discovery and/or filed with the court, redactions must be made in black, making it clear that information was removed.”

8. 83.9 (Procedures in Social Security Cases)

In January 2024, we began randomly assigning civil cases to judges on a district-wide basis. Consistent with this practice, we have amended section B. Under the change, if either party asks to have a district judge assigned in a Social Security case, it will be randomly assigned.

9. 83.11 (Assignment and Referral of Cases)

This new rule is consistent with the practice that began in January of 2024 randomly assigning district judges to civil cases.

10. 83.12 (Former Law Clerks)

This new rule prohibits an attorney who was a former law clerk to a judge of this Court from appearing before that judge for a period of one year.

Criminal Local Rule Changes

1. 12.4 (Disclosure Statement)

See explanation for Civ. LR 7.1.1 (striking the last sentence, thus defaulting to time limit in Fed. R. Crim. P. 12.4 (“A party must . . . file the Rule 12.4(a) statement within 28 days after the defendant’s initial appearance”).

2. 17.1 (Subpoenas and Writs)

We recently amended Crim. LR 17.1 to encourage counsel seeking subpoenas and writs to be served by the United States Marshals Service to attach a prepared AO 89 form or AO 89B form or a proposed writ. The amendment requires the attachment of a prepared subpoena or writ. Both forms are available on the Court’s website.

3. 26.1 (Witness List)

See explanation for proposed Civ. LR 39.2.

4. 44.1 F.2 (Attorneys)

See explanation for Civ. LR 83.2 F.1.

5. 47.1 (Motions)

This change corrects a run on sentence in Section C.

6. 49.1 (Highly Sensitive Documents)

See explanation for changes to Civ. LR 5.1.

7. 57.3 (Exhibits)

See explanation for Civ. LR 43.1.

8. 57.7 (Trial Appearance)

It recently came to our attention that a defendant must move to wear civilian clothing at a criminal court trial. This change strikes the word “jury” thereby making the rule applicable in all criminal trials.

9. 57.9 (Redactions)

See explanation for Civ. LR 83.4.

10. 57.10 (Access to Criminal Documents)

This rule was amended in 2022 to impose an obligation on prosecutors to identify cooperating witnesses *prior* to eliciting their testimony and requires the preparation of two transcripts: a restricted transcript and a public transcript that excludes the identity of cooperating witnesses. Although seldom invoked by prosecutors, the change has been burdensome for court reporters, in one instance creating 20 hours of additional work and in another 12 additional hours. For instances, the method of exclusion and reference (NR1, etc.) changes the pagination of the public transcript. This proposal strikes section B.4 in its entirety.

We have recently seen a few cases where the Government waited until *after* trial and filed a motion to redact cooperator testimony. Both motions were granted. This is the preferred method of addressing cooperator testimony as it does not impact pagination and takes significantly less time.

11. 57.13 (Former Law Clerks)

See explanation for Civ. LR 83.12.