

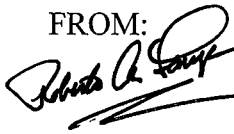
**UNITED STATES DISTRICT COURT
District of South Dakota
225 South Pierre Street, Room 413
Pierre, South Dakota 57501**

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MEMORANDUM EXPLAINING DSD'S PROPOSED LOCAL RULE CHANGES

TO: Eighth Circuit Judicial Council Rules Committee

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

DATED: February 17, 2023

The District of South Dakota strives to review its local rules periodically. The most recent review, which began last September, resulted in proposed changes approved by the district judges. They were sent to the District of South Dakota's Federal Practice Committee for consideration in October. The Committee made some suggestions, which the district judges largely adopted in November. The proposed rule changes were posted on the Court's website in December and await consideration by the Eighth Circuit Judicial Council Rules Committee.

A section on individual calendaring found near the beginning of both sets of rules has been eliminated as unnecessary. Most of the rule changes are minor. A few are substantive. Redline and clean copies are attached.

Criminal Local Rules of Practice – Tab A (redlined) and Tab B (clean)

1. Crim. L.R. 1.1

Subsection E (Assignment of Related Cases) has been revised to clarify that it does not extend beyond defendants with pending cases.

2. Crim. L.R. 6.1

This local rule expanded Fed. R. Crim. P. 6(f) to allow district judges to take grand jury returns. Now that all magistrate judges in the District are full-time, it is being stricken on the grounds that it is no longer necessary.

3. Crim. L.R. 6.2

Local rule 6.2 has been renumbered 6.1.

4. Crim. L.R. 10.1

This local rule is revised to eliminate the first paragraph, which adds nothing to its federal rule counterpart and revise what is left to clarify that defendants in felony cases are encouraged to file a written waiver of personal appearance on superseding indictments and superseding informations that do not add new counts or different charges.

5. Crim. L.R. 12.4

This is a new local rule. It requires every organizational defendant in a criminal case to file either a Corporate Disclosure Statement or a certificate that Fed. R. Crim. P. 12.4 is not applicable within 24 days of the defendant's initial appearance.

6. Crim. L.R. 16.1

Section C is new. It was prompted by changes to Rule 16 of the Federal Rules of Criminal Procedure that require both the government and the defendant in a criminal case to make the same sort of formal written expert witness disclosures long required in civil cases. Under the local rule, both sides must file written disclosures 21 days before trial. Rebuttal reports, if any, are due seven days before trial.

7. Crim. L.R. 17.1

Section A is revised to eliminate the last sentence ("This rule does not apply to defendants represented by the Federal Public Defender except for out of district subpoenas"). Under the change, all defendants unable to pay who want the United States Marshals Service to serve their subpoenas would follow the same procedure. Although the FPD can still request subpoenas over the counter for service by its investigators, it must comply with Fed. R. Crim. P. 17(b) if it wants the USMS to serve its subpoenas. The changes to Section B make clear that CJA counsel may not use private process servers or investigators to serve subpoenas for criminal hearings or trials.

8. Crim. L.R. 32.1

Section B (Confidential Sentencing Documents) is revised to require counsel or an employee of counsel to review confidential pretrial services and sentencing documents with their clients and requires their presence during any client review to "ensure that the documents are not copied, photographed, retained, or removed."

9. Crim. L.R. 44.1

Section C is amended so that in the absence of two active district judges, a senior judge may serve as the second approving judge for attorney admissions.

10. Crim. L.R. 49.1

The amendment strikes the reference to Fed. R. Civ. P. 5 and replaces it with its criminal rule counterpart.

11. Crim. L.R. 49.1.1

These are minor, stylistic and non-substantive changes.

12. Crim. L.R. 57.3

Section C clarifies that counsel has a responsibility to retain and preserve all physical exhibits, not just those offered at trial or in a hearing.

13. Crim. L.R. 57.10

This rule addresses access to criminal documents. Section C, paragraph 1 clarifies that the restrictions on attorneys reviewing restricted documents applies to all defendants, not just those in custody. Paragraph 3 is new. It addresses requests by post sentencing non-custodial defendants for access to their sealed or restricted documents and requires that they obtain a court order.

Civil Local Rules of Practice – Tab C (redlined) and Tab D (clean)

14. Civ. L.R. 5.2

These changes mirror those for Crim. L.R. 49.1.1.

15. Civ. L.R. 7.1.1

This is a new rule prompted by changes to Fed. R. Civ. P. 7.1. It requires all non-governmental organizational parties or intervenors in civil cases to file within 14 days of the party's first pleading or entry of appearance either a corporate disclosure statement or a certificate that Fed. R. Civ. P. 7.1 is not applicable.

16. Civ. L.R. 43.1

A sentence has been added to the end of Section C consistent with proposed changes to Crim. L.R. 57.3.

17. Civ. L.R. 48.1

Because this rule adds nothing to Fed. R. Civ. P. 48, it is stricken in its entirety.

18. Civ. L.R. 83.2

These changes mirror changes to Crim. L.R. 44.1 so that in the absence of two active district judges, a senior judge may serve as the second approving judge for attorney admissions.

19. Civ. L.R. 83.9

Section C of the rule on procedures in Social Security cases is amended consistent with Rule 4 of the Supplemental Rules for Social Security. Paragraph D addresses briefing and is also consistent with the Supplemental Rules.