Tammy Ludeman

From:	Matthew Thelen
Sent:	Friday, February 17, 2023 9:33 AM
To:	Millie Adams
Cc:	Roberto Lange; Ebony McCain; Lorri Brown; Girtrude Simmons; Tammy Ludeman
Subject:	The District of South Dakota proposed changes to local rules
Attachments:	Memorandum Explaining LR changes.pdf; Tab A - Proposed Criminal Local Rule Changes Redlined.pdf; Tab B - Proposed Criminal Local Rule Changes Clean.pdf; Tab C - Proposed Civil Local Rule Changes Redlined.pdf; Tab D - Proposed Civil Local Rule Changes Clean.pdf

Good morning, Millie,

Attached are the District of South Dakota's proposed civil and criminal local rule changes for consideration by the Eighth Circuit Judicial Council Rules Committee. I have also attached Chief Judge Lange's explanatory memorandum and red-line versions of the proposed local rule changes.

We published the proposed changes on our web site beginning December 15, 2022 and ending February 15, 2023.

Would you please forward the information to the Eight Circuit Judicial Council Rules Committee?

Please let me know if you or the Committee need additional information regarding our request for review.

Matt

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UNITED STATES DISTRICT COURT
District of South Dakota
225 South Pierre Street, Room 413
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ROBERTO A. LANGE
Chief United States District Judge

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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 stives 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.

CRIMINAL
LOCAL RULES OF PRACTICE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

12/08/2022

Table of Contents

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

District Judges:

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225 S. Pierre Street, Room 413
Pierre, SD 57501
605-945-4610

Karen E. Schreier
United States District Judge
400 South Phillips Avenue, Room 233
Sioux Falls, SD 57104
605-330-6670

Jeffrey L. Viken
Senior United States District Judge
Andrew W. Bogue Federal Building
and United States Courthouse
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605-399-6050

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Senior United States District Judge
102 Fourth Avenue, SE, Room 408
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Magistrate Judges:

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605-945-4601 (fax)

DIVISIONS OF DISTRICT OF SOUTH DAKOTA

The State of South Dakota constitutes one judicial district divided into four divisions for purposes of case assignment (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, Oglala Lakota, Pennington, and Perkins.

The place of holding court is Rapid City.

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

A. **Citation Form.** The local criminal rules are to be cited as "D.S.D. Crim. LR ___."

B. **Scope.** The local criminal rules govern all criminal proceedings in the District of South Dakota to the extent they are not inconsistent with any statute or law of the United States or any rule or order of the Supreme Court of the United States.

C. Modification of Local Rules by Presiding Judge. The local rules are subject to modification in any case at the discretion of the presiding judge.

D. Speedy Trials. The court's Speedy Trial Plan governs the scheduling of criminal trials. This plan may be found on the court's web site at www.sdd.uscourts.gov.

E. Assignment of Related Cases.

1. When a pending indictment or information is superseded by an indictment or information charging one or more of the defendants charged in the pending indictment or information and charging one or more of the offenses charged in the original indictment or information growing out of one or more occurrences that gave rise to the original charge, the superseding indictment or information will be assigned to the same judge to whom the first case is assigned.

2. When two or more indictments or criminal informations are filed against the same person or persons, corporation, or corporations, charging like offenses or violations of the same statute, each of such cases will be assigned to the judge to whom the first of such cases is assigned.

3. When an indictment or information is pending against a defendant, all subsequent indictments or informations against the same defendant that may be returned or filed will be assigned to the same judge. This section does not extend beyond defendants with pending cases.

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

B. Emergencies. In an emergency, a magistrate judge may be contacted away from the courthouse, including at his or her home, for purposes of considering 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 considering a proposed complaint.

LR 5.1 DETENTION ORDERS

A. Review. After a detention order is issued, a party may request reconsideration of the order based on new evidence or may appeal the order to a district judge. A party requesting review of a detention order must state in the caption whether the request is one for reconsideration or is an appeal to a district judge.

B. Appeals. A party appealing a detention order must file a written motion containing a statement of the grounds for the appeal and a statement that a transcript of the detention hearing has been ordered.

LR 6.1 CONTACT WITH GRAND JURORS

A. Contact 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. Contact 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 thatcontacts may be made on the record during grand jury proceedings and as necessary in connection with the administration of the grand jury.

LR 10.1 ARRAIGNMENT AND 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 informations that do not add new counts or different charges.

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. A plea agreement supplement must also be filed 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 in order to protect the safety of all federal defendants regardless of their cooperation with the government, and the integrity of any ongoing investigations or related prosecutions. The defendant, defendant's attorney and government attorney must sign the plea agreement, factual basis statement and supplement.

B. **Petition to Plead**. The lawyer for the defendant may file a written petition to plead with a factual basis statement, which must be signed by both the defendant and defendant's counsel.

LR 12.1 PRETRIAL MOTIONS AND REQUESTS

Scheduling and Case Management Order will set deadlines for motions, notices, and requests.

Requests for discovery or for 404(b) evidence should be filed as requests and not motions.

LR 12.4 DISCLOSURE STATEMENT

Every organizational defendant in a criminal case must file either a Corporate Disclosure Statement (disclosure statement) or a Certificate that Fed. R. Crim. P. 12.4 is not applicable (certificate of non-applicability). Information provided under this local rule may be used by the judge assigned to a case to determine whether recusal is necessary or appropriate. The disclosure statement or certificate of non-applicability must be filed within twenty-four (24) days of the defendant's initial appearance.

LR 16.1 DISCOVERY

A. **Stipulation for Entry of Discovery Order.** Within 14 days of an initial appearance, the Government and defense counsel must complete and file a joint stipulation for discovery, which can be found on the court's website. The Government is responsible for the timely electronic filing of the joint stipulation. The discovery order restricts dissemination of discovery materials and precludes defense counsel from giving discovery materials to the defendant without the court's express permission.

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

C. Expert Witness Disclosure Deadline.

1. The government and the defendant shall disclose to each other no later than twenty-one (21) calendar days before the start of trial the name of any person retained to testify as an expert witness in the case-in-chief and provide a written disclosure containing:
    a. A complete statement of all opinions that the party will elicit from the expert witness in the case-in-chief;
    b. The bases and reasons for them;
    c. The witness's qualifications, including a list of all publications authored in the previous 10 years; and
    d. A list of all other cases in which during the previous 4 years, the witness has testified as an expert at trial or by deposition.
2. Any rebuttal expert to refute testimony from a disclosed expert shall be identified with the same written disclosure provided no later than seven (7) calendar days before trial.

LR 17.1 SUBPOENAS AND WRITS

A. Subpoenas to be served by the United States Marshals Service. A defendant unable to pay must file an ex parte motion at least 14 calendar days before a hearing or trial for a subpoena to be served within the district by the United States Marshals Service. A defendant unable to pay must file an ex parte motion at least 21 calendar days before a hearing or trial for a subpoena to be served outside the district by the United States Marshals Service. All ex parte motions should be filed with an attached, prepared AO 89 or AO 89B and must include a physical address for service. The form should include the date and time it is reasonably anticipated the witness will be called to testify. Ex parte documents are not part of the public records of the court.

B. Private Service of Process Not Authorized by CJA. Unless prior approval is obtained from a judge, a lawyer appointed under the Criminal Justice Act may not use private process servers or investigators to serve subpoenas for criminal hearings or trials but must use the United States Marshals Service for such service. If a private process server is used without prior approval, service is valid but reimbursement under the Criminal Justice Act is subject to court approval.

C. Deadline for Application for Writ of Habeas Corpus Ad Testificandum. An application for a writ of habeas corpus ad testificandum to be served by the

United States Marshals Service within the district must be filed at least 14 calendar days before the hearing or trial at which the witness is to testify, and an application for a writ of habeas corpus ad testificandum to be served by the United States Marshals Service outside of the district must be filed 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 *ex parte* are 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 RESTRICTIONS ON PHOTOGRAPHING OR INTERVIEWING JURORS

A. Photographing Jurors. In order to protect the integrity and independence of jurors, no person may photograph or attempt to photograph any juror, grand or petit, without the express approval of the individual juror or the express approval of the presiding judge. This restriction also protects grand jury witnesses. No one other than a juror may photograph or otherwise record his or her motor vehicle or motor vehicle license. Leaflets or other juror information pamphlets may not be given to a juror or placed in any place where a juror might reasonably be expected to obtain the printed matter. Such action may constitute an unlawful attempt to influence, intimidate, or impede a juror or witness, in violation of 18 U.S.C. § 1503 and 18 U.S.C. § 1510.

B. Interviewing Jurors. No one may contact any juror before or during the juror's service on a case. The parties, their lawyers and anybody acting on their behalf must seek and obtain permission from the district judge who tried the case before contacting a juror after the juror served on the case.

LR 28.1 INTERPRETERS

A. **Responsibility for Obtaining**. When interpreters are required for proceedings instituted by the United States, the clerk of court will locate certified or otherwise qualified interpreters for court proceedings. However, the U.S. attorney's office is responsible for locating, contracting, and paying interpreters for government witnesses. For most other purposes, a party requiring the services of an interpreter must obtain his or her own interpreting services. If the defendant is indigent, prior court approval to hire an interpreter is required as specified in the Guide to Judiciary Policy and 18 U.S.C. § 3006A(e). If counsel for either party believes that interpreter services for court proceedings are needed for more than an hour, counsel must notify the clerk of court as soon as possible.

If participants in federal court proceedings are deaf, hearing impaired or have communication disabilities, the court will provide sign language interpreters.

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 for hearings that do not exceed an hour. 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. Where the jury has a substantive question, the judge 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

A. Sentencing Motions. Unless otherwise permitted by the court, 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 or variance may be joined with a party's sentencing memorandum.

B. Confidential Sentencing Documents. Whether filed by the U.S. Probation Office or by the parties, documents relating to the sentencing process are confidential and must not be distributed beyond the court and counsel unless otherwise ordered by the court. Pretrial services reports and related documents are also subject to these restrictions. Counsel or an employee of counsel must review confidential pretrial services and sentencing documents with their clients but may not provide copies to their clients. Clients may not review these documents unless counsel or an employee of counsel is present to ensure that the documents are not copied, photographed, retained, or removed. These documents include, but are not limited to, presentence, supplemental or predisposition reports; objections to such reports; addendums to such reports; letters of support; victim impact statements; evaluations; written allocution statements; and Rule 35 or U.S.S.G. 5K1.1 motions and materials.

C. Procedure. After a guilty plea has been accepted or a guilty verdict is received, a sentencing date will be set. Unless otherwise ordered, the following deadlines apply:

1. The Probation Office must file the draft presentence report in CM/ECF using the Draft Presentence Report event no later than 35 days before sentencing.

2. After the draft presentence report is filed, the parties will have 14 days to file and serve objections. Objections must be filed by counsel in CM/ECF using the Objections to Presentence Report event. If counsel has no objections, counsel must so indicate by using the Notice of No Objections to Presentence Report event.

3. The Probation Office must file the final presentencing report in CM/ECF using the Final Presentence Report event no later than 7 days before

sentencing using the Final Presentence Report event. An addendum setting forth any unresolved objections, the grounds for those objections, and the probation officer's response must be filed in CM/ECF on the same date using the Addendum to Final Presentence Report event.

4. Counsel must file all letters of support in CM/ECF using the Sealed Letter(s) of Support event no later than 28 days after the Draft Presentence Report is filed.

5. All other sentencing documents must be filed no later than 7 days before sentencing as follows.

   a. Motions for departure or variance or sentencing memoranda must be filed by counsel in CM/ECF using the appropriate events under Other Filings/Sealed Plea & Sentencing Related Documents.

   b. The filer must manually serve a copy of sealed sentencing documents on those case participants entitled to notice under the federal and local rules per the CM/ECF User Manual and Administrative Procedures. None of these documents should be submitted directly to the Probation Office or the Court.

LR 41.1 SEARCH AND SEIZURE

A. Presentation. A search warrant application ordinarily should be presented to a magistrate judge, but it may be presented to a district judge if no magistrate judge is reasonably available. If no federal magistrate or district judge is reasonably available, a search warrant may be presented to a state judicial officer.

Copies of the application, the proposed search warrant, and any supporting affidavits must be delivered to the judge for his or her private review before a request is made for the judge to sign the warrant. In an emergency situation, the judge may waive this requirement.

B. Lawyer for Government. Ordinarily, a law enforcement officer presenting a search warrant application to a judge should be accompanied by a lawyer for the government. If justified by unusual circumstances, a judge may entertain a search warrant application from an officer who is not accompanied by a lawyer for the government.

C. Emergencies. In an emergency situation, a magistrate judge may be contacted away from the courthouse, including at his or her home, for purposes of entertaining a search warrant application. If no magistrate judge is reasonably available, a district judge may be contacted away from the courthouse, including at his or her home, for purposes of entertaining a search warrant application.

D. Initial Sealing of Search Warrant Documents. When a search warrant is issued, a case is opened. The case is sealed until the warrant is returned; at which time the case is unsealed unless otherwise ordered by the court.

LR 44.1 ATTORNEYS

A. Bar of the Court. The bar of this court consists 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 is 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 in section B of this rule may apply for admission to the bar of this court. The application sequence is as follows:

1. The applicant must complete an application for admission.

2. The applicant must consent to an inquiry concerning the applicant's fitness and qualifications for admission. Submission of a completed application is consent and waiver of privacy regarding inquiry into the applicant's fitness and qualifications.

3. The clerk of court will make any inquiry that may be deemed necessary to obtain information concerning an applicant's fitness and qualifications to practice law.

4. At least two active judges in this district must approve the application before an applicant may be admitted. In the absence of two active district judges, a senior judge may be the second approving judge.

5. The clerk of court will report to a district judge in the division in which an application for admission is pending the approval or disapproval of the active judges.

6. When an application is approved or disapproved, the applicant will be notified.

7. An applicant approved for admission will be contacted by the court to schedule the applicant's admission ceremony.

8. Within six months of being approved for admission, an applicant must appear for an admission ceremony with a member of this bar who will vouch for applicant's legal qualifications, integrity, and good moral character. Upon oral motion of a member of the bar, taking the prescribed oath of admission, signing an oath of admission, and paying the required fee, the applicant will be admitted to the bar of this court. Upon admission, the clerk of court will issue a certificate of admission to the new bar member.

D. Oath of Admission. The following oath/affirmation will be administered to an applicant for admission to the bar of this court:

> I solemnly affirm that I will support and defend the Constitution of the United States, that I will represent my clients conscientiously and ethically, and that I will conduct myself uprightly and according to law in proceedings in this court.

E. Appearance of Attorney Pro Hac Vice. An attorney who is not a member of the bar of this court, but who is a member in good standing of the bar of another United States district court, may, upon motion and approval by the court, participate in the conduct of a particular case. Such motion may be allowed only if the applicant associates with a member in good standing of the bar of this court as local counsel. Any prior or pending disciplinary actions or actions resulting in sanctions against the attorney seeking admission pro hac vice must be disclosed in the motion.

Local counsel must sign and file all documents and must continue in the case unless another attorney admitted to practice in this court is substituted. Local counsel must be present during all court proceedings (which include telephone or video conference hearings) in connection with the case, unless otherwise ordered, and must have full authority to act for and on behalf of the client in all matters, including pretrial conferences, trial, and any other hearings.

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

1. **Resident Attorneys.**

   a. **Regular Admission.** Except as provided elsewhere by this rule, an attorney who resides within this district and represents the United States government or any agency or instrumentality thereof or the

Federal Public Defender's Office must be admitted to the State Bar of South Dakota before the attorney is permitted to practice before this court.

b. **Provisional Admission.** An attorney who is a member of the bar of another United States district court and has not yet been admitted to the State Bar of South Dakota, but either is a:

(1) resident assistant United States attorney;

(2) resident attorney representing agencies of the United States government; or

(3) resident assistant federal public defender

has 12 months from the date of the attorney's oath of office for the position in South Dakota to be admitted to the State Bar of South Dakota. During this period, the attorney may be admitted provisionally to practice before this court.

The procedure for provisional admission follows the procedure for admission outlined in Section C of this rule, except that resident attorneys provisionally admitted will not pay the required fee until they are admitted to the State Bar of South Dakota, at which time the clerk of court will issue a certificate of admission to the attorney.

2. **Nonresident Attorneys.**

The following nonresident attorneys may be admitted on the attorney's motion, without payment of fees, to practice in this court during the pendency of the attorney's employment, appointment, or designation if the attorney is a member in good standing of the highest bar of any state or the District of Columbia. An application for admission is not required.

a. An attorney designated as "Special Assistant United States Attorney" by the United States Attorney for the District of South Dakota;

b. An attorney appointed by the Attorney General of the United States or employed by a federal agency with independent litigation authority to represent the interest of the United States government;

c. An attorney hired by the Federal Public Defender's Office for the District of South Dakota; or

d. An attorney employed by the Federal Public Defender's Office for the District of North Dakota.

A judge advocate of the armed forces of the United States representing the United States government in proceedings supervised by judges of this court is not subject to this rule.

G. Attorney Discipline.

1. **Automatic Suspension.** Any member of the bar of this court who has been suspended or disbarred from the Supreme Court of the State of South Dakota or who has been convicted of any criminal offense in any United States District Court will, upon appropriate notice from the clerk of court, be suspended from practice before this court.

2. **Discipline by this Court**.

   a. This court, independent of action taken by the Supreme Court of the State of South Dakota, may disbar or suspend a member of the bar of this court from practice for a definite time, or reprimand for good cause shown, after opportunity has been afforded such member to be heard.

   b. An application for the disbarment or discipline of a member of the bar of this court will be made to or before the chief judge of this court unless otherwise ordered by the chief judge. At least two district judges of this court will sit at the hearing of such application unless the attorney against whom the disbarment or disciplinary proceeding is brought states in writing or in open court the member's willingness to proceed before one district judge.

   c. If an investigation is necessary, the chief judge, with the approval of a majority of the district judges, will appoint a member of the bar (hereinafter referred to as "investigator") to investigate charges against any member of this bar. If, as a result of the investigation, the investigator will be of the opinion that there has been a breach of professional ethics by a member of this bar, the investigator, as an officer of the court having special responsibilities for the administration of justice, will file and prosecute a petition requesting that the alleged offender be subjected to appropriate discipline, including disbarment, suspension, or reprimand. The investigator will be paid from the pro hac vice fund.

3. **Disciplinary Record.** The clerk of court keeps a separate attorney discipline docket. Orders of disbarment, suspension and public reprimand are a matter of public record. All other documents, hearings and records required under the provisions of this Rule will not be publicly disclosed or made available for use in any other proceeding, except upon order of this court.

H. Reinstatement of Disbarred and Suspended Attorneys.

1. An attorney who has been disbarred or suspended in this court may petition for reinstatement at any time. Upon the filing of such petition with the clerk of court, the chief judge may appoint an investigator and may enter an order setting a date for the hearing on said petition on providing at least 21 calendar days' notice. An attorney may be reinstated without a hearing upon a unanimous vote of all district judges who desire to participate in such determinations.

   Any investigator appointed will investigate the facts alleged in the petition for reinstatement and will present to the court, in affidavit form or otherwise, any facts in support of or against the granting of said petition. Two district judges of this court will sit at the hearing on said petition, and the order denying or granting reinstatement will be made in writing by said judges.

2. An attorney who has been disbarred or suspended by the Supreme Court of the State of South Dakota and thereafter reinstated by that court to practice in the state courts will not be permitted to practice in this court, notwithstanding such reinstatement, until a petition for reinstatement as prescribed in section 1 above, incorporating a certified copy of the order of reinstatement by the Supreme Court of the State of South Dakota, has been filed in this court and reinstatement ordered after a hearing as above provided. The hearing may be waived by the attorney with the consent of the court.

I. Law Students.

1. **Student Practice.** Any law student acting under a supervising attorney will 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:

   (1) A certificate by the dean of the law school that he or she is of good moral character and meets the requirements of rule 44.1 I.2 and is qualified to serve as a legal intern. The certificate should be in a form prescribed by the court.

   (2) A certificate by the law student stating that he or she has read and agrees to abide by the rules of the court, and all applicable codes of professional responsibility and other relevant federal practice rules. The certificate should be in a form prescribed by the court.

   (3) A notice of appearance must be filed in each case in which he or she is participating or appearing as a law student. The notice must be signed by a supervising attorney who is a member of the bar or this court.

d. Be introduced to the court in which he or she is appearing by an attorney who is a member of the bar of this court.

3. **Certificate of Admission.** Upon the completion and filing of the certificates required by these rules, the clerk of court will issue a certificate of admission to the law student in a form prescribed by the court. This certificate expires contemporaneously with the expiration date of the dean's certificate unless it is sooner withdrawn. Any law student's certificate of admission may be terminated at any time by the court without notice or hearing and without any showing of cause.

4. **Restrictions.** No law student admitted under these rules will:

   a. Request or receive any compensation or remuneration of any kind from the client. This will not prevent the supervising attorney, law school, public defender, or the government from paying compensation to the law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require.

   b. Appear in court without the presence of the supervising attorney.

c. File any documents or papers with the court that he or she has prepared which have not been read, approved, and signed by the supervising attorney.

5. **Supervising Attorneys.** Any person acting as a supervising attorney under this rule must be a member of the bar of this court and must:

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

   b. Sign all pleadings and other papers prepared by the law student.

   c. Advise the court of the law student's participation, always be present with the student 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 47.1 MOTIONS

A. Discovery Motions. Before filing a discovery motion, the certification required under D.S.D. Crim. LR 16.1 must be met.

B. Motions to Seal. Any motion seeking the sealing of pleadings, motions, exhibits, or other documents to be filed in the court record must include (1) proposed reasons supported by specific factual representations to justify the sealing, and (2) an explanation why alternatives to sealing would not provide sufficient protection. A motion to seal and the documents to which the motion refers must be filed consistent with the CM/ECF User Manual and Administrative Procedures found at www.sdd.uscourts.gov.

C. Required Written Brief. With every motion raising a question of law, except oral motions made during a hearing or trial, the movant must serve and file a brief containing the movant's legal arguments, the authorities in support thereof, and the Federal Rule of Criminal Procedure on which the movant relies. Motions in limine and supporting arguments and authorities may be filed as one document on or before 7 calendar days after service of a motion and brief, unless otherwise specifically ordered by the court, all opposing parties must serve and file a responsive brief containing opposing legal arguments and authorities in support thereof. The movant may file a reply brief within 4 calendar days after service of the responsive brief.

1. **Page Limitation on Briefs.** Briefs must not exceed 25 pages excluding table of contents and/or authorities, certificate of service, if applicable, and attachments unless prior approval has been obtained from the court.

2. **Attachments.** A party will 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 should be clearly and prominently identified as such. Highlighting or underlining 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. Responding parties may file additional excerpts that they believe are directly germane. The court may require parties to file additional excerpts or the complete document.

LR 49.1 SERVING AND FILING DOCUMENTS

A. **What constitutes filing/official record.** Electronic transmission of a document to the Electronic Filing System together with the transmission of a Notice of Electronic Filing from the court constitutes filing of the document for all purposes of the local rules of this court and the Federal Rules of Civil Procedure and constitutes entry of the document on the docket kept by the clerk of court under Fed. R. Civ. P. 58 and 79. When a document has been filed electronically, the official record is the electronic document as stored by the court and is deemed filed at the date and time stated on the Notice of Electronic Filing from the court. The party filing the document is bound by the document as filed.

B. **What constitutes an electronic signature.** In addition to the requirements contained in Rule 49(b)(4) of the Federal Rules of Criminal Procedure, 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 unless a facsimile of the filing user's signature appears in the signature block.

C. **Duty to protect login and password.** 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. If they learn that their password has been compromised, they must immediately notify the clerk. Attorneys may be subject to sanctions for failure to comply with this provision.

D. **Documents requiring the signature of more than one party.** Documents requiring signatures of more than one party may be electronically filed either by (a) submitting a scanned document containing all necessary signatures; or (b) 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.

E. Restricted Hyperlinks. Because a website address within a court filing becomes a hyperlink to the internet location upon filing in the CM/ECF system, counsel must redact from any filed documents any website address that directs the court to a website that contains pornography or personal identifiers. After filing the redacted document, counsel must provide an unredacted version to the clerk of court for filing under seal.

F. Filing Documents outside of CM/ECF. Highly sensitive documents may be filed outside of the court's Electronic Filing System.

1. **Highly Sensitive Documents (HSDs)**. HSDs are documents that contain highly sensitive non-public information that is likely to be of interest to the intelligence service of a foreign government and whose use or disclosure would likely cause significant harm. HSDs may be filed in cases involving the following:

    a. national security issues;
    b. foreign sovereign interests;
    c. cybersecurity or major infrastructure security;
    d. ongoing intelligence-gathering operations;
    e. safety of public officials or government interests;
    f. non-public intellectual property and/or trade secrets of value to the intelligence services of a foreign government;
    g. documents that would give foreign competitors of U.S. corporations a competitive advantage;
    h. the reputational interests of the U.S. or any State, or local government;
    i. false claims or qui tam cases;
    j. applications for production of stored electronic communications under 18 U.S.C. § 2703; or
    k. applications for electronic surveillance under 18 U.S.C. § 2518.

HSDs are rare. Any dispute as to whether a document is an HSD will be resolved by the presiding judge or, when no presiding judge is assigned, the Chief Judge.

2. **Motion Required.** A represented or pro se party must file a motion to treat a document as an HSD and a proposed order in the same manner as a motion to file under seal pursuant to D.S.D. Civ. LR 7.1 A and Crim. LR 47.1 B. The motion and proposed order must state the duration of the HSD designation or whether the HSD designation should be permanent. The motion must explain why the proposed document constitutes an HSD under paragraph F.1 or why it should otherwise be filed without revealing the highly sensitive information contained within the HSD.

a. The filing party must deliver to the clerk's office where the presiding judge is chambered two paper copies of the motion and HSD sought be filed along with a certificate of service. These documents must be submitted in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT" and marked with the applicable case number, attorney's name, street address, telephone number, and email address. Upon receipt, the clerk's office will make an informational docket entry that a motion to treat a document as an HSD has been filed.
b. Unless being submitted as an ex parte filing, the filing party must serve the proposed HSD on the other parties by any manner specified in Criminal Rule 49(a), except for service via the court's electronic filing system.

c. If the court grants the motion, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. The clerk's office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

3. **Service of HSD Orders.** The clerk's office will serve paper copies of the order on the parties via mail.

LR 49.1.1 PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

A. Pursuant to the E-Government Act of 2002, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all pleadings and documents filed, 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. After filing a document redacted consistent with Fed. R. Crim. P.49.1, a party may submit for filing under seal an unredacted copy of the document. Any such filings must contain a cover sheet stating the following: "Document filed under seal pursuant to the E-Government Act."

C. The responsibility for redacting personal identifiers rests solely with counsel and the parties. The clerk of court will not review each filing for compliance with this rule.

D. Personal Data Identifiers in Charging Documents

1. The clerk of court will file indictments under seal to prevent public disclosure of the identity of the foreperson of the grand jury. The attorney for the government must provide the clerk's office with a redacted version of the indictment in which the name of the foreperson is omitted. If the indictment includes personal data identifiers, the attorney for the government must also provide the clerk's office with a redacted version of the indictment that omits both personal data identifiers and the name of the foreperson. The clerk's office will file a redacted version of the indictment in addition to the sealed original.

2. Personal data identifiers may be included in informations and complaints if necessary, to comply with the requirements of federal law. If personal data identifiers are included, the attorney for the government must provide the clerk's office with a redacted version of the information or complaint along with the original. The original will be filed under seal to prevent public disclosure of the personal data identifiers.

3. In all other instances charging documents will be filed under seal only upon motion of the government and order of the court.

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 including ex parte documents. Specifically forbidden is the divulgence of information concerning arguments and hearings held in chambers, at side bars or otherwise outside the presence of the public.

LR 57.2 AVAILABILITY OF ELECTRONIC RECORDINGS

If a proceeding has been recorded electronically and the electronic recording constitutes the official record, the clerk of court will arrange, upon the request of any party, to have a transcript prepared from the electronic recording. The requesting party will be responsible for any costs associated with producing a transcript in accordance with the directives of the Administrative Office of the United States Courts. Recordings will not be released to parties or the public.

LR 57.3 EXHIBITS

A. Marking of Exhibits. Exhibits in criminal trials and hearings must be marked in accordance with instructions from the court.

B. Electronically Filing Documentary Exhibits.

1. **By the Clerk.** At the conclusion of a trial or other court proceeding, the Clerk of Court will electronically file all documentary exhibits offered and/or received in CM/ECF. The exhibits electronically filed by the Clerk will be restricted to court users and case participants. After filing, the Clerk will return documentary exhibits to the offering party.

2. **By the Parties.** The parties will have twenty-one (21) days to review their returned documentary exhibits to determine whether redactions are required pursuant to D.S.D. Crim. LR 49.1.1.

   a. **Redactions required.** If redactions are required, the offering party must electronically file all of its documentary exhibits, including redacted exhibits and exhibits that do not require redaction in CM/ECF. This requirement does not apply to exhibits that were sealed when offered and/or received.

   b. **Redactions not required.** If no redactions are required, the Clerk will remove the restrictions and enter a Notice of Unrestricting Trial/Hearing Exhibits in CM/ECF.

C. Physical Exhibits. Physical exhibits, including recordings, will be returned to the offering party at the conclusion of a trial or other proceeding for retention and preservation. This includes all physical exhibits submitted to the clerk even those not used at trial or in a hearing.

1. **Duty to Retain**. When physical exhibits are returned, they must be retained by the offering party, who will maintain and document the chain of custody, and make the exhibits available to the court, if necessary, and to other parties for use in preparing an appeal.

2. **Duty to Preserve.** Returned physical exhibits must be preserved in an unaltered condition until at least 120 calendar days after the resolution of any appeal to allow for the filing of a writ of certiorari under Rule 13 of the Rules of the Supreme Court of the United States. Before such exhibits may be destroyed, the custodial party must seek and obtain a court order authorizing destruction.

D. Exhibits Necessary for Appeal. Consistent with the Eighth Circuit's local rule on exhibits, the offering party is responsible for ensuring any non-public exhibits or physical exhibits necessary for an appeal are submitted to the appellate court.

LR 57.4 WITHDRAWAL AND SUBSTITUTION OF COUNSEL

A. In General. An attorney of record in a case may be permitted to withdraw from representation as counsel of record only by order of the court, or as otherwise provided herein. This does not apply to situations where withdrawal results in continued representation by the same firm or organization.

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 30 or more days in advance of trial, the substitution contains a certificate by substituted counsel, and the substitution will not delay the trial or other progress of the case. The notice of withdrawal and substitution must set forth the name and address of the substituted and withdrawing counsel. Withdrawal under this section will be effective upon filing a notice of withdrawal and substitution. Notice of withdrawal must be provided to the client by the withdrawing attorney.

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

LR 57.5 RECORDING AND CELLULAR DEVICES

Except by permission of the presiding judge, no person will photograph, videotape, televise, broadcast, or record, or cause to be photographed, videotaped, televised, broadcast, or recorded any courtroom proceeding, including proceedings of the grand jury. No person will take any photographic, videotape, television, or sound recording equipment into (1) any courtroom except upon the express permission of the presiding judge, or (2) any jury room, or (3) any corridor on the floor on which a courtroom or jury room is located. This paragraph does not apply to (1) the official court reporter who may use a voice-recording device in connection with his or her official duties, or (2) the use of electronic means for the presentation of evidence or the perpetuation of the record as authorized by the court.

Cellular phones and electronic devices may be brought into courthouses in the United States District Court for South Dakota unless the presiding judge places restrictions on these devices. All cellular and electronic devices must be turned off in the courtroom and any corridor on the floor on which a courtroom or jury room is located unless specifically authorized by order of the court. Cellular and electronic devices are devices capable of communicating, transmitting, receiving, or recording messages, images, sounds, data, or other information by any means, including but not limited to, a computer tablet, cell phone, or Bluetooth device. Individuals who bring such devices into courtrooms may be asked by court security personnel to demonstrate that the device is turned off. Members of the Bar and employees of members of the Bar are exempt from this provision.

Use of any camera or sound recording devices in the courtroom or any corridor on the floor on which a courtroom or jury room is located is prohibited unless specifically authorized by order of the court.

However, an electronic device that is essential to a person's health or welfare (such as an insulin pump) may remain on in the courtroom.

News media personnel who possess recording devices will be allowed entry into a court facility, provided the news media personnel are escorted through the building by a representative of the tenant agency being visited. If no tenant representative is available, entry with the recording devices will be denied. In courthouses where jury and grand jury facilities are located contiguous to public access corridors, news media personnel will not be allowed to possess recording devices on the floors housing the jury and grand jury facilities during jury deliberations or grand jury sessions.

Photographic, videotape, television, and sound recording devices are permitted in courtrooms and in adjacent corridors for naturalization ceremonies, investitures, attorney admissions, and other ceremonial functions unless specifically prohibited by the court.

LR 57.6 IDENTIFICATION

A. Caption. A pleading or other paper presented for filing must begin with the caption of the case, the title of the document, and the name of the party filing the document. All papers presented after the charging document must bear the file number assigned to the case.

B. Signature Block. All papers must be signed and include the typed or printed name, address, telephone number, and email address of the signer beneath the signature. This information must not appear as a header or footer on each page of the document, or as part of the caption of the case.

LR 57.7 TRIAL APPEARANCE

Absent extraordinary circumstances, every defendant in a criminal case may wear civilian clothing during a jury trial. Civilian clothing should be provided to the United States Marshal Service each morning of trial by the defendant's attorney. The United States Marshal Service will take appropriate measures to ensure jurors do not observe the defendant in shackles in or out of the courtroom.

LR 57.8 PAYMENTS PRIOR TO ENTRY OF JUDGMENT

The Clerk of Court may accept special penalty assessment, restitution and fine payments prior to entry of a judgment and commitment in criminal cases. Restitution funds should be held in the deposit fund until further order of the court.

LR 57.9 FORM OF PAPERS

All documents must be on 8½ x 11-inch paper. The text must be double-spaced, but quotations more than two lines long must be indented and single-spaced. Headings and footnotes must be single-spaced. Margins must be at least one inch on all four sides. Fonts must be at least 12-point. Papers not in the required form may not be filed without leave of the court. Exhibits attached to documents must, if feasible, be similarly typewritten, printed, or otherwise reproduced in clear, legible, and permanent form.

LR 57.10 ACCESS TO CRIMINAL DOCUMENTS

A. **Purpose.** In order to protect the safety of federal defendants and the integrity of ongoing investigations and related prosecutions, access to certain criminal documents and transcripts is restricted.

B. **Sealed or Restricted Documents.** The court's intent is to make it impossible to determine from examining the record whether a defendant or other witness did or did not cooperate with the government. To implement this intent, the following documents are sealed or otherwise restricted:

1. **Plea Agreement Supplements.** Every plea agreement will include a sealed supplement that either identifies any agreements the defendant has with the government regarding cooperation or states that there is no cooperation.

2. **Sentencing Memorandums and Motions for Departure/Variance.**

3. **Restricted Change of Plea or Sentencing Transcripts.** Every transcript of a change of plea or sentencing hearing will contain a confidential section or reference thereto so that cooperation or the lack thereof may be discussed. If a transcript is prepared, the court reporter or transcriptionist will prepare two versions: a restricted transcript and a public transcript.

    a. The restricted transcript will include the confidential section. Only the Government and counsel for the defendant will have access to restricted transcripts.

b. The public transcript will include the following reference: Pursuant to D.S.D. Crim. LR 57.10, portions of all change of plea and sentencing transcripts are restricted.

4. **Restricted Transcripts involving Cooperator Information.** If a transcript is prepared of other hearings or trials where a cooperating witness testified or was referenced by name, the court reporter or transcriptionist will prepare two versions: a restricted transcript and a public transcript.

a. The prosecutor must notify the court, court reporter, clerk, and counsel of cooperating witnesses prior to eliciting their testimony. This notification can be made at the pretrial conference or any other point outside the hearing of the jury.

b. The restricted transcript will include the identity of cooperating witnesses.

c. The public transcript will exclude the identity of cooperating witnesses and will refer to them as NR 1, etc.

d. If there is law enforcement testimony regarding cooperation or statements by counsel or others identifying a person as a cooperator, the prosecutor is to submit a redaction request, either orally at a bench conference or electronically prior to the preparation of the transcript. An order is not required.

e. If a transcript has been publicly filed containing any information identifying a person as a cooperating witness, the U.S. Attorney's office is to submit a motion to seal and a redaction request identifying where the public transcript needs to be redacted.

C. Access to Sealed or Restricted Documents.

1. **Attorneys and others.** Federal court officers or employees (including probation officers and federal public defender staff), retained counsel, appointed CJA panel attorneys, and any other person in an attorney-client relationship with a defendant may, consistent with this rule, review any sealed or

restricted portions of the file with their client but may not provide copies.

2. **Inmates.** When an inmate requests copies of sealed or restricted documents from his/her criminal file, copies will be forwarded to the warden of the appropriate institution, along with a copy of this rule. Inmates may review their documents in an area designated by the warden. Sealed or restricted documents may not be retained by the inmate, nor reviewed in the presence of another inmate.

3. **Post Sentencing Non-Custodial Defendants.** Any defendant whose case is concluded and is not in custody must obtain a court order to receive copies of restricted documents.

D. Serving Restricted or Sealed Documents. If the Clerk of Court or a party need to serve sealed or restricted documents on an inmate, they must follow the procedure outlined in Section C.2 of this rule.

LR 57.11 MAGISTRATE JUDGE DUTIES

A. General Designation. In every criminal case, the court designates the magistrate judge assigned to the case to perform the following duties authorized by 28 U.S.C. § 636:

1. Hear and determine any pretrial matter pending before the court, except a motion to dismiss or quash an indictment or information by the defendant, or to suppress evidence in a criminal case;

2. Conduct hearings, including evidentiary hearings, and submit to the district judge proposed findings and recommendation for the disposition of:

   (a) dispositive pretrial matters such as to dismiss or quash an indictment or information by the defendant, or to suppress evidence in a criminal case;

   (b) applications for posttrial relief made by individuals convicted of criminal offenses.

3. In accordance with 18 U.S.C. § 3401, with respect to misdemeanors committed within the district:

(a) try a defendant accused of, and sentence a defendant convicted of, a petty offense (Infractions, Class C misdemeanors, and Class B misdemeanors); and

(b) with the defendant's consent, try a defendant accused of, and sentence a defendant convicted of non-petty offenses (Class A) misdemeanors.

4. Conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and submit to the district judge proposed findings of fact and recommendations for such modification, revocation, or termination by the district judge.

5. Serve as a special master upon consent of the parties in civil cases.

6. Preside over allocution and change of plea proceedings in felony criminal cases upon consent of the parties and submit to the district judge proposed recommendations for de novo review.

B. Specific Designation. The district judge assigned to a case may specifically designate a magistrate judge to perform any of the duties authorized by 28 U.S.C. § 636(b). In performing the designated duties, the magistrate judge must conform to the Local Rules and the instructions of the district judge.

LR 57.12 COURT SECURITY OFFICER DUTIES

When a petit jury has been selected but before deliberations begin, court security officers shall, upon request, escort jurors outside the building provided they remain on courthouse property.

When a petit jury is sequestered to begin deliberations, court security officers shall collect and secure all cellphones and other electronic devices belonging to jurors until such time as the jury has reached a verdict, at which time such devices shall be returned to their owners.

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.

CRIMINAL
LOCAL RULES OF PRACTICE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

12/08/2022

Table of Contents

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

District Judges:

Roberto A. Lange
Chief Judge
225 S. Pierre Street, Room 413
Pierre, SD 57501
605-945-4610

Karen E. Schreier
United States District Judge
400 South Phillips Avenue, Room 233
Sioux Falls, SD 57104
605-330-6670

Jeffrey L. Viken
Senior United States District Judge
Andrew W. Bogue Federal Building
and United States Courthouse
515 Ninth Street, Room 318
Rapid City, SD 57701
605-399-6050

Charles B. Kornmann
Senior United States District Judge
102 Fourth Avenue, SE, Room 408
Aberdeen, SD 57401
605-377-2600

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

Magistrate Judges:

Veronica L. Duffy
United States Magistrate Judge
400 South Phillips Ave., Room 119
Sioux Falls, SD 57104
605-330-6650

Mark A. Moreno
United States Magistrate Judge
225 S. Pierre Street, Room 419
Pierre, SD 57501
605-945-4620

Daneta Wollmann
United States Magistrate Judge
Andrew W. Bogue Federal Building
and United States Courthouse
515 Ninth Street, Room 244
Rapid City, SD 57701
605-399-6030

Clerk:

Matthew w. Thelen
Clerk of Court
400 South Phillips Avenue
Room 128
Sioux Falls, SD 57104
605-330-6600
605-330-6601 (fax)

Divisional Office at Rapid City:

Andrew W. Bogue Federal Building
and United States Courthouse
515 Ninth Street, Room 302
Rapid City, SD 57701
605-399-6000
605-399-6001 (fax)

Divisional Office at Pierre:

225 S. Pierre Street, Room 405
Pierre, SD 57501
605-945-4600
605-945-4601 (fax)

DIVISIONS OF DISTRICT OF SOUTH DAKOTA

The State of South Dakota constitutes one judicial district divided into four divisions for purposes of case assignment (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, Oglala Lakota, Pennington, and Perkins.

The place of holding court is Rapid City.

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

A. Citation Form. The local criminal rules are to be cited as "D.S.D. Crim. LR ___."

B. Scope. The local criminal rules govern all criminal proceedings in the District of South Dakota to the extent they are not inconsistent with any statute or law of the United States or any rule or order of the Supreme Court of the United States.

C. Modification of Local Rules by Presiding Judge. The local rules are subject to modification in any case at the discretion of the presiding judge.

D. Speedy Trials. The court's Speedy Trial Plan governs the scheduling of criminal trials. This plan may be found on the court's web site at www.sdd.uscourts.gov.

E. Assignment of Related Cases.

1. When a pending indictment or information is superseded by an indictment or information charging one or more of the defendants charged in the pending indictment or information and charging one or more of the offenses charged in the original indictment or information growing out of one or more occurrences that gave rise to the original charge, the superseding indictment or information will be assigned to the same judge to whom the first case is assigned.

2. When two or more indictments or criminal informations are filed against the same person or persons, corporation, or corporations, charging like offenses or violations of the same statute, each of such cases will be assigned to the judge to whom the first of such cases is assigned.

3. When an indictment or information is pending against a defendant, all subsequent indictments or informations against the same defendant that may be returned or filed will be assigned to the same judge. This section does not extend beyond defendants with pending cases.

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

B. Emergencies. In an emergency, a magistrate judge may be contacted away from the courthouse, including at his or her home, for purposes of considering 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 considering a proposed complaint.

LR 5.1 DETENTION ORDERS

A. Review. After a detention order is issued, a party may request reconsideration of the order based on new evidence or may appeal the order to a district judge. A party requesting review of a detention order must state in the caption whether the request is one for reconsideration or is an appeal to a district judge.

B. Appeals. A party appealing a detention order must file a written motion containing a statement of the grounds for the appeal and a statement that a transcript of the detention hearing has been ordered.

LR 6.1 CONTACT WITH GRAND JURORS

A. Contact 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. Contact by Lawyers for the Government. Except upon leave of court, no lawyer for the government or other person acting on his or her behalf may contact, interview, examine, or question any grand juror or potential grand juror concerning the juror's actual or potential grand jury service, except that contacts may be made on the record during grand jury proceedings and as necessary in connection with the administration of the grand jury.

LR 10.1 ARRAIGNMENT AND 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 informations that do not add new counts or different charges.

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. A plea agreement supplement must also be filed 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 to protect the safety of all federal defendants regardless of their cooperation with the government, and the integrity of any ongoing investigations or related prosecutions. The defendant, defendant's attorney and government attorney must sign the plea agreement, factual basis statement and supplement.

B. Petition to Plead. The lawyer for the defendant may file a written petition to plead with a factual basis statement, which must be signed by both the defendant and defendant's counsel.

LR 12.1 PRETRIAL MOTIONS AND REQUESTS

Scheduling and Case Management Order will set deadlines for motions, notices, and requests.

Requests for discovery or for 404(b) evidence should be filed as requests and not motions.

LR 12.4 DISCLOSURE STATEMENT

Every organizational defendant in a criminal case must file either a Corporate Disclosure Statement (disclosure statement) or a Certificate that Fed. R. Crim. P. 12.4 is not applicable (certificate of non-applicability). Information provided under this local rule may be used by the judge assigned to a case to determine whether recusal is necessary or appropriate. The disclosure statement or certificate of non-applicability must be filed within twenty-four (24) days of the defendant's initial appearance.

LR 16.1 DISCOVERY

A. Stipulation for Entry of Discovery Order. Within 14 days of an initial appearance, the Government and defense counsel must complete and file a joint stipulation for discovery, which can be found on the court's website. The Government is responsible for the timely electronic filing of the joint stipulation. The discovery order restricts dissemination of discovery materials and precludes defense counsel from giving discovery materials to the defendant without the court's express permission.

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

C. **Expert Witness Disclosure Deadline.**
   1. The government and the defendant shall disclose to each other no later than twenty-one (21) calendar days before the start of trial the name of any person retained to testify as an expert witness in the case-in-chief and provide a written disclosure containing:
      a. A complete statement of all opinions that the party will elicit from the expert witness in the case-in-chief;
      b. The bases and reasons for them;
      c. The witness's qualifications, including a list of all publications authored in the previous 10 years; and
      d. A list of all other cases in which during the previous 4 years, the witness has testified as an expert at trial or by deposition.
   2. Any rebuttal expert to refute testimony from a disclosed expert shall be identified with the same written disclosure provided no later than seven (7) calendar days before trial.

LR 17.1 SUBPOENAS AND WRITS

A. **Subpoenas to be served by the United States Marshals Service**. A defendant unable to pay must file an ex parte motion at least 14 calendar days before a hearing or trial for a subpoena to be served within the district by the United States Marshals Service. A defendant unable to pay must file an ex parte motion at least 21 calendar days before a hearing or trial for a subpoena to be served outside the district by the United States Marshals Service. All ex parte motions should be filed with an attached, prepared AO 89 or AO 89B and must include a physical address for service. The form should include the date and time it is reasonably anticipated the witness will be called to testify. Ex parte documents are not part of the public records of the court.

B. **Private Service of Process Not Authorized by CJA**. Unless prior approval is obtained from a judge, a lawyer appointed under the Criminal Justice Act may not use private process servers or investigators to serve subpoenas for criminal hearings or trials but must use the United States Marshals Service for such service. If a private process server is used without prior approval, service is valid but reimbursement under the Criminal Justice Act is subject to court approval.

C. **Deadline for Application for Writ of Habeas Corpus Ad Testificandum**. An application for a writ of habeas corpus ad testificandum to be served by the United States Marshals Service within the district must be filed at least 14 calendar days before the hearing or trial at which the witness is to testify, and an application for a writ of habeas corpus ad testificandum to be served by the United States Marshals Service outside of the district must be filed 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 *ex parte* are 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 RESTRICTIONS ON PHOTOGRAPHING OR INTERVIEWING JURORS

A. **Photographing Jurors.** To protect the integrity and independence of jurors, no person may photograph or attempt to photograph any juror, grand or petit, without the express approval of the individual juror or the express approval of the presiding judge. This restriction also protects grand jury witnesses. No one other than a juror may photograph or otherwise record his or her motor vehicle or motor vehicle license. Leaflets or other juror information pamphlets may not be given to a juror or placed in any place where a juror might reasonably be expected to obtain the printed matter. Such action may constitute an unlawful attempt to influence, intimidate, or impede a juror or witness, in violation of 18 U.S.C. § 1503 and 18 U.S.C. § 1510.

B. **Interviewing Jurors.** No one may contact any juror before or during the juror's service on a case. The parties, their lawyers and anybody acting on their behalf must seek and obtain permission from the district judge who tried the case before contacting a juror after the juror served on the case.

LR 28.1 INTERPRETERS

A. Responsibility for Obtaining. When interpreters are required for proceedings instituted by the United States, the clerk of court will locate certified or otherwise qualified interpreters for court proceedings. However, the U.S. attorney's office is responsible for locating, contracting, and paying interpreters for government witnesses. For most other purposes, a party requiring the services of an interpreter must obtain his or her own interpreting services. If the defendant is indigent, prior court approval to hire an interpreter is required as specified in the Guide to Judiciary Policy and 18 U.S.C. § 3006A(e). If counsel for either party believes that interpreter services for court proceedings are needed for more than an hour, counsel must notify the clerk of court as soon as possible.

If participants in federal court proceedings are deaf, hearing impaired or have communication disabilities, the court will provide sign language interpreters.

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 for hearings that do not exceed an hour. 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. Where the jury has a substantive question, the judge 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

A. Sentencing Motions. Unless otherwise permitted by the court, 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 or variance may be joined with a party's sentencing memorandum.

B. Confidential Sentencing Documents. Whether filed by the U.S. Probation Office or by the parties, documents relating to the sentencing process are confidential and must not be distributed beyond the court and counsel unless otherwise ordered by the court. Pretrial services reports and related documents are also subject to these restrictions. Counsel or an employee of counsel must review confidential pretrial services and sentencing documents with their clients but may not provide copies to their clients. Clients may not review these documents unless counsel or an employee of counsel is present to ensure that the documents are not copied, photographed, retained, or removed. These documents include, but are not limited to, presentence, supplemental or predisposition reports; objections to such reports; addendums to such reports; letters of support; victim impact statements; evaluations; written allocution statements; and Rule 35 or U.S.S.G. 5K1.1 motions and materials.

C. Procedure. After a guilty plea has been accepted or a guilty verdict is received, a sentencing date will be set. Unless otherwise ordered, the following deadlines apply:

1. The Probation Office must file the draft presentence report in CM/ECF using the Draft Presentence Report event no later than 35 days before sentencing.

2. After the draft presentence report is filed, the parties will have 14 days to file and serve objections. Objections must be filed by counsel in CM/ECF using the Objections to Presentence Report event. If counsel has no objections, counsel must so indicate by using the Notice of No Objections to Presentence Report event.

3. The Probation Office must file the final presentencing report in CM/ECF using the Final Presentence Report event no later than 7 days before sentencing using the Final Presentence Report event. An addendum setting forth any unresolved objections, the grounds for those objections, and the probation officer's response must be filed in CM/ECF on the same date using the Addendum to Final Presentence Report event.

4. Counsel must file all letters of support in CM/ECF using the Sealed Letter(s) of Support event no later than 28 days after the Draft Presentence Report is filed.

5. All other sentencing documents must be filed no later than 7 days before sentencing as follows.

    a. Motions for departure or variance or sentencing memoranda must be filed by counsel in CM/ECF using the appropriate events under Other Filings/Sealed Plea & Sentencing Related Documents.

    b. The filer must manually serve a copy of sealed sentencing documents on those case participants entitled to notice under the federal and local rules per the CM/ECF User Manual and Administrative Procedures. None of these documents should be submitted directly to the Probation Office or the Court.

LR 41.1 SEARCH AND SEIZURE

A. Presentation. A search warrant application ordinarily should be presented to a magistrate judge, but it may be presented to a district judge if no magistrate judge is reasonably available. If no federal magistrate or district judge is reasonably available, a search warrant may be presented to a state judicial officer.

Copies of the application, the proposed search warrant, and any supporting affidavits must be delivered to the judge for his or her private review before a request is made for the judge to sign the warrant. In an emergency situation, the judge may waive this requirement.

B. Lawyer for Government. Ordinarily, a law enforcement officer presenting a search warrant application to a judge should be accompanied by a lawyer for the government. If justified by unusual circumstances, a judge may entertain a search warrant application from an officer who is not accompanied by a lawyer for the government.

C. Emergencies. In an emergency situation, a magistrate judge may be contacted away from the courthouse, including at his or her home, for purposes of entertaining a search warrant application. If no magistrate judge is reasonably available, a district judge may be contacted away from the courthouse, including at his or her home, for purposes of entertaining a search warrant application.

D. Initial Sealing of Search Warrant Documents. When a search warrant is issued, a case is opened. The case is sealed until the warrant is returned; at which time the case is unsealed unless otherwise ordered by the court.

LR 44.1 ATTORNEYS

A. Bar of the Court. The bar of this court consists 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 is 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 in section B of this rule may apply for admission to the bar of this court. The application sequence is as follows:

1. The applicant must complete an application for admission.

2. The applicant must consent to an inquiry concerning the applicant's fitness and qualifications for admission. Submission of a completed application is consent and waiver of privacy regarding inquiry into the applicant's fitness and qualifications.

3. The clerk of court will make any inquiry that may be deemed necessary to obtain information concerning an applicant's fitness and qualifications to practice law.

4. At least two active judges in this district must approve the application before an applicant may be admitted. In the absence of two active district judges, a senior judge may be the second approving judge.

5. The clerk of court will report to a district judge in the division in which an application for admission is pending the approval or disapproval of the active judges.

6. When an application is approved or disapproved, the applicant will be notified.

7. An applicant approved for admission will be contacted by the court to schedule the applicant's admission ceremony.

8. Within six months of being approved for admission, an applicant must appear for an admission ceremony with a member of this bar who will vouch for applicant's legal qualifications, integrity, and good moral character. Upon oral motion of a member of the bar, taking the prescribed oath of admission, signing an oath of admission, and paying the required fee, the applicant will be admitted to the bar of this court. Upon admission, the clerk of court will issue a certificate of admission to the new bar member.

D. Oath of Admission. The following oath/affirmation will be administered to an applicant for admission to the bar of this court:

> I solemnly affirm that I will support and defend the Constitution of the United States, that I will represent my clients conscientiously and ethically, and that I will conduct myself uprightly and according to law in proceedings in this court.

E. Appearance of Attorney Pro Hac Vice. An attorney who is not a member of the bar of this court, but who is a member in good standing of the bar of another United States district court, may, upon motion and approval by the court, participate in the conduct of a particular case. Such motion may be allowed only if the applicant associates with a member in good standing of the bar of this court as local counsel. Any prior or pending disciplinary actions or actions resulting in sanctions against the attorney seeking admission pro hac vice must be disclosed in the motion.

Local counsel must sign and file all documents and must continue in the case unless another attorney admitted to practice in this court is substituted. Local counsel must be present during all court proceedings (which include telephone or video conference hearings) in connection with the case, unless otherwise ordered, and must have full authority to act for and on behalf of the client in all matters, including pretrial conferences, trial, and any other hearings.

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

1. Resident Attorneys.

a. **Regular Admission.** Except as provided elsewhere by this rule, an attorney who resides within this district and represents the United States government or any agency or instrumentality thereof or the Federal Public Defender's Office must be admitted to the State Bar of South Dakota before the attorney is permitted to practice before this court.

b. **Provisional Admission.** An attorney who is a member of the bar of another United States district court and has not yet been admitted to the State Bar of South Dakota, but either is a:

(1) resident assistant United States attorney;

(2) resident attorney representing agencies of the United States government; or

(3) resident assistant federal public defender

has 12 months from the date of the attorney's oath of office for the position in South Dakota to be admitted to the State Bar of South Dakota. During this period, the attorney may be admitted provisionally to practice before this court.

The procedure for provisional admission follows the procedure for admission outlined in Section C of this rule, except that resident attorneys provisionally admitted will not pay the required fee until they are admitted to the State Bar of South Dakota, at which time the clerk of court will issue a certificate of admission to the attorney.

2. Nonresident Attorneys.

The following nonresident attorneys may be admitted on the attorney's motion, without payment of fees, to practice in this court during the pendency of the attorney's employment, appointment, or designation if the attorney is a member in good standing of the highest bar of any state or the District of Columbia. An application for admission is not required.

a. An attorney designated as "Special Assistant United States Attorney" by the United States Attorney for the District of South Dakota;

b. An attorney appointed by the Attorney General of the United States or employed by a federal agency with independent litigation authority to represent the interest of the United States government;

c. An attorney hired by the Federal Public Defender's Office for the District of South Dakota; or

d. An attorney employed by the Federal Public Defender's Office for the District of North Dakota.

A judge advocate of the armed forces of the United States representing the United States government in proceedings supervised by judges of this court is not subject to this rule.

G. Attorney Discipline.

1. **Automatic Suspension.** Any member of the bar of this court who has been suspended or disbarred from the Supreme Court of the State of South Dakota or who has been convicted of any criminal offense in any United States District Court will, upon appropriate notice from the clerk of court, be suspended from practice before this court.

2. **Discipline by this Court**.

   a. This court, independent of action taken by the Supreme Court of the State of South Dakota, may disbar or suspend a member of the bar of this court from practice for a definite time, or reprimand for good cause shown, after opportunity has been afforded such member to be heard.

   b. An application for the disbarment or discipline of a member of the bar of this court will be made to or before the chief judge of this court unless otherwise ordered by the chief judge. At least two district judges of this court will sit at the hearing of such application unless the attorney against whom the disbarment or disciplinary proceeding is brought states in writing or in open court the member's willingness to proceed before one district judge.

   c. If an investigation is necessary, the chief judge, with the approval of a majority of the district judges, will appoint a member of the bar (hereinafter referred to as "investigator") to investigate charges against any member of this bar. If, as a result of the investigation, the investigator will be of the opinion that there has been a breach of professional ethics by a member of this bar, the investigator, as an officer of the court having special responsibilities for the administration of justice, will file and prosecute a petition requesting that the alleged offender be subjected to appropriate discipline, including disbarment, suspension, or reprimand. The investigator will be paid from the pro hac vice fund.

3. **Disciplinary Record.** The clerk of court keeps a separate attorney discipline docket. Orders of disbarment, suspension and public reprimand are a matter of public record. All other documents, hearings and records required under the provisions of this Rule will not be publicly disclosed or made available for use in any other proceeding, except upon order of this court.

H. Reinstatement of Disbarred and Suspended Attorneys.

1. An attorney who has been disbarred or suspended in this court may petition for reinstatement at any time. Upon the filing of such petition with the clerk of court, the chief judge may appoint an investigator and may enter an order setting a date for the hearing on said petition on providing at least 21 calendar days' notice. An attorney may be reinstated without a hearing upon a unanimous vote of all district judges who desire to participate in such determinations.

   Any investigator appointed will investigate the facts alleged in the petition for reinstatement and will present to the court, in affidavit form or otherwise, any facts in support of or against the granting of said petition. Two district judges of this court will sit at the hearing on said petition, and the order denying or granting reinstatement will be made in writing by said judges.

2. An attorney who has been disbarred or suspended by the Supreme Court of the State of South Dakota and thereafter reinstated by that court to practice in the state courts will not be permitted to practice in this court, notwithstanding such reinstatement, until a petition for reinstatement as prescribed in section 1 above, incorporating a certified copy of the order of reinstatement by the Supreme Court of the State of South Dakota, has been filed in this court and reinstatement ordered after a hearing as above provided. The hearing may be waived by the attorney with the consent of the court.

I. Law Students.

1. **Student Practice.** Any law student acting under a supervising attorney will 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:

      (1) A certificate by the dean of the law school that he or she is of good moral character and meets the requirements of rule 44.1 I.2 and is qualified to serve as a legal intern. The certificate should be in a form prescribed by the court.

      (2) A certificate by the law student stating that he or she has read and agrees to abide by the rules of the court, and all applicable codes of professional responsibility and other relevant federal practice rules. The certificate should be in a form prescribed by the court.

      (3) A notice of appearance must be filed in each case in which he or she is participating or appearing as a law student. The notice must be signed by a supervising attorney who is a member of the bar or this court.

   d. Be introduced to the court in which he or she is appearing by an attorney who is a member of the bar of this court.

3. **Certificate of Admission.** Upon the completion and filing of the certificates required by these rules, the clerk of court will issue a certificate of admission to the law student in a form prescribed by the court. This certificate expires contemporaneously with the expiration date of the dean's certificate unless it is sooner withdrawn. Any law student's certificate of admission may be terminated at any time by the court without notice or hearing and without any showing of cause.

4. **Restrictions.** No law student admitted under these rules will:

   a. Request or receive any compensation or remuneration of any kind from the client. This will not prevent the supervising attorney, law school, public defender, or the government from paying compensation to the law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require.

   b. Appear in court without the presence of the supervising attorney.

   c. File any documents or papers with the court that he or she has prepared which have not been read, approved, and signed by the supervising attorney.

5. **Supervising Attorneys.** Any person acting as a supervising attorney under this rule must be a member of the bar of this court and must:

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

   b. Sign all pleadings and other papers prepared by the law student.

   c. Advise the court of the law student's participation, always be present with the student 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 47.1 MOTIONS

A. Discovery Motions. Before filing a discovery motion, the certification required under D.S.D. Crim. LR 16.1 must be met.

B. Motions to Seal. Any motion seeking the sealing of pleadings, motions, exhibits, or other documents to be filed in the court record must include (1) proposed reasons supported by specific factual representations to justify the sealing, and (2) an explanation why alternatives to sealing would not provide sufficient protection. A motion to seal and the documents to which the motion refers must be filed consistent with the CM/ECF User Manual and Administrative Procedures found at www.sdd.uscourts.gov.

C. Required Written Brief. With every motion raising a question of law, except oral motions made during a hearing or trial, the movant must serve and file a brief containing the movant's legal arguments, the authorities in support thereof, and the Federal Rule of Criminal Procedure on which the movant relies. Motions in limine and supporting arguments and authorities may be filed as one document on or before 7 calendar days after service of a motion and brief, unless otherwise specifically ordered by the court, all opposing parties must serve and file a responsive brief containing opposing legal arguments and authorities in support thereof. The movant may file a reply brief within 4 calendar days after service of the responsive brief.

1. **Page Limitation on Briefs.** Briefs must not exceed 25 pages excluding table of contents and/or authorities, certificate of service, if applicable, and attachments unless prior approval has been obtained from the court.

2. **Attachments.** A party will 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 should be clearly and prominently identified as such. Highlighting or underlining 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. Responding parties may file additional excerpts that they believe are directly germane. The court may require parties to file additional excerpts or the complete document.

LR 49.1 SERVING AND FILING DOCUMENTS

A. What constitutes filing/official record. Electronic transmission of a document to the Electronic Filing System together with the transmission of a Notice of Electronic Filing from the court constitutes filing of the document for all purposes of the local rules of this court and the Federal Rules of Civil Procedure and constitutes entry of the document on the docket kept by the clerk of court under Fed. R. Civ. P. 58 and 79. When a document has been filed electronically, the official record is the electronic document as stored by the court and is deemed filed at the date and time stated on the Notice of Electronic Filing from the court. The party filing the document is bound by the document as filed.

B. What constitutes an electronic signature. In addition to the requirements contained in Rule 49(b)(4) of the Federal Rules of Criminal Procedure, 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 unless a facsimile of the filing user's signature appears in the signature block.

C. Duty to protect login and password. 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. If they learn that their password has been compromised, they must immediately notify the clerk. Attorneys may be subject to sanctions for failure to comply with this provision.

D. Documents requiring the signature of more than one party. Documents requiring signatures of more than one party may be electronically filed either by (a) submitting a scanned document containing all necessary signatures; or (b) 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.

E. Restricted Hyperlinks. Because a website address within a court filing becomes a hyperlink to the internet location upon filing in the CM/ECF system, counsel must redact from any filed documents any website address that directs the court to a website that contains pornography or personal identifiers. After filing the redacted document, counsel must provide an unredacted version to the clerk of court for filing under seal.

F. Filing Documents outside of CM/ECF. Highly sensitive documents may be filed outside of the court's Electronic Filing System.

1. **Highly Sensitive Documents (HSDs)**. HSDs are documents that contain highly sensitive non-public information that is likely to be of interest to the intelligence service of a foreign government and whose use or disclosure would likely cause significant harm. HSDs may be filed in cases involving the following:

    a. national security issues;
    b. foreign sovereign interests;
    c. cybersecurity or major infrastructure security;
    d. ongoing intelligence-gathering operations;
    e. safety of public officials or government interests;
    f. non-public intellectual property and/or trade secrets of value to the intelligence services of a foreign government;
    g. documents that would give foreign competitors of U.S. corporations a competitive advantage;
    h. the reputational interests of the U.S. or any State, or local government;
    i. false claims or qui tam cases;
    j. applications for production of stored electronic communications under 18 U.S.C. § 2703; or
    k. applications for electronic surveillance under 18 U.S.C. § 2518.

    HSDs are rare. Any dispute as to whether a document is an HSD will be resolved by the presiding judge or, when no presiding judge is assigned, the Chief Judge.

2. **Motion Required.** A represented or pro se party must file a motion to treat a document as an HSD and a proposed order in the same manner as a motion to file under seal pursuant to D.S.D. Civ. LR 7.1 A and Crim. LR 47.1 B. The motion and proposed order must state the duration of the HSD designation or whether the HSD designation should be permanent. The motion must explain why the proposed document constitutes an HSD under paragraph F.1 or why it should otherwise be filed without revealing the highly sensitive information contained within the HSD.

    a. The filing party must deliver to the clerk's office where the presiding judge is chambered two paper copies of the motion and HSD sought be filed along with a certificate of service. These documents must be submitted in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT" and marked with the applicable case number, attorney's name, street address, telephone number, and email address. Upon receipt, the clerk's office will make an informational docket entry that a motion to treat a document as an HSD has been filed.

    b. Unless being submitted as an ex parte filing, the filing party must serve the proposed HSD on the other parties by any manner specified in Criminal Rule 49(a), except for service via the court's electronic filing system.

    c. If the court grants the motion, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. The clerk's office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

3. **Service of HSD Orders.** The clerk's office will serve paper copies of the order on the parties via mail.

LR 49.1.1 PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

A. Pursuant to the E-Government Act of 2002, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all pleadings and documents filed, 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. After filing a document redacted consistent with Fed. R. Crim. P.49.1, a party may submit for filing under seal an unredacted copy of the document. Any such filings must contain a cover sheet stating the following: "Document filed under seal pursuant to the E-Government Act."

C. The responsibility for redacting personal identifiers rests solely with counsel and the parties. The clerk of court will not review each filing for compliance with this rule.

D. Personal Data Identifiers in Charging Documents

1. The clerk of court will file indictments under seal to prevent public disclosure of the identity of the foreperson of the grand jury. The attorney for the government must provide the clerk's office with a redacted version of the indictment in which the name of the foreperson is omitted. If the indictment includes personal data identifiers, the attorney for the government must also provide the clerk's office with a redacted version of the indictment that omits both personal data identifiers and the name of the foreperson. The clerk's office will file a redacted version of the indictment in addition to the sealed original.

2. Personal data identifiers may be included in informations and complaints if necessary, to comply with the requirements of federal law. If personal data identifiers are included, the attorney for the government must provide the clerk's office with a redacted version of the information or complaint along with the original. The original will be filed under seal to prevent public disclosure of the personal data identifiers.

3. In all other instances charging documents will be filed under seal only upon motion of the government and order of the court.

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 including ex parte documents. Specifically forbidden is the divulgence of information concerning arguments and hearings held in chambers, at side bars or otherwise outside the presence of the public.

LR 57.2 AVAILABILITY OF ELECTRONIC RECORDINGS

If a proceeding has been recorded electronically and the electronic recording constitutes the official record, the clerk of court will arrange, upon the request of any party, to have a transcript prepared from the electronic recording. The requesting party will be responsible for any costs associated with producing a transcript in accordance with the directives of the Administrative Office of the United States Courts. Recordings will not be released to parties or the public.

LR 57.3 EXHIBITS

A. Marking of Exhibits. Exhibits in criminal trials and hearings must be marked in accordance with instructions from the court.

B. Electronically Filing Documentary Exhibits.

1. **By the Clerk.** At the conclusion of a trial or other court proceeding, the Clerk of Court will electronically file all documentary exhibits offered and/or received in CM/ECF. The exhibits electronically filed by the Clerk will be restricted to court users and case participants. After filing, the Clerk will return documentary exhibits to the offering party.

2. **By the Parties.** The parties will have twenty-one (21) days to review their returned documentary exhibits to determine whether redactions are required pursuant to D.S.D. Crim. LR 49.1.1.

    a. **Redactions required.** If redactions are required, the offering party must electronically file all of its documentary exhibits, including redacted exhibits and exhibits that do not require redaction in CM/ECF. This requirement does not apply to exhibits that were sealed when offered and/or received.

    b. **Redactions not required.** If no redactions are required, the Clerk will remove the restrictions and enter a Notice of Unrestricting Trial/Hearing Exhibits in CM/ECF.

C. Physical Exhibits. Physical exhibits, including recordings, will be returned to the offering party at the conclusion of a trial or other proceeding for retention and preservation. This includes all physical exhibits submitted to the clerk even those not used at trial or in a hearing.

1. **Duty to Retain**. When physical exhibits are returned, they must be retained by the offering party, who will maintain and document the chain of custody, and make the exhibits available to the court, if necessary, and to other parties for use in preparing an appeal.

2. **Duty to Preserve.** Returned physical exhibits must be preserved in an unaltered condition until at least 120 calendar days after the resolution of any appeal to allow for the filing of a writ of certiorari under Rule 13 of the Rules of the Supreme Court of the United States. Before such exhibits may be destroyed, the custodial party must seek and obtain a court order authorizing destruction.

D. Exhibits Necessary for Appeal. Consistent with the Eighth Circuit's local rule on exhibits, the offering party is responsible for ensuring any non-public exhibits or physical exhibits necessary for an appeal are submitted to the appellate court.

LR 57.4 WITHDRAWAL AND SUBSTITUTION OF COUNSEL

A. In General. An attorney of record in a case may be permitted to withdraw from representation as counsel of record only by order of the court, or as otherwise provided herein. This does not apply to situations where withdrawal results in continued representation by the same firm or organization.

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 30 or more days in advance of trial, the substitution contains a certificate by substituted counsel, and the substitution will not delay the trial or other progress of the case. The notice of withdrawal and substitution must set forth the name and address of the substituted and withdrawing counsel. Withdrawal under this section will be effective upon filing a notice of withdrawal and substitution. Notice of withdrawal must be provided to the client by the withdrawing attorney.

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

LR 57.5 RECORDING AND CELLULAR DEVICES

Except by permission of the presiding judge, no person will photograph, videotape, televise, broadcast, or record, or cause to be photographed, videotaped, televised, broadcast, or recorded any courtroom proceeding, including proceedings of the grand jury. No person will take any photographic, videotape, television, or sound recording equipment into (1) any courtroom except upon the express permission of the presiding judge, or (2) any jury room, or (3) any corridor on the floor on which a courtroom or jury room is located. This paragraph does not apply to (1) the official court reporter who may use a voice-recording device in connection with his or her official duties, or (2) the use of electronic means for the presentation of evidence or the perpetuation of the record as authorized by the court.

Cellular phones and electronic devices may be brought into courthouses in the United States District Court for South Dakota unless the presiding judge places restrictions on these devices. All cellular and electronic devices must be turned off in the courtroom and any corridor on the floor on which a courtroom or jury room is located unless specifically authorized by order of the court. Cellular and electronic devices are devices capable of communicating, transmitting, receiving, or recording messages, images, sounds, data, or other information by any means, including but not limited to, a computer tablet, cell phone, or Bluetooth device. Individuals who bring such devices into courtrooms may be asked by court security personnel to demonstrate that the device is turned off. Members of the Bar and employees of members of the Bar are exempt from this provision.

Use of any camera or sound recording devices in the courtroom or any corridor on the floor on which a courtroom or jury room is located is prohibited unless specifically authorized by order of the court.

However, an electronic device that is essential to a person's health or welfare (such as an insulin pump) may remain on in the courtroom.

News media personnel who possess recording devices will be allowed entry into a court facility, provided the news media personnel are escorted through the building by a representative of the tenant agency being visited. If no tenant representative is available, entry with the recording devices will be denied. In courthouses where jury and grand jury facilities are located contiguous to public access corridors, news media personnel will not be allowed to possess recording devices on the floors housing the jury and grand jury facilities during jury deliberations or grand jury sessions.

Photographic, videotape, television, and sound recording devices are permitted in courtrooms and in adjacent corridors for naturalization ceremonies, investitures, attorney admissions, and other ceremonial functions unless specifically prohibited by the court.

LR 57.6 IDENTIFICATION

A. Caption. A pleading or other paper presented for filing must begin with the caption of the case, the title of the document, and the name of the party filing the document. All papers presented after the charging document must bear the file number assigned to the case.

B. Signature Block. All papers must be signed and include the typed or printed name, address, telephone number, and email address of the signer beneath the signature. This information must not appear as a header or footer on each page of the document, or as part of the caption of the case.

LR 57.7 TRIAL APPEARANCE

Absent extraordinary circumstances, every defendant in a criminal case may wear civilian clothing during a jury trial. Civilian clothing should be provided to the United States Marshal Service each morning of trial by the defendant's attorney. The United States Marshal Service will take appropriate measures to ensure jurors do not observe the defendant in shackles in or out of the courtroom.

LR 57.8 PAYMENTS PRIOR TO ENTRY OF JUDGMENT

The Clerk of Court may accept special penalty assessment, restitution and fine payments prior to entry of a judgment and commitment in criminal cases. Restitution funds should be held in the deposit fund until further order of the court.

LR 57.9 FORM OF PAPERS

All documents must be on 8½ x 11-inch paper. The text must be double-spaced, but quotations more than two lines long must be indented and single-spaced. Headings and footnotes must be single-spaced. Margins must be at least one inch on all four sides. Fonts must be at least 12-point. Papers not in the required form may not be filed without leave of the court. Exhibits attached to documents must, if feasible, be similarly typewritten, printed, or otherwise reproduced in clear, legible, and permanent form.

LR 57.10 ACCESS TO CRIMINAL DOCUMENTS

A. Purpose. In order to protect the safety of federal defendants and the integrity of ongoing investigations and related prosecutions, access to certain criminal documents and transcripts is restricted.

B. Sealed or Restricted Documents. The court's intent is to make it impossible to determine from examining the record whether a defendant or other witness did or did not cooperate with the government. To implement this intent, the following documents are sealed or otherwise restricted:

1. **Plea Agreement Supplements.** Every plea agreement will include a sealed supplement that either identifies any agreements the defendant has with the government regarding cooperation or states that there is no cooperation.

2. **Sentencing Memorandums and Motions for Departure/Variance.**

3. **Restricted Change of Plea or Sentencing Transcripts.** Every transcript of a change of plea or sentencing hearing will contain a confidential section or reference thereto so that cooperation or the lack thereof may be discussed. If a transcript is prepared, the court reporter or transcriptionist will prepare two versions: a restricted transcript and a public transcript.

    a. The restricted transcript will include the confidential section. Only the Government and counsel for the defendant will have access to restricted transcripts.

    b. The public transcript will include the following reference: Pursuant to D.S.D. Crim. LR 57.10, portions of all change of plea and sentencing transcripts are restricted.

4. **Restricted Transcripts involving Cooperator Information.** If a transcript is prepared of other hearings or trials where a cooperating witness testified or was referenced by name, the court reporter or transcriptionist will prepare two versions: a restricted transcript and a public transcript.

    a. The prosecutor must notify the court, court reporter, clerk, and counsel of cooperating witnesses prior to eliciting their testimony. This notification can be made at the pretrial conference or any other point outside the hearing of the jury.

    b. The restricted transcript will include the identity of cooperating witnesses.

    c. The public transcript will exclude the identity of cooperating witnesses and will refer to them as NR 1, etc.

    d. If there is law enforcement testimony regarding cooperation or statements by counsel or others identifying a person as a cooperator, the prosecutor is to submit a redaction request, either orally at a bench conference or electronically prior to the preparation of the transcript. An order is not required.

e. If a transcript has been publicly filed containing any information identifying a person as a cooperating witness, the U.S. Attorney's office is to submit a motion to seal and a redaction request identifying where the public transcript needs to be redacted.

C. Access to Sealed or Restricted Documents.

1. Attorneys and others. Federal court officers or employees (including probation officers and federal public defender staff), retained counsel, appointed CJA panel attorneys, and any other person in an attorney-client relationship with a defendant may, consistent with this rule, review any sealed or restricted portions of the file with their client, but may not provide copies.

2. Inmates. When an inmate requests copies of sealed or restricted documents from his/her criminal file, copies will be forwarded to the warden of the appropriate institution, along with a copy of this rule. Inmates may review their documents in an area designated by the warden. Sealed or restricted documents may not be retained by the inmate, nor reviewed in the presence of another inmate.

3. Post Sentencing Non-Custodial Defendants. Any defendant whose case is concluded and is not in custody must obtain a court order to receive copies of restricted documents.

D. Serving Restricted or Sealed Documents. If the Clerk of Court or a party need to serve sealed or restricted documents on an inmate, they must follow the procedure outlined in Section C.2 of this rule.

LR 57.11 MAGISTRATE JUDGE DUTIES

A. General Designation. In every criminal case, the court designates the magistrate judge assigned to the case to perform the following duties authorized by 28 U.S.C. § 636:

1. Hear and determine any pretrial matter pending before the court, except a motion to dismiss or quash an indictment or information by the defendant, or to suppress evidence in a criminal case;

2. Conduct hearings, including evidentiary hearings, and submit to the district judge proposed findings and recommendation for the disposition of:

   (a) dispositive pretrial matters such as to dismiss or quash an indictment or information by the defendant, or to suppress evidence in a criminal case;

   (b) applications for posttrial relief made by individuals convicted of criminal offenses.

3. In accordance with 18 U.S.C. § 3401, with respect to misdemeanors committed within the district:

   (a) try a defendant accused of, and sentence a defendant convicted of, a petty offense (Infractions, Class C misdemeanors, and Class B misdemeanors); and

   (b) with the defendant's consent, try a defendant accused of, and sentence a defendant convicted of non-petty offenses (Class A) misdemeanors.

4. Conduct hearings to modify, revoke, or terminate supervised release, including evidentiary hearings, and submit to the district judge proposed findings of fact and recommendations for such modification, revocation, or termination by the district judge.

5. Serve as a special master upon consent of the parties in civil cases.

6. Preside over allocution and change of plea proceedings in felony criminal cases upon consent of the parties and submit to the district judge proposed recommendations for de novo review.

B. **Specific Designation.** The district judge assigned to a case may specifically designate a magistrate judge to perform any of the duties authorized by 28 U.S.C. § 636(b). In performing the designated duties, the magistrate judge must conform to the Local Rules and the instructions of the district judge.

LR 57.12 COURT SECURITY OFFICER DUTIES

When a petit jury has been selected but before deliberations begin, court security officers shall, upon request, escort jurors outside the building provided they remain on courthouse property.

When a petit jury is sequestered to begin deliberations, court security officers shall collect and secure all cellphones and other electronic devices belonging to jurors until such time as the jury has reached a verdict, at which time such devices shall be returned to their owners.

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.

CIVIL
LOCAL RULES OF PRACTICE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

Table of Contents

12/08/2022

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

District Judges:

Roberto A. Lange
Chief United States District Judge
225 S. Pierre Street, Room 413
Pierre, SD 57501
605-945-4610

Karen E. Schreier
United States District Judge
400 South Phillips Avenue, Room 233
Sioux Falls, SD 57104
605-330-6670

Jeffrey L. Viken
Senior United States District Judge
Andrew W. Bogue Federal Building and United States Courthouse
515 Ninth Street, Room 318
Rapid City, SD 57701
605-399-6050

Charles B. Kornmann
Senior United States District Judge
102 Fourth Ave., SE, Room 408
Aberdeen, SD 57401
605-377-2600

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

Magistrate Judges:

Veronica L. Duffy
United States Magistrate Judge
400 South Phillips Ave., Room 119
Sioux Falls, SD 57104
605-330-6650

Mark A. Moreno
United States Magistrate Judge
225 S. Pierre Street, Room 419
Pierre, SD 57501
605-945-4620

Daneta Wollmann
United States Magistrate Judge
Andrew W. Bogue Federal Building and United States Courthouse
515 Ninth Street, Room 244
Rapid City, SD 57701
605-399-6030

Clerk:

Matthew W. Thelen

Clerk of Court
400 South Phillips Ave., Room 128
Sioux Falls, SD 57104

605-330-6600
605-330-6601 (fax)

Divisional Office at Rapid City:

Andrew W. Bogue Federal Building
and United States Courthouse
515 Ninth Street, Room 302
Rapid City, SD 57701
605-399-6000
605-399-6001 (fax)

Divisional Office at Pierre:

225 S. Pierre Street, Room 405
Pierre, SD 57501
605-945-4600
605-945-4601 (fax)

DIVISIONS OF DISTRICT OF SOUTH DAKOTA

The State of South Dakota constitutes one judicial district divided into four divisions for purposes of case assignment. (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, Oglala Lakota, Pennington and Perkins.

The place of holding court is Rapid City.

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. Citation Form. The local civil rules are to be cited as "D.S.D. Civ. LR ___."

B. Scope and Effective Date. The local civil rules govern all civil 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. These local civil rules become effective after the comment period expires and upon the placement on court's official website.

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, other than standing orders. They govern all applicable civil proceedings brought in this court after they take effect. They also 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 will 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 5.1 SERVING AND FILING PLEADINGS AND OTHER PAPERS

A. What constitutes filing/official record. Electronic transmission of a document to the Electronic Filing System together with the transmission of a Notice of Electronic Filing from the court constitutes filing of the document for all purposes of the local rules of this court and the Federal Rules of Civil Procedure and constitutes entry of the document on the docket kept by the clerk of court under Fed. R. Civ. P. 58 and 79. When a document has been filed electronically, the official record is the electronic document as stored by the court and is deemed filed at the date and time stated on the Notice of Electronic Filing from the court. The party filing the document is bound by the document as filed.

B. What constitutes an electronic signature. In addition to the requirements contained in Rule 5(d)(3)(C) of the Federal Rules of Civil Procedure, 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 unless a facsimile of the filing user's signature appears in the signature block.

C. Duty to protect login and password. 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. If they learn that their password has been compromised, they must immediately notify the clerk. Attorneys may be subject to sanctions for failure to comply with this provision.

D. Documents requiring the signature of more than one party. Documents requiring signatures of more than one party may be electronically filed either by (a) submitting a scanned document containing all necessary signatures; or (b) 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.

E. Restricted Hyperlinks. Because a website address within a court filing becomes a hyperlink to the internet location upon filing in the CM/ECF system, counsel must redact from any filed documents any website address that directs the court to a website that contains pornography or personal identifiers. After filing the redacted document, counsel must provide an unredacted version to the clerk of court for filing under seal.

F. Filing Documents outside of CM/ECF. Highly sensitive documents may be filed outside of the court's Electronic Filing System.

1. **Highly Sensitive Documents (HSDs)**. HSDs are documents that contain highly sensitive non-public information that is likely to be of interest to the intelligence service of a foreign government and whose use or disclosure would likely cause significant harm. HSDs may be filed in cases involving the following:

   a. national security issues;
   b. foreign sovereign interests;
   c. cybersecurity or major infrastructure security;
   d. ongoing intelligence-gathering operations;
   e. safety of public officials or government interests;
   f. non-public intellectual property and/or trade secrets of value to the intelligence services of a foreign government;
   g. documents that would give foreign competitors of U.S. corporations a competitive advantage;
   h. the reputational interests of the U.S. or any State, or local government;
   i. false claims or qui tam cases;
   j. applications for production of stored electronic communications under 18 U.S.C. § 2703; or
   k. applications for electronic surveillance under 18 U.S.C. § 2518.

   HSDs are rare. Any dispute as to whether a document is an HSD will be resolved by the presiding judge or, when no presiding judge is assigned, the Chief Judge.

2. **Motion Required.** A represented or pro se party must file a motion to treat a document as an HSD and a proposed order in the same manner as a motion to file under seal pursuant to D.S.D. Civ. LR 7.1 A and Crim. LR 47.1 B. The motion and proposed order must state the duration of the HSD designation or whether the HSD designation should be permanent. The motion must explain why the proposed document constitutes an HSD under paragraph F.1 or why it should otherwise be filed without revealing the highly sensitive information contained within the HSD.

   a. The filing party must deliver to the clerk's office where the presiding judge is chambered two paper copies of the motion and HSD sought to be filed along with a certificate of service. These documents must be submitted in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT" and marked with the applicable case number, attorney's name, street address, telephone number, and email address. Upon receipt, the clerk's office will make an informational docket entry that a motion to treat a document as HSD has been filed.

b. Unless being submitted as an ex parte filing, the filing party must serve the proposed HSD on the other parties by any manner specified in Civil Rule 5(b)(2), except for service via the court's electronic filing system.

c. If the court grants the motion, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. The clerk's office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

3. **Service of HSD Orders.** The clerk's office will serve paper copies of the order on the parties via mail.

LR 5.2 PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

A. Pursuant to the E-Government Act of 2002, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all pleadings and papers filed, including exhibits thereto, unless otherwise ordered by the court:

1. **Social Security numbers and Taxpayer Identification numbers.** Only the last four digits of these numbers may be used.

2. **Name of an individual known to be a minor.** Only the initials of the minor may be used.

3. **Dates of birth.** Only the year may be used.

4. **Financial account numbers.** Only the last four digits of these numbers may be used.

B. After filing a redacted document consistent with Fed R. Civ. P. 5.2, a party may submit for filing under seal an unredacted copy of the document. Any such filings must contain a cover sheet stating the following, "Document filed under seal pursuant to the E-Government Act."

C. The responsibility for redacting personal identifiers rests solely with counsel and the parties. The clerk of court will not review each filing for compliance with this rule.

LR 7.1 MOTIONS

A. Motions to Seal. Any motion seeking the sealing of pleadings, motions, exhibits, or other documents to be filed in the court record must 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. A motion to seal and the documents to which the motion refers must be filed consistent with the CM/ECF User Manual and Administrative Procedures found at www.sdd.uscourts.gov.

B. Required Written Brief. With every opposed motion raising a question of law, except oral motions made during a hearing or trial, the movant must serve and file a brief containing the movant's legal arguments, the authorities in support thereof, and the Federal Rule of Civil Procedure on which the movant relies. Motions in limine and supporting arguments and authorities may be filed as one document. On or before 21 calendar days after service of a motion and brief, unless otherwise specifically ordered by the court, all opposing parties must serve and file a responsive brief containing opposing legal arguments and authorities in support thereof. The movant may file a reply brief within 14 calendar days after service of the responsive brief.

1. **Page Limitation on Briefs.** Briefs must not exceed 30 pages excluding table of contents and/or authorities, certificate of service, if applicable, and attachments unless prior approval has been obtained from the court.

2. **Attachments.** A party will 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 should be clearly and prominently identified as such. Highlighting or underlining 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. Responding parties may file additional excerpts that they believe are directly germane. The court may require parties to file additional excerpts or the complete document.

C. Oral Argument. Oral argument may be had only upon order of the court. Requests for oral argument must be made by separate statement at the conclusion of the motion or responsive brief, or by any party by a separate document filed within 14 calendar days after the filing of the motion or responsive brief.

LR 7.1.1 DISCLOSURE STATEMENT

Every non-government organizational party or intervenor in a civil case must file either a Corporate Disclosure Statement (disclosure statement) or a Certificate that Fed. R. Civ. P 7.1 is not applicable (certificate of non-applicability). Information provided under this local rule may be used by the judge assigned to a case to determine whether recusal is necessary or appropriate and to confirm jurisdiction is proper. The disclosure statement or certificate of non-applicability must be filed within fourteen (14) days of the party's first pleading or entry of appearance.

LR 10.1 IDENTIFICATION

A. Caption. A pleading or other paper presented for filing must begin with the caption of the case, the title of the document, and the name of the party filing the document. All papers presented after the initial pleading must bear the file number assigned to the case.

B. Signature Block. All papers must be signed and include the typed or printed name, address, telephone number, and email address of the signer beneath the signature. This information must not appear as a header or footer on each page of the document, or as part of the caption of the case.

LR 12.1 EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND

Without the need for a motion, the parties may agree to an extension of time to answer or otherwise respond to a complaint, counterclaim, or crossclaim, of no more than 21 days from the initial deadline, by the requesting party filing a notice of unopposed extension of time to answer or otherwise respond. The stated extension of time to answer or otherwise respond will thereupon become effective, unless otherwise ordered by the court.

LR 15.1 MOTIONS TO AMEND PLEADINGS

In addition to other requirements of these local civil rules, any party moving to amend a pleading must attach a copy of the proposed amended pleading to its motion to amend with the proposed changes highlighted or underlined so that they may be easily identified. If the court grants the motion, the moving party must file a clean original of the amended pleading within 7 days.

LR 16.1 SCHEDULING CONFERENCES

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

1. Actions for review on an administrative record including bankruptcy appeals and social security reviews;

2. Condemnation Actions;

3. Foreclosures;

4. Deportation Actions;

5. Equal Access to Justice/Fee Award Appeals;

6. Forfeiture and Statutory Penalty Actions;

7. Freedom of Information Actions;

8. Government Collection Actions including actions to recover benefit payments and actions to collect on a student loan guaranteed by the United States;

9. Judgments/Actions to Enforce or Register;

10. Petitions for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

11. Actions brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

12. Selective Service Actions;

13. Proceedings ancillary to a proceeding in another court;

14. Actions to enforce or quash a summons or subpoena of any kind;

15. Actions to enforce an arbitration award.

The court may choose to exempt any case from the Fed. R. Civ. P.16 pretrial conference procedure.

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 must not be filed.

B. Fed. R. Civ. P. 26(a)(1) and (2) materials must not be filed unless otherwise ordered by the court.

C. Any portions of discovery materials necessary for the disposition of any motion filed (with relevant portions highlighted or underlined) must either be 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 a party designates any or all of any deposition as evidence to be offered in the trial of any case, such deposition must be filed at the same time as that party's designation consistent with D.S.D. Civ. LR 5.2.

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

LR 26.2 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 D.S.D. Civ. LR 16.1.

LR 28.1 INDEPENDENCE OF COURT REPORTERS

The officer taking the deposition, or any other person with whom such officer has a principal and agency relationship, will not enter into an agreement for reporting service which does any of the following:

1. Requires or allows the court reporter reporting the deposition to relinquish control of an original deposition transcript and copies of the transcript before it is certified and delivered to the custodial attorney;

2. Requires the court reporter to provide special financial terms or other services that are not offered at the same time and on the same terms to all other parties in the litigation, or in any way offers any incentives or rewards to the attorneys, parties to the litigation or to anyone else who has an interest in the litigation;

3. Gives an exclusive monetary or other advantage to any party;

4. Compromises the authenticity of the record or the impartiality of the court reporter or results in the appearance that the authenticity of the record or the impartiality of the court reporter has been compromised;

5. Allows a person, other than the court reporter or reporting firm, to establish the rates charged by the court reporting firm.

Contracts for court reporting services for federal, state, or local governments and subdivisions thereof are excluded. Negotiating or bidding reasonable fees, equal to all parties, with the court reporter on a case-by-case basis is not prohibited.

These provisions may not be waived by disclosure, agreement, stipulation, or by any other means unless a request for waiver is contained in the notice of deposition.

Any deposition taken in violation of these provisions will result in the court imposing an appropriate sanction.

LR 29.1 STIPULATIONS MADE IN OPEN COURT OR WRITING

To be binding in a proceeding in this court, every stipulation, agreement, or consent between or among parties or their attorneys must be made in open court or reduced to writing and subscribed by the parties or their attorneys. Stipulations or agreements relating to changing the place of trial, continuing cases to a later date, extending time to answer or otherwise plead (except as provided in D.S.D. Civ. LR 12.1), or setting any matter for hearing are not binding unless so ordered by the court.

LR 37.1 CONDITIONS FOR DISCOVERY MOTIONS

A party filing a motion concerning a discovery dispute must file a separate certification describing the good faith efforts of the parties to resolve the dispute. If the court schedules a hearing on the motion, at least 7 calendar days prior to the hearing, or sooner as the court may require, the parties must file a statement setting forth the matters upon which they have been unable to agree.

LR 39.1 TRIALS

A. Opening Statements in Jury Trials. After a jury has been sworn, the party with 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 Attorneys. On the trial of any action only one attorney per party will be permitted to examine or cross-examine each witness, and not more than two attorneys per party may sum up the case to the jury, unless the court otherwise orders.

C. Motions During Trial. The moving party will be heard first, followed by the adverse party. The movant may reply. Thereafter, argument on the motion will end unless the court allows further argument.

LR 40.1 CONTINUANCES

A. Court Approval Required. A case will not be continued without an order of the court. The parties may file a joint motion for a continuance explaining the reasons for the requested continuance. If the parties disagree over whether there should be a continuance, the party seeking a continuance must file a motion and detail the factual basis on which a continuance is being sought. If the continuance is sought because of the absence of a material witness, the movant must file an affidavit showing that the party applying for the continuance has exercised due diligence to secure the testimony of the witness, the name and city of residence of the witness, and the substance and relevance of the anticipated testimony of the witness. A party opposing a continuance must file a response no later than 7 days after the motion is served. The moving party may file a reply no later than 3 days after the response.

B. When Witness Is Absent. Unless, in the opinion of the court, justice requires, a trial or evidentiary hearing will not be continued or postponed on account of the absence of a witness.

LR 43.1 EXHIBITS

A. Marking of Exhibits. Exhibits in civil trials and hearings must be marked in accordance with instructions from the court.

B. Electronically Filing Documentary Exhibits.

1. **By the Clerk.** At the conclusion of a trial or other court proceeding, the Clerk of Court will electronically file all documentary exhibits offered and/or received in CM/ECF. The exhibits electronically filed by the Clerk will be restricted to court users and case participants. After filing, the Clerk will return documentary exhibits to the offering party.

2. **By the Parties.** The parties will have twenty-one (21) days to review their returned documentary exhibits to determine whether redactions are required pursuant to D.S.D. Civ. LR 5.2.

    a. **Redactions required.** If redactions are required, the offering party must electronically file all of its documentary exhibits, including redacted exhibits and exhibits that do not require redaction in CM/ECF. This requirement does not apply to exhibits that were sealed when offered and/or received.

b. **Redactions not required.** If no redactions are required, the Clerk will remove the restrictions and enter a Notice of Unrestricting Trial/Hearing Exhibits in CM/ECF.

C. Physical Exhibits. Physical exhibits, including recordings, will be returned to the offering party at the conclusion of a trial or other proceeding for retention and preservation. This includes all physical exhibits submitted to the clerk even those not used at trial or in a hearing.

1. **Duty to Retain**. When physical exhibits are returned, they must be retained by the offering party, who will maintain and document the chain of custody, and make the exhibits available to the court, if necessary, and to other parties for use in preparing an appeal.

2. **Duty to Preserve.** Returned physical exhibits must be preserved in an unaltered condition until at least 120 calendar days after the resolution of any appeal to allow for the filing of a writ of certiorari under Rule 13 of the Rules of the Supreme Court of the United States. Before such exhibits may be destroyed, the custodial party must seek and obtain a court order authorizing destruction.

D. Exhibits Necessary for Appeal. Consistent with the Eighth Circuit's local rule on exhibits, the offering party is responsible for ensuring any non-public exhibits or physical exhibits necessary for an appeal are submitted to the appellate court.

LR 47.2 RESTRICTION ON PHOTOGRAPHING OR INTERVIEWING JURORS

A. Photographing Jurors. In order to protect the integrity and independence of jurors, no person may photograph or attempt to photograph any juror, grand or petit, without the express approval of the individual juror or the express approval of the presiding judge. No one other than a juror may photograph or otherwise record his or her motor vehicle or motor vehicle license. Leaflets or other juror information pamphlets may not be given to a juror or placed in any place where a juror might reasonably be expected to obtain the printed matter. Such action may constitute an unlawful attempt to influence, intimidate, or impede a juror or witness, in violation of 18 U.S.C. § 1503 and 18 U.S.C. § 1510.

B. Interviewing Jurors. No one may contact any juror before or during the juror's service on a case. The parties, their lawyers and anybody acting on their behalf must seek and obtain permission from the district judge who tried the case before contacting a juror after the juror served on the case.

LR 51.1 JURY INSTRUCTIONS

A. Pretrial Filing of Instructions. Each party must file and serve all proposed substantive jury instructions, including a "statement of the case" instruction and "theory of defense."

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

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 must file and serve a verified bill of costs within 28 calendar days after entry of judgment or an order of dismissal. The party liable for costs may within 14 calendar days thereafter file exceptions to the costs or any specific item therein.

The clerk of court may then tax costs and, upon allowance, the costs will be included in the judgment or decree. Upon motion of either party within 7 calendar days after the clerk taxes costs, the action of the clerk may be reviewed by the court.

B. Default Judgment. In a default judgment case, the clerk of court may tax costs as a matter of course without notice.

C. Attorney's Fees. A party moving for attorney's fees must file and serve a motion and an affidavit setting out the time reasonably spent in the litigation and any factual matters pertinent to the motion for attorney's fees. The motion must be filed no later than 28 calendar days after the entry of judgment absent a showing of good cause. The respondent may file and serve a response and counter affidavit controverting or asserting any factual matters bearing on the award of attorney's fees.

Objections to an allowance of attorney's fees must be filed within 21 calendar days after service on the party against whom the award of attorney's fees is sought. The movant may file a reply brief within 14 calendar days after service of the responsive brief. 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 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 must 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 must 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 must respond to each numbered paragraph in the moving party's statement of material facts with a separately numbered response and appropriate citations to the record. A party opposing a motion for summary judgment must identify any material facts on which there exists a genuine material issue to be tried.

C. Use of Documentary Evidence. A party must attach to an affidavit all relevant documentary evidence in support of or in opposition to a motion for summary judgment. The evidence should be submitted with proper highlighting or underlining as encouraged by D.S.D. Civ. LR 7.1B2.

D. Effect of Omission: Sanction. All material facts set forth in the movant's statement of material facts will be deemed to be admitted unless controverted by the opposing party's response to the moving party's statement of material facts.

LR 58.1 APPELLATE JUDGMENTS, ORDERS, AND MANDATES

Upon receipt from an appellate court of a judgment or order affecting the decision of the district court or a mandate, the clerk of court must forthwith file and enter the same of record. In the event that the mandate provides for costs or directs a disposition other than an affirmance, the prevailing party will timely submit an order to this court in conformity with the appellate court's ruling.

LR 65.1 MOTIONS FOR PRELIMINARY AND PERMANENT INJUNCTION

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

LR 67.1 REGISTRY FUND

Any party seeking an order of the court for the deposit of funds pursuant to Fed. R. Civ. P. 67 must file a motion and a draft order and must serve the same upon the clerk of court.

LR 68.1 SETTLEMENT

The deadline for settling civil cases is 14 calendar 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 any or all of the parties or their attorneys for violation of this rule.

LR 72.1 MAGISTRATE JUDGE DUTIES

A. General Designation. In every civil case, the court designates the magistrate judge assigned to the case to perform the following duties authorized by 28 U.S.C. § 636:

1. Hear and determine any pretrial matter pending before the court, except a motion: for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action.

2. Conduct hearings, including evidentiary hearings, and submit to the district judge proposed findings and recommendation for the disposition of:

   (a) dispositive pretrial matters such as motions for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action;

   (b) applications for posttrial relief made by individuals convicted of criminal offenses;

   (c) prisoner petitions challenging conditions of confinement; and

   (d) resolution of social security disability appeals.

3. Serve as a special master upon consent of the parties in civil cases.

B. Specific Designation. The district judge assigned to a case may specifically designate a magistrate judge to perform any of the duties authorized by 28 U.S.C. § 636(b). In performing the designated duties, the magistrate judge must conform to the Local Rules and the instructions of the district judge.

C. Consent Jurisdiction.

1. In every case, upon consent of the parties, the court specifically designates the assigned full-time magistrate judge under 28 U.S.C. § 636(c) to conduct the proceedings in a civil matter and to order the entry of judgment.

2. To consent in all cases except social security cases, a party must complete and mail the consent form found on the court's website under Forms **AO Forms 85** Notice, Consent, and Reference of a Civil Action to a Magistrate Judge to the clerk. The clerk will only file the form and reassign the case if all parties have consented to the referral.

LR 83.1 RECORDING AND CELLULAR DEVICES

Except by permission of the presiding judge, no person will photograph, videotape, televise, broadcast, or record, or cause to be photographed, videotaped, televised, broadcast, or recorded any courtroom proceeding, including proceedings of the grand jury. No person will take any photographic, videotape, television, or sound recording equipment into (1) any courtroom except upon the express permission of the presiding judge, or (2) any jury room, or (3) any corridor on the floor on which a courtroom or jury room is located. This paragraph does not apply to (1) the official court reporter who may use a voice-recording device in connection with his or her official duties, or (2) the use of electronic means for the presentation of evidence or the perpetuation of the record as authorized by the court.

Cellular phones and electronic devices may be brought into courthouses in the United States District Court for South Dakota unless the presiding judge places restrictions on these devices. All cellular and electronic devices must be turned off in the courtroom and any corridor on the floor on which a courtroom or jury room is located unless specifically authorized by order of the court. Cellular and electronic devices are devices capable of communicating, transmitting, receiving, or recording messages, images, sounds, data, or other information by any means, including but not limited to, a computer tablet, cell phone, or Bluetooth device. Individuals who bring such devices into courtrooms may be asked by court security personnel to demonstrate that the device is turned off. Members of the Bar and employees of members of the Bar are exempt from this provision.

Use of any camera or sound recording devices in the courtroom or any corridor on the floor on which a courtroom or jury room is located is prohibited unless specifically authorized by order of the court.

However, an electronic device that is essential to a person's health or welfare (such as an insulin pump) may remain on in the courtroom.

News media personnel who possess recording devices will be allowed entry into a court facility, provided the news media personnel are escorted through the building by a representative of the tenant agency being visited. If no tenant representative is available, entry with the recording devices will be denied. In courthouses where jury and grand jury facilities are located contiguous to public access corridors, news media personnel will not be allowed to possess recording devices on the floors housing the jury and grand jury facilities during jury deliberations or grand jury sessions.

Photographic, videotape, television, and sound recording devices are permitted in courtrooms and in adjacent corridors for naturalization ceremonies, investitures, attorney admissions, and other ceremonial functions unless specifically prohibited by the court.

LR 83.2 ATTORNEYS

A. Bar of the Court. The bar of this court consists 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 is 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 in section B of this rule may apply for admission to the bar of this court. The application sequence is as follows:

1. The applicant must complete an application for admission.

2. The applicant must consent to an inquiry concerning the applicant's fitness and qualifications for admission. Submission of a completed application is consent and waiver of privacy regarding inquiry into the applicant's fitness and qualifications.

3. The clerk of court will make any inquiry that may be deemed necessary to obtain information concerning the applicant's fitness and qualifications to practice law.

4. At least two active judges in this district must approve the application before an applicant may be admitted. In the absence of two active district judges, a senior judge may be the second approving judge.

5. The clerk of court will report to a district judge in the division in which an application for admission is pending the approval or disapproval of the active judges.

6. When an application is approved or disapproved, the applicant will be notified.

7. An applicant approved for admission will be contacted by the court to schedule the applicant's admission ceremony.

8. Within six months of being approved for admission, an applicant must appear for an admission ceremony with a member of this bar who will vouch for applicant's legal qualifications, integrity, and good moral character. Upon oral motion of a member of the bar, taking the prescribed oath of admission, signing an oath of admission form, and paying the required fee, the applicant will be admitted to the bar of this court. Upon admission, the clerk of court will issue a certificate of admission to the new bar member.

D. Oath of Admission. The following oath/affirmation will be administered to an applicant for admission to the bar of this court:

I solemnly affirm that I will support and defend the Constitution of the United States, that I will represent my clients conscientiously and ethically, and that I will conduct myself uprightly and according to law in all cases before this court.

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 this court, participate in the conduct of a particular case. Such motion may be allowed only if the applicant associates with a member in good standing of the bar of this court as local counsel. Any prior or pending disciplinary actions or actions resulting in sanctions against the attorney seeking admission pro hac vice must be disclosed in the motion.

Local counsel must sign and file all documents and must continue in the case unless another attorney admitted to practice before this court is substituted. Local counsel must be present during all court proceedings (which include telephone or video conference hearings) in connection with the case, unless otherwise ordered, and must have full authority to act for and on behalf of the client in all matters, including pretrial conferences, trial and any other hearings.

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

1. **Resident Attorneys.**

a. **Regular Admission.** Except as provided elsewhere by this rule, an attorney who resides within this district and represents the United States government or any agency or instrumentality thereof or the Federal Public Defender's Office must be admitted to the State Bar of South Dakota before the attorney is permitted to practice before this court.

b. **Provisional Admission.** An attorney who is a member of the bar of another United States district court and has not yet been admitted to the State Bar of South Dakota, but either is a:

(1) resident assistant United States attorney;

(2) resident attorney representing agencies or instrumentalities of the United States government; or

(3) resident assistant federal public defender has 12 months from the date of the attorney's oath of office for the position in South Dakota to be admitted to the State Bar of South Dakota.

During this period, the attorney may be admitted provisionally to practice before this court.

The procedure for provisional admission follows the procedure for admission outlined in Section C of this rule, except that resident attorneys provisionally admitted will not pay the required fee until they are admitted to the State Bar South Dakota, at which time the clerk of court will issue a certificate of admission to the attorney.

2. **Nonresident Attorneys.**

The following nonresident attorneys may be admitted on the attorney's motion, without payment of fees, to practice in this court during the pendency of the attorney's employment, appointment, or designation if the attorney is a member in good standing of the highest bar of any state or the District of Columbia. An application for admission is not required.

a. An attorney designated as "Special Assistant United States Attorney" by the United States Attorney for the District of South Dakota;

b. An attorney appointed by the Attorney General of the United States or employed by a federal agency with independent litigation authority to represent the interests of the United States government.

c. An attorney hired by the Federal Public Defender's Office for the District of South Dakota; or

d. An attorney employed by the Federal Public Defender's Office for the District of North Dakota.

A judge advocate of the armed forces of the United States representing the United States government proceedings supervised by judges of this court is not subject to this rule.

G. Attorney Discipline.

1. **Automatic Suspension.** Any member of the bar of this court who has been suspended or disbarred from the Supreme Court of the State of South Dakota or who has been convicted of any criminal offense in any United States District Court will, upon appropriate notice from the clerk of court, be suspended from practice before this court.

2. **Discipline by this Court**.

   a. This court, independent of action taken by the Supreme Court of the State of South Dakota, may disbar or suspend a member of the bar of this court from practice for a definite time, or reprimand for good cause shown, after opportunity has been afforded such member to be heard.

   b. An application for the disbarment or discipline of a member of the bar of this court will be made to or before the chief judge of this court unless otherwise ordered by the chief judge. At least two district judges of this court will sit at the hearing of such application unless the attorney against whom the disbarment or disciplinary proceeding is brought states in writing or in open court the member's willingness to proceed before one district judge.

   c. If an investigation is necessary, the chief judge, with the approval of a majority of the district judges, will appoint a member of the bar (hereinafter referred to as "investigator") to investigate charges against any member of this bar. If, as a result of the investigation, the investigator will be of the opinion that there has been a breach of professional ethics by a member of this bar, the investigator, as an officer of the court having special responsibilities for the administration of justice, will file and prosecute a petition requesting that the alleged offender be subjected to appropriate discipline, including disbarment, suspension, or reprimand. The investigator will be paid from the pro hac vice fund.

3. **Disciplinary Record.** The clerk of court keeps a separate attorney discipline docket. Orders of disbarment, suspension and public

reprimand are a matter of public record. All other documents, hearings and records required under the provisions of this Rule will not be publicly disclosed or made available for use in any other proceeding, except upon order of this court.

H. Reinstatement of Disbarred and Suspended Attorneys.

1. An attorney who has been disbarred or suspended in this court may petition for reinstatement at any time. Upon the filing of such petition with the clerk of court, the chief judge may appoint an investigator and may enter an order setting a date for the hearing on said petition on providing at least 21 calendar days' notice. An attorney may be reinstated without a hearing upon a unanimous vote of all district judges who desire to participate in such determinations.

   Any investigator appointed will investigate the facts alleged in the petition for reinstatement and will present to the court, in affidavit form or otherwise, any facts in support of or against the granting of said petition. Two district judges of this court will sit at the hearing on said petition, and the order denying or granting reinstatement will be made in writing by said judges.

2. An attorney who has been disbarred or suspended by the Supreme Court of the State of South Dakota and thereafter reinstated by that court to practice in the state courts will not be permitted to practice in this court, notwithstanding such reinstatement, until a petition for reinstatement as prescribed in section 1 above, incorporating a certified copy of the order of reinstatement by the Supreme Court of the State of South Dakota, has been filed in this court and reinstatement ordered after a hearing as above provided. The hearing may be waived by the attorney with the consent of the court.

I. Law Students.

1. **Student Practice.** Any law student acting under a supervising attorney will 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:

(1) A certificate by the dean of the law school that he or she is of good moral character and meets the requirements of rule 83.I.2 and is qualified to serve as a legal intern. The certificate should be in a form prescribed by the court.

(2) A certificate by the law student stating that he or she has read and agrees to abide by the rules of the court, and all applicable codes of professional responsibility and other relevant federal practice rules. The certificate should be in a form prescribed by the court.

(3) A notice of appearance must be filed in each case in which he or she is participating or appearing as a law student. The notice must be signed by a supervising attorney who is a member of the bar of this court.

d. Be introduced to the court in which he or she is appearing by an attorney who is a member of the bar of this court.

3. **Certificate of Admission.** Upon the completion and filing of the certificates required by these rules, the clerk of court will issue a certificate of admission to the law student in a form prescribed by the court. This certificate expires contemporaneously with the expiration date of the dean's certificate unless it is sooner withdrawn. Any law student's certificate of admission may be terminated at any time by the court without notice or hearing and without any showing of cause.

4. **Restrictions.** No law student admitted under these rules will:

a. Request or receive any compensation or remuneration of any kind from the client. This will not prevent the supervising attorney, law school, public defender, or the government from paying compensation to the law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require.

b. Appear in court without the presence of the supervising attorney.

c. File any documents or papers with the court that he or she has prepared which have not been read, approved, and signed by the supervising attorney.

5. **Supervising Attorneys.** Any person acting as a supervising attorney under this rule must be a member of the bar of this court and must:

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

b. Sign all pleadings and other papers prepared by the law student.

c. Advise the court of the law student's participation, always be present with the student 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 JURY DELIBERATIONS

A. Availability During Deliberations. Until a verdict is reached, and the jury is discharged, the lawyers and the parties 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 party 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. Counsel is responsible for communicating any such notification to the parties.

C. Proceedings. The nature of the proceedings concerning an issue arising during jury deliberations will be determined by the judge. Where the jury has a substantive question, the judge 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 83.4 FORM OF PAPERS

All documents must be on 8½ x 11-inch paper. The text must be double-spaced, but quotations more than two lines long must be indented and single-spaced. Headings and footnotes must be single-spaced. Margins must be at least one inch on all four sides. Fonts must be at least 12-point. Papers not in the required form may not be filed without leave of the court. Exhibits attached to documents must, if feasible, be similarly typewritten, printed, or otherwise reproduced in clear, legible, and permanent form.

LR 83.5 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, must pay to the clerk of court the statutory filing fee before the case will be filed and process issued thereon. (28 U.S.C. § 1914).

2. **Appeals.** The appellant must pay the statutory fee for an appeal to the clerk of the district court. (28 U.S.C. § 1917).

3. **Habeas Corpus.** The petitioner or applicant for a writ of habeas corpus, must pay the statutory filing fee to the clerk of court. (28 U.S.C. § 1914).

B. Miscellaneous Fees. The clerk of court will collect from parties such additional fees only as are prescribed by the Judicial Conference of the United States. Payment of such fees may be required by the clerk of court before furnishing the service therefor.

C. Refusal to File by the Clerk. The clerk of court may refuse to docket or file any suit or proceeding, writ, or other process, pleading or other paper 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) and 1915).

LR 83.6 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. USM 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 United States Marshal a completed USM Form 285. Said forms are available through the United States Marshals Service or the clerk of court's office.

LR 83.7 WITHDRAWAL OF COUNSEL

A. In General. An attorney of record in a case may be permitted to withdraw from representation as counsel of record only by order of the court, or as otherwise provided herein. This does not apply to situations where withdrawal results in continued representation.

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 will not delay the trial or other progress of the case. The notice of withdrawal and substitution must set forth the name and address of the substituted and withdrawing counsel. Withdrawal under this section will be effective upon filing a notice of withdrawal and substitution. Notice of withdrawal must be provided to the client by the withdrawing attorney.

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

LR 83.8 WRITS OF HABEAS CORPUS AND MOTIONS PURSUANT TO 28 U.S.C. § 2255

A. Filing Requirements. Petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2254 and 28 U.S.C. § 2241, motions to vacate sentence pursuant to 28 U.S.C. § 2255, and applications to proceed in forma pauperis must be signed and legibly written or typewritten on forms prescribed by the court and in accordance with the instructions provided with the forms unless the court finds, in its discretion, that the petition, motion, or application is understandable and that it substantially conforms with federal and local requirements for such actions. Copies of the relevant forms and instructions will be provided by the clerk of court upon requestThe court may strike or dismiss petitions, motions, or applications that do not conform substantively or procedurally with federal and local requirements for such actions.

B. In Forma Pauperis Certification. If a habeas corpus petitioner desires to prosecute a petition in forma pauperis, the petitioner must file an application to proceed in forma pauperis on a form prescribed by the court (Motion to Proceed Without Prepayment of Fees and Declaration), accompanied by a certification of the warden or other appropriate officer of the institution in which the petitioner is confined as to the amount of money or securities on deposit for the petitioner. If the petitioner has in excess of $25 on deposit, the petitioner must pay the filing fee to proceed with a 28 U.S.C. § 2241 or a 28 U.S.C. § 2254 case.

C. Assignment of Judicial Officer. Once a petition for a writ of habeas corpus is assigned to a district judge, any future pleadings filed by the prisoner will be automatically assigned to the same district judge to whom the earlier case was assigned, unless otherwise ordered by the court. Motions pursuant to 28 U.S.C. § 2255 will be assigned as provided for in Rule 4(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

LR 83.9 PROCEDURES IN SOCIAL SECURITY CASES

A. Direct Assignment of Cases to Magistrate Judge. Every case filed **under** 42 U.S.C. § 405(g) will be direct assigned to a magistrate judge by division.

B. Consent and Reassignment. On or before the date on which the answer must be filed, each party must submit a completed Social Security Case Assignment Form, through which the party either:

1. consents to disposition of the case by the magistrate judge under 28 U.S.C. § 636(c); or

2. asks to have a district judge assigned to the case.

The Social Security Case Assignment Form must be submitted to the clerk in paper and not filed on the CM/ECF system.

If any party asks to have a district judge assigned to the case, it will be assigned by division. The magistrate judge assigned to the case will remain assigned to the case to conduct such proceedings as the district judge directs.

C. Filing an Answer and the Administrative Record. Within 60 days after notice of an action is given, the Commissioner of Social Security must electronically file and serve an answer and/or certified copy of the administrative record consistent with Rule 4 of the Supplemental Rules for Social Security (Supplemental Rules).

D. Briefing. The briefing deadlines in the Supplemental Rules apply to all actions brought under 42 U.S.C. § 405(g). As of the adoption of this Local Rule, unless the Court orders otherwise, the deadlines are: The plaintiff's brief is due 30 days after the answer or certified record is filed or 30 days after entry of an order disposing of the last remaining motion to dismiss. The commissioner's brief is due 30 days after service of the plaintiff's brief. The plaintiff may file a reply brief within 14 days after service of the commissioner's brief.

LR 83.10 COURT SECURITY OFFICER DUTIES

When a petit jury has been selected but before deliberations begin, court security officers shall, upon request, escort jurors outside the building provided they remain on courthouse property.

When a petit jury is sequestered to begin deliberations, court security officers shall collect and secure all cellphones and other electronic devices belonging to jurors until such time as the jury has reached a verdict, at which time such devices shall be returned to their owners.

CIVIL
LOCAL RULES OF PRACTICE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

12/08/2022

Table of Contents

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

District Judges:

Roberto A. Lange
Chief United States District Judge
225 S. Pierre Street, Room 413
Pierre, SD 57501
605-945-4610

Karen E. Schreier
United States District Judge
400 South Phillips Avenue, Room 233
Sioux Falls, SD 57104
605-330-6670

Jeffrey L. Viken
Senior United States District Judge
Andrew W. Bogue Federal Building and United States Courthouse
515 Ninth Street, Room 318
Rapid City, SD 57701
605-399-6050

Charles B. Kornmann
Senior United States District Judge
102 Fourth Ave., SE, Room 408
Aberdeen, SD 57401
605-377-2600

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

Magistrate Judges:

Veronica L. Duffy
United States Magistrate Judge
400 South Phillips Ave., Room 119
Sioux Falls, SD 57104
605-330-6650

Mark A. Moreno
United States Magistrate Judge
225 S. Pierre Street, Room 419
Pierre, SD 57501
605-945-4620

Daneta Wollmann
United States Magistrate Judge
Andrew W. Bogue Federal Building and United States Courthouse
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Rapid City, SD 57701
605-399-6030

Clerk:

Matthew W. Thelen
Clerk of Court
400 South Phillips Ave., Room 128
Sioux Falls, SD 57104
605-330-6600
605-330-6601 (fax)

Divisional Office at Rapid City:

Andrew W. Bogue Federal Building
and United States Courthouse
515 Ninth Street, Room 302
Rapid City, SD 57701
605-399-6000
605-399-6001 (fax)

Divisional Office at Pierre:

225 S. Pierre Street, Room 405
Pierre, SD 57501
605-945-4600
605-945-4601 (fax)

DIVISIONS OF DISTRICT OF SOUTH DAKOTA

The State of South Dakota constitutes one judicial district divided into four divisions for purposes of case assignment. (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, Oglala Lakota, Pennington and Perkins.

The place of holding court is Rapid City.

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. Citation Form. The local civil rules are to be cited as "D.S.D. Civ. LR ___."

B. Scope and Effective Date. The local civil rules govern all civil 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. These local civil rules become effective after the comment period expires and upon the placement on court's official website.

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, other than standing orders. They govern all applicable civil proceedings brought in this court after they take effect. They also 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 will 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 5.1 SERVING AND FILING PLEADINGS AND OTHER PAPERS

A. What constitutes filing/official record. Electronic transmission of a document to the Electronic Filing System together with the transmission of a Notice of Electronic Filing from the court constitutes filing of the document for all purposes of the local rules of this court and the Federal Rules of Civil Procedure and constitutes entry of the document on the docket kept by the clerk of court under Fed. R. Civ. P. 58 and 79. When a document has been filed electronically, the official record is the electronic document as stored by the court and is deemed filed at the date and time stated on the Notice of Electronic Filing from the court. The party filing the document is bound by the document as filed.

B. What constitutes an electronic signature. In addition to the requirements contained in Rule 5(d)(3)(C) of the Federal Rules of Civil Procedure, 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 unless a facsimile of the filing user's signature appears in the signature block.

C. Duty to protect login and password. 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. If they learn that their password has been compromised, they must immediately notify the clerk. Attorneys may be subject to sanctions for failure to comply with this provision.

D. Documents requiring the signature of more than one party. Documents requiring signatures of more than one party may be electronically filed either by (a) submitting a scanned document containing all necessary signatures; or (b) 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.

E. Restricted Hyperlinks. Because a website address within a court filing becomes a hyperlink to the internet location upon filing in the CM/ECF system, counsel must redact from any filed documents any website address that directs the court to a website that contains pornography or personal identifiers. After filing the redacted document, counsel must provide an unredacted version to the clerk of court for filing under seal.

F. Filing Documents outside of CM/ECF. Highly sensitive documents may be filed outside of the court's Electronic Filing System.

1. **Highly Sensitive Documents (HSDs)**. HSDs are documents that contain highly sensitive non-public information that is likely to be of interest to the intelligence service of a foreign government and whose use or disclosure would likely cause significant harm. HSDs may be filed in cases involving the following:

   a. national security issues;
   b. foreign sovereign interests;
   c. cybersecurity or major infrastructure security;
   d. ongoing intelligence-gathering operations;
   e. safety of public officials or government interests;
   f. non-public intellectual property and/or trade secrets of value to the intelligence services of a foreign government;
   g. documents that would give foreign competitors of U.S. corporations a competitive advantage;
   h. the reputational interests of the U.S. or any State, or local government;
   i. false claims or qui tam cases;
   j. applications for production of stored electronic communications under 18 U.S.C. § 2703; or
   k. applications for electronic surveillance under 18 U.S.C. § 2518.

   HSDs are rare. Any dispute as to whether a document is an HSD will be resolved by the presiding judge or, when no presiding judge is assigned, the Chief Judge.

2. **Motion Required.** A represented or pro se party must file a motion to treat a document as an HSD and a proposed order in the same manner as a motion to file under seal pursuant to D.S.D. Civ. LR 7.1 A and Crim. LR 47.1 B. The motion and proposed order must state the duration of the HSD designation or whether the HSD designation should be permanent. The motion must explain why the proposed document constitutes an HSD under paragraph F.1 or why it should otherwise be filed without revealing the highly sensitive information contained within the HSD.

   a. The filing party must deliver to the clerk's office where the presiding judge is chambered two paper copies of the motion and HSD sought to be filed along with a certificate of service. These documents must be submitted in a sealed envelope marked "HIGHLY SENSITIVE DOCUMENT" and marked with the applicable case number, attorney's name, street address, telephone number, and email address. Upon receipt, the clerk's office will make an informational docket entry that a motion to treat a document as HSD has been filed.

b. Unless being submitted as an ex parte filing, the filing party must serve the proposed HSD on the other parties by any manner specified in Civil Rule 5(b)(2), except for service via the court's electronic filing system.

c. If the court grants the motion, an informational entry will be made on the case docket indicating that the HSD has been filed with the Court. The clerk's office will maintain the HSD in a secure paper filing system or a secure standalone computer system that is not connected to any network.

3. **Service of HSD Orders.** The clerk's office will serve paper copies of the order on the parties via mail.

LR 5.2 PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

A. Pursuant to the E-Government Act of 2002, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all pleadings and papers filed, including exhibits thereto, unless otherwise ordered by the court:

1. **Social Security numbers and Taxpayer Identification numbers.** Only the last four digits of these numbers may be used.

2. **Name of an individual known to be a minor.** Only the initials of the minor may be used.

3. **Dates of birth.** Only the year may be used.

4. **Financial account numbers.** Only the last four digits of these numbers may be used.

B. After filing a redacted document consistent with Fed R. Civ. P. 5.2, a party may submit for filing under seal an unredacted copy of the document. Any such filings must contain a cover sheet stating the following, "Document filed under seal pursuant to the E-Government Act."

C. The responsibility for redacting personal identifiers rests solely with counsel and the parties. The clerk of court will not review each filing for compliance with this rule.

LR 7.1 MOTIONS

A. Motions to Seal. Any motion seeking the sealing of pleadings, motions, exhibits, or other documents to be filed in the court record must 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. A motion to seal and the documents to which the motion refers must be filed consistent with the CM/ECF User Manual and Administrative Procedures found at www.sdd.uscourts.gov.

B. Required Written Brief. With every opposed motion raising a question of law, except oral motions made during a hearing or trial, the movant must serve and file a brief containing the movant's legal arguments, the authorities in support thereof, and the Federal Rule of Civil Procedure on which the movant relies. Motions in limine and supporting arguments and authorities may be filed as one document. On or before 21 calendar days after service of a motion and brief, unless otherwise specifically ordered by the court, all opposing parties must serve and file a responsive brief containing opposing legal arguments and authorities in support thereof. The movant may file a reply brief within 14 calendar days after service of the responsive brief.

1. **Page Limitation on Briefs.** Briefs must not exceed 30 pages excluding table of contents and/or authorities, certificate of service, if applicable, and attachments unless prior approval has been obtained from the court.

2. **Attachments.** A party will 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 should be clearly and prominently identified as such. Highlighting or underlining 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. Responding parties may file additional excerpts that they believe are directly germane. The court may require parties to file additional excerpts or the complete document.

C. Oral Argument. Oral argument may be had only upon order of the court. Requests for oral argument must be made by separate statement at the conclusion of the motion or responsive brief, or by any party by a separate document filed within 14 calendar days after the filing of the motion or responsive brief.

LR 7.1.1 DISCLOSURE STATEMENT

Every non-government organizational party or intervenor in a civil case must file either a Corporate Disclosure Statement (disclosure statement) or a Certificate that Fed. R. Civ. P 7.1 is not applicable (certificate of non-applicability). Information provided under this local rule may be used by the judge assigned to a case to determine whether recusal is necessary or appropriate and to confirm jurisdiction is proper. The disclosure statement or certificate of non-applicability must be filed within fourteen (14) days of the party's first pleading or entry of appearance.

LR 10.1 IDENTIFICATION

A. Caption. A pleading or other paper presented for filing must begin with the caption of the case, the title of the document, and the name of the party filing the document. All papers presented after the initial pleading must bear the file number assigned to the case.

B. Signature Block. All papers must be signed and include the typed or printed name, address, telephone number, and email address of the signer beneath the signature. This information must not appear as a header or footer on each page of the document, or as part of the caption of the case.

LR 12.1 EXTENSION OF TIME TO ANSWER OR OTHERWISE RESPOND

Without the need for a motion, the parties may agree to an extension of time to answer or otherwise respond to a complaint, counterclaim, or crossclaim, of no more than 21 days from the initial deadline, by the requesting party filing a notice of unopposed extension of time to answer or otherwise respond. The stated extension of time to answer or otherwise respond will thereupon become effective, unless otherwise ordered by the court.

LR 15.1 MOTIONS TO AMEND PLEADINGS

In addition to other requirements of these local civil rules, any party moving to amend a pleading must attach a copy of the proposed amended pleading to its motion to amend with the proposed changes highlighted or underlined so that they may be easily identified. If the court grants the motion, the moving party must file a clean original of the amended pleading within 7 days.

LR 16.1 SCHEDULING CONFERENCES

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

1. Actions for review on an administrative record including bankruptcy appeals and social security reviews;

2. Condemnation Actions;

3. Foreclosures;

4. Deportation Actions;

5. Equal Access to Justice/Fee Award Appeals;

6. Forfeiture and Statutory Penalty Actions;

7. Freedom of Information Actions;

8. Government Collection Actions including actions to recover benefit payments and actions to collect on a student loan guaranteed by the United States;

9. Judgments/Actions to Enforce or Register;

10. Petitions for habeas corpus or any other proceeding to challenge a criminal conviction or sentence;

11. Actions brought without an attorney by a person in the custody of the United States, a state, or a state subdivision;

12. Selective Service Actions;

13. Proceedings ancillary to a proceeding in another court;

14. Actions to enforce or quash a summons or subpoena of any kind;

15. Actions to enforce an arbitration award.

The court may choose to exempt any case from the Fed. R. Civ. P.16 pretrial conference procedure.

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 must not be filed.

B. Fed. R. Civ. P. 26(a)(1) and (2) materials must not be filed unless otherwise ordered by the court.

C. Any portions of discovery materials necessary for the disposition of any motion filed (with relevant portions highlighted or underlined) must either be 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 a party designates any or all of any deposition as evidence to be offered in the trial of any case, such deposition must be filed at the same time as that party's designation consistent with D.S.D. Civ. LR 5.2.

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

LR 26.2 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 D.S.D. Civ. LR 16.1.

LR 28.1 INDEPENDENCE OF COURT REPORTERS

The officer taking the deposition, or any other person with whom such officer has a principal and agency relationship, will not enter into an agreement for reporting service which does any of the following:

1. Requires or allows the court reporter reporting the deposition to relinquish control of an original deposition transcript and copies of the transcript before it is certified and delivered to the custodial attorney;

2. Requires the court reporter to provide special financial terms or other services that are not offered at the same time and on the same terms to all other parties in the litigation, or in any way offers any incentives or rewards to the attorneys, parties to the litigation or to anyone else who has an interest in the litigation;

3. Gives an exclusive monetary or other advantage to any party;

4. Compromises the authenticity of the record or the impartiality of the court reporter or results in the appearance that the authenticity of the record or the impartiality of the court reporter has been compromised;

5. Allows a person, other than the court reporter or reporting firm, to establish the rates charged by the court reporting firm.

Contracts for court reporting services for federal, state, or local governments and subdivisions thereof are excluded. Negotiating or bidding reasonable fees, equal to all parties, with the court reporter on a case-by-case basis is not prohibited.

These provisions may not be waived by disclosure, agreement, stipulation, or by any other means unless a request for waiver is contained in the notice of deposition.

Any deposition taken in violation of these provisions will result in the court imposing an appropriate sanction.

LR 29.1 STIPULATIONS MADE IN OPEN COURT OR WRITING

To be binding in a proceeding in this court, every stipulation, agreement, or consent between or among parties or their attorneys must be made in open court or reduced to writing and subscribed by the parties or their attorneys. Stipulations or agreements relating to changing the place of trial, continuing cases to a later date, extending time to answer or otherwise plead (except as provided in D.S.D. Civ. LR 12.1), or setting any matter for hearing are not binding unless so ordered by the court.

LR 37.1 CONDITIONS FOR DISCOVERY MOTIONS

A party filing a motion concerning a discovery dispute must file a separate certification describing the good faith efforts of the parties to resolve the dispute. If the court schedules a hearing on the motion, at least 7 calendar days prior to the hearing, or sooner as the court may require, the parties must file a statement setting forth the matters upon which they have been unable to agree.

LR 39.1 TRIALS

A. Opening Statements in Jury Trials. After a jury has been sworn, the party with 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 Attorneys. On the trial of any action only one attorney per party will be permitted to examine or cross-examine each witness, and not more than two attorneys per party may sum up the case to the jury, unless the court otherwise orders.

C. Motions During Trial. The moving party will be heard first, followed by the adverse party. The movant may reply. Thereafter, argument on the motion will end unless the court allows further argument.

LR 40.1 CONTINUANCES

A. Court Approval Required. A case will not be continued without an order of the court. The parties may file a joint motion for a continuance explaining the reasons for the requested continuance. If the parties disagree over whether there should be a continuance, the party seeking a continuance must file a motion and detail the factual basis on which a continuance is being sought. If the continuance is sought because of the absence of a material witness, the movant must file an affidavit showing that the party applying for the continuance has exercised due diligence to secure the testimony of the witness, the name and city of residence of the witness, and the substance and relevance of the anticipated testimony of the witness. A party opposing a continuance must file a response no later than 7 days after the motion is served. The moving party may file a reply no later than 3 days after the response.

B. When Witness Is Absent. Unless, in the opinion of the court, justice requires, a trial or evidentiary hearing will not be continued or postponed on account of the absence of a witness.

LR 43.1 EXHIBITS

A. Marking of Exhibits. Exhibits in civil trials and hearings must be marked in accordance with instructions from the court.

B. Electronically Filing Documentary Exhibits.

1. **By the Clerk.** At the conclusion of a trial or other court proceeding, the Clerk of Court will electronically file all documentary exhibits offered and/or received in CM/ECF. The exhibits electronically filed by the Clerk will be restricted to court users and case participants. After filing, the Clerk will return documentary exhibits to the offering party.

2. **By the Parties.** The parties will have twenty-one (21) days to review their returned documentary exhibits to determine whether redactions are required pursuant to D.S.D. Civ. LR 5.2.

    a. **Redactions required.** If redactions are required, the offering party must electronically file all of its documentary exhibits, including redacted exhibits and exhibits that do not require redaction in CM/ECF. This requirement does not apply to exhibits that were sealed when offered and/or received.

    b. **Redactions not required.** If no redactions are required, the Clerk will remove the restrictions and enter a Notice of Unrestricting Trial/Hearing Exhibits in CM/ECF.

C. Physical Exhibits. Physical exhibits, including recordings, will be returned to the offering party at the conclusion of a trial or other proceeding for retention and preservation. This includes all physical exhibits submitted to the clerk even those not used at trial or in a hearing.

1. **Duty to Retain**. When physical exhibits are returned, they must be retained by the offering party, who will maintain and document the chain of custody, and make the exhibits available to the court, if necessary, and to other parties for use in preparing an appeal.

2. **Duty to Preserve.** Returned physical exhibits must be preserved in an unaltered condition until at least 120 calendar days after the resolution of any appeal to allow for the filing of a writ of certiorari under Rule 13 of the Rules of the Supreme Court of the United States. Before such

exhibits may be destroyed, the custodial party must seek and obtain a court order authorizing destruction.

D. Exhibits Necessary for Appeal. Consistent with the Eighth Circuit's local rule on exhibits, the offering party is responsible for ensuring any non-public exhibits or physical exhibits necessary for an appeal are submitted to the appellate court.

LR 47.2 RESTRICTION ON PHOTOGRAPHING OR INTERVIEWING JURORS

A. Photographing Jurors. In order to protect the integrity and independence of jurors, no person may photograph or attempt to photograph any juror, grand or petit, without the express approval of the individual juror or the express approval of the presiding judge. No one other than a juror may photograph or otherwise record his or her motor vehicle or motor vehicle license. Leaflets or other juror information pamphlets may not be given to a juror or placed in any place where a juror might reasonably be expected to obtain the printed matter. Such action may constitute an unlawful attempt to influence, intimidate, or impede a juror or witness, in violation of 18 U.S.C. § 1503 and 18 U.S.C. § 1510.

B. Interviewing Jurors. No one may contact any juror before or during the juror's service on a case. The parties, their lawyers and anybody acting on their behalf must seek and obtain permission from the district judge who tried the case before contacting a juror after the juror served on the case.

LR 51.1 JURY INSTRUCTIONS

A. Pretrial Filing of Instructions. Each party must file and serve all proposed substantive jury instructions, including a "statement of the case" instruction and "theory of defense."

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

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 must file and serve a verified bill of costs within 28 calendar days after entry of judgment or an order of dismissal. The party liable for costs may within 14 calendar days thereafter file exceptions to the costs or any specific item therein.

The clerk of court may then tax costs and, upon allowance, the costs will be included in the judgment or decree. Upon motion of either party within 7 calendar days after the clerk taxes costs, the action of the clerk may be reviewed by the court.

B. Default Judgment. In a default judgment case, the clerk of court may tax costs as a matter of course without notice.

C. Attorney's Fees. A party moving for attorney's fees must file and serve a motion and an affidavit setting out the time reasonably spent in the litigation and any factual matters pertinent to the motion for attorney's fees. The motion must be filed no later than 28 calendar days after the entry of judgment absent a showing of good cause. The respondent may file and serve a response and counter affidavit controverting or asserting any factual matters bearing on the award of attorney's fees.

Objections to an allowance of attorney's fees must be filed within 21 calendar days after service on the party against whom the award of attorney's fees is sought. The movant may file a reply brief within 14 calendar days after service of the responsive brief. 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 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 must 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 must 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 must respond to each numbered paragraph in the moving party's statement of material facts with a separately numbered response and appropriate citations to the record. A party opposing a motion for summary judgment must identify any material facts on which there exists a genuine material issue to be tried.

C. Use of Documentary Evidence. A party must attach to an affidavit all relevant documentary evidence in support of or in opposition to a motion for summary judgment. The evidence should be submitted with proper highlighting or underlining as encouraged by D.S.D. Civ. LR 7.1B2.

D. Effect of Omission: Sanction. All material facts set forth in the movant's statement of material facts will be deemed to be admitted unless controverted by the opposing party's response to the moving party's statement of material facts.

LR 58.1 APPELLATE JUDGMENTS, ORDERS, AND MANDATES

Upon receipt from an appellate court of a judgment or order affecting the decision of the district court or a mandate, the clerk of court must forthwith file and enter the same of record. In the event that the mandate provides for costs or directs a disposition other than an affirmance, the prevailing party will timely submit an order to this court in conformity with the appellate court's ruling.

LR 65.1 MOTIONS FOR PRELIMINARY AND PERMANENT INJUNCTION

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

LR 67.1 REGISTRY FUND

Any party seeking an order of the court for the deposit of funds pursuant to Fed. R. Civ. P. 67 must file a motion and a draft order and must serve the same upon the clerk of court.

LR 68.1 SETTLEMENT

The deadline for settling civil cases is 14 calendar 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 any or all of the parties or their attorneys for violation of this rule.

LR 72.1 MAGISTRATE JUDGE DUTIES

A. General Designation. In every civil case, the court designates the magistrate judge assigned to the case to perform the following duties authorized by 28 U.S.C. § 636:

1. Hear and determine any pretrial matter pending before the court, except a motion: for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a

class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action.

2. Conduct hearings, including evidentiary hearings, and submit to the district judge proposed findings and recommendation for the disposition of:

   (a) dispositive pretrial matters such as motions for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, or to involuntarily dismiss an action;

   (b) applications for posttrial relief made by individuals convicted of criminal offenses;

   (c) prisoner petitions challenging conditions of confinement; and

   (d) resolution of social security disability appeals.

3. Serve as a special master upon consent of the parties in civil cases.

B. Specific Designation. The district judge assigned to a case may specifically designate a magistrate judge to perform any of the duties authorized by 28 U.S.C. § 636(b). In performing the designated duties, the magistrate judge must conform to the Local Rules and the instructions of the district judge.

C. Consent Jurisdiction.

1. In every case, upon consent of the parties, the court specifically designates the assigned full-time magistrate judge under 28 U.S.C. § 636(c) to conduct the proceedings in a civil matter and to order the entry of judgment.
2. To consent in all cases except social security cases, a party must complete and mail the consent form found on the court's website under Forms **AO Forms 85** Notice, Consent, and Reference of a Civil Action to a Magistrate Judge to the clerk. The clerk will only file the form and reassign the case if all parties have consented to the referral.

LR 83.1 RECORDING AND CELLULAR DEVICES

Except by permission of the presiding judge, no person will photograph, videotape, televise, broadcast, or record, or cause to be photographed, videotaped, televised, broadcast, or recorded any courtroom proceeding, including proceedings of the grand jury. No person will take any photographic, videotape, television, or sound recording equipment into (1) any courtroom except upon the express permission of the presiding judge, or (2) any jury room, or (3) any corridor on the floor on which a courtroom or jury room is located. This paragraph does not apply to (1) the official court reporter who may use a voice-recording device in connection with his or her official duties, or (2) the use of electronic means for the presentation of evidence or the perpetuation of the record as authorized by the court.

Cellular phones and electronic devices may be brought into courthouses in the United States District Court for South Dakota unless the presiding judge places restrictions on these devices. All cellular and electronic devices must be turned off in the courtroom and any corridor on the floor on which a courtroom or jury room is located unless specifically authorized by order of the court. Cellular and electronic devices are devices capable of communicating, transmitting, receiving, or recording messages, images, sounds, data, or other information by any means, including but not limited to, a computer tablet, cell phone, or Bluetooth device. Individuals who bring such devices into courtrooms may be asked by court security personnel to demonstrate that the device is turned off. Members of the Bar and employees of members of the Bar are exempt from this provision.

Use of any camera or sound recording devices in the courtroom or any corridor on the floor on which a courtroom or jury room is located is prohibited unless specifically authorized by order of the court.

However, an electronic device that is essential to a person's health or welfare (such as an insulin pump) may remain on in the courtroom.

News media personnel who possess recording devices will be allowed entry into a court facility, provided the news media personnel are escorted through the building by a representative of the tenant agency being visited. If no tenant representative is available, entry with the recording devices will be denied. In courthouses where jury and grand jury facilities are located contiguous to public access corridors, news media personnel will not be allowed to possess recording devices on the floors housing the jury and grand jury facilities during jury deliberations or grand jury sessions.

Photographic, videotape, television, and sound recording devices are permitted in courtrooms and in adjacent corridors for naturalization ceremonies, investitures, attorney admissions, and other ceremonial functions unless specifically prohibited by the court.

LR 83.2 ATTORNEYS

A. Bar of the Court. The bar of this court consists 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 is 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 in section B of this rule may apply for admission to the bar of this court. The application sequence is as follows:

1. The applicant must complete an application for admission.

2. The applicant must consent to an inquiry concerning the applicant's fitness and qualifications for admission. Submission of a completed application is consent and waiver of privacy regarding inquiry into the applicant's fitness and qualifications.

3. The clerk of court will make any inquiry that may be deemed necessary to obtain information concerning the applicant's fitness and qualifications to practice law.

4. At least two active judges in this district must approve the application before an applicant may be admitted. In the absence of two active district judges, a senior judge may be the second approving judge.

5. The clerk of court will report to a district judge in the division in which an application for admission is pending the approval or disapproval of the active judges.

6. When an application is approved or disapproved, the applicant will be notified.

7. An applicant approved for admission will be contacted by the court to schedule the applicant's admission ceremony.

8. Within six months of being approved for admission, an applicant must appear for an admission ceremony with a member of this bar who will vouch for applicant's legal qualifications, integrity, and good moral character. Upon oral motion of a member of the bar, taking the prescribed oath of admission, signing an oath of admission form, and paying the required fee, the applicant will be admitted to the bar of this court. Upon admission, the clerk of court will issue a certificate of admission to the new bar member.

D. Oath of Admission. The following oath/affirmation will be administered to an applicant for admission to the bar of this court:

I solemnly affirm that I will support and defend the Constitution of the United States, that I will represent my clients conscientiously and ethically, and that I will conduct myself uprightly and according to law in all cases before this court.

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 this court, participate in the conduct of a particular case. Such motion may be allowed only if the applicant associates with a member in good standing of the bar of this court as local counsel. Any prior or pending disciplinary actions or actions resulting in sanctions against the attorney seeking admission pro hac vice must be disclosed in the motion.

Local counsel must sign and file all documents and must continue in the case unless another attorney admitted to practice before this court is substituted. Local counsel must be present during all court proceedings (which include telephone or video conference hearings) in connection with the case, unless otherwise ordered, and must have full authority to act for and on behalf of the client in all matters, including pretrial conferences, trial and any other hearings.

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

1. **Resident Attorneys.**

a. **Regular Admission.** Except as provided elsewhere by this rule, an attorney who resides within this district and represents the United States government or any agency or instrumentality thereof or the Federal Public Defender's Office must be admitted to the State Bar of South Dakota before the attorney is permitted to practice before this court.

b. **Provisional Admission.** An attorney who is a member of the bar of another United States district court and has not yet been admitted to the State Bar of South Dakota, but either is a:

(1) resident assistant United States attorney;

(2) resident attorney representing agencies or instrumentalities of the United States government; or

(3) resident assistant federal public defender has 12 months from the date of the attorney's oath of office for the position in South Dakota to be admitted to the State Bar of South Dakota.

During this period, the attorney may be admitted provisionally to practice before this court.

The procedure for provisional admission follows the procedure for admission outlined in Section C of this rule, except that resident attorneys provisionally admitted will not pay the required fee until they are admitted to the State Bar South Dakota, at which time the clerk of court will issue a certificate of admission to the attorney.

2. **Nonresident Attorneys.**

The following nonresident attorneys may be admitted on the attorney's motion, without payment of fees, to practice in this court during the pendency of the attorney's employment, appointment, or designation if the attorney is a member in good standing of the highest bar of any state or the District of Columbia. An application for admission is not required.

a. An attorney designated as "Special Assistant United States Attorney" by the United States Attorney for the District of South Dakota;

b. An attorney appointed by the Attorney General of the United States or employed by a federal agency with independent litigation authority to represent the interests of the United States government.

c. An attorney hired by the Federal Public Defender's Office for the District of South Dakota; or

d. An attorney employed by the Federal Public Defender's Office for the District of North Dakota.

A judge advocate of the armed forces of the United States representing the United States government proceedings supervised by judges of this court is not subject to this rule.

G. Attorney Discipline.

1. **Automatic Suspension.** Any member of the bar of this court who has been suspended or disbarred from the Supreme Court of the State of South Dakota or who has been convicted of any criminal offense in any United States District Court will, upon appropriate notice from the clerk of court, be suspended from practice before this court.

2. **Discipline by this Court**.

   a. This court, independent of action taken by the Supreme Court of the State of South Dakota, may disbar or suspend a member of the bar of this court from practice for a definite time, or reprimand for good cause shown, after opportunity has been afforded such member to be heard.

   b. An application for the disbarment or discipline of a member of the bar of this court will be made to or before the chief judge of this court unless otherwise ordered by the chief judge. At least two district judges of this court will sit at the hearing of such application unless the attorney against whom the disbarment or disciplinary proceeding is brought states in writing or in open court the member's willingness to proceed before one district judge.

   c. If an investigation is necessary, the chief judge, with the approval of a majority of the district judges, will appoint a member of the bar (hereinafter referred to as "investigator") to investigate charges against any member of this bar. If, as a result of the investigation, the investigator will be of the opinion that there has been a breach of professional ethics by a member of this bar, the investigator, as an officer of the court having special responsibilities for the administration of justice, will file and prosecute a petition requesting that the alleged offender be subjected to appropriate discipline, including disbarment, suspension, or reprimand. The investigator will be paid from the pro hac vice fund.

3. **Disciplinary Record.** The clerk of court keeps a separate attorney discipline docket. Orders of disbarment, suspension and public reprimand are a matter of public record. All other documents, hearings and records required under the provisions of this Rule will not be publicly disclosed or made available for use in any other proceeding, except upon order of this court.

H. Reinstatement of Disbarred and Suspended Attorneys.

1. An attorney who has been disbarred or suspended in this court may petition for reinstatement at any time. Upon the filing of such petition with the clerk of court, the chief judge may appoint an investigator and may enter an order setting a date for the hearing on said petition on providing at least 21 calendar days' notice. An attorney may be reinstated without a hearing upon a unanimous vote of all district judges who desire to participate in such determinations.

   Any investigator appointed will investigate the facts alleged in the petition for reinstatement and will present to the court, in affidavit form or otherwise, any facts in support of or against the granting of said petition. Two district judges of this court will sit at the hearing on said petition, and the order denying or granting reinstatement will be made in writing by said judges.

2. An attorney who has been disbarred or suspended by the Supreme Court of the State of South Dakota and thereafter reinstated by that court to practice in the state courts will not be permitted to practice in this court, notwithstanding such reinstatement, until a petition for reinstatement as prescribed in section 1 above, incorporating a certified copy of the order of reinstatement by the Supreme Court of the State of South Dakota, has been filed in this court and reinstatement ordered after a hearing as above provided. The hearing may be waived by the attorney with the consent of the court.

I. Law Students.

1. **Student Practice.** Any law student acting under a supervising attorney will 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:

      (1) A certificate by the dean of the law school that he or she is of good moral character and meets the requirements of rule 83.I.2 and is qualified to serve as a legal intern. The certificate should be in a form prescribed by the court.

      (2) A certificate by the law student stating that he or she has read and agrees to abide by the rules of the court, and all applicable codes of professional responsibility and other relevant federal practice rules. The certificate should be in a form prescribed by the court.

      (3) A notice of appearance must be filed in each case in which he or she is participating or appearing as a law student. The notice must be signed by a supervising attorney who is a member of the bar of this court.

d. Be introduced to the court in which he or she is appearing by an attorney who is a member of the bar of this court.

3. **Certificate of Admission.** Upon the completion and filing of the certificates required by these rules, the clerk of court will issue a certificate of admission to the law student in a form prescribed by the court. This certificate expires contemporaneously with the expiration date of the dean's certificate unless it is sooner withdrawn. Any law student's certificate of admission may be terminated at any time by the court without notice or hearing and without any showing of cause.

4. **Restrictions.** No law student admitted under these rules will:

   a. Request or receive any compensation or remuneration of any kind from the client. This will not prevent the supervising attorney, law school, public defender, or the government from paying compensation to the law student, nor will it prevent any agency from making such charges for its services as it may otherwise properly require.

   b. Appear in court without the presence of the supervising attorney.

   c. File any documents or papers with the court that he or she has prepared which have not been read, approved, and signed by the supervising attorney.

5. **Supervising Attorneys.** Any person acting as a supervising attorney under this rule must be a member of the bar of this court and must:

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

   b. Sign all pleadings and other papers prepared by the law student.

   c. Advise the court of the law student's participation, always be present with the student 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 JURY DELIBERATIONS

A. Availability During Deliberations. Until a verdict is reached, and the jury is discharged, the lawyers and the parties 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 party 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. Counsel is responsible for communicating any such notification to the parties.

C. Proceedings. The nature of the proceedings concerning an issue arising during jury deliberations will be determined by the judge. Where the jury has a substantive question, the judge 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 83.4 FORM OF PAPERS

All documents must be on 8½ x 11-inch paper. The text must be double-spaced, but quotations more than two lines long must be indented and single-spaced. Headings and footnotes must be single-spaced. Margins must be at least one inch on all four sides. Fonts must be at least 12-point. Papers not in the required form may not be filed without leave of the court. Exhibits attached to documents must, if feasible, be similarly typewritten, printed, or otherwise reproduced in clear, legible, and permanent form.

LR 83.5 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, must pay to the clerk of court the statutory filing fee before the case will be filed and process issued thereon. (28 U.S.C. § 1914).
2. **Appeals.** The appellant must pay the statutory fee for an appeal to the clerk of the district court. (28 U.S.C. § 1917).
3. **Habeas Corpus.** The petitioner or applicant for a writ of habeas corpus, must pay the statutory filing fee to the clerk of court. (28 U.S.C. § 1914).

B. Miscellaneous Fees. The clerk of court will collect from parties such additional fees only as are prescribed by the Judicial Conference of the United States. Payment of such fees may be required by the clerk of court before furnishing the service therefor.

C. Refusal to File by the Clerk. The clerk of court may refuse to docket or file any suit or proceeding, writ, or other process, pleading or other paper 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) and 1915).

LR 83.6 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. USM 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 United States Marshal a completed USM Form 285. Said forms are available through the United States Marshals Service or the clerk of court's office.

LR 83.7 WITHDRAWAL OF COUNSEL

A. In General. An attorney of record in a case may be permitted to withdraw from representation as counsel of record only by order of the court, or as otherwise provided herein. This does not apply to situations where withdrawal results in continued representation.

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 will not delay the trial or other progress of the case. The notice of withdrawal and substitution must set forth the name and address of the substituted and withdrawing counsel. Withdrawal under this section will be effective upon filing a notice of withdrawal and substitution. Notice of withdrawal must be provided to the client by the withdrawing attorney.

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

LR 83.8 WRITS OF HABEAS CORPUS AND MOTIONS PURSUANT TO 28 U.S.C. § 2255

A. Filing Requirements. Petitions for writs of habeas corpus pursuant to 28 U.S.C. § 2254 and 28 U.S.C. § 2241, motions to vacate sentence pursuant to 28 U.S.C. § 2255, and applications to proceed in forma pauperis must be signed and legibly written or typewritten on forms prescribed by the court and in accordance with the instructions provided with the forms unless the court finds, in its discretion, that the petition, motion, or application is understandable and that it substantially conforms with federal and local requirements for such actions. Copies of the relevant forms and instructions will be provided by the clerk of court upon requestThe court may strike or dismiss petitions, motions, or applications that do not conform substantively or procedurally with federal and local requirements for such actions.

B. In Forma Pauperis Certification. If a habeas corpus petitioner desires to prosecute a petition in forma pauperis, the petitioner must file an application to proceed in forma pauperis on a form prescribed by the court (Motion to Proceed Without Prepayment of Fees and Declaration), accompanied by a certification of the warden or other appropriate officer of the institution in which the petitioner is confined as to the amount of money or securities on deposit for the petitioner. If the petitioner has in excess of $25 on deposit, the petitioner must pay the filing fee to proceed with a 28 U.S.C. § 2241 or a 28 U.S.C. § 2254 case.

C. Assignment of Judicial Officer. Once a petition for a writ of habeas corpus is assigned to a district judge, any future pleadings filed by the prisoner will be automatically assigned to the same district judge to whom the earlier case was assigned, unless otherwise ordered by the court. Motions pursuant to 28 U.S.C. § 2255 will be assigned as provided for in Rule 4(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts.

LR 83.9 PROCEDURES IN SOCIAL SECURITY CASES

A. Direct Assignment of Cases to Magistrate Judge. Every case filed **under** 42 U.S.C. § 405(g) will be direct assigned to a magistrate judge by division.

B. Consent and Reassignment. On or before the date on which the answer must be filed, each party must submit a completed Social Security Case Assignment Form, through which the party either:

1. consents to disposition of the case by the magistrate judge under 28 U.S.C. § 636(c); or

2. asks to have a district judge assigned to the case.

The Social Security Case Assignment Form must be submitted to the clerk in paper and not filed on the CM/ECF system.

If any party asks to have a district judge assigned to the case, it will be assigned by division. The magistrate judge assigned to the case will remain assigned to the case to conduct such proceedings as the district judge directs.

C. Filing an Answer and the Administrative Record. Within 60 days after notice of an action is given, the Commissioner of Social Security must electronically file and serve an answer and/or certified copy of the administrative record consistent with Rule 4 of the Supplemental Rules for Social Security (Supplemental Rules).

D. Briefing. The briefing deadlines in the Supplemental Rules apply to all actions brought under 42 U.S.C. § 405(g). As of the adoption of this Local Rule, unless the Court orders otherwise, the deadlines are: The plaintiff's brief is due 30 days after the answer or certified record is filed or 30 days after entry of an order disposing of the last remaining motion to dismiss. The commissioner's brief is due 30 days after service of the plaintiff's brief. The plaintiff may file a reply brief within 14 days after service of the commissioner's brief.

LR 83.10 COURT SECURITY OFFICER DUTIES

When a petit jury has been selected but before deliberations begin, court security officers shall, upon request, escort jurors outside the building provided they remain on courthouse property.

When a petit jury is sequestered to begin deliberations, court security officers shall collect and secure all cellphones and other electronic devices belonging to jurors until such time as the jury has reached a verdict, at which time such devices shall be returned to their owners.