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CIVIL
LOCAL RULES OF PRACTICE

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

Draft 12/6/2012

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DISTRICT OF SOUTH DAKOTA

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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, Pennington, Perkins, and Shannon.

The place of holding court is Rapid City.

INDIVIDUAL CALENDARS

The court operates on an individual calendar system. Each judge in service assumes responsibility for the cases, both civil and criminal, randomly assigned to him/her. The chief judge ~~shall~~will assign responsibility for cases not randomly assigned or in the event of a recusal. The schedule in each case is fixed by court order. All preliminary motions will be heard insofar as practicable by the judge or magistrate judge assigned to the case in question. Inquiries as to motions or other matters having to do with a particular case may be addressed to the clerk at Sioux Falls, Rapid City, or Pierre, as appropriate, for the attention of the judge who is assigned to the case.

LOCAL RULE NUMBERING

These local rules have been numbered consistently with the Federal Rules of Civil Procedure and the conventions of the United States Judicial Conference's Local Rule Project. Generally, the number of each of the local rules is dictated by the number of the corresponding rule in the Federal Rules of Civil Procedure.

LR 1.1 SCOPE OF THE RULES

A. 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 and become effective on ~~December~~January 1, 20~~09~~13.

C. Relationship to Prior Rules; Actions Pending on Effective Date. These rules supersede all previous rules promulgated by this court or any judge of this court. They ~~shall~~will govern all applicable civil proceedings brought in this court after they take effect. They also ~~shall~~will apply to all proceedings pending at the time they take effect, except to the extent that, in the opinion of the court, the application thereof would not be feasible or would work injustice, in which event the former rules ~~shall~~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. Service.

1. Consent to electronic service. All attorneys, including attorneys admitted pro hac vice and attorneys authorized to represent the United States, must register with the court's electronic filing system. Attorneys may petition the court for a registration exemption for good cause shown. Attorneys registered with the court's electronic filing system will receive electronic notice of documents entered into the system.

Registration constitutes written consent to electronic service of all documents filed in accordance with these rules and the Federal Rules of Civil Procedure.

2. What constitutes service. Receipt of Notice of Electronic Filing (NEF) that is generated by the Case Management/ Electronic Case Filing (CM/ECF) system ~~shall~~will constitute service of pleadings or other papers on any person who has consented to electronic service. Parties who have not consented to electronic service including exempt attorneys and *pro se* parties ~~shall~~will be served in accordance with these rules and the Federal Rules of Civil Procedure.

Service of the summons and complaint may not be made electronically, but should proceed according to Fed. R. Civ. P. 4.

B. Filing.

1. 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 Rues 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.

2. Method of Filing.

(a) Electronic Filing. Documents filed by attorneys ~~shall~~will be filed electronically subject to subsection A1. Counsel admitted pro hac vice may not file documents with the court.

(b) Traditional Filing. Documents filed by exempt attorneys and *pro se* parties ~~shall~~will be filed by delivering the original to the clerk within 14 days after service on the opposing party or parties.

(c) Exceptions. ~~-~~Summonses, complaints, ~~notices of appeal,~~ motions to seal, and documents to be filed under seal ~~shall~~will be filed by delivering the originals to the clerk.

3. Certificate of Service. ~~Any document after the complaint that is required to be filed shall be accompanied by~~A party may serve a paper under Fed. R. Civ. P. 5(b)(3) by using the court's electronic transmission facilities in accordance with the CM/ECF User Manual and Administrative Procedures.If a document is served electronically in this manner, the notice of electronic filing generated by CM/ECF constitutes a certificate of service ~~reflecting how service was effectuated on all parties. The court prefers that the~~with respect to those persons to whom electronic notice of the filing is sent, and no separate certificate of service ~~appear at the end of the document rather than as a separate pleading.~~ need be filed with respect to those persons. In all other instances a certificate of service identifying the persons served and the manner in which service was accomplished will be attached to the document.

4. Electronic Filing, Signing, or Verification. The user login and password required to submit documents to the CM/ECF System serve as the filing user's signature on all electronic documents filed with the court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure (including Fed. R. Civ. P. 11), the local rules of this court, and any other purpose for which a signature is required in connection with proceedings

before the court. Electronically filed documents must include a signature block and set forth the name, address, telephone number, and e-mail address of the filing user. In addition, the name of the filing user under whose login and password the documents are submitted must be preceded by a "/s/" and typed in the space where the signature would otherwise appear or a facsimile of the filing user's signature must appear in the signature block.

No filing user or other person may knowingly permit a filing user's login and password to be used by someone other than an authorized agent of the filing user.
Registered Attorneys agree to protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised. Attorneys may be subject to sanctions for failure to comply with this provision

5. **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; ~~(b) identifying on the document the parties whose signatures are required~~ and ~~by the submission of a notice of endorsement by the other parties no later than 7 calendar days after filing; or~~ ~~(c~~(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.

LR 5.2 PRIVACY PROTECTION FOR FILINGS MADE WITH THE COURT

A. Pursuant to the E-Government Act of 2002, parties ~~shall~~will refrain from including, or ~~shall~~will partially redact where inclusion is necessary, the following personal data identifiers from all pleadings and papers filed with the clerk of court, 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 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.

B. Parties wishing to do so may, in addition to the redacted filing, file under seal with the clerk of court ~~either~~ an unredacted copy of the pleading ~~or a reference sheet containing a key to the redacted personal data identifiers~~. Any such filings ~~shall~~will contain a cover

sheet stating the following, "Document filed under seal pursuant to the E-Government Act." ~~Such documents will be retained by the clerk of court as part of the record.~~

C. The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk of court 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 ~~shall~~will 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 ~~shall~~will be filed in paper form. The documents to which the motion to seal refers ~~shall~~will be filed under seal by the clerk of court until the court rules upon the motion. The court will not rule upon the motion until at least 7 calendar days after filing to permit the filing of objections.

B. Required Written Brief. With every motion raising a question of law, except oral motions made during a hearing or trial or motions to amend a scheduling order or motions to withdraw pursuant to D.S.D. LR 57.4, unless otherwise ordered, the movant ~~shall~~will serve on opposing counsel and file with the clerk of court a brief containing the specific points of law with the authorities in support thereof on which the movant relies, including the Federal Rule of Civil Procedure on the basis of which the motion is made. On or before 21 calendar days after service of a motion and brief, unless otherwise specifically ordered by the court, all opposing parties ~~shall~~will serve and file with the clerk of court a responsive brief containing the specific points of law with authorities in support thereof in opposition to the motion. The movant may file with the clerk of court a reply brief within 14 calendar days after service of the responsive brief.

1. Page Limitation on Briefs. Briefs and any attachments other than documentary evidence attached in accordance with D.S.D. LR 56.1(A) ~~shall~~will not exceed 25 pages or 12,000 words unless prior approval has been obtained from the court. If a brief exceeds 25 pages, it ~~shall~~will be accompanied by a certificate by the attorney, or an unrepresented party, that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the brief.

2. **Attachments.** A party must submit as exhibits or attachments only those excerpts of the referenced document that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Highlighting 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 ~~shall~~will be had only upon order of the court. Requests for oral argument ~~shall~~will 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 10.1 IDENTIFICATION

A pleading or other paper presented for filing ~~shall~~will plainly show the caption of the case, a description or designation of the contents, and on whose behalf the same is offered for filing. All papers presented after the initial pleading must bear the file number assigned to the case. All papers must be signed and include the typed or printed name, address, telephone number, and email address of the signer.

LR 15.1 MOTIONS TO AMEND PLEADINGS

In addition to other requirements of these local civil rules, any party moving to amend a pleading ~~shall~~will 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 ~~shall~~will file a clean original of the amended pleading with the clerk of court within 7 days.

LR 16.1 SCHEDULING CONFERENCES

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

1. 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.

LR 26.1 FILING OF DISCOVERY MATERIALS

A. Pursuant to Fed. R. Civ. P. 5(d), depositions, interrogatories, requests for documents, requests for admissions, and answers and responses thereto ~~shall~~will not be filed with the clerk of court.

B. Fed. R. Civ. P. 26(a)(1) and (2) materials ~~shall~~will not be filed with the clerk of court unless otherwise ordered by the court.

C. Any portions of discovery materials necessary for the disposition of any motion filed with the clerk of court (with relevant portions highlighted or underlined) ~~shall~~will 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 ~~shall~~will be filed with the clerk of court at the same time as that party's designation consistent with 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), ~~shall~~will not be filed unless otherwise ordered by the court.

LR 26.2 PRESERVATION AND DISPOSAL OF DEPOSITIONS

A. All depositions that have been read or offered into evidence by agreement of the parties, or at trial or submission of the case to the court, ~~shall~~will become a permanent part of the file.

B. After the ultimate conclusion of the case, depositions not offered or received into evidence may be withdrawn by the parties taking the deposition. All unclaimed depositions may be disposed of by the clerk of court after giving 28 calendar days' notice to all parties of the clerk's intention to do so.

LR 26.3 MEETING OF PARTIES

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

LR 29.1 STIPULATIONS MADE IN OPEN COURT OR WRITING

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

LR 37.1 CONDITIONS FOR DISCOVERY MOTIONS

A party filing a motion concerning a discovery dispute ~~shall~~will 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 ~~shall~~will 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 selected and sworn, the party upon whom rests the burden of proof may briefly, and without argument, make an opening statement to the jury. Thereafter, the adverse party may briefly, and without argument, make an opening statement to the jury.

B. Number of Attorneys. On the trial of any action only one attorney per party ~~shall~~will be permitted to examine or cross-examine each witness, and not more than two attorneys per party ~~shall~~will sum up the case to the jury, unless the court ~~shall~~will otherwise order.

C. Motions During Trial. The moving party ~~shall~~will be heard first, followed by the adverse party. The movant may reply, confining any remarks to the points first stated and a pertinent answer to respondent's argument. Thereafter, discussion on the question ~~shall~~will be closed unless the court requests further argument.

LR 40.1 CONTINUANCES

A. Court Approval Required. In no event ~~shall~~will a case be continued without the approval of the court. Unless the court ~~shall~~will deem it unnecessary, any party seeking a continuance ~~shall~~will do so by motion, which ~~shall~~will include the affidavit of the party seeking the continuance or of some person who knows the facts upon which the application is founded. The affidavit ~~shall~~will contain the grounds for the continuance. If the continuance is sought because of the absence of

a material witness, the affidavit must show that the party applying for the continuance has a valid cause of action or defense and has used due diligence to prepare for trial, the nature and kind of diligence used, the name and city of residence of the absent witness, and the substance of the testimony expected to be given by such witness.

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

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. Custody of Clerk. All exhibits offered or received into evidence at a trial or hearing must be left in the custody of the clerk of court, except as provided in sections C and E of this rule. Until judgment in a case becomes final, exhibits may not be taken from the custody of the clerk of court, except upon order of the court and the execution of a receipt.

C. Custody with Offering Party. Except as provided in section D of this rule, any exhibit not suitable for filing or transmission to the appellate court as part of the appellate record must be retained in the custody of the party offering the exhibit. Such exhibits include, but are not limited to, the following:

1. "Unsafe or Dangerous Exhibits," as defined in section (H) of this rule;

2. Jewelry, liquor, money, articles of high monetary value, and counterfeit money; and

3. Documents or physical exhibits of unusual sensitivity, bulk, or weight.

Except when such an exhibit is being used in court during a trial or hearing, or is in the custody of a jury or the court during deliberations, the offering party must retain custody of the exhibit. The offering party must preserve the exhibit in an unaltered condition until 28 calendar days after the resolution of any appeal. The exhibit may then be disposed of by the party having custody of the exhibit, but only after the party gives 28 calendar days' written notice to all other parties. The party retaining custody of such an exhibit must make the exhibit available to the court and to all other parties for use in preparing

an appeal, and such party must transmit the exhibit safely to the appellate court, if required. Such party also must maintain and document the chain of custody of the exhibit.

D. Biological Evidence. Biological evidence (for example, blood, saliva, tissue, and items containing bodily fluids upon which DNA or other forensic tests could be performed) must be retained by the clerk of court until disposed of pursuant to section F of this rule.

E. Substitution of Photographs for Exhibits. If a party has offered into evidence at a trial or hearing an exhibit that is not suitable for filing or transmission to the appellate court as part of the appellate record, the offering party must provide a photographic print of the exhibit to the clerk of court to be substituted for the exhibit, and the party must retain custody of the exhibit as provided in section C of this rule.

F. Disposition of Exhibits. After judgment has become final, or the time for appeal has elapsed, exhibits left in the custody of the clerk of court may be claimed and withdrawn by the party who offered the exhibit. Any exhibits not claimed and withdrawn within 60 calendar days after the ultimate conclusion of a judgment may be disposed of by the clerk of court after giving 28 calendar days' notice to all parties of the clerk's intention to do so.

G. Record of Withdrawal or Destruction. A party withdrawing an exhibit must execute a receipt that will be filed by the clerk of court. Exhibits disposed of by the clerk of court will be accounted for by a statement prepared and filed by the clerk of court showing the date such action was taken and the date notice of intention to do so was given to all parties.

H. Unsafe or Dangerous Exhibits. As used in this rule, the phrase "unsafe or dangerous exhibit" includes narcotics and other controlled substances, firearms, ammunition, explosives, knives, any object capable of use as a weapon, poisons, dangerous chemicals, hazardous substances, and any other item or matter that may present a substantial risk of physical injury or property damage if not properly handled, stored, or protected.

LR 43.2 TAKING TESTIMONY

Pursuant to Fed. R. Civ. P. 43(a) testimony may be taken in open court by contemporaneous transmission from a different location under certain circumstances. These circumstances are set forth in the Protocol for the Use of Interactive Video Conferencing (Civil), which can be found on the court's website at www.sdd.uscourts.gov.

LR 47.1 EXAMINATION OF POTENTIAL JURORS

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

LR 47.2 QUESTIONING OF JURORS AFTER TRIAL

None of the parties or their attorneys or anybody acting on their behalf ~~shall~~will contact jurors after a trial until the jurors have completed their term of service as jurors. The court may order exceptions to this rule ~~in various instances, including but not limited to, the instance of a hung jury~~.

LR 48.1 NUMBER OF JURORS

In all civil jury cases, the jury ~~shall~~will consist of not fewer than six members nor more than twelve members, to be determined by the court.

LR 51.1 JURY INSTRUCTIONS

A. Required Pretrial Filing of Instructions. Each party ~~shall~~will file with the clerk of court, as ordered by the court, all proposed substantive jury instructions that reasonably can be anticipated in advance of trial, including a "statement of the case" instruction and "theory of defense."

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

C. Service of Instructions. Copies of all proposed jury instructions ~~shall~~will be served on all parties.

LR 53.1 ALTERNATIVE DISPUTE RESOLUTION

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

LR 54.1 TAXATION OF COSTS

A. Procedure. Before costs may be taxed, the prevailing party entitled to recover costs ~~shall~~will file a verified bill of costs within 28 calendar days after entry of judgment or an order of dismissal, together with proof of service on the party liable for costs. The party liable for costs may within 14 calendar days thereafter file with the clerk of court exceptions to the costs or any specific item therein.

The clerk of court may then tax costs and, upon allowance, the costs ~~shall~~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. In a default 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 ~~shall~~will attach to the motion an affidavit setting out the time reasonably spent in the litigation and any factual matters pertinent to the motion for attorney's fees. The motion must be filed no later than 28 calendar days

after the entry of judgment absent a showing of good cause. The respondent may by counter affidavit controvert any of the factual matters contained in the motion and may assert any factual matters bearing on the award of attorney's fees.

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 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 ~~shall~~will be accompanied by a separate, short, and concise statement of the material facts as to which the moving party contends there is no genuine issue to be tried. Each material fact ~~shall~~will be presented in a separate numbered statement with an appropriate citation to the record in the case.

B. Opposing Party's Required Statement of Material Facts. A party opposing a motion for summary judgment ~~shall~~will 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 ~~shall~~will identify any material facts as to which it is contended that there exists a genuine material issue to be tried.

C. Use of Documentary Evidence. A party ~~shall~~will attach to an affidavit all relevant documentary evidence in support of or in opposition to a motion for summary judgment. The evidence ~~shall~~will 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 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 ~~shall~~will

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 ~~shall~~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 ~~shall~~will be deemed consolidated for trial unless otherwise specifically ordered by the court.

LR 67.1 REGISTRY FUND

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

LR 68.1 SETTLEMENT

The deadline for settling civil cases ~~shall~~will be 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 the parties or their attorneys for violation of this rule.

LR 77.1 OFFICE OF THE CLERK

A. Official Station. The official station of the clerk of the court ~~shall~~will be at Sioux Falls.

B. Deputy Stations. Deputy clerks of court, in such numbers as may be required, ~~shall~~will be stationed at Sioux Falls, Pierre, and Rapid City.

LR 83.1 MEDIA COVERAGE

No camera, radio or television broadcasting equipment, or voice-recording instrument, whether or not court actually is in session, ~~shall~~will be brought into any federal court building or place of holding proceedings before a United States District Judge or Magistrate Judge in this district for use during the trial or hearing of any case, or proceeding incident to any case, or in connection with any session of the United States grand jury. This rule, however, ~~shall~~will not apply to official court reporters in attendance at any trial, hearing, or proceedings and where, in connection with the duties of such court reporters, a voice-recording instrument is used.

LR 83.2 CELL PHONES

Cellular phones and portable devices that contain cellular phones are permitted in all courthouses in the district but must be turned off or placed in silent mode when taken into courtrooms. The use of any camera feature inside the courthouse is prohibited unless specifically authorized. The jury ~~shall~~will not be allowed access to cellular phones or other portable devices during deliberations.

LR 83.3 ATTORNEYS

A. Bar of the Court. The bar of this court ~~shall~~will consist of those attorneys admitted to practice before this court.

B. Eligibility. Any person of good moral character who is an active member of the State Bar of South Dakota ~~shall~~will be eligible for admission to the bar of this court as hereinafter provided.

C. Procedure for Admission. An attorney who is eligible to practice law as provided in section B of this rule may apply for admission to the bar of this court. The application sequence ~~shall~~will be as follows:

1. Applicants must complete a written application for admission ~~in the division of their residence or in the division where the trial of a case in which they are counsel will be heard~~. Forms are available from the clerk of court or on the court's website.

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

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

4. At least two active judges in this district must approve each applicant before an applicant may be admitted.

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

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

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

8. Applicants for admission ~~shall~~will appear in person for their admission ceremony with a member of this bar who will vouch for their legal qualifications, integrity, and good moral character. Upon oral motion of a member of the bar, taking the prescribed oath, signing the roll of attorneys in the clerk of court's office, and paying the required fee, the applicant will be admitted to the bar of this court. The clerk of court ~~shall~~will then issue a Certificate of Admission to the new bar member.

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

> You do solemnly swear (or affirm) that you will support and defend the Constitution of the United States and that you will faithfully demean yourself as an attorney and officer of this court, uprightly and according to law, with all good fidelity to your clients, as well as to the court. SO HELP YOU GOD (or, If so, please say, "I do.").

E. Appearance of Attorney Pro Hac Vice. An attorney who is not a member of the bar of this court, but who is a member in good standing of the bar of another United States District Court, may, upon motion and approval by the court, participate in the conduct of a particular case, but such motion may be allowed only if the applicant associates with a member in good standing of the bar of this court. Applicants for pro hac vice admission ~~shall~~will disclose any prior or pending disciplinary actions in their application. The associated member of this court (local counsel) ~~shall~~will sign all documents filed and ~~shall~~will continue in the case unless another attorney admitted to practice in this court ~~shall~~will be substituted. The attorney admitted to practice in this court will be present during all court proceedings (which include telephone or video conference hearings) in connection with the case, unless otherwise ordered, and ~~shall~~will have full authority to act for and on behalf of the client in all matters, including pretrial conferences as well as trial or any other hearings. ~~It shall be sufficient to make service of any motion, pleading, order, notice, or any other paper upon the attorney admitted to practice in this court who shall assume responsibility for advising the pro hac vice attorney of such service.~~

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

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 is required to be admitted to the South Dakota bar before the attorney is permitted to practice before this court.

An attorney who is a member of the bar of another United States district court and not admitted to the South Dakota bar, but either is a:

1. resident assistant United States attorney;
2. resident attorney representing agencies of the government; or
3. resident assistant Federal Public Defender

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

A nonresident attorney who is:

1. designated as "Special Assistant United States Attorney" by the United States Attorney for the District of South Dakota;
2. appointed by the Attorney General of the United States;
3. hired by the Federal Public Defender's Office; or
4. employed by the North Dakota Federal Public Defender's Office

may be admitted on the attorney's motion, without prepayment of fees, to practice in this court during the pendency of the case if the attorney is a member in good standing of the highest bar of any state or the District of Columbia. A judge advocate of the armed forces of the United States representing the government in proceedings supervised by judges of the District of South Dakota is not subject to this rule.

G. Disbarment and Discipline.

1. Any member of the bar of this court who has been suspended or disbarred from the State Bar of South Dakota or who has been convicted of any criminal offense in any United States District Court ~~shall~~will, upon appropriate notice from the clerk of court, be suspended from practice before this court. The member may thereupon be afforded the opportunity upon notice to show good cause within 21 calendar days why there should be no disbarment or suspension. Upon the member's response to the order to show cause, the member ~~shall~~will be entitled to a hearing or, upon the expiration of 21 calendar days if no response is made, the chief judge will enter an appropriate order.

2. Any member of the bar of this court may be disbarred, suspended from practice for a definite time, or reprimanded for good cause shown, after opportunity has been afforded such member to be heard.

3. All applications for the disbarment or discipline of members of the bar of this court ~~shall~~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 ~~shall~~will sit at the hearing of such applications unless the attorney against whom the disbarment or disciplinary proceedings are brought states in writing or in open court the member's willingness to proceed before one district judge.

4. If an investigation is necessary, the chief judge, with the approval of a majority of the district judges, ~~shall~~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 ~~shall~~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, ~~shall~~will file and prosecute a petition requesting that the alleged offender be subjected to appropriate discipline, including disbarment, suspension, or reprimand. The investigator ~~shall~~will be paid from the pro hac vice fund.

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 ~~shall~~will enter an order setting a date for the hearing on said petition on notice of not less than 21 calendar days. The petitioner ~~shall~~will cause a copy of said petition and order for hearing to be served forthwith on the investigator who ~~shall~~will be in attendance on the date of said hearing. The investigator ~~shall~~will investigate the facts alleged in the petition for reinstatement and ~~shall~~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 ~~shall~~will sit at the hearing on said petition, and the order denying or granting reinstatement ~~shall~~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 ~~shall~~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 ~~shall~~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:

(i) A certificate by the dean of the law school that he or she is of good moral character and possesses the above requirements and is qualified to serve as a legal intern. The certificate ~~shall~~will be a form prescribed by the court.

(ii) 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 ~~shall~~will be in a form prescribed by the court.

(iii) A notice of appearance in each case in which he or she is participating or appearing as a law student. The notice ~~shall~~will be in the form prescribed by the court and ~~shall~~will be signed by a supervising attorney who is a member of the bar of this court and the client.

(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 subsections (I)(2)(c)(i) and (ii) of this rule, the clerk of court ~~shall~~will issue a certificate of admission to the law student in a form prescribed by the court. This certificate ~~shall~~will expire contemporaneously with the expiration date of the dean's certificate unless it is sooner withdrawn. Any law student's certificate of admission may be terminated at any time by the court without notice or hearing and without any showing of cause.

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

(a) Request or receive any compensation or remuneration of any kind from the client. This ~~shall~~will not prevent the supervising attorney, law school, public defender, or the government from paying compensation to the law student, nor ~~shall~~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 and co-signed by the law student.

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

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

(b) Co-sign all pleadings and other papers prepared by the law student.

(c) Advise the court of the law student's participation, be present with the student at all times in court, and be prepared to supplement oral or written work of the student as requested by the court or as necessary to ensure proper representation of the client.

(d) Be available for consultation with the client.

LR 83.4 ASSIGNMENT OF OFFICIAL REPORTERS

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

LR 83.5 FORM OF PAPERS

All pleadings and other papers must be on 8½ x 11 inch paper. The text must be double-spaced, but quotations more than two lines long ~~shall~~will be indented and single-spaced. Headings and footnotes ~~shall~~will be single-spaced. Margins must be at least one inch on all four sides. Fonts must be at least 12-point. To ease the scanning process, all pleadings and other papers submitted to the clerk of court for filing should not be stapled at the top. Papers not in the required form will not be filed without leave of the court. Exhibits attached to pleadings ~~shall~~will be similarly typewritten, printed, or otherwise reproduced in clear, legible, and permanent form.

LR 83.6 REMOVAL OF FILES OR WITHDRAWAL OF PAPERS

A. Temporary Removal. No file, pleading, or other paper belonging to the files of the court ~~shall~~will be taken from the office or custody of the clerk of court except upon order of the court made after a showing

of good cause and specifying the time within which the same ~~shall~~will be returned to the clerk of court. A receipt for files so taken ~~shall~~will be delivered to the clerk of court by the party removing the same.

B. Permanent Withdrawal. Upon such terms as the court may order, a party may permanently withdraw a paper or record from the files of the court.

LR 83.7 CLERK'S FEES

A. Filing Fees.

1. Actions. Except in seaman's suits, any party commencing any civil action, suit, or proceedings, whether by original process, removal, or otherwise, ~~shall~~will 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. Upon the filing of a separate or joint notice of appeal or application for an appeal or upon the receipt of an order allowing, or notice of the allowance of an appeal or of a writ of certiorari, the statutory fee ~~shall~~will be paid to the clerk of the district court by the appellant or petitioner. (28 U.S.C. § 1917).

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

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

C. Refusal to File by the Clerk. The clerk of court is authorized to 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).

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

LR 83.8 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 an executed USM Form 285. Said forms are available through the United States Marshals Service or the clerk orf court's office.

LR 83.9 WITHDRAWAL OF COUNSEL

A. In General. An attorney whose appearance is noted in a cause on file in this court may be permitted to withdraw from representation as counsel of record only by order of the court, or as otherwise provided herein.

B. Withdrawal With Substitution. Leave of court is not required where a notice of withdrawal is accompanied by a substitution of counsel filed with the clerk of court, provided that said substitution takes place 90 or more days in advance of trial, the substitution contains a certificate by substituted counsel, and the substitution ~~shall~~will not delay the trial or other progress of the case. The notice of withdrawal and substitution ~~shall~~will set forth the name and address of the substituted and withdrawing counsel. Withdrawal under this section ~~shall~~will be effective upon filing a notice of withdrawal and substitution with the clerk of court. Notice of withdrawal ~~shall~~will 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 ~~shall~~will be provided to the client by the withdrawing attorney.

LR 83.10 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 ~~shall~~will 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 conforms with federal and local requirements for such actions. Copies of the relevant forms and instructions ~~shall~~will be provided by the clerk of court upon request. The 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 ~~shall~~will 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.

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 ~~shall~~will be 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.