



LOCAL CRIMINAL RULES

for the

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

(with revisions through March 2005)

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SCOPE AND CITATION OF LOCAL CRIMINAL RULES

1.01: *Scope.* These local criminal rules of practice shall govern the conduct of the United States District Court for the District of South Carolina, except when the conduct of this Court is governed by federal statutes and rules. These rules shall be cited: "Local Criminal Rule ____ DSC."

1.02: *Suspension or Modification.* For good cause shown in a particular case, the Court may suspend or modify any Local Criminal Rule.

MOTION PRACTICE

12.01: *Filing of Motions*. All motions in criminal cases shall be filed with the Clerk of Court.

12.02: *Consultation before Filing Motions*. Attorneys are encouraged to consult before filing motions in an effort to resolve the issues in dispute.

12.03: *Supporting Memoranda*. Unless otherwise directed by the Court, a supporting memorandum is not required if a full explanation of the motion is contained within the motion and a memorandum would serve no useful purpose. Where appropriate, motions shall be accompanied by affidavits or other supporting documents.

When possible, motions shall be consolidated into a single filing.

12.04: *Form and Content of Memoranda*.

- (A) A memorandum shall contain:
 - (1) A concise summary of the nature of the case;
 - (2) A concise statement of the facts that pertain to the matter before the Court; and
 - (3) The argument (brevity is expected) relating to the matter before the Court for ruling with citation to authority relevant to the motion.
- (B) Unless an exception is granted by the Court, no memorandum shall exceed:
 - (1) 35 double-spaced pages, in the case of an initial brief of any party; and
 - (2) 15 double-spaced pages, in the case of any reply (*see* Local Civil Rule 7.07).

The page limitation is exclusive of affidavits, supporting documentation, and copies of authority which may be attached.

12.05: *Responses to Motions*. Any memorandum or response of an opposing party must be filed with the Clerk of Court as soon as possible but not later than the earlier of fifteen (15)

days after service of the motion or one full business day prior to the pretrial conference, unless the Court imposes a different deadline.

12.06: *Hearings on Motions*. Hearings on motions may be ordered by the Court in its discretion. Unless so ordered, motions may be determined without a hearing.

12.07: *Sanctions on Motions*. Where the Court finds that a motion is frivolous, filed for delay, or not in compliance with the provisions of these rules, the Court may, in its discretion, impose sanctions, monetary or otherwise, against the party or counsel who filed the motion.

MOTIONS RE: DISCOVERY

16.01: *[Prior rule deleted (“Motion to Compel Discovery”) – not applicable to criminal proceedings.]*

16.02: *[Prior rule deleted (“Motion for Enlargement or Shortening of Time; Extension of Discovery”) – not applicable to criminal proceedings.]*

TIME

17.01: *Time of Issuance of Subpoenas in Criminal Cases.* Subpoenas for witnesses in criminal cases shall be delivered to the Marshal or other person qualified by Fed. R. Crim. P. 17(d) to make service at least fourteen (14) days prior to the Monday of the week in which the case is set for trial or hearing unless otherwise ordered by the Court. The failure of the Marshal or other qualified person to serve a subpoena not delivered within the time period shall not constitute sufficient cause for a continuance.

TRIAL PROCEDURE

26.01: *Examination of Witness.* One counsel for each party shall examine or cross-examine a witness. During examination in open court, the examining counsel shall stand.

26.02: *Scope of Redirect.* Redirect examination shall be limited only to new matters brought out on cross-examination.

26.03: *Excusing Witnesses.* Witnesses are automatically excused when they step off the witness stand, unless one of the parties objects.

26.04: *Pretrial Submissions.*

- (A) Examination of Jurors. The court shall conduct the examination of prospective jurors. All proposed voir dire questions must be submitted for the court's review five (5) days prior to the selection of the jury. Copies of the requests for voir dire shall be served on opposing counsel.
- (B) Jury Instructions. All proposed jury instructions must be submitted for the court's review five (5) days prior to the beginning of trial. Copies of the government's proposed jury instructions shall be served on opposing counsel. Proposed jury instructions from the defense are to be held *in camera* until all testimony is concluded.
- (C) Sanctions for Noncompliance. The Court may, in its discretion, impose a monetary or other sanction on counsel or the party in lieu of imposing the penalty of waiver.

CLOSING ARGUMENTS

29.01: *Closing Argument of Counsel*. Rule 29.1 of the Fed. R. Crim. P. governs closing in criminal cases. The time allowed for argument shall be limited as the Court deems appropriate.

TIME COMPUTATION

45.01: *Time Computation.* The time computation rules of Fed. R. Crim. P. 45 apply to these rules.

RELEASE FROM CUSTODY

46.01: *Security*. Unless a personal recognizance or an unsecured bond is authorized for a defendant or a material witness, every bond shall be secured by either cash, negotiable United States Government securities, trust receipts issued in favor of the United States by the Trust Department of a national bank or a state bank which is a member of the Federal Reserve System, or one or more approved sureties (not exceeding three for any defendant unless the Court approves a higher number). The Court will not accept a pledge of personal property.

46.02: *Corporate Surety*. Only a corporate surety in good standing with the United States Treasury Department and which has designated a resident agent in the District of South Carolina as required by statute is acceptable as a surety on a bond for a defendant (or a material witness). If any corporate surety fails to pay a forfeiture on a bond ordered by the Court, upon proper notice to that surety and opportunity for it to be heard as to why it has failed to pay a forfeiture decreed, the Court may order the Clerk to strike its name from the list of approved corporate sureties eligible to execute bonds to be performed in the District of South Carolina, and to notify the Secretary of Treasury of such action. A list of these sureties can be obtained by contacting the Clerk of Court or through the Court's website (www.scd.uscourts.gov).

46.03: *Disclosure of Interest*. In every corporate surety bond proffered for filing in a criminal case in the District of South Carolina, the Court requires the attorney-in-fact who executes the bond on behalf of the corporate surety to disclose under oath the identity of the premium payor. In any case where the bond exceeds fifty thousand dollars (\$50,000), whether the surety is a corporation or an individual, the attorney-in-fact or individual surety must disclose the details of any collateral pledged to the surety to induce issuance of the bond and the details of any agreement to indemnify the surety should bond forfeiture be ordered.

46.04: *Use of Real Property as Security*. Whenever real estate is proposed to be used as security by an individual surety, such individual must demonstrate by satisfactory evidence that the unencumbered equity in such property is sufficient in amount to secure the bond. Such individual surety must agree to place a lien on the proffered real property. When the amount of the bond is more than twenty-five thousand dollars (\$25,000), the Court may require, in its discretion, independent appraisal to confirm the value of the property offered as collateral. In no event will an individual who seeks to justify as surety exclusively on the basis of real property be approved for an amount in excess of seventy-five percent (75%) of the equity in the property.

46.05: *[Prior rule deleted ("Use of Personal Property as Security") – substance incorporated in Local Criminal Rule 46.01 above.]*

46.06: *Prohibited Sureties*. Bail bondsmen who are authorized to write bonds in the state courts of South Carolina are not by such authorization eligible to serve as sureties in this Court. No bondsman or local bonding company will be approved as a surety unless the standards required of all corporate and individual sureties as specified by federal statutes, Rule 46 of the Fed. R. Crim. P., and these Rules are met. Members of the Bar and their spouses, officers and employees of this Court, and officers and employees of the United States Marshals Service are prohibited from acting as a surety unless the Court, by a special order that is filed as a public record, creates an exception based on the financial need of a particular defendant or material witness.

46.07: *Forfeiture of Collateral*. Pursuant to Rule 58 of the Fed. R. Crim. P., payment of a fixed sum may be accepted as to certain misdemeanor or petty offenses. Those offenses and corresponding forfeitures are set out in this District's standing Collateral Forfeiture Order which can be obtained from the Clerk of Court. The amount of collateral to be forfeited may be increased if the defendant fails to timely respond.

FILING

49.01: *Filing Documents under Seal*. The following procedures are mandatory and apply to any request to file documents under seal. Failure to follow the procedures set forth below shall result in summary denial of any request or attempt to seal filed documents. Nothing in this Rule limits the ability of the parties, by agreement or order, to restrict access to documents which are not filed with the Court.

- (A) Pre-authorized filing under seal
 - (1) If a governing rule, statute, or order provides for filing documents under seal, the party filing such documents shall designate in the caption that the document is to be filed under seal and shall identify the rule, statute, or order which authorizes the filing under seal.¹ If the party is relying on an order not entered in the case at issue, a copy of that order shall be attached.
 - (2) *Ex parte* applications for subpoenas under Fed. R. Crim. P. 17(b) are subject to the automatic sealing provisions under the procedures of the preceding paragraph.
- (B) In all other cases, counsel shall follow the rules set out below.
 - (1) A party seeking to file documents under seal shall file and serve a “Motion to Seal” accompanied by a memorandum and the attachments set forth below in subparagraphs (2) and (3). The memorandum shall: (a) identify, with specificity, the documents or portions thereof for which sealing is requested; (b) state the reasons why sealing is necessary; (c) explain (for each document or group of documents) why less drastic alternatives to sealing will not afford adequate protection; and (d) address the factors governing sealing of documents reflected in controlling case law. *E.g.*, *Ashcroft v. Conoco, Inc.*, 218 F.3d 288 (4th Cir. 2000); and *In re Knight Publishing Co.*, 743 F.2d 231 (4th Cir. 1984).

¹ A number of criminal rules and statutes require or authorize filing under seal. These include but are not limited to: (1) Fed. R. Crim. P. 6(e) (concerning material relating to grand jury proceedings or investigations); (2) 18 U.S.C. § 2510 *et seq.* (dealing with court-approved electronic surveillance); (3) 18 U.S.C. app 3 §§1-16 (Classified Procedures Act, or “CIPA”); (4) 50 U.S.C. § 1801 *et seq.* (Foreign Intelligence Surveillance Act or “FISA”).

- (2) The motion shall be accompanied by (a) a non-confidential descriptive index of the documents at issue and (b) counsel's certification of compliance with this rule.
- (3) A separately sealed attachment labeled "Confidential Information to be Submitted to Court in Connection with Motion to Seal" shall be submitted with the motion. The sealed attachment shall contain the documents at issue for the Court's *in camera* review and shall not be filed. The Court's docket shall reflect that the motion and memorandum were filed and were supported by a sealed attachment submitted for *in camera* review.
- (4) The Clerk shall provide public notice of the Motion to Seal in the manner directed by the Court. Absent direction to the contrary, this may be accomplished by docketing the motion in a manner that discloses its nature as a motion to seal.

49.02 *Filing Documents by Electronic Means.* Documents may be filed, signed, and verified by electronic means to the extent and manner authorized by the Court's Electronic Case Filing Policies and Procedures Manual and the Attorney User Manual. A document filed by electronic means in compliance with this Local Rule constitutes a written document for the purposes of applying these Local Rules, the Federal Rules of Civil Procedure, and the Federal Rules of Criminal Procedure.

49.03 *Service of Documents by Electronic Means.* Filed documents may be served by electronic means, including through the Court's transmission facilities, or as otherwise provided and authorized by the Court's Electronic Case Filing Policies and Procedures Manual and the Attorney User Manual. Transmission of the Notice of Electronic Filing constitutes service of the filed documents upon each attorney in the case who is registered as a Filing User in accordance with the procedures established by the Court. Any other attorney, party, or parties shall be served according to these Local Rules, the Federal Rules of Civil Procedure, and the Federal Rules of Criminal Procedure.

RULES BY DISTRICT COURTS

57.I.01: *Attorney Admissions and Discipline.* Rules for the admission of attorneys are set forth in Local Civil Rule 83.I.01 through 83.I.07. The Rules for attorney disciplinary matters are set forth in Local Civil Rule 83.I.08. The Local Civil Rules as to these subject matters are equally applicable to attorneys handling criminal matters in the District of South Carolina with the additional qualification requirements set forth in Local Criminal Rule 57.I.02.

57.I.02: *Additional Requirements to Appear in Criminal Matters.* In addition to the requirements for admission set forth in Local Civil Rule 83.I.03(B), an attorney should be familiar with the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, these Local Criminal Rules, The Bail Reform Act (18 U.S.C. § 3143(b)), the Speedy Trial Act (18 U.S.C. § 3161), and the United States Sentencing Commission Sentencing Guidelines, as well as the relevant substantive areas of law before undertaking representation in a criminal matter.

57.I.03: *Appointment in Criminal Matters.*

- (A) In order to be eligible for appointment to represent criminal defendants in the District of South Carolina, counsel must be approved by the Court after completion of proper application and review by the Criminal Justice Act Committee. Application forms may be obtained from the Clerk of Court or on the District's website (www.scd.uscourts.gov). *See* 18 U.S.C. § 3006A (Criminal Justice Act).
- (B) In order to be considered for appointment in capital matters in the District of South Carolina, counsel must file a separate application and be approved by the Court. Application forms may be obtained from the Clerk of Court or on the District's website (www.scd.uscourts.gov). Under extraordinary circumstances, the Court may waive requirements of this rule for a specific case. *See* 18 U.S.C. § 3005 (setting forth requirements for capital case appointments).

57.II.01: *Fair Trial Directives: Court Personnel.* All Court supporting personnel, including, but not limited to, marshals, deputy marshals, court clerks and office personnel, probation officers and office personnel, bailiffs, court reporters and employees or subcontractors retained by the Court or the Marshal, and the Judges' office personnel, are prohibited from disclosing to any person, without authorization by the Court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the Court. Further, all such personnel are forbidden to divulge any information concerning grand jury proceedings, *in camera* arguments, and hearings held in chambers or otherwise outside the presence of the public.

57.II.02: *Fair Trial Directives: Attorneys.*

- (A) It is the duty of any lawyer or law firm not to release or authorize the release of information or opinions, which a reasonable person would expect to be disseminated by any means of public communication, in connection with pending or imminent criminal litigation with which any lawyer or law firm is associated if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.
- (B) With respect to a grand jury or other pending investigation of any criminal matter, any lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement which a reasonable person would expect to be disseminated by any means of public communication that goes beyond the public record or that is not necessary
 - (1) to inform the public that the investigation is underway,
 - (2) to describe the general scope of the investigation,
 - (3) to obtain assistance in the apprehension of a suspect,
 - (4) to warn the public of any danger, or
 - (5) to aid in the investigation.
- (C) From the time of arrest, issuance of an arrest warrant or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, any lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement, which a reasonable person would expect to be disseminated by any means of public communication, relating to that matter and concerning:
 - (1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status; if the accused has not been apprehended, any lawyer associated with the prosecution may release any information necessary to aid in apprehension or to warn the public of any danger;

- (2) The existence or contents of any confession, admission, or statement given by the accused or the refusal or failure of the accused to make any statement;
 - (3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;
 - (4) The identity, testimony, or credibility of prospective witnesses, except that any lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;
 - (5) The possibility of a plea of guilty to the offense charged or a lesser offense;
 - (6) Any opinion as to the accused's guilt or innocence or as to the merits of the case or the evidence in the case.
- (D) Nothing contained in these rules shall prohibit a lawyer from making a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue adversely prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. However, any statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.
- (E) The foregoing shall not be construed to preclude any lawyer or law firm during this period, in the proper discharge of official or professional obligations, from announcing the fact and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the Court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.
- (F) During a jury trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial which a reasonable

person would expect to be disseminated by any means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial, except that any lawyer or law firm may quote from or refer without comment to public records of the Court in the case.

- (G) After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, any lawyer associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement for dissemination by any means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.
- (H) Nothing in this Rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to public charges of misconduct.

57.II.03: *Fair Trial Directives: Copies of Public Records.* The provisions of Local Civil Rule 83.III.03 (“Copies of Public Records”) shall apply with equal force in criminal proceedings.

57.II.04: *Fair Trial Directives: Conduct of Judicial Proceedings.* The provisions of Local Civil Rule 83.III.04 (allowing special case specific orders) shall apply with equal force in criminal proceedings.

57.II.05: *Fair Trial Directives: Photographing and Reproducing Court Proceedings.* The provisions of Local Civil Rule 83.III.05 (“Photography and Reproducing Court Proceedings”) shall apply with equal force in criminal proceedings.

57.III.01: *[Prior rule deleted (“Opening Statement”) – federal rules/statutes control.]*

57.IV.01: *[Prior rule deleted (“Petition for Attorney’s Fees”) – federal rules/statutes control.]*

57.V.01: *Prompt Disposition of Criminal Cases.* The Plan for Achieving Prompt Disposition of Criminal Cases adopted by Judges for this District can be obtained from the Clerk of Court.

57.VI.01: *Requests for Federal Custody.* If custody of a defendant awaiting trial in this District is requested by another United States Court, the Marshal shall not surrender custody of such defendant unless the United States District Judge to whom the defendant's case has been

assigned for trial or other disposition so orders after considering all relevant factors and giving such notice to interested parties as the Court deems appropriate.

57.VI.02: *Requests for State Custody.* If custody of a defendant awaiting trial in this District is requested by any State authority, the Marshal will only surrender custody of such defendant if authorized to do so by the United States District Judge to whom the defendant's case has been assigned for trial or other disposition. In the absence of an emergency request, the authorization shall be requested by the following procedure:

- (A) The requesting State must deliver to the Marshal a specific writ signed by the judge of a court of competent jurisdiction. Such writ shall include an express direction that the defendant will be promptly returned to the Marshal at the State's expense upon conclusion of the matter for which the defendant is sought. A counterpart order signed by a United States District Judge as to whether the State writ will be honored shall be submitted as well.
- (B) The Marshal shall notify both the United States Attorney and the defendant's counsel of the request and allow each a period of three (3) days in which to consent or object. The three-day (3-day) period may be waived.
- (C) The appropriate United States District Judge will determine whether the State's request will be granted, deferred or denied. In so doing, the Court shall consider the Speedy Trial Act, the Interstate Agreement on Detainers, and any other relevant factors. If said Judge determines to honor the State's request, the order shall so indicate.

57.VIII.01: *Filing of Habeas Corpus Actions.* All petitions filed by state, federal, and local prisoners seeking relief under 28 U.S.C. § 2254 or 28 U.S.C. § 2255 shall be filed with the Clerk in compliance with the instructions of the Office of the Clerk of Court and on the appropriate forms or forms substantially similar. The instructions and the appropriate forms can be obtained from the Office of the Clerk of Court without charge.

ASSIGNMENT OF DUTIES TO MAGISTRATE JUDGES

58.01: *Assignment of Duties to Magistrate Judges.*

- (A) Misdemeanor Cases. All misdemeanor cases shall be assigned by the Clerk of Court to the Magistrate Judge(s) designated for the division in which the case is brought.
- (B) Felony Cases. All felony cases shall be assigned by the Clerk of Court to the Magistrate Judge(s) designated for the division in which the case is brought for the conduct of an arraignment and related proceedings and for such other pretrial proceedings as are directed by the District Judge.
- (C) Method of Case Assignment. Unless otherwise specified by order of the Chief Judge of the district, criminal cases shall be assigned by division as follows:
 - (1) The Magistrate Judge(s) in Columbia shall be assigned criminal cases filed in the Aiken, Columbia, Orangeburg, and Rock Hill Divisions not arising at Fort Jackson or Shaw Air Force Base;
 - (2) The Magistrate Judge(s) in Charleston shall be assigned cases filed in the Charleston and Beaufort Divisions;
 - (3) The Magistrate Judge(s) in Greenville shall be assigned cases filed in the Greenville, Spartanburg, Anderson, and Greenwood Divisions;
 - (4) The Magistrate Judge(s) in Florence shall be assigned cases filed in the Florence Division;
 - (5) The Magistrate Judge(s) in Aiken shall be assigned cases originating at Fort Jackson and Shaw Air Force Base.
 - (6) If there is more than one Magistrate Judge assigned to a given location, the cases covered by (1) – (5) above shall be assigned to those Magistrate Judges on a rotational basis.
- (D) District-Wide Jurisdiction. Nothing in this rule shall limit the district-wide jurisdiction of a Magistrate Judge, prohibit a District Judge from assigning a specific matter to a specific Magistrate Judge, or prohibit the

reassignment of a specific matter between Magistrate Judges on the concurrence of the Magistrate Judges and District Judge involved.

- (E) General. Nothing in these rules shall preclude the Court or a District Judge from reserving any proceeding for conduct by a District Judge, rather than a Magistrate Judge. The Court, moreover, may by order modify the method of assigning proceedings to a Magistrate Judge as changing conditions may warrant.

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