IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE ADOPTION	)	
OF A NEW RULE RELATING TO	)	**RULE 10-14**
FEDERAL RULES OF EVIDENCE 705	)	
AND THE REPEAL OF SDCL 19-15-5.1;	)	
SDCL 19-15-5.2; SDCL 19-15-6;	)	
SDCL 19-15-5.7; SDCL 19-15-8	)	

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A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the adoption of a new rule relating to the adoption of Federal Rules of Evidence 705, Disclosure of Facts or Data Underlying Expert Opinion, and repealing SDCL 19-15-5.1; SDCL 19-15-5.2; SDCL 19-15-6; SDCL 19-15-5.7 and SDCL 19-15-8, and the Court having considered the proposed adoption and correspondence relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule relating to the adoption of Federal Rules of Evidence 705, Disclosure of Facts or Data Underlying Expert Opinion, to be designated in SDCL Ch. 19-15 be and it is hereby adopted to read in its entirety as follows:

The expert may testify in terms of opinion or inference and give reasons therefore without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

Section 2. The repeal of SDCL 19-15-5.1.

~~19-15-5.1. (Rule 705(a)) Expert opinion admissible without hypothetical question -- Cross-examination. An expert witness may be asked to state his opinions or inferences, whether these opinions or inferences are based on the witness' personal observation, or on evidence introduced at the trial and seen or heard by the witness, or on his technical knowledge of the subject, without first specifying hypothetically in the question the data on which these opinions or inferences are based. An expert witness may be required, on direct or cross-examination, to specify the data on which his opinions or inferences are based.~~

Section 3. The repeal of SDCL 19-15-5.2.

~~19-15-5.2. (Rule 705(b)) Report of impartial expert admissible though based on information furnished by others. A written report or finding of facts prepared by an expert not being a party to the cause, nor an employee of a party, except for the purpose of making such report or finding, nor financially interested in the result of the controversy, and containing the conclusions resulting wholly or partly from written information furnished by the cooperation of several persons acting for a common purpose, shall, in so far as the same may be relevant, be admissible when testified to by the person, or one of the persons, making such report or finding without calling as witnesses the persons furnishing the information, and without producing the books or other writings on which the report or finding is based, if in the opinion of the court, no substantial injustice will be done the opposite party.~~

Section 4. The Repeal of SDCL 19-15-6.

~~19-15-6. (Rule 705(c)) Notice to opponent of report of impartial expert--Inspection rights. The report or finding described in § 19-15-5.2 shall not be admissible unless the party offering it shall have given notice to the adverse party a reasonable time before trial of his intention to offer it, together with a copy of the report or finding, or so much thereof as may relate to the controversy, and shall also have afforded him a reasonable opportunity to inspect and copy any records or other documents in the offering party's possession or control, on which the report or finding was based, and also the names of all persons furnishing facts upon which the report or finding was based, except that it may be admitted if the trial court finds that no substantial injustice would result from the failure to give such notice.~~

Section 5. The repeal of SDCL 19-15-7.

~~19-15-7. (Rule 705(d)) Cross-examination of person furnishing information for impartial expert report. Any person who has furnished information on which the report or finding described in § 19-15-5.2 is based may be cross examined by the adverse party, but the fact that his testimony is not obtainable shall not render the report or finding inadmissible, unless the trial court finds that substantial injustice would be done to the adverse party by its admission.~~

Section 6. The repeal of SDCL 19-15-8..

~~19-15-8. (Rule 705(e)) Citation of uniform act. Sections 19-15-5.2 to 19-15-8, inclusive, may be cited as the Uniform Composite Reports as Evidence Act.~~

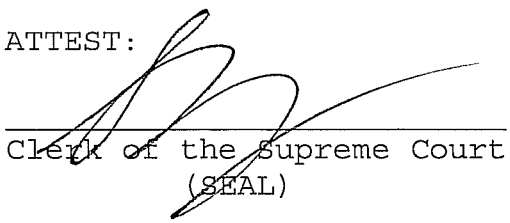
IT IS FURTHER ORDERED that the rule shall become effective July 1, 2011.

DATED at Pierre, South Dakota, this 15th day of March, 2011.

BY THE COURT:

David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

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Clerk