IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION OF A NEW RULE RELATING TO CIRCUIT COURT ELECTRONIC FILING RULES	))))	RULE 13-12

- -

A hearing was held on August 28, 2013, at Pierre, South Dakota, relating to the adoption of a new rule relating to Circuit Court Electronic Filing Rules and the Court having considered the proposed adoption and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule relating to Circuit Court Electronic Filing Rules be and it is hereby adopted to read in its entirety as follows:

CIRCUIT COURT ELECTRONIC FILING RULES

A. Definitions.

1. "Registered user" means an attorney or party registered with the South Dakota Odyssey® electronic filing system.

2. "Electronic filing system" means the Odyssey® file and serve system maintained by the South Dakota Unified Judicial System.

3. "Confidential" means any records not accessible to the public as provided by SDCL 15-15A-7. A document marked as "confidential" means that the document will not be accessible to the public but will be accessible to court personnel and attorneys or parties in the case as permitted by applicable law or court order.

4. "Sealed" means any record where access is restricted by order of the court. A document marked "sealed" will not be accessible to the public but will be accessible to court personnel and attorneys or parties in the case as permitted by applicable law or court order.

5. "Electronic Signature" means an electronic symbol or process attached to or logically associated with a document executed or adopted by a user with the intent to sign a document.

B. Electronic Filing.

1. Documents filed electronically in the circuit courts or magistrate courts, excluding small claims, shall be submitted through the Odyssey® electronic filing system in all counties where available. Any user shall be required to register with the court and designate an email address prior to using the electronic filing system. The presiding judge of a judicial circuit may direct that small claims cases be filed through the electronic filing system except as specifically exempted by these rules or court order.

2. Effective July 1, 2014, except as specifically exempted by these rules or court order, all filings, notices, petitions, pleadings, motions, briefs or documents, with the exception of small claims, shall be filed electronically for all civil case types. For criminal case types all documents, except the initiating pleading or documents specifically exempted by these rules or court order, shall be filed electronically. Self-represented litigants may file electronically, but shall not be required to file electronically. On a showing of good cause, an attorney required to file electronically may be granted leave of court to file paper documents with the clerk of court. The service of any summons or subpoena shall follow the requirements of SDCL 15-6-4 or SDCL 15-6-45(c) as applicable.

3. Registered users will receive electronic notice when documents are entered into the system. Registration for electronic filing constitutes written consent to electronic service of all documents filed in accordance with these rules and the Rules of Civil Procedure. Electronic service through the electronic filing system shall be deemed service by mail for purposes of adding an additional three days to any prescribed period.

4. Documents that will not be accepted for electronic filing, unless otherwise directed to be filed electronically by the court, include:

a. New criminal case initiating documents;

b. Motions requesting that a document be sealed and original sealed documents;

c. Trial or hearing exhibits;

d. Wills to be retained for safekeeping pursuant to 29A-2-515;

e. Oversized documents that cannot be scanned effectively;

f. Documents not of sufficient graphical quality to be legible when scanned;

g. Administrative appeal records filed with the court pursuant to SDCL 1-26-33;

h. Discovery documents as provided by SDCL 15-6-5(g); and

i. Any other documents directed by the court not to be filed electronically.

5. A document filed or served electronically has the same legal effect as a paper document.

6. Any signature on a document filed electronically is considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall strike the filing.

7. 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 seven days after filing; or (c) 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.

8. All paragraphs, excluding attachments, shall be numbered in all documents, except briefs, filed electronically. Reference to material in such documents shall be to paragraph number, not page number.

C. Filing Formats.

1. Approved formats for documents filed electronically are WordPerfect (.wpd), Word (.doc or .docx), Tagged Image File (.tif) and text searchable Portable Document File (.pdf).

D. Time of Filing.

1. A document in compliance with the rules and submitted electronically to the court clerk of court by 11:59 p.m. central standard time or daylight savings time as applicable shall be considered filed on that date.

2. After reviewing an electronically filed document, the clerk of court must inform the filer, through an e-mail generated by the Odyssey® system, whether the document has been accepted or rejected. A document may be rejected (a) if it is filed in the wrong county; (b) applicable filing fees are not paid or waived (c) the document is incomplete or contains missing information; (d) or fails to comply with applicable statutory requirements or these rules.

3. Any applicable fees associated with the filing must be paid at the time the document is filed. A request for the waiver of fees must accompany the filing of the document. If the request to waive such fees is denied the party must submit any applicable fee within seven days.

E. Confidentiality/Sealed Documents.

1. A party electronically filing a document that is not accessible to the public in whole or in part is responsible for redaction or designating the document as confidential or sealed before transmitting it to the court. For any redacted document a sealed version of the original unredacted document should also be filed electronically.

2. In documents prepared for filing with the court, information that would otherwise be included in the document but required by SDCL 15-15A-9 not to be disclosed in court documents must be separately filed on a Confidential Information Form and may be included in those documents only by reference.

3. It is the responsibility of the parties to seek advance approval from the court for submitting a document as sealed or confidential if that document is not already declared confidential or sealed by existing law, court rules or order. The title of a sealed or confidential document will appear on any electronic register of actions for the case.

F. Retention.

A registered attorney electronically filing or serving a document, or any person filing a petition for mental illness commitment, is deemed to represent that the document so filed or served is a true and correct copy of the original. The original, if in hardcopy form, shall be maintained by the filing attorney or person filing a mental illness commitment for 120 days after the date of electronic filing or service, whichever is later. Self-represented litigants electronically filing or serving a document shall maintain the original document in hardcopy form for two years after the date of electronic filing and service, whichever is later. Both attorneys and self-represented litigants shall make the original document available upon request of the court,

the signatories, or other parties during the required retention period. In the event of a failure to comply with this provision the court may make such orders in regard to the failure as are appropriate under the circumstances including, but not limited to, the following: order that the electronic document be considered the original document for all purposes; prohibit the party from introducing designated matters in evidence as a result of the failure to comply; strike any relevant pleadings or parts thereof; stay further proceedings until the order is obeyed; dismiss the action or proceeding or any part thereof; order the party to pay reasonable expenses, including attorney's fees, caused by the failure as the court may determine appropriate. In lieu of any of the foregoing, or in addition thereto, the court may treat such failure as a contempt of court.

G. Electronic Service.

1. A party who files a document electronically must serve the document by electronic means if the recipient consents to accept documents served electronically. All documents filed electronically must be served electronically through the Odyssey® system except for documents served on or by self-represented litigants. On a showing of good cause, an attorney may be granted leave of court to serve paper documents or to be exempt from receiving electronic service.

2. Electronic service is not effective if the party making service learns that the attempted service did not reach the person to be served.

3. After July 1, 2014, any party not exempt from electronic filing must designate an e-mail address for accepting electronic service and for receiving electronic service through the electronic filing system.

4. The court may electronically file and serve on registered attorneys and parties any judgments, orders, notices or other documents prepared by the court in such cases provided the attorney or party to be served has designated an e-mail address for receiving electronic service.

H. Original Documents.

An original document submitted for filing in paper form may be scanned by the clerk of court and destroyed after thirty days. A party may request the return of any original document filed with the clerk of court by submitting a document request return form with the document when it is delivered for filing along with a self-addressed stamped envelope. See Appendix "Document Return Request Form."

I. Technical Issues; Relief.

On a showing of good cause, the court may grant appropriate relief if electronic filing or electronic service was not completed due to technical problems.

J. Scope.

Unless specifically provided otherwise in this rule or inconsistent with its provisions, the Rules of Civil and Criminal Procedure shall govern electronic filings.

K. Effective Date.

This rule is effective July 1, 2014, and remains in effect until further order of the Court. The electronic filing requirements set forth by this Order shall be considered discretionary until July 1, 2014.

L. Amendments.

Effective July 1, 2014, the following provisions shall be amended as follows:

15-6-5(d). Filing of papers--Originals--Copies.

The original of all papers, excluding briefs or memorandums of law thereof, served upon a party or presented to any court or judge in support of any application or motion and including the summons, all pleadings, notices, demands, offers, stipulations, affidavits, written motions and orders shall, if not filed before service, be filed with the court, together with proof of such service, forthwith upon such service. The foregoing requirement of filing applies to the notice of filing of an order and the notice of entry of a judgment together with proof of service thereof, both of which shall be filed forthwith; if not filed within ten days after service thereof, the time of service shall be deemed to be the date of filing of the notice and proof of service. If papers are not to be served, they must be filed with the court at the time of their presentation to the court for any action or consideration.

Any ~~facsimile~~ electronic version of any paper or document shall have the same force and effect as the original. A certified copy of an original made ~~transmitted~~ by ~~facsimile~~ electronic transmission shall have the same force and effect as a certified copy of an original.

~~Any paper or document received by facsimile transmission by the clerk or court for filing may be refused upon notice to~~

~~sender and determination by the clerk or court that filing of the paper or document by facsimile transmission is not time critical or in violation of these rules. For good cause, the court may require a person or sender to obtain permission before sending a facsimile transmission to the clerk or court. Briefs and other lengthy documents in support of matters filed with the clerk shall not be transmitted by facsimile transmission except by court permission.~~

~~Any facsimile shall be accompanied by a cover sheet which states the title of the document, case number, if any, number of pages, identity and voice telephone number of the sender. If sent directly to the court, there must be instructions as to filing therein in bold face type.~~

~~Filing shall be deemed complete when the facsimile is received by the clerk or court. Facsimile filings shall be accepted for filing until 4:30 o'clock p.m. on days when the clerk's office is open for business and the facsimile equipment is in operation. All facsimile filings shall be completed by 5 o'clock p.m. in accordance with § 15-6-6(a).~~

~~Within five business days after the date of the facsimile transmission, the sender shall file with the court the original document, a certificate stating that the original document is identical to the facsimile previously filed, and a ten dollar transmission fee for each document or one dollar per page, whichever is greater. The fee will be deposited into the state court automation fund.~~

~~Upon receipt of the original, the clerk shall note thereon the date and time received and the date and time that the facsimile transmission was received. Upon the filing of the original, the facsimile may be removed from the court file and the original substituted therefore. Thereafter, the original shall be deemed received as of the date and time of receipt of the facsimile transmission. If the original is not filed with the clerk within the time provided, the court may on its own motion and upon notice to the sender strike the facsimile from the file and so note on the register of actions of the court.~~

~~Failure to comply with any requirements of this rule shall, upon notice, authorize the court to apply other appropriate sanctions, including but not limited to, the striking of the paper or document received by facsimile transmission.~~

~~In the event of failure to file any paper required to be filed as herein specified, the adverse party upon proof of the omission so to file shall be entitled without notice to an order requiring such papers to be filed within a time to be specified~~

~~in the order, and such order may likewise provide that upon such failure so to file such papers, the action or proceeding may be dismissed and that no new action or proceeding may be commenced without payment of reasonable terms to be fixed by the court.~~

~~If any process, original pleading, or any other paper, be lost or withheld by any person, the court may authorize a copy thereof to be filed and used instead of the original.~~

APPENDIX

DOCUMENT RETURN REQUEST FORM

STATE OF SOUTH DAKOTA,	)	In Circuit Court
County of _____	)	
	)	_____Judicial Circuit

A. B.,	)	
Plaintiff	)	
vs.	)	DOCUMENT RETURN REQUEST
C. D.,	)	
Defendant	)	

I am requesting that the following document(s) submitted for scanning or as a trial exhibit in the above-named case be returned:

List documents to be returned

_____ I request that the document(s) be returned by mail and have enclosed a self-addressed stamped envelope.

_____ I will pick up the document(s) on_____.

Dated _____

Signed: _____
Party or Party's Attorney of Record
Address: _____

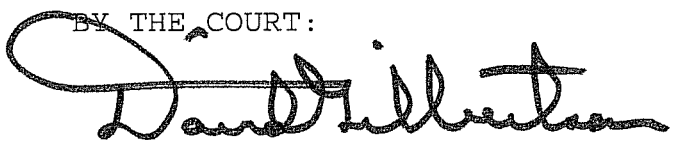
RETURN RECEIPT

Received document(s) this _____day of _____,_____.

Signed: _____

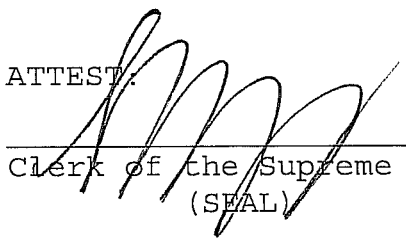
DATED at Pierre, South Dakota, this 10th day of September, 2013.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

SEP 10 2013

Clerk