

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE PROPOSED	)	NOTICE OF SPECIAL
AMENDMENT OF SDCL 15-6-4(e) and	)	RULES HEARING
ADOPTION OF A NEW RULE TO BE	)	
DESIGNATED AT SDCL CH. 15-6	)	NO. 130
RELATING TO EXPEDITED CIVIL ACTIONS	)	

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Petition for amendment of an existing section of the South Dakota Codified Laws, and adoption of a new rule having been filed with the Court, and the Court having determined that the proposed amendment and adoption of a new rule should be noticed for hearing, now therefore,

NOTICE IS HEREBY GIVEN THAT ON April 22, 2015, at 9:00 A.M., C.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

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1. Amendment of SDCL 15-6-4(e). Service in the following manner shall also constitute personal service. If the defendant cannot be found conveniently, service may be made by leaving a copy at his the defendant's dwelling house in the presence of a member of his family with someone over the age of fourteen years who resides there or if the defendant resides in the family of another, with a member of such age of the family with which he resides.  
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2. Adoption of a New Rule to be designated at SDCL Ch. 15-6\_\_\_ Relating to Expedited Civil Actions.

SOUTH DAKOTA RULES OF CIVIL PROCEDURE IN CIRCUIT COURTS

15-6- - EXPEDITED CIVIL ACTIONS

(a) 15-6- (a). General provisions

- (1) Eligible actions. § 15-6- governs "expedited civil actions" in which the sole relief sought is a money judgment and in which all claims (other than compulsory counterclaims) for all damages by or against any one party total \$75,000 or less,

including damages of any kind, penalties, and attorneys' fees, but excluding prejudgment interest accrued prior to entry of judgment, post-judgment interest, and costs.

- (2) Excluded actions. § 15-6- does not apply to small claims or domestic relations cases.
- (3) Electing expedited procedures. Eligible plaintiffs can elect to proceed as an expedited civil action by certifying that the sole relief sought is a money judgment and that all claims (other than compulsory counterclaims) for all damages by or against any one party total \$75,000 or less, including damages of any kind, penalties, and attorneys' fees, but excluding prejudgment interest accrued prior to entry of judgment, post-judgment interest, and costs. The certification must be on a form approved by the Supreme Court and signed by all plaintiffs and their attorneys if represented. The certification is not admissible to prove a plaintiff's damages in the expedited civil action or in any other proceeding.
- (4) South Dakota Rules of Civil Procedure otherwise apply. Except as otherwise specifically provided by this rule, the South Dakota Rules of Civil Procedure are applicable to expedited civil actions.
- (5) Limitation on damages. Except as provided in § 15-6- (a) (6), a party proceeding under § 15-6- may not recover a judgment in excess of \$75,000, nor may a judgment be entered against a party in excess of \$75,000, excluding prejudgment interest that accrues prior to entry of judgment, post-judgment interest, and costs. The jury, if any, must not be informed of the \$75,000 limitation. If the jury returns a verdict for damages in excess of \$75,000 for or against a party, the court may not enter judgment on that verdict in excess of \$75,000, exclusive of prejudgment interest that accrues prior to entry of judgment, post-judgment interest, and costs.
- (6) Stipulated expedited civil action. In a civil action not eligible under § 15-6- (a) (1) and not excluded by § 15-6- (a) (2), the parties may request to proceed as an expedited civil action upon the parties' filing of a Joint Motion to Proceed as an Expedited Civil Action. If the court grants the parties' motion, and unless the parties have otherwise agreed, the parties will not be bound by the \$75,000 limitation on judgments in § 15-6- (a) (5). The parties may enter into additional stipulations regarding damages and attorneys' fees. Unless otherwise ordered, the joint motion and any stipulations must not be disclosed to the jury.

- (7) Termination of expedited civil action. Upon timely application of any party, the court may terminate application of this rule and enter such orders as are appropriate under the circumstances if:
- (A) The moving party makes a specific showing of substantially changed circumstances or other good cause sufficient to render the application of this rule unfair; or
  - (B) A party has in good faith filed a compulsory counterclaim that seeks relief other than that allowed under § 15-6-(a) (1).
- (8) Permissive counterclaims. Permissive counterclaims are subject to the \$75,000 limitation on damages under § 15-6-(a) (5), unless the court severs the permissive counterclaim.
- (9) Side. As used throughout § 15-6- , the term "side" refers to all the litigants with generally common interests in the litigation.
- (b) 15-6- (b). Discovery in expedited civil actions
- (1) Discovery period. Except upon agreement of the parties or leave of court granted upon a showing of good cause, all discovery must be completed no later than 60 days before trial.
  - (2) Limited and simplified discovery procedures. Except upon agreement of the parties or leave of court granted upon a showing of good cause, discovery in expedited civil actions is subject to the following additional limitations:
    - (A) Interrogatories to parties. Each side may serve no more than 10 interrogatories including subparts on any other side.
    - (B) Production of documents. Each side may serve no more than 10 requests for production including subparts on any other side under § 15-6-34.
    - (C) Requests for admission. Each side may serve no more than 10 requests for admission including subparts on any other side under § 15-6-36. This limit does not apply to requests for admission of the genuineness of documents that the party intends to offer into evidence at trial.

(D) Depositions upon oral examination.

- (i) Parties. One deposition of each party may be taken. With regard to corporations, partnerships, voluntary associations, or any other groups or entities named as a party, one representative deponent may be deposed.
  - (ii) Other deponents. Each side may take the deposition of up to two nonparties.
- (3) Number of expert witnesses. Each side is entitled to one retained expert, except upon agreement of the parties or leave of court granted upon a showing of good cause.
  - (4) Motion for leave of court. A motion for leave of court to modify the limitations provided in § 15-6- (b) must be in writing and must set forth the proposed additional discovery and the reasons establishing good cause for its use.

(c) 15-6- (c). Motions

- (1) Motions to dismiss. Any party may file any motion permitted by § 15-6-12(b). Unless the court orders a stay, the filing of a motion to dismiss will not eliminate or postpone otherwise applicable pleading or disclosure requirements.
- (2) Motions for summary judgment.
  - (A) Limited grounds. Motions for summary judgment under § 15-6-56 may be made in an expedited civil action only upon the following grounds:
    - (i) To collect on an open account or other liquidated debt.
    - (ii) To establish an obligation to indemnify.
    - (iii) To assert an immunity defense.
    - (iv) Failure to provide notice or exhaust remedies as required by law.
    - (v) To raise any other matter constituting an avoidance or affirmative defense.
  - (B) Limited number. Each party may file no more than one motion for summary judgment under § 15-6-56. The motion may include more than one ground.

(C) Deadline. Motions for summary judgment under §15-6-56 must be filed no later than 90 days before trial.

(d) 15-6- (d). Procedure for expedited trials

- (1) Demand for jury trial. Any party who desires a jury trial of any issue triable of right by a jury must file and serve upon the other parties a demand for jury trial pursuant to § 15-6-38(b). Otherwise, expedited civil actions will be tried to the court.
- (2) Trial setting. The court shall set the expedited civil action for trial on a date certain, which will be a firm date except that the court may later reschedule the trial for another date during the same week. Unless the court otherwise orders for good cause shown, expedited civil actions must be tried within one year of filing.
- (3) Pretrial submissions.
  - (A) The trial court shall provide for the timing and extent of such submissions by appropriate pre-trial order, at the court's discretion.
  - (B) In addition to the pretrial submissions required by the trial court, the parties must file one jointly proposed set of jury instructions and verdict forms. If a jury instruction or verdict form is controverted, each side must include its specific objections, supporting authority, and, if desired, a proposed alternative instruction or verdict form for the court's approval, denial, or modification. Both stipulated and alternative proposed jury instructions and verdict forms must be set forth in one document that is filed electronically in word processing format with the court.
- (4) Expedited civil jury trial. Unless otherwise ordered, the jury in an expedited civil jury trial will consist of twelve persons selected from a panel of eighteen prospective jurors. Each side must strike three prospective jurors. The parties may stipulate to a jury of less than twelve upon such conditions as agreed to by the parties and the trial court.
- (5) Expedited nonjury trial. The court trying an expedited civil action without a jury may, in its discretion, dispense with findings of fact and conclusions of law and instead render judgment on a general verdict, special verdicts, or answers to interrogatories that are accompanied by relevant legal

instructions that would be used if the action were being tried to a jury. When the court follows this procedure, parties must make their record with respect to objections to or requests for instructions, special verdicts, and answers to interrogatories as in a jury trial. Post-trial motions will be permitted as in a jury trial except that the court may, in lieu of ordering a new trial, enter new verdicts or answers to interrogatories on the existing trial record.

- (6) Time limit for trial. Expedited civil actions should ordinarily be submitted to the jury within two business days from the commencement of trial. Unless the court allows additional time for good cause shown, each side is allowed no more than six hours to complete jury selection, opening statements, presentation of evidence, examination and cross-examination of witnesses, and closing arguments. Time spent on objections, bench conferences, and challenges for cause to a juror is not included in the time limit.
- (7) Evidence.
- (A) Stipulations. Parties should stipulate to factual and evidentiary matters to the greatest extent possible.
- (B) Documentary evidence admissible without custodian certification or testimony. The court may overrule objections based on authenticity and hearsay to the admission of a document, notwithstanding the absence of testimony or certification from a custodian or other qualified witness, if:
- (i) The party offering the document gives notice to all other parties of the party's intention to offer the document into evidence at least 90 days in advance of trial. The notice must be given to all parties together with a copy of any document intended to be offered.
- (ii) The document on its face appears to be what the proponent claims it is.
- (iii) The document on its face appears not to be hearsay or appears to fall within a hearsay exception set forth in South Dakota Rule of Evidence §§ 19-6-7, 19-16-8, 19-16-10, 19-16-11, 19-16-12, 19-16-13, 19-16-14, 19-16-15, 19-16-16, 19-16-17 or 19-16-22.
- (iv) The objecting party has not raised a substantial question as to the authenticity or trustworthiness of the document.

- (v) Nothing in § 15-6- (d) (7) (B) affects the operation of other South Dakota Rules of Evidence such as §§ 19-12-2, 19-12-3, 19-12-4, and 19-12-5.
  - (vi) Nothing in this section authorizes admission of a document that contains hearsay within hearsay, unless the court determines from the face of the document that each part of the combined statements conforms with an exception to the hearsay rule set forth above.
  - (vii) Any authenticity or hearsay objections to a document as to which notice has been provided under § 15-6- (d) (7) (B) (i) must be made within 30 days after receipt of the notice.
- (C) Health Care Provider Statement in Lieu of Testimony. A statement of a health care provider in lieu of testimony shall be permitted in an expedited civil action and shall be governed by the requirements of § 19-16-8.2.
- (e) 15-6- (e). Settlement conference; alternative dispute resolution. Unless the parties have agreed to engage in alternative dispute resolution or are required to do so by contract or statute, the court may not, by order or local rule, require the parties to engage in a settlement conference or in any other form of alternative dispute resolution.
  - (f) 15-6- (f). Claim preclusion; issue preclusion. Judgments or orders in an expedited civil action may not be relied upon to establish claim preclusion or issue preclusion unless the party seeking to rely on a judgment or order for preclusive effect was either a party or in privity with a party in the expedited civil action.

Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and ten copies thereof filed with the Clerk of the Supreme Court no later than April 10, 2015.

Subsequent to the hearing, the Court may reject or adopt the proposed rules or any rules germane to the subject thereof.

Notice of this hearing shall be made to the members of the State Bar by publication of this notice in the March 2015 and April 2015 State Bar Newsletters.

Notice of Rules Hearing No. 130 - April 22, 2015

The proposed amendment and adoption of a new rule set out above may be found at

<http://ujs.sd.gov/SupremeCourt/ruleshearing.aspx> or

<http://www.sdbar.org/new/members/docs/130.pdf>.

Written copies are available from the Clerk of the Supreme Court upon request.

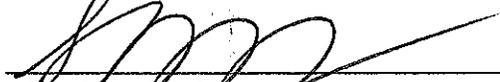
DATED at Pierre, South Dakota this 27th day of February, 2015.

BY THE COURT:



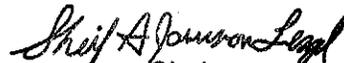
David Gilbertson, Chief Justice

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

FEB 27 2015

  
Clerk