

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION)
OF A NEW RULE RELATING TO)
SUPREME COURT ELECTRONIC FILING)
RULES)

RULE 13-11

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A hearing was held on August 28, 2013, at Pierre, South Dakota, relating to the adoption of a new rule relating to Supreme 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 Supreme Court Electronic Filing Rules be and it is hereby adopted to read in its entirety as follows:

SUPREME COURT ELECTRONIC FILING RULES

A. Electronic Filing.

1. Effective January 1, 2014, except as specifically exempted by these rules or court order, attorneys shall electronically file briefs and any appendices with the Supreme Court unless advance permission is granted by the court allowing paper filing. Any other notices, petitions, pleadings, motions, or documents may be filed electronically at the discretion of the attorney. Electronic filing for self-represented litigants is discretionary for all filings with the Supreme Court. On a showing of good cause, an attorney required to file electronically may be granted leave of court to file paper documents with the Supreme Court.
2. Documents filed electronically must be submitted by email attachment to SCClerkBriefs@ujs.state.sd.us. The number of the case shall appear in the subject line of the email.
3. A document filed electronically has the same legal effect as an original paper document.
4. The typed attorney or party name or electronic signature on a document filed electronically has the same effect as an original manually affixed signature.

5. 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 document containing information where redaction is required, in whole or in part, pursuant to SDCL Ch. 15-15A or order of the court, the original unredacted document shall also be filed electronically.

B. Electronic Document Formats.

1. All documents submitted to the court in electronic form must be in approved word processing format which shall then be converted by the supreme court clerk to portable document format (.pdf).

a. Parties must obtain permission from the supreme court clerk in advance if they seek to submit documents in another format.

b. Briefs shall comply with SDCL 15-26A-60.

c. An appendix may be filed electronically in portable document format (.pdf). Except for limited excerpts showing a court's reasoning, circuit court transcripts that have been filed electronically with the Supreme Court shall not be included in an appendix. A table of contents with page or paragraph reference as appropriate for each document must precede the appendix. Points of particular interest with page or paragraph reference may also be added to the table of contents. When feasible, electronic bookmarks shall be added to note the first page of each document in the appendix and may be added to note the location of points of particular interest.

C. Time of Filing.

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

2. Upon receiving an electronic document, the supreme court clerk will issue an e-mail confirmation that the document has been received.

3. Parties filing electronically must also submit an original and two hardcopies of any document to the supreme court clerk. For any brief filed in an appeal from a judgment or order pursuant to

SDCL chapter 26-8A, the appellant shall also file two hardcopy redacted briefs in compliance with SDCL 15-26A-60(9).

4. The Supreme Court may also order any party to provide additional hardcopies of any documents electronically filed.

5. A party must pay all required fees and payments within five days of submitting a document filed electronically. If fees and payments are not received within five days of submission, the document will not be filed and will be returned by the supreme court clerk and the party will be required to re-file the document.

D. Electronic Service.

1. After January 1, 2014, any attorney not exempt from electronic filing or a party filing electronically must designate an email address for accepting electronic service and for receiving electronic service with the supreme court clerk. 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. If a party files a document by electronic means, the party must serve the document by electronic means unless the recipient of service has not designated an email address for receiving electronic service.

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

4. If a recipient cannot accept electronic service of a document, service under another means specified by SDCL 15-6-5(b) is required.

5. Any party effectuating service electronically must include a certificate of service specifying the items electronically served.

6. Documents served electronically may be in portable document format (.pdf), with the exception of those documents to be filed with the Supreme Court in approved word processing format as previously specified herein.

7. The Supreme Court may electronically file and serve on registered attorneys and parties any decisions, orders, notices, remittiturs or other documents prepared by the court in such cases provided the attorney or party to be served has designated an email address for receiving electronic service.

E. Original Documents.

An original document submitted for filing in paper form may be scanned by the supreme court clerk and destroyed after thirty days.

F. 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.

G. Scope.

Unless specifically provided otherwise by this rule or inconsistent with its provisions, the Rules of Appellate Procedure contained in SDCL Ch. 15-26A shall govern any electronic filings.

H. Repealer.

Effective January 1, 2014, the following provisions shall be repealed:

~~15-26A-2.1. Emergency filings by facsimile transmission~~

~~(1) Documents may be filed with the Supreme Court by facsimile transmission in cases of emergency, provided that prior permission has been granted by the clerk.~~

~~(2) Such emergency filings shall be made in accordance with the provisions of § 15-6-5(d) and shall have the same effect as therein provided.~~

~~(3) In cases where a facsimile has been transmitted and filed pursuant to this section, counsel must file the original, together with the appropriate number of copies, with the clerk within five business days of the date of the facsimile filing. Copies of all documents filed in accordance with this method of transmission shall be served within the time and in the manner provided for in this chapter unless otherwise directed by the court.~~

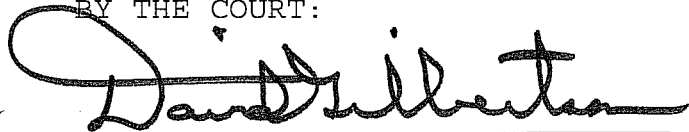
~~(4) Payment of facsimile transmission charges at the rate provided in § 15-6-5(d), photocopying charges as provided in subdivision 16-2-29.1(3), and other applicable fees shall be tendered with the original document. Transmission fees will be deposited into the state court automation fund.~~

~~(5) Failure to timely comply with the foregoing requirements may result in the imposition of sanctions, including, but not limited to, the striking of the document received by facsimile transmission.~~

IT IS FURTHER ORDERED that the rule shall become effective January 1, 2014.

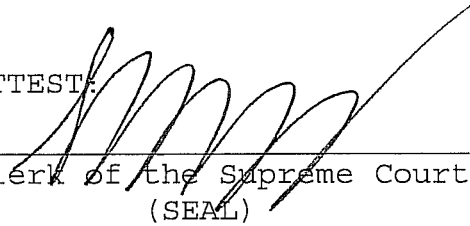
DATED at Pierre, South Dakota, this 10th day of September, 2013.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "David Gilbertson".

David Gilbertson, Chief Justice

ATTEST:

A handwritten signature in cursive script, appearing to read "M. M. M.". Below the signature is a horizontal line.

Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

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A handwritten signature in cursive script, appearing to read "Shirley A. Johnson Legal". Below the signature is the word "Clerk".

Clerk