

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION)
OF A NEW RULE RELATING TO) RULE 12-01
ELECTRONIC DOCUMENTS)

A hearing was held on February 15, 2012, at Pierre, South Dakota, relating to the adoption of a new rule relating to recognizing electronic documents as the official court record and provide for an electronic document management system for court records and the Court having considered the proposed adoption and the oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule to recognize electronic documents as the official court record and provide for an electronic document management system for court records be and it is hereby adopted to read in its entirety as follows:

Section 1. Definitions.

Electronic Document Management System. "Electronic Document Management System" ("EDMS") means a collection of computer software application programs and hardware devices that provide a means of organizing and controlling the creation, management and retrieval of documents through their life cycle.

Electronic record. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means within the Unified Judicial System's EDMS.

Electronic signature. "Electronic signature" means an electronic symbol or process attached to or logically associated with a document, that can be executed or adopted by the user with the intent to sign a document.

Section 2. Electronic Document Management System Policy.

The State Court Administrator, in consultation with the Unified Judicial System Technology Council, shall prepare and publish an Electronic Document Management System Policy specifying EDMS

policy and procedure within the clerk of courts office. Such policy may be amended as necessary and appropriate to carry out the provisions of these rules establishing an EDMS.

Section 3. EDMS Conversion.

For those counties with EDMS capabilities, the clerk of courts office shall not maintain a paper court file in any case commenced after the effective date of this rule except as otherwise provided in the EDMS policy. The clerk of courts shall electronically scan all paper documents and convert them to electronic documents pursuant to the EDMS policy.

Section 4. Official Record.

1. Whenever available, the official court record shall be the electronic file maintained by the Unified Judicial System. The official record shall also include, however, any conventional documents or exhibits filed and maintained in accordance with the policy for EDMS. The clerk of court shall maintain the official court record in an electronic format or in a combination of electronic and non-electronic formats as required. Documents filed by traditional methods shall be electronically scanned and made part of the official record in accordance with the EDMS policy. If a document submitted by traditional methods is not of sufficient graphical quality to be legible when electronically scanned into the EDMS, the clerk shall maintain the document in paper format.
2. An electronic transmission or print-out from the EDMS that shows the clerk's seal attesting to the document's authenticity shall be considered an official record or certified copy of the original.
3. Any court rule requiring that a document be an original, be on paper or another tangible medium, or be in writing, is satisfied by the electronic image defined as the original document in this rule. No record or signature may be denied legal effect or enforceability solely because it is in electronic form.
4. A requirement that a document or signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached or logically associated with the document or signature.

5. Court personnel will electronically file all official documents entered by the court. This applies to any electronic documents generated by the court and shall include orders, judgments, memoranda, papers, notices and any other official document.

Section 5. Signatures of Judges and Court Officials.

The requirement that any court record or document be signed is met by use of an electronic signature. The submission of a document signed with an "/s/ name" or electronic image of the traditional signature when filed with the login and password of a judge or court official shall constitute an original signature for all purposes. An electronic signature is considered to be the original signature upon the court record or document for all purposes under this rule and other applicable statutes or rules.

Section 6. Confidential Information.

The confidentiality of an electronic record, or an electronic copy thereof, is the same for the equivalent paper record. Access to confidential information, regardless of form, shall only be to the extent provided by law. The EMDS shall place a visible mark identifying confidential or sealed information and restrict access accordingly.

Section 7. Certification/Authentication of a Court Record.

A court document may be certified as an official copy only if the original document is on file with the court. In addition to manually certifying documents with a handwritten signature, any custodian of a court document may also use an electronic signature and seal to certify or authenticate documents that are in electronic format. A raised seal on the copy from the issuing court shall not be required.

Section 8. Public Access.

Public access to the electronic documents filed in the EDMS shall be available at no charge at the clerk's office during regular business hours through a public access terminal or any other reasonable means to provide access to publicly available portions of an electronic record. Fees for copies of electronic documents shall be as provided by law.

Section 9. Electronic Transmission.

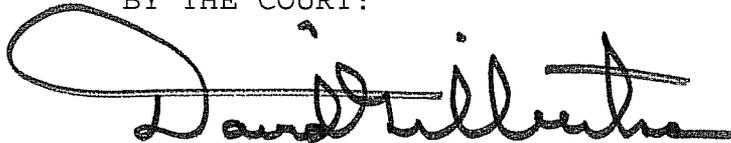
To the extent reasonably practicable, a clerk shall distribute through electronic means all communications, including orders,

judgments, notices and any other communications to attorneys and self-represented litigants in any pending proceeding.

IT IS FURTHER ORDERED that the rule shall become effective immediately.

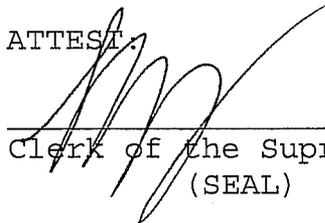
DATED at Pierre, South Dakota, this 21st day of February, 2012.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST



Clerk of the Supreme Court
(SEAL)

**SUPREME COURT
STATE OF SOUTH DAKOTA
FILED**

FEB 21 2012

Shirley A. Johnson Legal
Clerk