



Supreme Court of South Dakota

OFFICE OF THE CLERK
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
(605) 773-3511

Shirley A. Jameson-Fergel
Clerk

Laura J. Graves
Chief Deputy

M E M O R A N D U M

TO: ATTORNEYS AND PRO SE LITIGANTS INVOLVED IN APPELLATE PROCESS
FROM: SHIRLEY A. JAMESON-FERGEL
RE: CIVIL APPEALS
DATE: SEPTEMBER 2020

Amy Hudson
Deputy Clerk

Sarah L. Gallagher
Deputy Clerk

This memorandum is intended as a point of reference only to Civil Appellate Procedure. It is not a comprehensive summary and should not be used in place of the rules, which are fully set out at SDCL 15-26A.

CIVIL APPEALS (SDCL 15-26A)

Time Within Which an Appeal Must be Taken:

SDCL 15-26A-6. Appeals--When taken. An appeal from a judgment or order must be taken within thirty days after the judgment or order shall be signed, attested, filed and written notice of entry thereof shall have been given to the adverse party. A written notice of appeal filed before the attestation and filing of such signed judgment or order shall be deemed as filed on the date of the attestation and filing of the judgment or order.

Note: THE TIME WITHIN WHICH AN APPEAL MAY BE TAKEN IS JURISDICTIONAL.

Filing an Appeal:

When a notice of appeal is presented for filing, the notice should specify the party or parties taking the appeal; it should designate the judgment, order, or part thereof from which appeal is sought, and it should be signed by the appellant or his attorney.

A notice of appeal filed under chapter 26-8A shall be signed by the appellant and his or her attorney. (SDCL 15-26A-4(1)). The clerk of the trial court shall not accept for filing a notice of appeal under chapter 26-8A that is not signed by the appellant and his or her attorney (SDCL 15-26A-4(4)).

The notice of appeal must be accompanied by:

(1) Proof of service of the notice of appeal and the docketing statement on counsel of record for each party other than appellant, or, if a party is not represented by counsel, on the party at the last known address (SDCL 15-26A-4(3)), and

(2) Docketing statement. This statement must be on the prescribed form with copies of findings of fact, conclusions of law, and memorandum decision, if any, attached thereto. (SDCL 15-26A-4(2))

(3) Statutory filing fees: One check in the amount of \$150 should be submitted with appeal documents made payable to the circuit court clerk in which the appeal is being filed (\$50 to the Clerk of the Supreme Court (SDCL -2-29.1(1)); and \$50 court automation surcharge (SDCL 16-2-41.1) (the circuit court clerk will issue a check totaling \$100 to the Supreme Court); \$50 to the Clerk of the trial Court (SDCL 16-2-29(2)), unless

(a) the appeal is taken by the State of South Dakota or one of its political subdivisions, in which case neither the trial court fee nor the Supreme Court fee is required (last paragraphs of SDCL 16-2-29 and 16-2-29.1), or

(b) an affidavit of indigence is presented for filing, in which case neither the trial court fee nor the Supreme Court fee need be tendered. (SDCL 15-26A-5)

Undertaking on Appeal:

It is the recommended practice that the undertaking/cost bond be filed at the time the appeal is taken. There are some exemptions from the undertaking/cost bond requirement, and they are set out as follows:

(1) No undertaking/cost bond need be posted by an appellant who has filed an affidavit of indigence (SDCL 15-26A-24), and

(2) No undertaking/cost bond need be posted by an appellant if a written consent of each appellee to the waiver thereof is filed by appellant (SDCL 15-26A-24), and

(3) No undertaking/cost bond need be posted by the State or any of its political subdivisions (SDCL 15-26A-38).

A P P E N D I X

DOCKETING STATEMENT. APPENDIX 1

NOTICE OF APPEAL & CERTIFICATE OF SERVICE (Civil). APPENDIX 2

NOTICE OF APPEAL & CERTIFICATE OF SERVICE (Term).. APPENDIX 3

NOTICE OF APPEAL & CERTIFICATE OF SERVICE (Crim).. APPENDIX 4

TRANSCRIPT ORDER FORM. APPENDIX 5

SECTION B.

TIMELINESS OF APPEAL

(If section B is completed by an appellee filing a notice of review pursuant to SDCL 15-26A-22, the following questions are to be answered as they may apply to the decision the appellee is seeking to have reviewed.)

- 1. The date the judgment of order appealed from was signed and filed by the trial court: _____
- 2. The date notice of entry of the judgment or order was served on each party: _____
- 3. State whether either of the following motions was made:
 - a. Motion for judgment n.o.v., SDCL 15-6-50(b): Yes No
 - b. Motion for new trial, SDCL 15-6-59: Yes No

NATURE AND DISPOSITION OF CLAIMS

(Confine responses to questions 4 through 6 to the space provided.)

- 4. State the nature of each party's separate claims, counterclaims or cross-claims and the trial court's disposition of each claim (e.g., court trial, jury verdict, summary judgment, default judgment, agency decision, affirmed/reversed, etc.).

- 5. Appeals of right may be taken only from final, appealable orders. See SDCL 15-26A-3 and 4.
 - a. Did the trial court enter a final judgment or order that resolves all of each party's individual claims, counterclaims, or cross-claims? Yes No
 - b. If the trial court did not enter a final judgment or order as to each party's individual claims, counterclaims, or cross-claims, did the trial court make a determination and direct entry of judgment pursuant to SDCL 15-6-54(b)? Yes No

6. State each issue intended to be presented for review. (Parties will not be bound by these statements.)

Date: _____

Signature _____

Attach a copy of any memorandum opinion and findings of fact or conclusions of law supporting the judgment or order appealed from. See SDCL 15-26A-4(2).

STATE OF SOUTH DAKOTA)
COUNTY OF _____) SS

IN CIRCUIT COURT
_____ JUDICIAL CIRCUIT

WATER SYSTEMS, INC.,)
Plaintiff,)
vs.)
RONALD G. ROE,)
Defendant,)
vs.)
PATRICK JOHNSON,)
Intervenor.)

(Sample)
NOTICE OF APPEAL

TO: THOMAS J. JONES, of Jones, Hill and Morris, P.O. Box 499, Pierre, South Dakota 57501, Attorneys for Defendant

WILLIAM R. GRANT, P.O. Box 106, Pierre, South Dakota 57501, Attorney for Intervenor

Notice is hereby given that plaintiff, Water Systems, Inc., appeals to the Supreme Court of the State of South Dakota from the final judgment rendered in the above-entitled action on September 11, 2020, and filed in the office of the Clerk of Courts within and for Hughes County, South Dakota, on September 11, 2020.

DATED this 11th day of September, 2020.

Richard D. Smith
PO Box 367
Pierre SD 57501
Attorney for plaintiff and appellant

(Y:\Training\Civ-NA.Tng)

CERTIFICATE OF SERVICE

I hereby certify that on 11th of September, 2020, I served a true and correct copy of the foregoing Notice of Appeal and Docketing Statement by depositing a copy thereof in the United States mail, postage for first class mail prepaid, to the following persons, to-wit:

Thomas J. Jones
Jones, Hill and Morris
PO Box 499
Pierre SD 57501-5070
Attorneys for defendant

William R. Grant
PO Box 106
Pierre SD 57501
Attorney for intervenor

Richard D. Smith
PO Box 367
Pierre SD 57501
Ph
Attorney for plaintiff and appellant

(Y:\Training\Civ-PS.Tng)

STATE OF SOUTH DAKOTA)
COUNTY OF _____) SS

IN CIRCUIT COURT
_____ JUDICIAL CIRCUIT

The People of the State of South)
Dakota, ex rel, South Dakota)
Department of Social Services)
in the Interest of T.S.,)
Child(ren) and concerning)
)
D.S.,)
Respondent Mother,)
and)
L.S.,)
Respondent Father)

(Sample)
NOTICE OF APPEAL
Under SDCL Ch. 26-8A

TO: THE STATE OF SOUTH DAKOTA, Attorney General,
_____, County State's Attorney,
_____, Attorney for Minor Child and
_____, Attorney for Respondent Father:
(Parties and Counsel clearly identified)

Notice is hereby given that Respondent Mother, D.S., -Appellant Identified
does hereby appeal to the Supreme Court of the State of South
Dakota from the whole of the final dispositional order rendered
in the above-entitled action on the 11th Day of September, 2020, -Date of Order
and having been filed in the office of the Clerk of Courts within
and for Stanley County, South Dakota, on September 11, 2020. -Filing Date

DATED this 11th day of September, 2020.

Appellant Mother's Full Name

Name
Attorney for Appellant Mother
Address
Phone Number

CERTIFICATE OF SERVICE

I hereby certify that on 11th of September, 2020, I served a true and correct copy of the foregoing Notice of Appeal, Affidavit of Indigence and Docketing Statement by depositing a copy thereof in the United States mail, postage for first class mail prepaid, to the following persons, to-wit:

Attorney General
1302 E Hwy 14 Ste 1
Pierre SD 57501-8501

County State's Attorney
201 S Euclid #1
Pierre SD 57501

Attorney for Minor Child

Attorney for Respondent Father

Name
Attorney for Appellant Mother
Address
Phone Number

STATE OF SOUTH DAKOTA)
COUNTY OF _____) SS

IN CIRCUIT COURT
_____ JUDICIAL CIRCUIT.

STATE OF SOUTH DAKOTA,)
Plaintiff,)
)
vs.)
)
JOHN PAUL DOE,)
Defendant.)

NOTICE OF APPEAL

TO: THE STATE OF SOUTH DAKOTA and Attorney General, and State's Attorney, for Minnehaha County, South Dakota:

Notice is hereby given that defendant, John Paul Doe, does hereby appeal to the Supreme Court of the State of South Dakota from the whole of the final judgment rendered in the above-entitled action, said judgment being dated September 11, 2020, and having been filed in the office of the Clerk of Courts within and for Minnehaha County, South Dakota, on September 11, 2020.

DATED this 11th day of September, 2020.

Name
Address
Phone

(Y:\Training\Cr-NA.Tng)

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2020, I served a true and correct copy of the foregoing Notice of Appeal by depositing a copy thereof in the United States mail, postage for first class mail prepaid, to the following persons, to-wit:

Attorney General
1302 E Highway 14 Ste 1
Pierre SD 57501-8501

County State's Attorney
201 S Euclid #1
Pierre SD 57501

Name
Attorney for Appellant
Address
Telephone Number

STATE OF SOUTH DAKOTA)
SS
COUNTY OF _____)

IN CIRCUIT COURT
_____ JUDICIAL CIRCUIT

)
)
vs.)
)
)
)

ORDER FOR TRANSCRIPT(S)

TO: COURT REPORTER(S) _____ :
Pursuant to SDCL 15-26A-48, (name(s) of party/parties placing order) hereby orders a transcript(s) of proceedings in the above-entitled action as indicated below:

DATE OF HEARING TYPE OF NAME OF PROCEEDING REPORTER

- _____ Arraignment _____
- _____ Closing Statements _____
- _____ Court Trial _____
- _____ Jury Trial _____
- _____ Motion Hearings(s) _____
- _____ Opening Statement(s) _____
- _____ Sentencing _____
- _____ Voir Dire _____

_____ (Other-Specify) _____

As the ordering party I hereby certify that notice of appeal was filed with the trial clerk on _____, and that this order is timely made within ten days of said filing date.

I also certify that pursuant to SDCL 15-26A-48, an original of this order has been transmitted to each Court Reporter who took the requested proceedings; that a copy has been filed with the trial clerk; and that service has been made upon all parties to the action as reflected in the attached certificate of service.

DATED this _____ day of _____, 20_____.

(Name and Address of Attorney/
Party placing order)

COURT REPORTER'S ENDORSEMENT

I, _____, hereby acknowledge receipt of this order for transcript on _____. My anticipated date of completion is _____.

(Explanatory comments should be noted by the reporter on the reverse side of this form).

Court Reporter

(Note to Ordering Party: Within ten days of the filing of the notice of appeal the original of this order must be transmitted to the Court Reporter. If more than one Reporter is involved, duplicate originals should be transmitted to each. One copy is to be filed with the trial clerk and a copy is to be served upon counsel for each party to the action or upon each party if unrepresented by counsel. A certificate of service should be attached to the original order and to each copy thereof. See SDCL 15-26A-48.)