

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT
OF SDCL 15-6-51(a)

RULE 98-32

A hearing having been held on October 23, 1998, at Sioux Falls, South Dakota, relating to the amendment of SDCL 15-6-51(a), and the Court having considered the amendment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-6-51(a) be and it is hereby amended to read in its entirety as follows:

15-6-51(a) Manner of preparation and giving instructions to the jury. During the trial, or at the close of the evidence, or at any time as the court reasonably directs, a party may file written requests that the court instruct the jury on the law as set forth in the requests. The court shall inform counsel of its proposed action upon the requests prior to their argument before the jury. No party may claim error for the giving or failure to give an instruction unless that party objects stating distinctly the matter objected to and the grounds for the objection. Opportunity shall be given to make the objection out of the hearing of the jury pursuant to § 15-6-51(b). The court may instruct the jury on general and preliminary matters concerning the conduct of the trial at any time before or during the trial. However, after the close of the evidence and prior to arguments to the jury, the court shall instruct the jury as to the applicable law.

All instructions except those given under § 5-6-51(c) shall be reduced to writing before being given, and after being settled shall be read to the jury by the court without any disclosure to indicate which are and which are not requested instructions.

All requests for instructions shall be in writing and in duplicate, and shall be presented to the court on or before the time fixed for settling instructions. However, the court

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may set a date prior to trial for the submission of any requests for instructions which reasonably can be anticipated in advance of trial. In requesting instructions, counsel shall number only the copies. At the same time counsel shall furnish to the judge the original of each such requested instruction and such originals shall not be numbered, and shall not in any way show that they are requested instructions, but shall have at the top of each instruction a space for numbering. Such original requested instructions shall be typed, double-spaced, on letter-size, bond paper in such form that the judge can insert the original requested instruction in the set to be used by the jury in the event the instruction is adopted by the court. Such original instructions as are not adopted shall be discarded by the court. All requested instructions which are refused by the court shall be so endorsed by the court on the numbered copy. An additional numbered copy of each requested instruction shall be furnished to opposing counsel.

The court shall in no case qualify, modify, or in any manner explain to the jury any written instruction given, unless such qualification, modification, or explanation shall first have been reduced to writing and made a part of such instruction and settled.

The court may, after the giving of instructions and at any time before verdict, recall the jury for further instructions, which, if given, shall be given in full compliance with the provisions of § 15-6-51(a) and (b).

After the jury has retired for deliberation if there be a disagreement between them as to any part of the testimony or if they desire to be informed of any point of law arising in the case, they may require the officer to conduct them into court. Upon their being brought into court the information required, if given, must be given in the presence of, or after notice to the parties or counsel, and the instruction given shall be taken down by the court reporter.

In all cases the instructions shall be taken by the jury in their retirement, and the jury shall be provided with the number of copies the court deems necessary. The instructions shall include any general or preliminary instructions prepared and read to the jury by the court and the instructions as to the applicable law. The original instructions shall be returned into court with the verdict. No instruction taken by the jury shall be marked so as to indicate it was requested.

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IT IS FURTHER ORDERED that this rule shall become effective July 1, 1999.

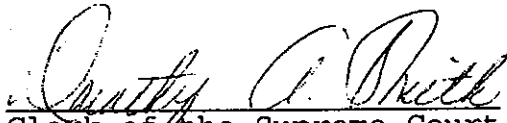
DATED at Pierre, South Dakota, this 25th day of November, 1998.

BY THE COURT:



Robert A. Miller, Chief Justice

ATTEST:


Dorothy A. Smith
Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

NOV 25 1998


Clerk