

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE AMENDMENT)

SDCL 15-6-37(b)

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RULE 06-34

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A hearing was held on February 16, 2006, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-37(b), and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-6-37(b) be and it is hereby amended to read in its entirety as follows:

**SDCL 15-6-37(b). Failure to comply with order.**

- (1) Sanctions by court in circuit where deposition is taken. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the circuit in which the deposition is being taken, the failure may be considered a contempt of that court.
- (2) Sanctions by court in which action is pending. If a party or an officer, director, or managing agent of a party or a person designated under subdivision 15-6-30(b)(6) or § 15-6-31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under § 15-6-37(a) or 15-6-35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
  - (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
  - (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
  - (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is

obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

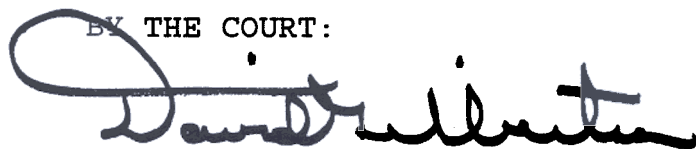
Where a party has failed to comply with an order under § 15-6-35(a) requiring that party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this subdivision, unless the party failing to comply shows that that party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2006.

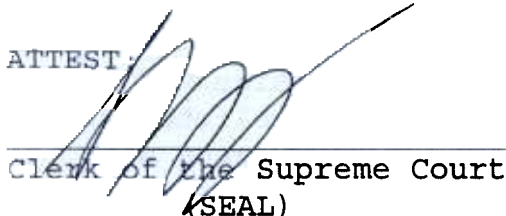
DATED at Pierre, South Dakota, this 17th day of March, 2006

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court  
(SEAL)

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

MAR 17 2006



Clerk