

N THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE PROPOSED)	NOTICE OF SPECIAL
AMENDMENT OF SDCL 25-4-58.1)	RULES HEARING
AMENDMENT OF APPENDIX TO)	
SDCL CH. 25-4A)	NO. 123
REPEAL OF SDCL 15-30-16)	
)	

Petitions for amendments of existing sections of the South Dakota Codified Laws and the adoption of new rules having been filed with the Court, and the Court having determined that the proposed amendments and adoptions should be noticed for hearing, now therefore,

NOTICE IS HEREBY GIVEN THAT ON AUGUST 24, 2011, at 11:00 A.M., C.S.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

1. Proposed Amendment of SDCL 25-4-58.1 Minimum Qualifications for Family Court Mediators. To be eligible as a court appointed mediator under § 25-4-56, a mediator must have the following minimum qualifications:

(1) A mediator must file an ~~approved~~ application on the prescribed form with the presiding judge for the circuit ~~or circuits~~ in which the mediator will primarily conduct mediations. Approval of the application by the presiding judge will authorize the approved mediator to conduct mediations in all judicial circuits. See prescribed form attached as Exhibit A.

(2) A mediator must have a minimum of forty (40) hours training and consultation with an experienced mediator for at least three mediation sessions. In place of forty (40) hours' training and consultation, a person may, with court approval, qualify as a

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mediator if that person has had five year's experience in mediating custody and visitation issues with a minimum of twenty (20) mediations during that period. A mediator must have competence in the following areas:

- (a) general knowledge of the South Dakota court system and its procedures in contested family matters;
 - (b) general knowledge of South Dakota family law, especially as applied to custody and visitation issues;
 - (c) knowledge of child development and specifically the impact of divorce or separation on family members;
 - (d) knowledge of resources available in the state to which the parties and the children can be referred for assistance;
 - (e) knowledge of interviewing and mediation techniques applicable to the family setting.
- (3) A mediator must be committed to and participate in continuing education courses.

EXHIBIT A - MEDIATOR APPLICATION FORM

MEDIATOR APPLICATION FORM

UNIFIED JUDICIAL SYSTEM OF SOUTH DAKOTA

CIRCUIT COURT

Name: _____
Address: _____
Day time Phone: _____

Instructions: Please complete the following questionnaire as specified under each section. If additional space is needed, attach a sheet for each area making sure to indicate which section of the questionnaire to which you are responding. This form must be filed with the Presiding Judge for the circuit in which the mediator will primarily conduct mediations. ~~each circuit in which you intend to participate in court appointed mediation.~~

- 1) Provide your professional background including degree(s), certificate(s), practice specialization(s), years of experience and special training and relevant dates:

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2) Provide a full and complete disclosure of all professional employment experiences whether in the field of mediation or in any other field:

3) Provide complete information regarding any training, seminars, workshops, etc., you deem pertinent to mediation:

4) Provide the number of mediations in which you have been involved giving approximate dates of those mediations if available. Please indicate how many of the mediations were successful.

5) Describe methods of mediation you have used and time required to conduct a typical mediation:

6) Please describe how fees and costs are calculated for completion of a typical mediation:

7) Please describe the requirements for payment of fees:

I am aware of and agree to abide by the principles and guidelines set out in the Interim Standards for Mediators as rules for mediators promulgated by the Supreme Court of South Dakota.

Signature

Date

NOTE: This form must be updated as changes to the information occur or at least annually.

Approved:

Presiding Circuit Judge

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2. Proposed Amendment of Appendix to SDCL Ch. 25-4A:

SOUTH DAKOTA VISITATION PARENTING GUIDELINES

A powerful cause of stress, suffering, and maladjustment in children of divorce or separation is not simply the divorce or separation itself, but rather the continuing conflict between their parents, before, during, and after the divorce. ~~Similar conflicts can occur between parents who were never married and/or separation.~~ To minimize harm to their children, parents should agree on a parenting arrangement that is most conducive to the children having frequent and meaningful contact ~~for the children~~ with both parents,

with as little conflict as possible. When parental maturity, personality, and communication skills are adequate, the ideal arrangement is reasonable time with the noncustodial parent ~~on~~ upon reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed ~~visitation~~ parenting agreement made by the parents to fit their particular needs and, more importantly, the needs of their children. It is recommended that an annual calendar be prepared so that the parents and the children all are aware of the parenting schedule. If the parents are unable to agree on their own parenting plan, however, the following guidelines (Parenting Plan) will be used, ~~unless a different schedule is ordered.~~ ~~For most parents, these guidelines should be considered as only a minimum direction for interaction help the parents in knowing what is generally reasonable, unless special circumstances require a different arrangement.~~ (See Paragraph 1.16 below.) In the event a parent's time with the children becomes an issue in court, the judge will set whatever parenting plan best meets the needs of the children.

1. GENERAL RULES.

A parent should always avoid speaking negatively about ~~one another~~ the other parent and should firmly discourage such conduct by relatives or friends. ~~In fact, the~~ Each parents should speak in positive terms about the other parent in the presence of the children. Each parent should encourage the children to respect the other parent. Children should never be used by one parent to spy or report on the other parent. The basic rules of conduct and discipline established by the custodial parent should be the baseline standard for both parents and any step-parents, and consistently enforced by all caregivers, so that the children do not receive mixed messages ~~about appropriate behavior.~~

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. ~~In South Dakota, grandparents have a legal right to reasonable visitation with their grandchildren, if it is in the best interests of the grandchildren.~~ Usually the children will visit with the paternal relatives during the times when the children are with their father and with the maternal relatives during times when they are with their mother. ~~It is recommended that the parents prepare an annual calendar of agreed dates so that both the parents and the children know where the children will be during the coming year.~~

In cases where both parents reside in the same community at the time of separation, and then one parent leaves the area, thus changing the ~~visitation patterns~~ parenting plan, the court will consider ~~apportioning between~~ imposing the parents travel costs for the children's travel costs children necessary to facilitate ~~visitation~~ future time with the custodial children on the parent- ~~In apportioning these costs~~ who moved; however, the court will also consider ~~such~~ other factors such as the economic circumstances of the parents and the reasons prompting the move. Before relocating the children, the custodial parent is required to comply with South Dakota's statutory notice requirements.

1.1 Parental Communication. Parents should always keep each other advised of their home and work addresses and telephone numbers. Whenever feasible, all communication concerning the children must be conducted between the parents themselves in person, or by telephone,

or at their residences, or via email or text message. Absent an emergency, communication should not occur at a parent's place of employment.

1.2 Grade Reports and Medical Information. ~~The custodial parent shall provide the noncustodial parent with grade reports and notices from school as they are received and shall authorize the noncustodial parent to communicate concerning the child directly with the daycare, the school, and the children's doctors and other professionals outside the presence of the custodial parent. Unless there are abuse, neglect, criminal, or protection orders to the contrary, the noncustodial parent shall also be listed as the children's parent and as an emergency contact with the daycare, the school, and all health professionals. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. The custodial parent shall, as soon as reasonably possible, notify the noncustodial parent of all school or other events (for example, church or sports) involving parental participation. If the child is taking medications, the custodial parent shall provide a sufficient amount and appropriate instructions to the noncustodial parent.~~

The custodial parent must provide the noncustodial parent with the name, address and telephone number of the school where any child attends and must authorize the noncustodial parent to communicate concerning the child directly with the school and with the child's doctors and other professionals outside the presence of the custodial parent. The noncustodial parent also has an obligation to contact the school to ensure receipt of school report cards, notices, etc. so that he/she can remain involved with their child's education. Both parents will be listed on all of the child's records. Each parent must immediately notify the other parent of

any medical emergencies or serious illnesses of a child. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, orthodontia and similar health care, and school records must be made equally available to both parents. Counseling, psychiatric, psychotherapy and other records subject to confidentiality or privilege must only be released in accordance with state and federal law; but, if available to one parent, must be available to both. The parents must make reasonable efforts to ensure that the name and address of the other parent is listed on all such records. If either parent enrolls the child in any social, beneficent, religious, or peer group activity, service, benefit or program for which written application is required, the enrolling parent must provide the name and address of the other parent on, or supplementary to, the application. [This provision does not apply to insurance or annuities.] The custodial parent must notify the noncustodial parent of all school or other events (for example, church and sports) involving parental participation. If the child is taking medications, the custodial parent must provide a sufficient amount and appropriate instructions.

1.3 Clothing. The custodial parent will send an appropriate supply of children's clothing with them, which must be returned clean (when reasonably possible) with the children, by the noncustodial parent. The noncustodial parent must advise, as far in advance as possible, of any special activities so that appropriate clothing belonging to the children may be sent. It is recommended that the noncustodial parent have some basic clothing available in his/her home to ensure that all of the children's basic needs are met.

1.4 Withholding Support or Time With the Children. Neither time with the children nor child support is to be withheld because of

either parent's failure to comply with a court order. Only the court may enter sanctions for non-compliance. Children have a right both to support and, absent abuse or other safety concerns, time with the noncustodial parent, neither of which is dependent upon the other. In other words, no support does **not** mean the children will spend no time with the noncustodial parent, and no time with the noncustodial parent does not mean no support needs to be paid to the custodial parent. If there is a violation of either the parenting order or a support order, the exclusive remedy is to apply to the court for appropriate sanctions.

1.5 Adjustments in Parenting Plan. Although this is a specific schedule, the parents are expected to fairly modify the Parenting Plan when family necessities, illnesses, or commitments reasonably so require. The requesting parent must act in good faith and give as much notice as circumstances permit.

1.6 Custodial Parent's Vacation. Unless otherwise specified in a court order or agreed upon by the parents, the custodial parent is entitled to a vacation with the children for a reasonable period of time, usually equal to the vacation time the noncustodial parent takes with the children. The custodial parent should plan a vacation during the time when the noncustodial parent is not scheduled to spend time with the children. With children age 3 and over, a vacation of up to two (2) weeks of uninterrupted time in the summer upon 30 days advance notice is reasonable. Parents are encouraged to coordinate vacation plans.

1.7 Insurance Forms. The parent who has medical insurance coverage on the children ~~shall~~ must supply to the other parent an insurance card and, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where

the other parent is residing. Except in emergencies, the parent taking the children to a doctor, dentist, or other provider not so approved or qualified ~~should~~ may be required to pay the additional cost thus ~~incurred~~ created. ~~W-However,~~ when there is a contemplated change in insurance which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parents to what is more important, i.e., allowing the child to remain with the original provider or ~~taking advantage of the economic or medical benefits offered by the new~~ consequences of changing carriers. When there is an obligation to pay medical expenses, the parent responsible therefor ~~shall~~ must be promptly furnished with the bill by the other parent. The parents ~~shall~~ must cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill ~~shall~~ must make arrangements directly with the health care provider and ~~shall~~ will inform the other parent of such arrangements. Insurance refunds should be promptly turned over to the parent who paid the bill for which the refund was received.

1.8 Child Support Abatement. Unless a court order otherwise provides, child support will not abate during any period when the children are with the noncustodial parent. South Dakota law allows for child support abatements and offsets. See generally SDCL 25-7. However, no abatement or offset may be taken unless there is a court order authorizing it.

~~**1.9 Missed Visitation.**~~

1.9 Noncustodial Parent's Missed Time With the Children. When scheduled time with the children cannot occur due to events beyond either parent's control, such as illness, ~~prevent a scheduled visitation,~~ of the parent exercising time with the children, then a mutually agreeable substituted ~~visitation~~ date ~~shall~~ will be

arranged, as quickly as ~~feasible possible~~. Each parent shall must timely advise the other parent when ~~a particular visitation~~ scheduled time with the children cannot be exercised. Missed ~~visitation time with the children~~ should not be unreasonably accumulated.

1.10 ~~Visitation~~ ~~a Shared Experience~~ Children of Different Ages.

Except with infants and adolescents, it usually makes sense for all ~~the children~~ to share the same schedule of parenting time with the noncustodial parent. Having brothers ~~and~~ or sisters along ~~may provide~~ can be an important support for children. Infants have special needs that may well prevent a parent from being with both infants and older children at the same time. ~~Adolescents have~~ Teenagers' special needs for peer involvement and for some control of their own lives ~~that~~ may place them on different schedules from their younger brothers and sisters. Because it is intended that ~~visitation~~ the noncustodial parent's time with the children be a shared experience between siblings and, unless these guidelines, a court order, or circumstances, such as age, illness, or a the particular event suggests otherwise, all the children should participate together in spending time with ~~the~~ a noncustodial parent.

1.11. Telephone Communication.

~~Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. The custodial parent may call. Either parent may call, text, or email the children at reasonable hours when times and with reasonable frequency during those periods the children are with the noncustodial other parent. The children may, of course, call, text, or email either parent, though at reasonable hours and with reasonable frequencies, and at the cost of the parent called if it~~

~~is a long distance call.~~ During long vacations, the parent with whom the child is on vacation ~~should~~ is required to make the child available for telephone calls with the other parent at least every three days. At all other times, the parent ~~with whom the child is staying~~ with must not refuse to answer the ~~phone~~ other parent's telephone calls or turn off the ~~phone~~ telephone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned by a telephone call to that parent as soon as feasible. Parents should agree on a specified time for calls to the children so that the children will be made available. A parent may wish to provide a an older child with a ~~telephone calling card~~ cell phone to facilitate these communications ~~with that parent.~~

~~1.12 Mail and E-mail Contact.~~ In such instances, it is not appropriate for a parent to use restrictions from that cell phone as a means of punishing the child. Telephone calls between a parent and child must not be censored, recorded, or monitored, absent court order. With older children, establishing an email account for communication with the other parent is recommended. Email communication or text messages between parents is also helpful in keeping the other parent informed about the child and should likewise not be read or monitored by the other parent. Abuse, neglect, criminal activity, or protection orders may impact access to information regarding the custodial parent or the children.

1.12 Other Contact. Parents have an unrestricted right to send cards, letters, packages, ~~and~~ audio and video cassettes or CDs to their children. Children also have the same right to send items to their parents. Neither parent should interfere with this right. A parent may wish to provide a child with self-addressed, stamped envelopes for the child's use in corresponding with that parent. ~~If~~

~~the child and the parent have Internet capability, communication through e-mail should be fostered and encouraged.~~

1.13 Privacy of Residence. A parent may not enter the residence of the other parent except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence ~~of the other parent~~. Accordingly, ~~t~~ The children must be picked up and returned to the front entrance of the ~~appropriate~~ other parent's residence. The parent dropping off the children ~~should~~ must not leave ~~the premises~~ until the children are safely inside the other parent's residence. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is ~~his or her~~ his/her own, and the children's time with ~~that~~ the other parent is equally private.

1.14 Special Considerations for Adolescents. ~~Generally, these guidelines apply to adolescents as well as younger children.~~ ~~Nonetheless, within~~ Within reason, the parents should honestly and fairly consider ~~the wishes of their teenagers~~ teenager's wishes on visitation time with a parent. Neither parent should attempt to pressure their teenager to make a ~~visitation~~ decision on time with a parent adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent, without intervention by the other parent.

1.15 Day Care Providers. When parents reside in the same community, they should use the same day care provider. To the extent feasible, the parents should rely on each other to care for the children when the other parent is unavailable.

1.16 Special e Circumstances-:

A. Child Abuse. When child abuse has been established ~~against the noncustodial parent~~ and a continuing danger is shown to exist,

~~all visitation time with the abusive parent~~ should cease or ~~only~~ be allowed ~~only~~ under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases, ~~if either parent abuses a child.~~

- B. **Spouse Spousal Abuse.** Witnessing ~~spouse~~ spousal abuse has long-term, emotionally detrimental effects on children. Furthermore, ~~a~~ A person who loses control and acts impulsively with a spouse may be capable of doing so with children as well. Depending on the nature of the spouseal abuse and ~~the time and circumstances of when its occurrence occurred~~, the court may require ~~that~~ an abusive spouse to successfully complete appropriate counseling before being permitted unsupervised time with the children.
- C. **Substance a Abuse.** ~~F~~ Time with the children should not ~~be with~~ occur when a parent ~~who~~ is abusing substances.
- D. **Long Interruption of Contact.** In those situations where the noncustodial parent has not had a ~~continuing~~ n ongoing relationship ~~the~~ with a child for an extended period, ~~visitation time with the child~~ should begin with brief visits and a ~~very~~ gradual transition to the ~~visitation~~ parenting plan in these guidelines.
- E. ~~Kidnapping~~ **Abduction Threats.** Noncustodial parents who have threatened to ~~kidnap~~ abduct or hide the children should have either no ~~visitation~~ time with the children or only supervised ~~visits~~ time.
- F. **Breast Feeding Child.** Forcibly weaning a child, whether breast feeding or bottle feeding, during the upheaval of parental

separation is not appropriate for the physical health or emotional well-being of the child. Until weaning has occurred without forcing, a nursing infant should have frequent visits of only a few hours each with the ~~father~~ noncustodial parent. A mother should not use breast feeding beyond the normal weaning age as a means to deprive the father of visitation time with the child.

- G. **A Parent's New Relationship.** Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parents' separation and and/or divorce.
- H. **Religious Holidays and Native American Ceremonies.** Parents should respect their children's needs to be raised in their faith and ~~in-keeping with~~ to maintain their cultural heritage and ~~should cooperate with each other on visitation in co-~~ parenting to achieve these goals. ~~These goals~~ However, religious holidays and Native American ceremonies should not be used to unreasonably deprive the noncustodial parent of visitation time with the children.
- I. **Other.**— The court will ~~consider limiting~~ limit or denying ~~visitation or changing custody of~~ deny time with the children to noncustodial parents who show neglectful, impulsive, immoral, criminal, assaultive, or other risk-taking behavior with or in the presence of the children.

~~Guideline 2. Noncustodial Parent Visitation When Children Are Under Age Five~~

2. NONCUSTODIAL PARENTING TIME WITH CHILDREN UNDER AGE FIVE.

2.1 Children Under Age Five Generally. Infants (children under eighteen months of age) and toddlers (eighteen months to three years) have a great need for continuous contact with the primary ~~caretaker~~ caregiver who provides a sense of security, nurturing, and predictability. Generally, ~~overnight visits~~ overnights for infants and toddlers are not recommended unless the noncustodial parent is very closely attached to the child and is ~~personally~~ able to provide primary care. Older preschool age children (three to five years) are able to tolerate limited separations from the primary ~~caretaker~~ caregiver. The following guidelines for children under age five are designed to take into account ~~children's~~ childhood developmental milestones as a basis for time with the noncustodial parent. Since children mature at different rates, these may need to be adjusted to fit the child's individual circumstances. These guidelines may not apply in those instances ~~where~~ the parents are truly sharing ~~equally share caretaking~~ all the caregiving responsibilities for the child and the child is equally attached to both parents. ~~Yet in~~ the majority of situations, ~~those in which~~ when the custodial parent has been the primary ~~caretaker~~ caregiver and the noncustodial parent has maintained a continuous relationship with the child, but has not shared equally in child ~~caretaking~~ caregiving, the following guidelines should generally apply:

2.2 Infants - Birth to Six Months. Alternative parenting plans:
(1) Three, two-hour ~~visits~~ custodial periods per week, with one weekend day for six hours; or (2) Three, two-hour ~~visits~~ custodial periods per week, with one overnight on a weekend for no longer than a twelve-hour-period, if the child is not breast feeding and the noncustodial parent is capable of providing primary care.

2.3 Infants - Six to Eighteen Months. Alternative parenting plans:
(1) Three, three-hour ~~visits~~ custodial periods per week with one

weekend day for six hours; or (2) Same as (1), but with one overnight not to exceed twelve hours, if the child is not breast feeding and the noncustodial parent is capable of providing primary care; or (3) Child spends time in alternate homes, but spends significantly more time at in one of them and no more ~~than~~ one to two twelve-hour overnights per spaced regularly throughout the week at the other parent's home. ~~This a~~ Arrangement (3) should be considered only for mature, adaptable children and very cooperative parents.

2.4 Toddlers - Eighteen to Thirty-six Months. Alternative parenting plans: (1) The noncustodial parent has the child up to three times per week for a few hours ~~on each visit,~~ on a predictable schedule; or (2) Same as (1) but with one overnight per week; or (3) Child spends time in alternate homes, but with more time in one ~~than~~ the other parent's home with two or three overnights spaced regularly throughout the week. ~~This a~~ Arrangement (3) requires an adaptable child and cooperative parents.

2.5 Preschoolers - Three to ~~Five Years Old.~~ Five Years.

Alternative parenting plans: (1) One overnight ~~visit~~ custodial period (i.e., Saturday morning to Sunday evening) on alternate weekends and one midweek ~~visit, at the conclusion of which~~ custodial period with the child is returned returning to the custodial parent's home at least ~~one-half~~ one hour before bedtime; or (2) Two or three nights at one home, spaced throughout the week, the remaining time at the other parent's home. In addition, for preschoolers, a vacation of no longer than two weeks with the noncustodial parent.

2.6 Children in Day Care. In families where a child has been in day care before the parental separation, the child may be able to

tolerate ~~flexible visits~~ more time with the noncustodial parent earlier because the child is more accustomed to separations from both parents. The noncustodial parent ~~who exercises visitation~~ of a child under age five should not during ~~the visits~~ his/her time place the child with a babysitter or day care provider. If the noncustodial parent cannot be with the child personally, the child should be returned to the custodial parent. ~~Visiting~~ Allowing the child to visit with relatives for short periods ~~with relatives of time~~ may be appropriate, if the relatives are not merely serving as babysitters.

2.7 Holidays. For toddlers and preschool age children, when the parents ~~live~~ celebrate the holiday in the same or a nearby communities community, the parents should alternate ~~each year~~ Christmas Eve and Christmas Day each year so that the children spend equal time with each parent during this holiday period. Other major holidays should also be divided between the parents.

~~Guideline 3. Noncustodial Parent Visitation When Children Are Over Age Five and the Parents Reside No More Than 200 Miles Apart~~

3. NONCUSTODIAL PARENTING TIME WHEN CHILDREN ARE OVER AGE FIVE WHEN THERE IS SOLE CUSTODY OR PRIMARY PHYSICAL CUSTODY AND THE PARENTS RESIDE NO MORE THAN 200 MILES APART.

3.1 Weekends. Parenting time should consist of alternate weekends from Friday at 5:30 P.M. to Sunday at 7:00 P.M., or an equivalent period of time if the noncustodial parent is unavailable on weekends and the child does not miss school. The starting and ending times may change to fit the parents' schedules. ~~Or an equivalent period of time if the noncustodial parent is not available on weekends and the child does not miss school.~~ In addition, if time and distance allow, ~~one or two midweek visits of two to three hours.~~ the noncustodial parent may spend time on a regular schedule with the children once or twice per week for two or three hours. In most

cases, it is a positive experience for the child to have the noncustodial parent involved in taking the child to and from school and it is recommended that the noncustodial parent, if feasible, extend the alternating weekends by picking up the child from school on Friday and taking the child to school on Monday. All transportation for the midweek visits are custodial periods is the responsibility of the noncustodial parent exercising them.

3.2 Mother's Day - Father's Day. The alternate weekends will be shifted, exchanged, or arranged so that the children are with their mother each Mother's Day weekend and with their father each Father's Day weekend. ~~Conflicts between these special weekends and regular visitation shall be resolved under Paragraph 1.9.~~

3.3 Summer Visitation Vacation. ~~One half of the school summer vacation.~~ The children will be with each parent for one-half of the school summer vacation. At the option of the noncustodial parent, the time may be consecutive or it may be split into two or more blocks of time. If a the child goes to summer school and it is impossible for the noncustodial parent to schedule this ~~visitation~~ time other than during summer school, the noncustodial parent may elect to take the time when the child is in summer school and transport the child to the summer school sessions at the child's school or an equivalent summer school session in the noncustodial parent's community.

3.4 Winter (Christmas) Vacation. ~~One half~~ The children will spend with each parent one-half of the school winter vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school. If the parents cannot agree on the division of this period, the noncustodial parent ~~shall~~ will have the first half in even-

numbered years. Holidays, such as Christmas, are extremely important as times of shared enjoyment, family tradition, and meaning. Families living in the same or nearby communities should plan work out ways for the children to spend part of each important holiday at both homes. If the parents are unable to work out a ~~sharing~~ shared arrangement for ~~Christmas~~ the Christmas/New Year holiday and they ~~live~~ celebrate the holidays in the same or a nearby communities community, in those years when Christmas does not fall in a parent's week, ~~that~~ the children will be with the other parent shall have from 2 11:00 P.A.M. to 9 8:00 P.M. on Christmas Day.

3.5 Holidays Weekends. Parents ~~shall~~ will alternate the following holiday weekends: Easter, Memorial Day, the 4th of July, Labor Day, and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening; Memorial Day and Labor Day weekends will begin on Friday evening and end on Monday evening; Easter weekend will begin on Thursday evening and end on Sunday evening; the 4th of July, when it does not fall on a weekend, ~~shall~~ will include the weekend closest to the 4th of July or, if on a Wednesday, the weekend before the 4th of July. Holiday weekends begin at 5:30 P.M. and end at 7:00 P.M. on the appropriate designated days.

3.6 Children's Birthdays. Like the holidays, a child's birthday ~~shall~~ will be alternated annually between the parents. If the child's birthday falls on a weekend, it ~~shall~~ will ~~extend to the full weekend, and any resulting conflict with regular visitation shall be resolved under Paragraph 1.9.~~ If the birthday falls on a weekday, it ~~shall~~ be celebrated from 2 11:00 P.A. M. to 8:00 P.M. (or so much of ~~that~~ the period as the noncustodial parent elects to use). In some instances, the parents may agree to share the child's birthday with each parent spending a few hours with the child.

3.7 Parents' Parent's Birthdays. The children should spend the day with the parent ~~who is celebrating his or her~~ on the parent's birthday, unless it interferes with ~~a noncustodial~~ the other parent's scheduled time during a ~~holiday or vacation or a major~~ holiday. If a parent's birthday falls on a holiday, that parent may elect to exercise parenting time on another day during that month, upon sufficient advance notice to the other parent.

3.8 Conflicts Between Regular and Holiday Weekends. When there is a conflict between a holiday weekend and the ~~regular~~ regularly ~~scheduled weekend visitation time with the parent,~~ the holiday takes ~~preference precedence.~~ Thus, ~~if~~ If the noncustodial parent misses a ~~regular~~ regularly ~~scheduled weekend because it is the custodial~~ parent's holiday, ~~the regular alternating visitation schedule will resume following the holiday.~~ If the noncustodial then the noncustodial parent ~~receives two~~ will have another weekend during that month. Unless mutually agreed, neither parent will have three consecutive weekends ~~because of a holiday, the regular alternating weekend schedule will resume the following weekend with the~~ custodial parent. ~~The parents are to make up missed weekends resulting from holiday conflicts.~~

3.9 Time With the Noncustodial Parent ~~Visitation~~ Before and During Vacations. The custodial parent will have the weekend before the beginning and the weekend after the end of the noncustodial parent's summer ~~extended visitation vacation period(s) with the children,~~ regardless of whose weekend it may be. ~~Similarly, the noncustodial parent's alternating weekend schedule shall resume the second weekend after each extended summer visitation period.~~ Weekend ~~visitation time~~ "missed" during the summer vacation period will not be "made up." During any the noncustodial parent's extended summer ~~visitation time with the children~~ of more than three consecutive

weeks, it will be the noncustodial parent's duty to ~~accommodate, at~~
arrange for a mutually convenient ~~time, a~~ 48-hour continuous period
of ~~visitation time~~ for the custodial parent to spend with the
children, unless impractical because of distance.

3.10 Notice of Canceled Visitation Time With the Children.

Whenever ~~possible~~ feasible, the noncustodial parent ~~shall~~ will give
a minimum of three days notice of intent not to exercise all or part
of the scheduled ~~visitation time with the children~~. When such
notice is not reasonably feasible, the maximum notice permitted by
the circumstances, and the reason therefor, ~~shall~~ will be provided
to the other parent. Custodial parents ~~shall~~ will give the same
type of notice when events beyond their control make the
cancellation or modification of the scheduled visitation time with
the noncustodial parent necessary. If the custodial parent cancels
or modifies the noncustodial parent's time with a the child because
the child has a scheduling conflict, the noncustodial parent should
be given the opportunity to take the child to the scheduled event or
appointment.

3.11 Pick Up and Return of Children. When the parents live in the
same community, the responsibility ~~of~~ for picking up and returning
the children should be shared. Usually the ~~noncustodial parent will~~
~~pickup and the custodial parent will return the children to that~~
~~parent's residence~~ parent who receives the children will handle the
transportation. The person picking up or returning the children
~~during times of visitation~~ has an obligation to be punctual,
~~arriving~~ to arrive at the agreed agreed-upon time, not substantially
earlier or later. Repeated, unjustified violations of this
provision may subject the offender to court sanctions.

3.12 Additional Visitation Time With the Noncustodial Parent. The children's time with the noncustodial parent should be liberal and flexible. For ~~most~~ many parents, these guidelines should be considered ~~as only the minimum and~~ only as a minimum direction for interaction with the children. These guidelines are not meant to foreclose the parents from agreeing to ~~such time sharing with the children as~~ modify the parents parenting plan as they find reasonable and in the best interests of their children at any given time.

~~Guideline 4. Noncustodial Parent Visitation When Children Are Over Age Five and the Parents Reside More Than 200 Miles Apart~~

4. NONCUSTODIAL PARENTING TIME WITH CHILDREN OVER AGE FIVE WHEN SOLE CUSTODY OR PRIMARY PHYSICAL CUSTODY AND PARENTS RESIDE MORE THAN 200 MILES APART.

4.1 Extended visitation Summer and Holidays. This parenting time should consist of all but three weeks of the school summer vacation period and, on an alternating basis, the Thanksgiving break, school winter (Christmas) vacation and school break. ~~break and spring break with the noncustodial parent.~~

4.2 Priority of Summer Visitation Time With Noncustodial Parent. Summer visitation time with the noncustodial parent takes precedence over summer activities (such as sports), when the visitation noncustodial parent's time cannot be reasonably scheduled around such events. Even so, the conscientious noncustodial parent will often be able to enroll the child in ~~the same or~~ a similar activity in the noncustodial parent's community.

4.3 Notice. At least sixty (60) days ~~advance written~~ notice should be given by the noncustodial parent of the date for commencing

~~extended summer visitation,~~ parenting time with the children so that the most efficient means of transportation may be obtained and the parents and the children may arrange their schedules. Failure to give the precise number of days notice does not give entitle the custodial parent the right to deny ~~visitation.~~ the noncustodial parent parenting time with the children.

4.4 Additional Visitation Time with the Noncustodial Parent. Where distance and finances permit, additional visitation custodial periods for the children with the noncustodial parent, such as for holiday weekends or special events, is encouraged. When the eustodial noncustodial parent is in the area where the children reside, or the children are in the area where the noncustodial parent resides, liberal visitation time with the children shall must be accommodated.—B allowed and because the noncustodial parent does not get weekly time with the children, the children can miss some school to spend time with the noncustodial parent, so long as it does not substantially impair the children's scholastic progress.

5. SHARED PARENTING PLAN. South Dakota law allows parents to agree in writing to a detailed shared parenting plan which provides that the child will reside no less than one hundred eighty nights per calendar year in each parent's home, and that the parents will share the duties and responsibilities of parenting the child and the expenses of the child in proportion to their incomes. Such shared parenting plan must be incorporated into the custody order. A shared parenting plan requires an adaptable child and cooperative parents.

3. A proposal to repeal SDCL 15-30-16.

Section 1. That § 15-30-16 be repealed in its entirety.

~~Time allowed for further proceedings ordered by Supreme Court—
Dismissal of action for default.~~

Notice of Special Rules Hearing No. 123 - August 24, 2011

~~In every case on appeal, in which the Supreme Court shall order a new trial or further proceedings in the court below, the record shall be transmitted to such court and proceedings had therein within one year from the date of such order in the Supreme Court, or in default thereof, the action shall be dismissed, unless upon good cause shown the court shall otherwise order.~~

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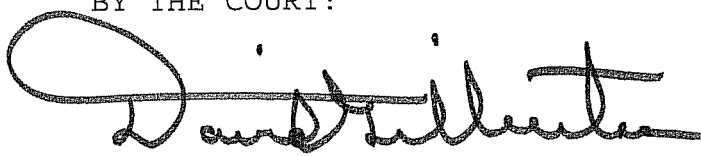
Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and ten copies thereof filed with the clerk of the Supreme Court no later than August 10, 2011.

Subsequent to the hearing, the Court may reject or adopt the proposed rule or any rule germane to the subject thereof.

Notice of this hearing shall be made to the members of the State Bar by publication of this notice in the July 2011, State Bar Newsletters.

DATED at Pierre, South Dakota this 9th day of June, 2011.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JUN - 9 2011



Sheri A. Johnson Legal
Clerk