

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF AN AMENDMENT)
TO SDCL 15-6-5)

RULE 04-01

A hearing having been held on February 19, 2004, at Pierre, South Dakota, relating to an addition to SDCL 15-6-5, and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-6-5 be and it is hereby amended to read in its entirety as follows:

15-6-5 - SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

15-6-5(a). Service - When required. Except as otherwise provided in this chapter, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer or judgment, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in § 15-6-4.

15-6-5(b). Service - How made - Proof. Whenever under this chapter service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Service upon a party represented by an attorney may also be made by facsimile transmission as provided in § 15-6-5(f). Delivery of a copy within § 15-6-5 means: Handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person over the age of fourteen years then residing therein. Service by mail shall be by first class mail and is complete upon mailing. Service by facsimile transmission

is complete upon receipt by the attorney receiving service. An attorney's certificate of service, the written admission of service by the party or his attorney or an affidavit shall be sufficient proof of service. In the case of service by facsimile transmission, proof of service shall state the date and time of service and the facsimile telephone number or identifying symbol of the receiving attorney. The provisions of § 15-6-5 shall not apply to the service of a summons or other process or of any paper to bring a party into contempt.

15-6-5(c). Service on numerous defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

15-6-5(d). Filing of papers - Originals - Facsimiles - Copies. The original of all papers, excluding briefs or memorandums of law thereof, served upon a party or presented to any court or judge in support of any application or motion and including the summons, all pleadings, notices, demands, offers, stipulations, affidavits, written motions and orders shall, if not filed before service, be filed with the court, together with proof of such service, forthwith upon such service. The foregoing requirement of filing applies to the notice of filing of an order and the notice of entry of a judgment together with proof of service thereof, both of which shall be filed forthwith; if not filed within ten days after service thereof, the time of service shall be deemed to be the date of filing of the notice and proof of service. If papers are not to be served, they must be filed with the court at the time of their presentation to the court for any action or consideration.

Any facsimile of any paper or document shall have the same force and effect as the original. A certified copy of an original transmitted by facsimile transmission shall have the same force and effect as a certified copy of an original.

Any paper or document received by facsimile transmission by the clerk or court for filing may be refused upon notice to sender and determination by the clerk or court that filing of the paper or document by facsimile transmission is not time critical or in violation of these rules. For good cause, the court may require a person or sender to obtain permission before sending a facsimile transmission to the clerk or court. Briefs

and other lengthy documents in support of matters filed with the clerk shall not be transmitted by facsimile transmission except by court permission.

Any facsimile shall be accompanied by a cover sheet which states the title of the document, case number, if any, number of pages, identity and voice telephone number of the sender. If sent directly to the court, there must be instructions as to filing therein in bold face type.

Filing shall be deemed complete when the facsimile is received by the clerk or court. Facsimile filings shall be accepted for filing until 4:30 o'clock p.m. on days when the clerk's office is open for business and the facsimile equipment is in operation. All facsimile filings shall be completed by 5 o'clock p.m. in accordance with § 15-6-6(a).

Within five business days after the date of the facsimile transmission, the sender shall file with the court the original document, a certificate stating that the original document is identical to the facsimile previously filed, and a ten dollar transmission fee for each document or one dollar per page, whichever is greater. The fee will be deposited into the state court automation fund.

Upon receipt of the original, the clerk shall note thereon the date and time received and the date and time that the facsimile transmission was received. Upon the filing of the original, the facsimile may be removed from the court file and the original substituted therefore. Thereafter, the original shall be deemed received as of the date and time of receipt of the facsimile transmission. If the original is not filed with the clerk within the time provided, the court may on its own motion and upon notice to the sender strike the facsimile from the file and so note on the register of actions of the court.

Failure to comply with any requirements of this rule shall, upon notice, authorize the court to apply other appropriate sanctions, including but not limited to, the striking of the paper or document received by facsimile transmission.

In the event of failure to file any paper required to be filed as herein specified, the adverse party upon proof of the omission so to file shall be entitled without notice to an order requiring such papers to be filed within a time to be specified in the order, and such order may likewise provide that upon such failure so to file such papers, the action or proceeding may be dismissed and that no new action or proceeding may be commenced without payment of reasonable terms to be fixed by the court.

If any process, original pleading, or any other paper, be lost or withheld by any person, the court may authorize a copy thereof to be filed and used instead of the original.

15-6-5(e). *Definition - "Filing with the court."

The filing of pleadings and other papers with the court as required by this chapter shall be made by filing them with the

clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk.

15-6-5(f). Service by facsimile transmission (fax) to parties represented by attorney. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, such service may be made by facsimile transmission pursuant to the following conditions:

- (1) The attorney upon whom service is made has the necessary equipment to receive such transmission;
- (2) The attorney has agreed to accept service by facsimile transmission, or has served the serving party in the same case by facsimile transmission; and
- (3) The time and manner of transmission comply with the requirements of § 15-6-6(a), unless otherwise established by the Court.

The signature on the facsimile shall constitute a signature under § 15-6-11(a).

15-6-5(g). Documents not to be filed - Depositions.

No depositions (except notices to take depositions), interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall be filed with the clerk of the court.

Any discovery materials necessary for the disposition of any motion filed with the court shall be attached as an exhibit and filed with the party's motion.

If any party designates any or all of any deposition as evidence to be offered in the trial of any case, such deposition shall be filed with the clerk of the court at the same time as that party's designation.

Depositions used by a party only for the purpose of contradicting or impeaching the testimony of deponent as a witness, pursuant to § 15-6-32(a)(1), shall not be filed unless otherwise ordered by the judge presiding at the hearing or trial.

All depositions which have been read or offered into evidence by agreement of parties, or at the trial or submission of the case to the court, shall become a permanent part of the file.

After the ultimate conclusion of the case, depositions not offered or received into evidence may be withdrawn by the parties taking the deposition. All unclaimed depositions may be disposed of by the clerk after giving thirty days' notice to the attorneys of record of the clerk's intention to do so.

15-6-5(h). Civil Case Filing Statements. Whenever a party or an attorney representing a party commences a civil action or files an answer or first responsive pleading in a civil action, the party or attorney representing the party shall file a

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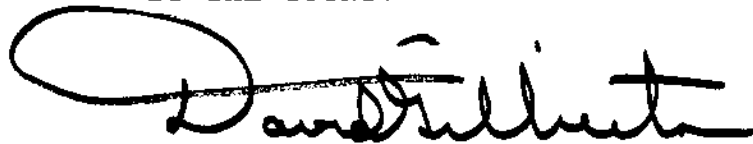
completed civil case filing statement containing identifying information available to that party or attorney regarding all parties, including the adverse party, with the clerk of the court. A statement must also be filed whenever a new party is added to the action. The statement shall be available from the clerk or online at the Unified Judicial System's website. The identifying information for the filing party must be submitted on the filing statement. If the party or attorney representing a party is unable to provide the required information for the filing party, he or she may seek a waiver from the judge assigned to the action. After the information is recorded in the Unified Judicial System docketing system, the filing statement may be destroyed or kept by the clerk of the court in a nonpublic file for internal record management use by the Unified Judicial System. Access to the filed statement will only be available to court personnel or by court order.

15-6-5(i). Any party or attorney serving discovery requests pursuant to § 15-6-31, § 15-6-33, § 15-6-34 or § 15-6-36 shall also, upon receipt of a written request, serve those items on the opposing party or attorney by electronic mail or computer diskette. Failure to comply with such a request shall not make service invalid or extend the time to file a response, but the court shall order payment of the actual costs of reproducing the item and may award such other terms as it deems proper under § 15-6-37 unless good cause for failure to comply with the request is shown.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2004.

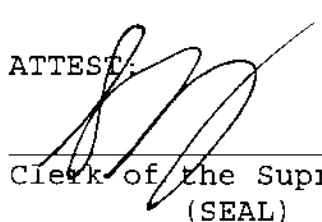
DATED at Pierre, South Dakota, this 26th day of February, 2004.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

**SUPREME COURT
STATE OF SOUTH DAKOTA
FILED**

FEB 26 2004



Clerk