

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)
SDCL 15-6-32(a)) RULE 06-29

A hearing was held on February 16, 2006, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-32(a), 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 15-6-32(a) be and it is hereby amended to read in its entirety as follows:

SDCL 15-6-32(a). Use of depositions.

At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any one of the following provisions:

- (1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the South Dakota Rules of Evidence.
- (2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under § 15-6-30(b)(6) or 31(a) to testify on behalf of a public or private corporation, limited liability company, partnership, association or governmental agency which is a party may be used by an adverse party for any purpose.
- (3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:
 - (A) that the witness is dead; or
 - (B) that the witness is out of the state, unless it appears that the absence of the witness was procured by the party offering the deposition; or

Rule 06-29

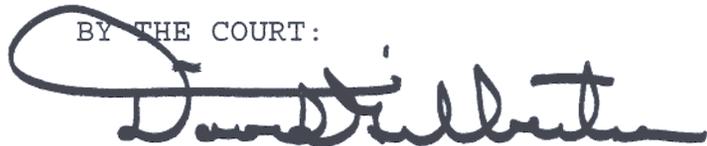
- (C) that the witness is unable to attend or testify because of age, illness, infirmity, imprisonment, or occupational commitments; if the deposition was taken for purposes of use at the trial in the place of the witness' personal attendance because of such commitments; or
 - (D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or
 - (E) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.
- (4) If only part of a deposition is offered in evidence by a party, an adverse party may require the offeror to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

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

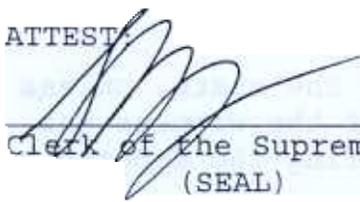
DATED at Pierre, South Dakota, this 17th day of March 2006

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