

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)

SDCL 15-6-37(c)

)

RULE 06-35

- - - - -
A hearing was held on February 16, 2006, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-37(c), 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(c) be and it is hereby amended to read in its entirety as follows:

SDCL 15-6-37(c). Failure to disclose-False or misleading disclosure-Refusal to admit.

- (1) A party that without substantial justification fails to disclose information required by § 15-6-26(e) (1), or to amend a prior response to discovery as required by § 15-6-26(e) (2), is not, unless such failure is harmless, permitted to use as evidence at a trial, at a hearing, or on a motion any witness or information not so disclosed. In addition to or in lieu of this sanction, the court, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions. In addition to requiring payment of reasonable expenses, including attorneys' fees, caused by the failure, these sanctions may include any of the actions authorized under § 15-6-37(b) (2) (A), (B), and (C) and may include informing the jury of the failure to make the disclosure.
- (2) If a party fails to admit the genuineness of any document or the truth of any matter as requested under § 15-6-36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorneys' fees. The court shall make the order unless it finds that:

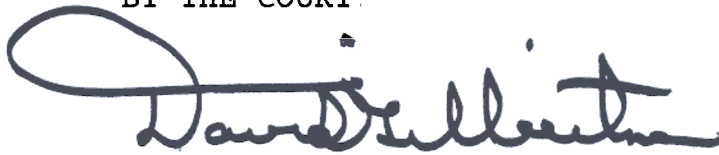
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The request was held objectionable pursuant to
§ 15-6-36(a); or
The admission sought was of no substantial
importance; or
The party failing to admit had reasonable ground
to believe that the party might prevail on the
matter; or
There was other good reason for the failure to
admit.

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

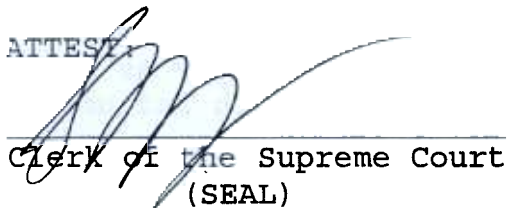
DATED at Pierre, South Dakota, this 17th day of March,
2006

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