

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)

SDCL 15-26A-4

)

RULE 06-73

A hearing was held on October 3, 2006, at Sioux Falls, South Dakota, relating to the amendment of SDCL 15-26A-4, 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 15-26A-4 be and it is hereby amended to read in its entirety as follows:

15-26A-4. Appeals of right - How taken. An appeal permitted by § 15-26A-3 as of right shall be taken as follows:

- (1) Notice of appeal. The notice shall specify the party or parties taking the appeal; shall designate the judgment, order, or part thereof appealed from; and shall be signed by the appellant or his or her attorney. A notice of appeal filed under chapter 26-8A shall be signed by the appellant and his or her attorney. A notice of appeal filed under chapters 26-7A, 26-8A, 26-8B and 26-8C shall comply with § 15-26A-63.1.
- (2) Docketing statement. A docketing statement shall be completed for each civil appeal, other than appeals in habeas corpus actions brought under chapter 21-27, on the form prescribed by the Supreme Court. Appellant shall attach to the docketing statement the findings of fact and conclusions of law, and memorandum decision, if any.
- (3) Service of the notice of appeal and docketing statement. The appellant, or his or her counsel, shall serve the notice of appeal and docketing statement on counsel of record of each party other than appellant, or, if a party is not represented by counsel, on the party at his or her last known address.

- (4) Filing notice of appeal and docketing statement. Before the expiration of the time to appeal, appellant shall file the notice of appeal and docketing statement with the clerk of the trial court in which the judgment or order was entered. The clerk of the trial court shall not accept for filing a notice of appeal unless accompanied by a docketing statement and proof of service of copies thereof on each party other than the appellant, together with the required statutory filing fees unless exempt by law. The clerk of the trial court shall not accept for filing a notice of appeal under chapter 26-8A that is not signed by the appellant and his or her attorney.
- (5) Transmittal to Supreme Court. Upon compliance with subdivision (4) of this section, the clerk of the trial court shall immediately transmit to the clerk of the Supreme Court certified copies of the notice of appeal, docketing statement, proof of service, the judgment or order appealed from, notice of entry thereof, and the required statutory filing fees unless exempt by law. The clerk of the trial court shall redact the signature of the appellant from any certified copy of a notice of appeal filed under chapter 26-8A that is transmitted pursuant to this subdivision.
- (6) Joint appeals. If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may serve and file a joint notice of appeal, or may join in appeal after serving and filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant.

Failure of an appellant to take any step other than timely service and filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. The failure of the appellant and his or her attorney to sign a notice of appeal under chapter 26-8A deprives the Supreme Court of jurisdiction to decide the appeal.

Rule 06-73

Appeals may be consolidated by order of the Chief Justice of the Supreme Court upon motion of a party.

IT IS FURTHER ORDERED that this rule shall become effective January 1, 2007.

DATED at Pierre, South Dakota, this 14th day of December, 2006.

BY THE COURT



David Gilbertson, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

DEC 14 2006


Clerk