

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE PROPOSED)	NOTICE OF SPECIAL
AMENDMENT OF SDCL 15-39-47)	RULES HEARING
PROPOSED ADOPTION OF A NEW RULE)	
IN RE: SUPREME COURT ELECTRONIC)	NO. 126
FILING RULES WITH THE)	
REPEAL OF SDCL 15-26A-2.1)	
PROPOSED ADOPTION OF A NEW RULE)	
IN RE: CIRCUIT COURT ELECTRONIC)	
FILING RULES WITH THE)	
AMENDMENT OF SDCL 15-6-5(d))	
IN THE MATTER OF THE ADOPTION OF A)	
NEW RULE TO BE DESIGNATED AT SDCL)	
Ch. 16-16		

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Petition for the amendment 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 adoption of new rules should be noticed for
hearing, now therefore,

NOTICE IS HEREBY GIVEN THAT ON AUGUST 28, 2013, at 9:00
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:

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1. Proposed Amendment of SDCL 15-39-47: Persons
authorized to act as attorney--Notice to attorney. The term,
attorney, in this chapter means an attorney-at-law, who is an active
member of the State Bar of the State of South Dakota, in good
standing, one of a number of partners or joint plaintiffs, acting
for all, an officer, manager, or local manager of a corporation

acting for it, a member, manager, or local manager of a limited liability company acting for it, or, in the case of actions by or against the State of South Dakota, its agencies, or its employees acting within the scope of their employment, a representative designated in writing by the commissioner of the Bureau of Administration; and, unless and until there is a removal of the action pursuant to § 15-39-57. A representative of the Bureau of Administration is not required to have an appointment from the attorney general in order to appear in small claims court. The term includes an assignee of any claim, or the agent, manager, or officer of an assignee of any claim, if the assignment is bona fide and for a valuable consideration. Any assignment made for collection purposes only is considered bona fide, within the meaning of this chapter. In the event of removal pursuant to § 15-39-57, the term does not include such assignee or officer, agent, manager or local manager thereof or of a corporation or representative designated by the commissioner of the Bureau of Administration.

Notice to such attorney for a party shall be equivalent to notice to such party.

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2. Proposed Adoption of a New Rule In Re:

SUPREME COURT ELECTRONIC FILING RULES

A. Electronic Filing.

1. Effective January 1, 2014, except as specifically exempted by these rules or court order, attorneys shall electronically file briefs and any appendices with the Supreme Court unless advance permission is granted by the court allowing paper filing. Any other notices, petitions, pleadings, motions, or documents may be filed electronically at the discretion of the attorney. Electronic filing for self-represented litigants is discretionary for all filings with the Supreme Court. On a showing of good cause, an attorney required to file electronically may be granted leave of court to file paper documents with the Supreme Court.

2. Documents filed electronically must be submitted by email attachment to SCclerkBriefs@ujs.state.sd.us. The number of the case shall appear in the subject line of the email.

3. A document filed electronically has the same legal effect as an original paper document.

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4. The typed attorney or party name or electronic signature on a document filed electronically has the same effect as an original manually affixed signature.

5. A party electronically filing a document that is not accessible to the public, in whole or in part, is responsible for redaction or designating the document as confidential or sealed before transmitting it to the court. For any document containing information where redaction is required, in whole or in part, pursuant to SDCL Ch. 15-15A or order of the court, the original unredacted document shall also be filed electronically.

B. Electronic Document Formats.

1. All documents submitted to the court in electronic form must be in approved word processing format which shall then be converted by the supreme court clerk to portable document format (.pdf).

a. Parties must obtain permission from the supreme court clerk in advance if they seek to submit documents in another format.

b. All paragraphs must be numbered in documents submitted electronically with the exception of appendices. Reference to material in such documents must be to paragraph number, not page number.

c. Page breaks must separate the headings in a brief as required by SDCL 15-26A-60.

d. An appendix may be filed electronically in portable document format (.pdf). Except for limited excerpts showing a court's reasoning, circuit court transcripts that have been filed electronically with the Supreme Court shall not be included in an appendix. A table of contents with page or paragraph reference as appropriate for each document must precede the appendix. Points of particular interest with page or paragraph reference may also be added to the table of contents. When feasible, electronic bookmarks shall be added to note the first page of each document in the appendix and may be added to note the location of points of particular interest.

C. Time of Filing.

1. A document in compliance with the Rules of Appellate Procedure and this rule and submitted electronically to the supreme court

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clerk by 11:59 p.m. central standard time or daylight savings time as applicable shall be considered filed on that date.

2. Upon receiving an electronic document, the supreme court clerk will issue an e-mail confirmation that the document has been received.

3. Parties filing electronically must also submit an original of any document in hardcopy to the supreme court clerk. For any brief filed in an appeal from a judgment or order pursuant to SDCL chapter 26-8A, the appellant shall also file a second hardcopy redacted brief in compliance with SDCL 15-26A-60(9).

4. The Supreme Court may order that additional copies of any documents be provided in hardcopy to the supreme court clerk.

5. A party must pay all required fees and payments within five days of submitting a document filed electronically. If fees and payments are not received within five days of submission, the document will not be filed and will be returned by the supreme court clerk and the party will be required to re-file the document.

D. Electronic Service.

1. After January 1, 2014, any attorney not exempt from electronic filing or a party filing electronically must designate an email address for accepting electronic service and for receiving electronic service with the supreme court clerk. On a showing of good cause, an attorney may be granted leave of court to serve paper documents or to be exempt from receiving electronic service.

2. If a party files a document by electronic means, the party must serve the document by electronic means unless the recipient of service has not designated an email address for receiving electronic service.

3. Electronic service is not effective if the party making service learns that the attempted service did not reach the person to be served.

4. If a recipient cannot accept electronic service of a document, service under another means specified by SDCL 15-6-5(b) is required.

5. Any party effectuating service electronically must include a certificate of service specifying the items electronically served.

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6. Documents served electronically may be in portable document format (.pdf), with the exception of those documents to be filed with the Supreme Court in approved word processing format as previously specified herein.

7. The Supreme Court may electronically file and serve on registered attorneys and parties any decisions, orders, notices, remittiturs or other documents prepared by the court in such cases provided the attorney or party to be served has designated an email address for receiving electronic service.

E. Original Documents. An original document submitted for filing in paper form may be scanned by the supreme court clerk and destroyed after thirty days.

F. Technical Issues; Relief. On a showing of good cause, the court may grant appropriate relief if electronic filing or electronic service was not completed due to technical problems.

G. Scope. Unless specifically provided otherwise by this rule or inconsistent with its provisions, the Rules of Appellate Procedure contained in SDCL Ch. 15-26A shall govern any electronic filings.

H. Repealer. Effective January 1, 2014, the following provisions shall be repealed:

~~15-26A-2.1. Emergency filings by facsimile transmission.~~

~~(1) Documents may be filed with the Supreme Court by facsimile transmission in cases of emergency, provided that prior permission has been granted by the clerk.~~

~~(2) Such emergency filings shall be made in accordance with the provisions of § 15-6-5(d) and shall have the same effect as therein provided.~~

~~(3) In cases where a facsimile has been transmitted and filed pursuant to this section, counsel must file the original, together with the appropriate number of copies, with the clerk within five business days of the date of the facsimile filing. Copies of all documents filed in accordance with this method of transmission shall be served within the time and in the manner provided for in this chapter unless otherwise directed by the court.~~

~~(4) Payment of facsimile transmission charges at the rate provided in § 15-6-5(d), photocopying charges as provided in subdivision 16-2-29.1(3), and other applicable fees shall be tendered with the~~

~~original document. Transmission fees will be deposited into the state court automation fund.~~

~~(5) Failure to timely comply with the foregoing requirements may result in the imposition of sanctions, including, but not limited to, the striking of the document received by facsimile transmission.~~

3. Proposed Adoption of a New Rule In Re:

CIRCUIT COURT ELECTRONIC FILING RULES

A. Definitions.

1. "Registered user" means an attorney or party registered with the South Dakota Odyssey® electronic filing system.

2. "Electronic filing system" means the Odyssey file and serve system maintained by the South Dakota Unified Judicial System.

3. "Confidential" means any records not accessible to the public as provided by SDCL 15-15A-7. A document marked as "confidential" means that the document will not be accessible to the public but will be accessible to court personnel and attorneys or parties in the case as permitted by applicable law.

4. "Sealed" means any record where access is restricted by order of the court. A document marked "sealed" will not be accessible to the public but will be accessible to court personnel with the appropriate security clearance.

5. "Electronic Signature" means an electronic symbol or process attached to or logically associated with a document, that can be executed to or logically associated with a document, that can be executed or adopted by a user with the intent to sign a document.

B. Electronic Filing.

1. Documents filed electronically in the circuit courts or magistrate courts, excluding small claims, shall be submitted through the Odyssey® electronic filing system in all counties where available. Any user shall be required to register with the court and designate an email address prior to using the electronic filing system.

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2. Effective July 1, 2014, except as specifically exempted by these rules or court order, all filings, notices, petitions, pleadings, motions, or documents, with the exception of small claims, shall be filed electronically for all civil case types. For criminal case types all documents, except the initiating pleading or documents specifically exempted by these rules or court order, shall be filed electronically. Self-represented litigants may file electronically, but shall not be required to file electronically. On a showing of good cause, an attorney required to file electronically may be granted leave of court to file paper documents with the clerk of court.

3. Registered users will receive electronic notice when documents are entered into the system. Registration for electronic filing constitutes written consent to electronic service of all documents filed in accordance with these rules and the Rules of Civil Procedure. In accordance with SDCL 15-6-6(e) service by electronic means shall not be deemed service by mail for purposes of adding an additional three days to any prescribed period.

4. Documents that will not be accepted for electronic filing, unless otherwise directed to be filed electronically by the court, include:

- a. New criminal case initiating documents;
- b. Motions requesting that a document be sealed and original sealed documents;
- c. Trial or hearing exhibits;
- d. Wills to be retained for safekeeping pursuant to 29A-2-515;
- e. Oversized documents that cannot be scanned effectively;
- f. Documents not of sufficient graphical quality to be legible when scanned; and
- g. Any other documents directed by the court not to be filed electronically.

5. A document filed or served electronically has the same legal effect as a paper document.

6. Any signature on a document filed electronically is considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall strike the filing.

7. Documents requiring signatures of more than one party may be electronically filed either by (a) submitting a scanned document containing all necessary signatures; (b) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than seven days after filing; or (c) in any other manner approved by the court. When filing documents that require signatures from other parties, it is not permissible to insert a "/s/" for another person's signature.

8. All paragraphs, excluding attachments, shall be numbered in documents filed electronically. Reference to material in such documents shall be to paragraph number, not page number.

C. Filing Formats.

1. Approved formats for documents filed electronically are WordPerfect (.wpd), Word (.doc or.docx), Tagged Image File (.tif) and text searchable Portable Document File (.pdf).

D. Time of Filing.

1. A document in compliance with the rules and submitted electronically to the court clerk of court by 11:59 p.m. central standard time or daylight savings time as applicable shall be considered filed on that date.

2. After reviewing an electronically filed document, the clerk of court must inform the filer, through an e-mail generated by the Odyssey® system, whether the document has been accepted or rejected. A document may be rejected (a) if it is filed in the wrong county; (b) applicable filing fees are not paid or waived; (c) the document is incomplete or contains missing information; (d) or fails to comply with applicable statutory requirements or these rules.

3. Any applicable fees associated with the filing must be paid at the time the document is filed. A request for the waiver of fees must accompany the filing of the document. If the request to waive such fees is denied the party must submit any applicable fee within seven days.

E. Confidentiality/Sealed Documents.

1. A party electronically filing a document that is not accessible to the public in whole or in part is responsible for redaction or designating the document as confidential or sealed before transmitting it to the court. For any redacted document a sealed version of the original unredacted document should also be filed electronically.

2. In documents prepared for filing with the court, information that would otherwise be included in the document but required by SDCL 15-15A-9 not to be disclosed in court documents must be separately filed on a Confidential Information Form and may be included in those documents only by reference.

3. It is the responsibility of the parties to seek advance approval from the court for submitting a document as sealed or confidential if that document is not already declared confidential or sealed by existing law, court rules or order. The title of a sealed or confidential document will appear on any electronic register of actions for the case.

F. Retention. A registered attorney or party electronically filing or serving a document shall maintain the original document in hardcopy form and shall make the original document available upon request of the court, the signatories, or other parties for two years after the case has fully concluded, including two years after any appeal is concluded. In the event of a failure to comply with this provision the court may make such orders in regard to the failure as are appropriate under the circumstances including, but not limited to, the following: order that the electronic document be considered the original document for all purposes; prohibit the party from introducing designated matters in evidence as a result of the failure to comply; strike any relevant pleadings or parts thereof; stay further proceedings until the order is obeyed; dismiss the action or proceeding or any part thereof; order the party to pay reasonable expenses, including attorney's fees, caused by the failure as the court may determine appropriate. In lieu of any of the foregoing, or in addition thereto, the court may treat such failure as a contempt of court.

G. Electronic Service.

1. A party who files a document electronically must serve the document by electronic means if the recipient consents to accept documents served electronically. All documents filed electronically

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must be served electronically through the Odyssey® system except for documents served on or by self-represented litigants. On a showing of good cause, an attorney may be granted leave of court to serve paper documents or to be exempt from receiving electronic service.

2. Electronic service is not effective if the party making service learns that the attempted service did not reach the person to be served.

3. After July 1, 2014, any party not exempt from electronic filing must designate an e-mail address for accepting electronic service and for receiving electronic service through the electronic filing system.

4. The court may electronically file and serve on registered attorneys and parties any judgments, orders, notices or other documents prepared by the court in such cases provided the attorney or party to be served has designated an e-mail address for receiving electronic service.

H. Original Documents. An original document submitted for filing in paper form may be scanned by the clerk of court and destroyed after thirty days. A party may request the return of any original document filed with the clerk of court by submitting a document request return form with the document when it is delivered for filing along with a self-addressed stamped envelope. See Appendix "Document Return Request Form."

I. Technical Issues; Relief. On a showing of good cause, the court may grant appropriate relief if electronic filing or electronic service was not completed due to technical problems.

J. Scope. Unless specifically provided otherwise in this rule or inconsistent with its provisions, the Rules of Civil and Criminal Procedure shall govern electronic filings.

K. Effective Date. This rule is effective _____, and remains in effect until further order of the court. The electronic filing requirements set forth by this order shall be considered discretionary until July 1, 2014.

L. Amendments.

Effective July 1, 2014, the following provisions shall be amended as follows:

15-6-5(d). Filing of papers--Originals--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 ~~faesimile~~ electronic version of any paper or document shall have the same force and effect as the original. A certified copy of an original made transmitted by ~~faesimile~~ electronic transmission shall have the same force and effect as a certified copy of an original.

~~Any paper or document received by faesimile 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 faesimile 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 faesimile transmission to the clerk or court. Briefs and other lengthy documents in support of matters filed with the clerk shall not be transmitted by faesimile transmission except by court permission.~~

~~Any faesimile 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 faesimile is received by the clerk or court. Faesimile 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 faesimile equipment is in operation. All faesimile filings shall be completed by 5 o'clock p.m. in accordance with § 15-6-6(a).~~

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~~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.~~

APPENDIX

DOCUMENT RETURN REQUEST FORM

STATE OF SOUTH DAKOTA)
)
COUNTY OF _____)
A. B.,)
 Plaintiff,)
)
 vs.)
)
C. D.)
 Defendant.)

IN CIRCUIT COURT

JUDICIAL CIRCUIT

DOCUMENT RETURN REQUEST

I am requesting that the following document(s) submitted for scanning or as a trial exhibit in the above-named case be returned:

List documents to be returned

_____ I request that the document(s) be returned by mail and have enclosed a self-addressed stamped envelope.

_____ I will pick up the document(s) on _____.

Dated _____

Signed: _____
 Party or Party's Attorney of Record

Address: _____

RETURN RECEIPT

Received document(s) this ____ day of _____, _____.

Signed: _____

4. Proposed Adoption of a new rule to be designate at
SDCL Ch. 16-16:

Section 1. Notwithstanding any other provision in law, any attorney licensed to practice law in another jurisdiction within the United States, shall be admitted to practice in this state if:

- (1) His or her spouse is a member of the armed forces of the United States;
- (2) His or her spouse is the subject of a military transfer to South Dakota for active duty military service;
- (3) He or she left employment to accompany the applicant's spouse to South Dakota; and
- (4) He or she meets the requirements in Section 2.

Section 2. Any attorney seeking admission to practice in South Dakota under Section 1 shall submit a sworn, written application to the Supreme Court of South Dakota containing the following:

- (1) The name and post office address of the applicant;
- (2) The jurisdictions in which the applicant is licensed to practice law;
- (3) A statement that the applicant is a member in good standing of the bar of the jurisdictions in which he or she is licensed;
- (4) A statement that the applicant has not been the subject of disciplinary action by the bar or courts of any jurisdiction during the preceding five years;
- (5) A statement that the applicant has not been denied admission to the courts of any jurisdiction during the preceding five years; and
- (6) A statement that the applicant is familiar with the rules of the State Bar of South Dakota and will at all times abide by and comply with the same.

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Such application will be accompanied by the following:

- a. A certificate of admission to the bar in the jurisdictions in which the applicant is licensed to practice law; and
- b. A certificate from the proper courts therein that the applicant is a member in good standing.

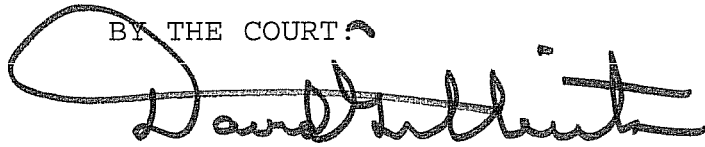
Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and ten copies thereof filed with the clerk of the Supreme Court no later than August 14, 2013.

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 June, July and August 2013, State Bar Newsletters.

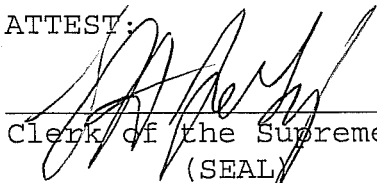
DATED at Pierre, South Dakota this 24th day of May, 2013.

BY THE COURT.



David Gilbertson, Chief Justice

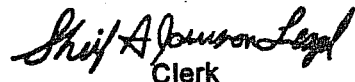
ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAY 24 2013



Clerk