

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION)
OF A NEW RULE RELATING TO)
FEDERAL RULES OF EVIDENCE 807)
AND THE REPEAL OF SDCL 19-16-28)
AND SDCL 19-16-35)
- - - - -

RULE 10-15

A hearing was held on February 17, 2010, at Pierre, South Dakota, relating to the adoption of a new rule relating to Federal Rule of Evidence 807, regarding the Residual Exception and to repeal SDCL 19-16-28 and SDCL 19-16-35, and the Court having considered the proposed adoption and correspondence relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule relating to the adoption of Federal Rules of Evidence 807, regarding the Residual Exception, be and it is hereby adopted to read in its entirety as follows:

SDCL 19-16-____. (Rule 807) Residual Exception. A statement not specifically covered by §§ 19-16-5 to 19-16-8, inclusive, or §§ 19-16-9 to 19-16-34, inclusive, but having equivalent circumstantial guarantees of trustworthiness, is not excluded by § 19-16-4, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of chapters 19-9 to 19-18, inclusive, and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

Section 2. The repeal of SDCL 19-16-28.

~~19-16-28. (Rule 803(24)) Other hearsay admissible despite availability of declarant Criteria for admission Advance notice to~~

~~opponent. A statement not specifically covered by any of §§ 19-16-5 to 19-16-27, inclusive, but having equivalent circumstantial guarantees of trustworthiness, is not excluded by § 19-16-4, even though the declarant is available as a witness, if the court determines that:~~

- ~~(1) The statement is offered as evidence of a material fact;~~
- ~~(2) The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and~~
- ~~(3) The general purposes of chapters 19-9 to 19-18, inclusive, and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this section unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.~~

Section 3. The repeal of SDCL 19-16-35.

~~19-16-35. (Rule 804(b)(6)) Other hearsay admissible if declarant unavailable Advance notice to opponents. A statement not specifically covered by any of §§ 19-16-30 to 19-16-34, inclusive, but having equivalent circumstantial guarantees of trustworthiness, is not excluded by § 19-16-4 if the declarant is unavailable as a witness and if the court determines that:~~

- ~~(1) The statement is offered as evidence of a material fact;~~
- ~~(2) The statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and~~

~~(3) The general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence.~~

~~However, a statement may not be admitted under this section unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, his intention to offer the statement and the particulars of it, including the name and address of the declarant.~~

Rule 10-15

IT IS FURTHER ORDERED that the rule shall become effective July 1, 2011.

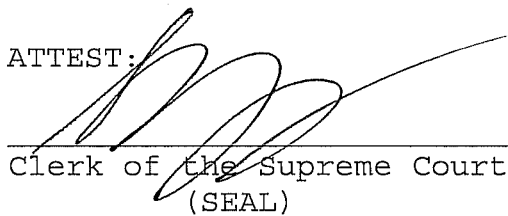
DATED at Pierre, South Dakota, this 15th day of March, 2011.

BY THE COURT:

A handwritten signature in dark ink, appearing to read "David Gilbertson", written over a horizontal line.

David Gilbertson, Chief Justice

ATTEST:

A handwritten signature in dark ink, written over a horizontal line. The signature is stylized and appears to be "Shirley A. Johnson".
Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 15 2011

A handwritten signature in dark ink, appearing to read "Shirley A. Johnson", written over a horizontal line.
Clerk