

IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)

SDCL 15-6-41(a)

)

RULE 06-40

- - - - -
A hearing was held on February 16, 2006, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-41(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 15-6-41(a) be and it is hereby amended to read in its entirety as follows:

SDCL 15-6-41(a). Voluntary dismissal-Effect thereof.

- (1) By Plaintiff; by Stipulation. Subject to the provisions of § 15-6-23(e), of § 15-6-66, and of any statute of this state, an action may be dismissed by the plaintiff without order of court
 - (A) By filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or
 - (B) By filing a stipulation of dismissal signed by all parties who have appeared in the action.

Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state action based on or including the same claim.

- (2) By Order of the Court. Except as provided in subdivision (1) of this section, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's

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motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

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

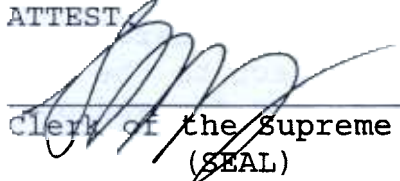
DATED at Pierre, South Dakota, this 17th day of March, 2006.

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