

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * *

IN THE MATTER OF THE AMENDMENT)

SDCL 15-6-11(c)

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RULE 06-07

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A hearing was held on February 16, 2006, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-11(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 15-6-11(c) be and it is hereby amended to read in its entirety as follows:

SDCL 15-6-11(c). Sanctions.

If, after notice and a reasonable opportunity to respond, the court determines that § 15-6-11(b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated § 15-6-11(b) or are responsible for the violation.

(1) How Initiated.

- (A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate § 15-6-11(b). It shall be served as provided in § 15-6-5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate § 15-6-11(b) and directing an attorney, law firm, or party to show cause why it has not violated § 15-6-11(b) with respect thereto.

(2) Nature of Sanctions; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of § 15-6-11(b) (2) .

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

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)