

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)
SDCL CH 15-15A) RULE 05-05

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A hearing was held on February 17, 2005, at Pierre, South Dakota, relating to the amendment of SDCL ch. 15-15A, 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 ch. 15-15A be and it is hereby amended to read in its entirety as follows:

UNIFIED JUDICIAL SYSTEM
COURT RECORDS RULE
SDCL ch. 15-15A

SDCL 15-15A-1. Purpose of rule of access to court records. The purpose of this rule is to provide a comprehensive policy on access to court records. The rule provides for access in a manner that:

- (1) Maximizes accessibility to court records,
- (2) Supports the role of the judiciary,
- (3) Promotes governmental accountability,
- (4) Contributes to public safety,
- (5) Minimizes risk of injury to individuals,
- (6) Protects individual privacy rights and interests,
- (7) Protects proprietary business information,
- (8) Minimizes reluctance to use the court to resolve disputes,
- (9) Makes most effective use of court and clerk of court staff,
- (10) Provides excellent customer service, and
- (11) Does not unduly burden the ongoing business of the judiciary.

The rule is intended to provide guidance to 1) litigants, 2) those seeking access to court records, and 3) judges, court and clerk of court personnel responding to requests for access.

SDCL 15-15A-2. Who has access to court records under the rule.

Every member of the public has the same access to court

records as provided in this rule, except as provided otherwise by statute or rule and except as provided in § 15-15A-7.

"Public" includes:

- (1) any person and any business or non-profit entity, organization or association;
- (2) any governmental agency for which there is no existing policy, statute or rule defining the agency's access to court records;
- (3) media organizations.

"Public" does not include:

- (4) court or clerk of court employees;
- (5) people or entities, private or governmental, who assist the court in providing court services;
- (6) public agencies whose access to court records is defined by another statute, rule, order, policy or database access agreement with the South Dakota Unified Judicial System;
- (7) the parties to a case or their lawyers regarding access to the court record in their case, which may be defined by statute or rule.

SDCL 15-15A-3. Definition of terms.

- (1) "Court record" includes any document, information, or other thing that is collected, received or maintained by a clerk of court in connection with a judicial proceeding. "Court record" does not include other records maintained by the public official who also serves as clerk of court or information gathered, maintained or stored by a governmental agency or other entity to which the court has access but which is not part of the court record as defined in this section.
- (2) Information in a court record "in electronic form" includes information that exists as: (a) electronic representations of text or graphic documents; (b) an electronic image, including a video image, of a document, exhibit or other thing; or (c) data in the fields or files of an electronic database.
- (3) "Public access" means that the public may inspect and obtain a copy of the information in a court record unless otherwise prohibited by statute, court rule or a decision by a court of competent jurisdiction. The public may have access to inspect information in a court file upon payment of applicable fees.
- (4) "Remote access" means the ability to electronically search, inspect, or copy information in a court record without the need to physically visit the court facility where the court record is maintained.

SDCL 15-15A-4. Applicability of rule.

This rule applies to all court records, regardless of the physical form of the court record, the method of recording the information in the court record or the method of storage of the information in the court record.

SDCL 15-15A-5. General access rule.

- (1) Information in the court record is accessible to the public except and as prohibited by statute or rule and except as restricted by §§ 15-15A-7 through 15-15A-13.
- (2) There shall be a publicly accessible indication of the existence of information in a court record to which access has been restricted, which indication shall not disclose the nature of the information protected, i.e., "sealed document."
- (3) An individual circuit or a local court may not adopt a more restrictive access policy or otherwise restrict access beyond that provided by statute or in this rule, nor provide greater access than that provided for by statute or in this rule.

SDCL 15-15A-6. Court records that are only publicly available at a court facility.

A request to limit public access to information in a court record to a court facility in the jurisdiction may be made by any party to a case, an individual identified in the court record, or on the court's own motion. For good cause, the court will limit the manner of public access. In limiting the manner of access, the court will use the least restrictive means that achieves the purposes of this access rule and the needs of the requestor.

SDCL 15-15A-7. Court records excluded from public access.

The following information in a court record is not accessible to the public:

- (1) Information that is not to be accessible to the public pursuant to federal law;
- (2) Information that is not to be accessible to the public pursuant to state law, court rule or case law as follows;
- (3) Examples of such state laws, court rules, or case law follow. Note this may not be a complete listing and the public and court staff are directed to consult state law, court rules or case law. Note also that additional documents are listed below that may not be within court records but are related to

the court system; the public and court staff should be aware of access rules relating to these documents.

- (a) Abortion records (closed); § 34-23A-7.1
- (b) Abuse and neglect files and records (closed, with statutory exceptions); § 26-8A-13
- (c) Adoption files and adoption court records (closed, with statutory exceptions); §§ 25-6-15 through 25-6-15.3
- (d) Affidavit filed in support of search warrant (sealed if so ordered by court, see statutory directives); § 23A-35-4.1
- (e) Attorney discipline records (closed until formal complaint has been filed with Supreme Court by the State Bar Association's Disciplinary Board or Attorney General, accused attorney requests matter be public, or investigation is premised on accused attorney's conviction of a crime); § 16-19-99
- (f) Civil case filing statements (closed); § 15-6-5(h);
- (g) Coroner's inquest (closed until after arrest directed if inquisition finds criminal involvement with death); § 23-14-12
- (h) Custody or visitation dispute mediation proceedings pursuant to § 25-4-60 (closed, inadmissible into evidence)
- (i) Discovery material (closed unless admitted into evidence by court) §§ 15-6-26(c); 15-6-5(g)
- (j) Domestic abuse victim's location (closed, with statutory exception); § 25-10-39
- (k) Employment examination or performance appraisal records maintained by Bureau of Personnel (closed); § 1-27-1
- (l) Grand jury proceedings (closed with statutory exceptions); § 23A-5-16
- (m) Guardianships and conservatorships (closed with statutory exceptions); § 29A-5-311
- (n) Involuntary commitment for alcohol and drug abuse (petition, application, report to circuit court and court's protective custody order sealed; law enforcement or prosecutor may petition the court to examine these documents for limited purpose); § 34-20A-70.2
- (o) Judicial disciplinary proceedings (closed until Judicial Qualifications Commission files its

- recommendation to Supreme Court, accused judge requests matter be public, or investigation is premised on accused judge's conviction of either a felony crime or one involving moral turpitude); ch. 16-1A, Appx. III(1)
- (p) Juvenile court records and court proceedings (closed with statutory exception); §§ 26-7A-36 through -38; §§ 26-7A-113 through -116
 - (q) Mental illness court proceedings and court records (closed); §§ 27A-12-25; 27A-12-25.1 through -32
 - (r) Pardons (statutory exceptions, see § 24-14-11)
 - (s) Presentence investigation reports (closed); §§ 23A-27-5 through -10; § 23A-27-47
 - (t) Probationer under suspended imposition of sentence (record sealed upon successful completion of probation conditions and discharge); §§ 23A-27-13.1; 23A-27-17
 - (u) Records prepared or maintained by court services officer (closed except by specific order of court); § 23A-27-47
 - (v) Trade secrets (closed); § 15-6-26(c)(7)
 - (w) Trusts (sealed upon petition with statutory exceptions); § 21-22-28
 - (x) Voluntary termination of parental rights proceedings and records (closed except by order of court); § 25-5A-20
 - (y) Wills (closed with statutory exceptions); § 29A-2-515
 - (z) Written communication between attorney and client; attorney work product (closed unless such privilege is waived); ch. 16-18, Appx. Rule 1.6
 - (aa) Information filed with the court pending in camera review (closed)
 - (bb) Any other record declared to be confidential by law; § 1-27-3.

SDCL 15-15A-8. Confidential numbers and financial documents excluded from public access.

The following information in a court record is not accessible to the public.

- (1) Social security numbers, employer or taxpayer identification numbers, and financial account numbers of a party or party's child.

- (2) Financial documents such as income tax returns, W-2's and schedules, wage stubs, credit card statements, financial institution statements, credit card account statements, check registers, and other financial information.

SDCL 15-15A-9. Filing confidential numbers and financial documents in court records.

- (1) Social security numbers, employer or taxpayer identification numbers, and financial account numbers of a party or party's child, where required to be filed with the court shall be submitted on a separate Confidential Information Form, appended to these rules, and filed with the pleading or other document required to be filed. The Confidential Information Form is not accessible to the public.
- (2) Financial documents named in § 15-15A-8(2) that are required to be filed with the court shall be submitted as a sealed document and designated as such to the clerk upon filing. The Sealed Financial Documents Information Form appended to these rules shall be attached to financial documents being filed with the court. The Sealed Financial Documents Information Form is confidential and is not accessible to the public. The sealed financial documents will not be publicly accessible, even if admitted as a trial or hearing exhibit, unless the court permits access pursuant to § 15-15A-10. The court may, on its own motion, seal financial documents that have been submitted without the Sealed Financial Documents Information Form.
- (3) Parties with cases filed prior to the effective date of this rule, or the court on its own, may, by motion, protect the privacy of confidential information as defined in § 15-15A-8. Parties filing this motion will submit a completed Confidential Information Form or Sealed Financial Documents Information Form as appropriate.

SDCL 15-15A-10. Procedure for requesting access to sealed financial documents.

- (1) Any person may file a motion, supported by affidavit showing good cause, for access to sealed financial documents. Written notice of the motion shall be required.
- (2) If the person seeking access cannot locate a party to provide the notice required under this rule, after making good faith reasonable effort to provide such notice as required by applicable court rules,

an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provisions of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

- (3) The court shall allow access to sealed financial documents, or relevant portions of the documents, if the court finds that the public interest in granting access or the personal interest of the person seeking access outweighs the privacy interests of the parties or dependent children. In granting access the court may impose conditions necessary to balance the interests consistent with this rule.

SDCL 15-15A-11. Requests for bulk distribution of court records.

Dissemination of bulk information for resale is prohibited pursuant to § 1-27-1. Any other bulk dissemination is prohibited except as authorized by the State Court Administrator or the Chief Justice of the Supreme Court.

SDCL 15-15A-12. Access to compiled information from court records.

- (1) Compiled information is defined as information that is derived from the selection, aggregation or reformulation by the Supreme Court of some of the information from more than one individual court record.
- (2) Any member of the public may request compiled information that consists solely of information that is publicly accessible and that is not already available in an existing report. The Supreme Court may compile and provide the information if it determines, in its discretion, that providing the information meets criteria established by the Court, that the resources are available to compile the information and that it is an appropriate use of public resources. The State Court Administrator's Office will make the initial determination as to whether to provide the compiled information.
 - (a) Compiled information that includes information to which public access has been restricted may be requested by any member of the public only for scholarly, journalistic, political, governmental, research, evaluation, or statistical purposes.
 - (b) The request shall a) identify what information is sought; b) describe the purpose for

requesting the information and explain how the information will benefit the public interest or public education, and c) explain provisions for the secure protection of any information requested to which public access is restricted or prohibited.

- (c) The Supreme Court may grant the request and compile the information if it determines that doing so meets criteria established by the Court, is consistent with the purposes of the access rules, that the resources are available to compile the information, and that it is an appropriate use of public resources.
- (d) If the request is granted, the Supreme Court may require the requestor to sign a declaration that:
 - (i) The data will not be sold or otherwise distributed directly or indirectly, to third parties, except for journalistic purposes;
 - (ii) The information will not be used directly or indirectly to sell a product or service to an individual or the general public, except for journalistic purposes; and
 - (iii) There will be no copying or duplication of information or data provided other than for the stated scholarly, journalistic, political, governmental, research, evaluation, or statistical purpose.

The Supreme Court may make such additional orders as may be needed to protect information to which access has been restricted or prohibited.

SDCL 15-15A-13. Requests to prohibit public access to information in court records.

A request to prohibit public access to information in a court record may be made by any party to a case, the individual about whom information is present in the court record, or on the court's own motion. Notice of the request must be provided to all parties in the case and the court may order notice be provided to others with an interest in the matter. The court shall hear any objections from other interested parties to the request to prohibit public access to information in the court record. The court must decide whether there are sufficient grounds to prohibit access according to applicable constitutional, statutory and common law. In deciding this the

court should consider the purpose of this rule as set forth in § 15-15A-1. In restricting access, the court will use the least restrictive means that will achieve the purposes of this access rule and the needs of the requestor.

SDCL 15-15A-14. When court records may be accessed.

- (1) Court records will be available where available for public access in the courthouse during hours established by the court. Court records in electronic form to which the court allows remote access under this rule will be available for access at least during the hours established by the court for courthouse access, subject to unexpected technical failures or normal system maintenance announced in advance.
- (2) Upon receiving a request for access to information the court will respond within a reasonable time regarding the availability of the information and provide the information within a reasonable time.

SDCL 15-15A-15. Fees for accessing court records.

The Supreme Court may charge a fee for access to and copies of court records in electronic form, for remote access or compiled information. The fee shall be reasonable and may include costs for labor, materials and supplies. Fees for record searches are set forth in § 16-2-29.5. Some entities, and other entities under certain conditions, are exempt from paying a record search fee pursuant to § 16-2-29. Copying and certification fees shall be charged as determined by statute or Supreme Court Rule.

IT FURTHER ORDERED that this rule shall become effective immediately.

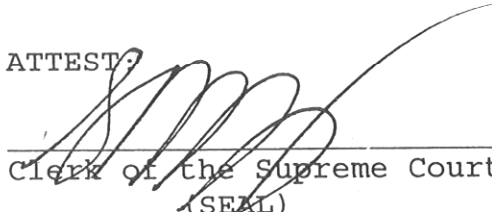
DATED at Pierre, South Dakota, this 25th day of February, 2005.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 25 2005



Clerk

CONFIDENTIAL INFORMATION FORM (Required by SDCL 15-15A-9)

Plaintiff/Petitioner

Case No. _____

Defendant/Respondent

The information on this form is confidential and shall not be placed in a publicly accessible portion of a court record.

NAME

SOCIAL SECURITY NUMBER, EMPLOYER
IDENTIFICATION NUMBER, TAXPAYER
IDENTIFICATION NUMBER, AND
FINANCIAL ACCOUNT NUMBERS

Plaintiff/Petitioner

1. _____

2. _____

3. _____

Defendant/Respondent

1. _____

2. _____

3. _____

Other Parties (including minor children)

1. _____

2. _____

3. _____

4. _____

Information supplied by: _____

Signed: _____

Firm: _____

Address: _____

Date _____

SEALED FINANCIAL DOCUMENTS INFORMATION FORM
(Required by SDCL 15-15A-9)

Plaintiff/Petitioner

Case No. _____

Defendant/Respondent

The information on this form is confidential and shall not be placed in a publicly accessible portion of a court record.

_____ Income Tax Records
Period Covered: _____

_____ Financial Account Statements
Period Covered: _____

_____ Wage Stubs
Period Covered: _____

_____ Credit Card Account Statements
Period Covered: _____

_____ Other: _____

Information supplied by: _____

Signed: _____

Firm: _____

Address: _____

Date: _____