

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\*

IN THE MATTER OF THE AMENDMENT)

SDCL 15-6-27(a)

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RULE 06-17

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A hearing was held on February 16, 2006, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-27(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 15-6-27(a) be and it is hereby amended to read in its entirety as follows:

**SDCL 15-6-27(a). Depositions before action.**

(1) Petition. A person who desires to perpetuate the person's own testimony or that of another person regarding any matter that may be cognizable in any court of this state may file a verified petition in the circuit court in any county which would be the proper place of trial of such matter. The petition shall be entitled in the name of the petitioner and shall show:

- (A) That the petitioner expects to be a party to an action cognizable in a court of this state but is presently unable to bring it or cause it to be brought;
- (B) The subject matter of the expected action and the petitioner's interest therein;
- (C) The facts which the petitioner desires to establish by the proposed testimony and the petitioner's reasons for desiring to perpetuate it;
- (D) The names or a description of the persons the petitioner expects will be adverse parties and their addresses so far as known; and
- (E) The names and addresses of the persons to be examined and the substance of the testimony which the petitioner expects to elicit from each;

and shall ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

(2) Notice and Service. The petitioner shall thereafter serve a notice upon each person named in the petition

as an expected adverse party, together with a copy of the petition, stating that the petitioner will apply to the court, at a time and place named therein, for the order described in the petition. At least twenty days before the date of hearing the notice shall be served either within or without the state in the manner provided in § 15-6-4(d) for service of summons, but if such service cannot with due diligence be made upon any expected adverse party named in the petition, the court may make such order as is just for service by publication or otherwise and shall appoint, for persons not served in the manner provided in § 15-6-4(d), an attorney who shall represent them, and in case they are not otherwise represented, shall cross-examine the deponent. If any expected adverse party is a minor or incompetent the provisions of § 15-6-17(c) apply.

(3) Order and Examination. If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with this chapter; and the court may make orders of the character provided for by §§ 15-6-34 and 15-6-35. For the purpose of applying this chapter to depositions for perpetuating testimony, each reference therein to the court in which the action is pending shall be deemed to refer to the court in which the petition for such deposition was filed.

(4) Use of Deposition. If a deposition to perpetuate testimony is taken under this chapter or if, although not so taken, it would be admissible in evidence in the courts of the state in which it is taken, or the courts of the United States, it may be used in any action involving the same subject matter subsequently brought in a court of this state, in accordance with the provisions of § 15-6-32(a).

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

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

MAR 17 2006

*Alvin A. Hanson, Clerk*

ATTEST:

Clerk of the Supreme Court  
(SEAL)