

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)
OF SDCL 15-6-4(d))

RULE 02-01

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A hearing was held on February 14, 2002, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-4(d), and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto, if any, and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-6-4(d) be and it is hereby amended to read in its entirety as follows:

15-6-4(d) Personal service of summons. The summons shall be served by delivering a copy thereof. Service in the following manner shall constitute personal service:

- (1) If the action be against a domestic private corporation, on the president or other head of the corporation, secretary, cashier, treasurer, a director, or managing or registered agent thereof, and such service may be made within or without this state. In case the sheriff shall return the summons with his certificate that no such officer, director, or agent can conveniently be found in his county, service may be made by leaving a copy of the summons and complaint at any office of such corporation within this state, with the person in charge of such office;
- (2) If the action be against a foreign private corporation, on the president or other head of the corporation, secretary, cashier, treasurer, a director or managing agent thereof;
- (3) In an action against a railroad corporation or against a person, firm, or corporation operating an elevator or licensed warehouse in this state, service may be made by serving any of the persons mentioned in subparagraphs (1) and (2) of this subsection, or by service upon any acting ticket, station, or freight agent of a railroad company or upon any acting agent in charge of any such elevator or warehouse, in the county where the action or proceeding is commenced;
- (4) If the action be against a public corporation within this state, service may be made as follows:

- (i) Upon a county, by serving upon any county commissioner;
 - (ii) Upon a first or second class municipality, by serving upon; the mayor or any alderman or commissioner
 - (iii) Upon a third class municipality, by serving upon any trustee;
 - (iv) Upon an organized township, by serving upon any supervisor; and
 - (v) Upon any school district, by serving upon any member of the school board or board of education;
- (5) If the action be against a minor, upon a parent or person having custody, and if the minor be over the age of fourteen years, then also upon such minor personally, and in any event upon the legally appointed guardian or conservator, if there be one. If a guardian ad litem has been appointed, such service shall also be made on such guardian ad litem;
- (6) If the action be against a person judicially declared to be mentally incompetent, or who is a patient at an institution for persons with mental illnesses or developmental disabilities or for whom a guardian or conservator has been legally appointed, upon such guardian or conservator, and upon the administrator or superintendent of such institutions for persons with mental illnesses or developmental disabilities, or person having custody, and also upon the person with mental illness or a developmental disability; provided that if the person with mental illness or a developmental disability is a patient of an institution for persons with mental illnesses or developmental disabilities, and the administrator or superintendent thereof shall certify in writing that service upon such person personally would be unavailing or injurious to his physical or mental well-being, and such certificate be filed, service upon such individual may be dispensed with by order of court;
- (7) If against the state or any of its institutions, departments, or agencies, by service upon such officer or employee as may be designated by the statute authorizing such action, and upon the attorney general. In all matters involving title to land owned or held in trust by the state or any of its institutions, departments, or agencies, upon the commissioner of school and public lands and the attorney general. In all matters other than those involving title to such lands, if no officer or employee is designated, then upon the Governor and the attorney general. Any of such officers or employees referred to in § 15-6-4 may admit service of the summons with the same legal effect as if it had been personally served upon them by an officer or elector;
- (8) If the action be against a state officer, employee or agent arising out of his office, employment or agency, a copy of the summons and complaint shall be mailed, certified mail, postage prepaid to the attorney general together with an admission of service and a return

envelope, postage prepaid, addressed to the sender. The executed admission of service shall be filed by the sender in accordance with § 15-6-5(d);

- (9) Whenever the manner of service of process is specified in any statute or rule relating to any action, remedy or special proceedings the manner of service so specified shall be followed;
- (10) In all other cases, to the defendant personally; and
- (11) If the action be against a business with a fictitious name, upon the owner or other head of the business, secretary, cashier, treasurer, director, manager or bookkeeper thereof, and such service may be made within or without this state.
- (12) In an action against a person or business entity in a foreign country, service may be made as follows:
 - (i) By an internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the service abroad of judicial and extrajudicial documents; or
 - (ii) If there is no internationally agreed means of service, service reasonably calculated to give notice may be made:
 - (A) In the manner prescribed by the law of the foreign country for service in that country in an action in any of its court of general jurisdiction;
 - (B) As directed by the foreign authority in response to a letter rogatory or letter request; or
 - (C) Unless prohibited by the law of the foreign country; by one delivery to the individual personally; upon a corporation, limited liability company, limited partnership or partnership or association, by delivery to an officer, or a managing or general agent; or by any form of mail requiring a signed receipt; or
 - (iii) as directed by the court.

Service under this subdivision may be made by any person authorized by §15-6-4(c), anyone duly authorized to serve lawful summons by the law of the country where service is to be made, pursuant to the applicable treaty or convention, or by anyone designated by order of the court or the foreign court. Proof of service may be made as prescribed in § 15-6-4(g), pursuant to the applicable treaty or convention, by order of the court, or by law of the foreign country. Proof of service by mail shall include an affidavit or certificate of addressing and mailing.

IT IS FURTHER ORDERED that this rule shall become effective
July 1, 2002.

DATED at Pierre, South Dakota, this 27th day of February, 2002.

BY THE COURT:


David Gilbertson, Chief Justice

ATTEST:


Clerk of the Supreme Court
(REAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 27 2002


Clerk