

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF SDCL)
15-39-66)

RULE 97-20

A hearing having been held on February 21, 1997, at Pierre, South Dakota, relating to the amendment of SDCL 15-39-66, 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 15-39-66 be and it is hereby amended to read in its entirety as follows:

15-39-66. Setoff or counterclaim stated by defendant -- Notice to plaintiff and postponement of hearing -- Answer by plaintiff -- Request for jury trial or petition for removal on non-compulsory counterclaims -- Provisions not compulsory. The defendant within the time for answer may, in the manner provided in § 15-39-48, claim any setoff or counterclaim within the jurisdiction of the court in civil cases. Upon the making of such claim by the defendant, the clerk shall give a notice to the plaintiff, at the expense of the defendant, similar to that provided by § 15-39-78, and shall postpone the hearing of the original claim until the time set for hearing the defendant's claim, and shall notify the parties accordingly. The defendant's claim shall be answered within the time and in the manner provided by §§ 15-39-64 and 15-39-65, and the penalties upon defendants provided by § 15-39-64 shall apply to plaintiffs in respect to claims by a defendant. The original claim and the claim of setoff or counterclaim shall be deemed one case. This section shall not be deemed as establishing a compulsory counterclaim provision.

In the judicial circuit so designated by the Supreme Court under (insert session law designation for HB 1068), if a non-compulsory counterclaim is filed, then the plaintiff has the same right to a jury trial in the small claims action and the same right to

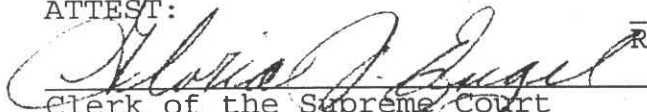
petition for removal to the regular civil docket as a defendant has under §§ 15-39-56 and 15-39-57. Unless the action is removed, the plaintiff has no right to appeal a decision reached on any counterclaim or setoff.

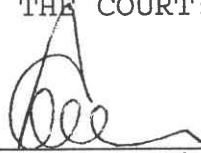
IT IS FURTHER ORDERED that this rule shall become effective July 1, 1997.

DATED at Pierre, South Dakota, this 17th day of March, 1997.

BY THE COURT:

ATTEST:


Clerk of the Supreme Court
(SEAL)



Robert A. Miller, Chief Justice

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 17 1997


Clerk