

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE ADOPTION	)	
OF A NEW RULE RELATING TO	)	RULE 12-02
INTERSTATE DEPOSITIONS AND	)	
DISCOVERY TO BE DESIGNATED AT	)	
SDCL 15-6-28A	)	

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A hearing was held on February 15, 2012, at Pierre, South Dakota, relating to the adoption of a new rule relating to interstate depositions and discovery and the Court having considered the proposed adoption and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule relating to interstate depositions and discovery be and it is hereby adopted to read in its entirety as follows:

**SDCL 15-6-28A(a). Interstate depositions and discovery.**  
This rule shall govern depositions and discovery conducted in South Dakota in connection with a civil lawsuit brought in another state.

**SDCL 15-6-28A(b). Definitions.**

In this rule:

- (1) "Foreign jurisdiction" means a state other than this state.
- (2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.
- (3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.
- (4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.
- (5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

- (a) attend and give testimony at a deposition;
- (b) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or
- (c) permit inspection of premises under the control of the person.

**SDCL 15-6-28A(c). Issuance of subpoena for interstate depositions and discovery.**

(A) To request issuance of a subpoena under this rule, a party must submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this rule does not constitute an appearance in the courts of this state. It does create the necessary jurisdiction in the State of South Dakota to:

- (i) enforce the subpoena;
- (ii) quash or modify the subpoena;
- (iii) issue any protective order or resolve any other dispute relating to the subpoena;
- (iv) impose sanctions on the attorney requesting the issuance of the subpoena for any action which would constitute a violation of the South Dakota Rules of Civil Procedure.

An attorney who is not licensed to practice law in the State of South Dakota may petition the courts of this State to enforce or resolve any other dispute relating to a subpoena issued under this Section, or may respond in the courts of this State to any petition or motion relating to the subpoena filed by any other person, without being admitted pro hac vice.

(B) When a party submits a foreign subpoena to a clerk of court in this state, the clerk shall promptly issue a subpoena for service upon the person to whom the foreign subpoena is directed.

(C) A subpoena under subsection (B) must:

- (i) conform to the requirements of the South Dakota Rules of Civil Procedure, including 15-6-45, but may otherwise

incorporate the terms used in the foreign subpoena so long as they conform to the South Dakota Rules of Civil Procedure;

(ii) advise the person to whom the subpoena is directed that such a person has a right to petition the South Dakota court to quash or modify the subpoena under Rule 15-6-45(b); and

(iii) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

SDCL 15-6-28A(d). Service of subpoena for interstate depositions and discovery. A subpoena issued by a clerk of court under this rule must be served in compliance with 15-6-45(c).

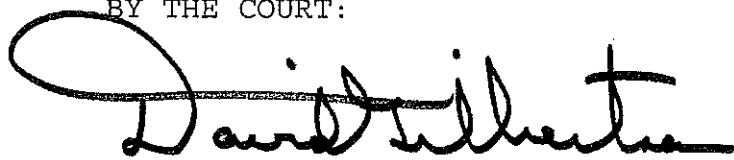
SDCL 15-6-28A(e). Deposition, production, inspection, witness fees, expenses, place of examination, attendance where required. All other provisions of 15-6-45 shall also apply to subpoenas issued under this rule.

SDCL 15-6-28A(f) Application to court. An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under this rule must comply with the rules or laws of South Dakota and be submitted to the court in the county in which discovery is to be conducted.

IT IS FURTHER ORDERED that the rule shall become effective July 1, 2012.

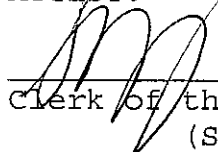
DATED at Pierre, South Dakota, this 6th day of March, 2012.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:

  
Clerk of the Supreme Court  
(SEAL)

SUPREME COURT  
STATE OF SOUTH DAKOTA  
**FILED**

MAR - 6 2012

  
Clerk