

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE PROPOSED)	NOTICE OF RULES HEARING
AMENDMENT OF SDCL 15-25-2)	
AMENDMENT OF SDCL 15-26A-13)	NO. 150
AMENDMENT OF SDCL 15-26A-16)	
AMENDMENT OF SDCL 15-26A-73)	
AMENDMENT OF SDCL 15-26A-79)	
AMENDMENT OF SDCL 15-26A-87.2)	
AMENDMENT OF SDCL 15-26A-87.3)	
AMENDMENT OF SDCL 15-26A-91)	
AMENDMENT OF SDCL 15-26C-1)	
AMENDMENT OF SDCL 15-26C-2)	
AMENDMENT OF SDCL 15-26C-3)	
AMENDMENT OF SDCL 15-26C-4)	
AMENDMENT OF SDCL 15-30-4)	
AMENDMENT OF SDCL 15-30-9)	

A petition for the amendment of existing sections of the South Dakota Codified Laws having been filed with the Court, and the Court having determined that the proposed amendments should be noticed for hearing, now therefore,

NOTICE IS HEREBY GIVEN THAT ON February 16, 2023, at 10:00 A.M., C.T., at the Courtroom of the Supreme Court in the Capitol Building, Pierre, South Dakota, the Court will consider the following:

1. Proposed Amendment of SDCL 15-25-2. Application to commence proceeding--~~Fee--Number of copies filed~~ Filing.

Application for permission to commence such action or proceeding and to fix the procedure to be followed therein shall be accompanied by the form of plaintiff's proposed pleading and by a

filing fee. ~~The original and five copies of the~~ application, proposed complaint and supporting papers, if any, shall be filed with the clerk of the Supreme Court.

2. Proposed Amendment of SDCL 15-26A-13. Petition for permission to take discretionary appeal.

An appeal from an intermediate order made before trial as prescribed by subdivision 15-26A-3(6) may be sought by filing a petition for permission to appeal, together with proof of service thereof upon all other parties to the action in circuit court, with the clerk of the Supreme Court within ten days after notice of entry of such order. When a petition is forwarded to the clerk for filing by mail it shall be accompanied by an affidavit of mailing or certificate of service of mailing and shall be deemed to be filed as of the date of mailing.

~~The original and five copies of the~~ petition shall be filed with the clerk of the Supreme Court, together with the required statutory filing fees unless exempt by law.

3. Proposed Amendment of SDCL 15-26A-16. Response to petition.

Within seven days after the service of the petition, any party to the action may serve and file a response thereto. ~~The original and five copies of the answer response~~ shall be filed with the clerk of the Supreme Court. When a response to a petition is forwarded to the clerk for filing by mail it shall be accompanied by an affidavit of mailing or certificate of service of mailing and shall be deemed to be filed as of the date of mailing.

The petition and any response shall be submitted without oral argument unless otherwise ordered.

4. Proposed Amendment of SDCL 15-26A-73. Supplemental brief with late authorities--Service on opposing counsel.

Whenever a party desires to present late authorities, newly enacted legislation, or other intervening matters that were not available in time to have been included in ~~his~~ the party's brief in chief, ~~he~~ the party shall serve a copy thereof upon ~~opposing counsel~~ the attorney for each party to the action separately represented and upon any party who is not represented by counsel and ~~file fifteen copies of the~~ supplemental brief, restricted to such new matter and otherwise in conformity with this chapter, up

to the time the case is called for hearing, or by leave of court thereafter. A supplemental brief shall not exceed ten pages.

5. Proposed Amendment of SDCL 15-26A-79. Number of copies of briefs to be served and filed.

~~(Text of section effective as to Supreme Court cases numbered 30000 and above on September 1, 2022.)~~

A copy of each brief shall be served on the attorney for each party to the appeal separately represented and upon any party who is not represented by counsel. A copy of each brief shall be filed with the clerk of the Supreme Court. In addition to electronic submission of each brief, an original must be submitted to the clerk. The clerk shall not accept a brief for filing unless it is accompanied by admission or proof of service.

~~(Text of section effective as to Supreme Court cases numbered 29999 and below.)~~

~~Two copies of each brief shall be served on the attorney for each party to the appeal separately represented and upon any party who is not represented by counsel. Fifteen copies of each brief shall be filed with the clerk of the Supreme Court. The clerk shall not accept a brief for filing unless it is accompanied by admission or proof of service.~~

6. Proposed Amendment of SDCL 15-26A-87.2. Motions--Answers to motions--Generally.

Unless otherwise specifically provided in this chapter, motions shall be served upon all adverse parties the attorney for each party to the action separately represented and upon any party who is not represented by counsel, and ~~the original and five copies of the motion,~~ together with proof of service thereof, shall be filed with the clerk of the Supreme Court.

~~An adverse~~ Any party may respond to a motion by filing the ~~original and five copies of a response,~~ together with proof of service thereof, with the clerk of the Supreme Court within ten days after service of the motion, or within such time as may be otherwise directed by the court.

7. Proposed Amendment of SDCL 15-26A-87.3. Motion for attorney fees--Contents, form, and filing of motion.

A motion for appellate attorney fees in actions where such fees may be allowable must comply with the following requirements:

- (1) The motion must be accompanied by a verified, itemized statement of legal services rendered, said statement to be exclusive of costs allowable under § 15-30-6;
- (2) The motion must be served and filed prior to submission of the action on its merits; and
- (3) ~~An original and fifteen copies of the~~ The motion and itemized statement, together with proof of service thereof, must be submitted for filing.

Consideration of a motion for attorney fees will be held in abeyance until such time as the action is considered on its merits.

8. Proposed Amendment of SDCL 15-26A-91. Time for petition for reinstatement--Contents, form, and filing of petition.

A petition for reinstatement of an appeal dismissed by the Supreme Court may be served and filed within twenty days after entry of the order of dismissal. The petition shall state briefly the ground upon which the reinstatement is sought and any underlying circumstances relevant to the dismissal. Copies of relevant affidavits, documents, and correspondence may be attached to the petition. ~~An original and five copies thereof~~ The petition shall be filed with the clerk of the Supreme Court. ~~The adverse~~ Any party may serve and file answer thereto within ten days after service of the petition.

9. Proposed Amendment of SDCL 15-26C-1. Electronic Filing.

~~(Text of section effective as to Supreme Court cases numbered 30000 and above on September 1, 2022.)~~

(1) ~~Effective upon further order of the Supreme Court entered after July 1, 2019, and except~~ Except as specifically exempted by these rules or court order, attorneys shall electronically file all documents, including petitions, notices of review, motions and briefs, and any appendices with the Supreme Court through the Odyssey® electronic filing system unless advance permission is granted by the court allowing paper filing or filing through any other method. Self-represented litigants may file electronically but shall not be required to file electronically.

(2) Registered users will receive electronic notice when documents are entered into the system. Registration for electronic filing constitutes written consent to electronic service of all documents filed in accordance with these rules.

(3) A document filed electronically has the same legal effect as an original paper document.

(4) The typed attorney or party name or electronic signature on a document filed electronically has the same effect as an original manually affixed signature.

(5) A party electronically filing a document that is not accessible to the public, in whole or in part, is responsible for redaction or designating the document as confidential or sealed before transmitting it to the Supreme Court. For any document containing information where redaction is required, in whole or in part, pursuant to chapter 15-15A or order of the Supreme Court or circuit court, the original unredacted document shall also be filed electronically. It is the responsibility of the parties to seek advance approval from the Supreme Court for submitting a document as sealed or confidential if that document is not already declared confidential or sealed by existing law, court rules or order.

~~(Text of section effective as to Supreme Court cases numbered 29999 and below.)~~

~~(1) Effective January 1, 2014, except as specifically exempted by these rules or court order, attorneys shall electronically file briefs and any appendices with the Supreme Court unless advance permission is granted by the court allowing paper filing. Any other notices, petitions, pleadings, motions, or documents may be filed electronically at the discretion of the attorney. Electronic filing for self-represented litigants is discretionary for all filings with the Supreme Court. On a showing of good cause, an attorney required to file electronically may be granted leave of court to file paper documents with the Supreme Court.~~

~~(2) Documents filed electronically must be submitted by email attachment to SCCLerkBriefs@ujs.state.sd.us. The number of the case shall appear in the subject line of the email.~~

~~(3) A document filed electronically has the same legal effect as an original paper document.~~

~~(4) The typed attorney or party name or electronic signature on a document filed electronically has the same effect as an original manually affixed signature.~~

~~(5) A party electronically filing a document that is not accessible to the public, in whole or in part, is responsible for redaction or designating the document as confidential or sealed before transmitting it to the court. For any document containing information where redaction is required, in whole or in part, pursuant to chapter 15-15A or order of the court, the original unredacted document shall also be filed electronically.~~

10. Proposed Amendment of SDCL 15-26C-2. Electronic document formats.

~~(Text of section effective as to Supreme Court cases numbered 30000 and above on September 1, 2022.)~~

(1) All documents submitted to the Supreme Court in electronic form must be in portable document format (.pdf) except as follows:

(a) Parties must obtain permission from the Supreme Court Clerk in advance if they seek to submit documents in another format.

(b) Briefs shall comply with chapter 15-26A and shall consist of a single document submitted in pdf and an approved word processing format.

(c) When an appendix is filed, it shall be in .pdf format and shall be included as part of the brief document. Except for limited excerpts showing a court's reasoning, circuit court transcripts that have been filed electronically with the Supreme Court shall not be included in an appendix. A table of contents with page or paragraph reference as appropriate for each document must precede the appendix. Points of particular interest with page or paragraph reference may also be added to the table of contents. When feasible, electronic bookmarks shall be added to note the first page of each document in the appendix and may be added to note the location of points of particular interest.

~~(Text of section effective as to Supreme Court cases numbered 29999 and below.)~~

~~(1) All documents submitted to the court in electronic form must be in approved word processing format which shall then be converted by the supreme court clerk to portable document format (.pdf).~~

~~(a) Parties must obtain permission from the supreme court clerk in advance if they seek to submit documents in another format.~~

~~(b) Briefs shall comply with § 15-26A-60.~~

~~(c) An appendix may be filed electronically in portable document format (.pdf). Except for limited excerpts showing a court's reasoning, circuit court transcripts that have been filed electronically with the Supreme Court shall not be included in an appendix. A table of contents with page or paragraph reference as appropriate for each document must precede the appendix. Points of particular interest with page or paragraph reference may also be added to the table of contents. When feasible, electronic bookmarks shall be added to note the first page of each document in the appendix and may be added to note the location of points of particular interest.~~

11. Proposed Amendment of SDCL 15-26C-3. Time of filing.

~~(Text of section effective as to Supreme Court cases numbered 30000 and above on September 1, 2022.)~~

(1) A document in compliance with the Rules of Appellate Procedure and this rule and submitted electronically to the supreme court clerk by 11:59 p. m. central standard time or daylight savings time as applicable shall be considered filed on that date.

(2) After reviewing an electronically filed document, the supreme court clerk must inform the filer, through an e-mail generated by the Odyssey® system, whether the document has been accepted or rejected. A document may be rejected (a) if it is filed in the wrong court; (b) applicable filing fees are not paid or waived; (c) the document is incomplete or contains missing information; (d) or fails to comply with applicable statutory requirements or these rules.

(3) Parties filing briefs electronically must also submit an original to the supreme court clerk. For any brief filed in an appeal from a judgment or order pursuant to chapter 26-8A, the appellant shall also file a redacted brief in compliance with subdivision 15-26A-60(9).

(4) The Supreme Court may also order any party to provide additional hardcopies of any documents electronically filed.

~~(Text of section effective as to Supreme Court cases numbered 29999 and below.)~~

~~(1) A document in compliance with the Rules of Appellate Procedure and this rule and submitted electronically to the supreme court clerk by 11:59 p. m. central standard time or daylight savings time as applicable shall be considered filed on that date.~~

~~(2) Upon receiving an electronic document, the supreme court clerk will issue an e-mail confirmation that the document has been received.~~

~~(3) Parties filing electronically must also submit an original and two hardcopies hardcopy of any document to the supreme court clerk. For any brief filed in an appeal from a judgment or order pursuant to chapter 26-8A, the appellant shall also file two a hardcopy redacted briefs brief in compliance with subdivision 15-26A-60(9).~~

~~(4) The Supreme Court may also order any party to provide additional hardcopies of any documents electronically filed.~~

~~(5) A party must pay all required fees and payments within five days of submitting a document filed electronically. If fees and payments are not received within five days of submission, the document will not be filed and will be returned by the supreme court clerk and the party will be required to re-file the document.~~

12. Proposed Amendment of SDCL 15-26C-4. Electronic Service.

~~(Text of section effective as to Supreme Court cases numbered 30000 and above on September 1, 2022.)~~

(1) All documents filed electronically must be served electronically through the Odyssey® system except for documents served on or by self-represented litigants. On a showing of good cause, an attorney may be granted leave by the Supreme Court to serve paper documents or to be exempt from receiving electronic service.

(2) Electronic service is not effective if the party making service learns that the attempted service did not reach the person to be served.

~~(Text of section effective as to Supreme Court cases numbered 29999 and below.)~~

~~(1) After January 1, 2014, any attorney not exempt from electronic filing or a party filing electronically must designate an email address for accepting electronic service and for receiving electronic service with the supreme court clerk. On a showing of good cause, an attorney may be granted leave of court to serve paper documents or to be exempt from receiving electronic service.~~

~~(2) If a party files a document by electronic means, the party must serve the document by electronic means unless the recipient of service has not designated an email address for receiving electronic service.~~

~~(3) Electronic service is not effective if the party making service learns that the attempted service did not reach the person to be served.~~

~~(4) If a recipient cannot accept electronic service of a document, service under another means specified by § 15-6-5 (b) is required.~~

~~(5) Any party effectuating service electronically must include a certificate of service specifying the items electronically served.~~

~~(6) Documents served electronically may be in portable document format (.pdf), with the exception of those documents to be filed with the Supreme Court in approved word processing format as previously specified herein.~~

~~(7) The Supreme Court may electronically file and serve on registered attorneys and parties any decisions, orders, notices, remittiturs or other documents prepared by the court in such cases provided the attorney or party to be served has designated an email address for receiving electronic service.~~

13. Proposed Amendment of SDCL 15-30-4. Time for petition for rehearing--Contents, form, and filing of petition.

A petition for the rehearing of a cause heard on appeal to the Supreme Court may be served and filed within twenty days after the date of filing of the formal opinion or the order of summary disposition. ~~The adverse~~ Any party may serve and file answer thereto within ten days after service of the petition. The petition shall state briefly the ground upon which a rehearing is asked and the points supposed to have been overlooked or misapprehended by the court, with proper reference to the particular portion of the printed record and to the authorities relied upon. The petition and answer may be typewritten. ~~An original and five copies thereof shall be filed.~~

14. Proposed Amendment of SDCL 15-30-9. Objections to taxation of costs on appeal--Reply to objections--Decision by court.

At any time within ten days after the mailing of such notice of taxation of costs, any party aggrieved may object to the same by serving written objections upon the other parties to the appeal and filing ~~five copies of~~ such objections with proof of service thereof with the clerk of the Supreme Court. If any relevant question of fact is raised, the party objecting shall serve and file with his the objections, proof in the form of an affidavit or affidavits of the facts as claimed by him, ~~and five additional copies of such affidavits must be filed with the clerk the party.~~ The objections may be supported by such written argument or authority as the party desires to submit in support of the same. Within five days after the service of such objections, any party to the appeal may reply thereto by serving the same with answering affidavits if any on the ~~adverse~~ other parties and filing ~~five clear copies~~ the reply with the clerk of the court. Such reply may contain such argument and authority as the party may desire to submit. Upon receipt of such objections and replies, if any, and after the time for serving and filing the same has expired, the court shall consider and decide upon the same and make such order thereon as to it may seem warranted and such order shall be final and not subject to rehearing or appeal excepting that the court will at all times reserve the right to correct any actual mistake or error existing therein.

Explanation for Proposals 1-14

These amendments are proposed by the State Court Administrator's Office.

In 2019, rules were adopted that would allow for appellate filings through the Odyssey system. The purpose was to move away from the e-mail-based filing system used by the Supreme Court. The rules were to be made effective upon further order of the Court. In September 2022, the Court issued an order making the rules effective, but the rules differed for cases numbered 30000 and above and 29999 and below. Once these proposed changes become effective, all parties, except pro se litigants, shall be required to file all pleadings and briefs with the Supreme Court through the Odyssey system, regardless of the case number. These proposals are also intended to reduce the number of paper copies a party must submit of any filing with the Court and to make the filing rules consistent no matter the case number. The purpose of these amendments is to further move the Court to full utilization of the Odyssey appellate system.

Additional changes are made in the sections related to the number of copies filed to increase consistency with other rules of appellate procedure or modernize the language of the rule. The proposed amendments to SDCL 15-26A-73 and 15-30-9 include changes to utilize gender-neutral language. The proposed amendments in SDCL 15-26A-73, 15-26A-87.2, 15-26A-91, 15-30-4, and 15-30-9 include changes to reflect the fact that all parties, whether adverse or not, should be served. See SDCL 15-26A-4(3) (requiring service of "the notice of appeal and docketing statement on counsel of record of each party other than appellant, or, if a party is not represented by counsel, on the party at his or her last known address").

The proposed amendments are not based upon a Federal Rule of Civil Procedure and should not affect other existing rules or statutes.

Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and filed with the Clerk of the Supreme Court no later than February 2, 2023. Subsequent to the hearing, the

Notice of Rules Hearing No. 150 - February 16, 2023

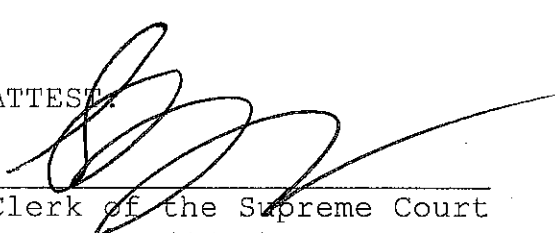
Court may reject or adopt the proposed amendments of any rule germane to the subject thereof.

Notice of this hearing shall be made to the members of the State Bar by electronic mail notification, by posting notice at the Unified Judicial System's website at <https://ujs.sd.gov/Supreme Court/Hearings.aspx> or the State Bar of South Dakota's website <https://www.statebarofsouthdakota.com>.

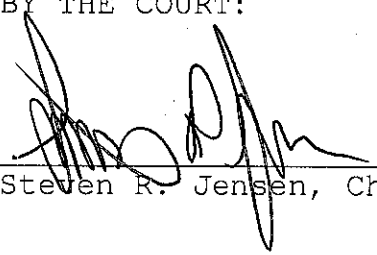
DATED at Pierre, South Dakota this 5th day of January, 2023.

BY THE COURT:

ATTEST:



Clerk of the Supreme Court
(SEAL)



Steven R. Jensen, Chief Justice

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

JAN - 5 2023


Clerk