

PROPOSED AMENDMENTS TO SDCL 15-6-5 GIVEN THE TRANSITION TO ELECTRONIC FILING

15-6-5(a) Service-When Required

Except as otherwise provided in this chapter, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every written motion other than one which may be heard ex parte, and every written brief, notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in § 15-6-4.

15-6-5(b) Service-How made-Proof

(1) Unless otherwise ordered by the court or provided by rule,
~~w~~Whenever ~~under~~ this chapter ~~service is required~~ or permitted ~~service~~ to be made upon a party represented by an attorney, the service shall be made upon the attorney. ~~unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Service upon a party represented by an attorney may also be made by facsimile transmission as provided in § 15-6-5(f). Delivery of a copy within § 15-6-5 means: Handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person over the age of fourteen years then residing therein. Service by mail shall be by first class mail and is complete upon mailing. Service by facsimile transmission is complete upon receipt by the attorney receiving service. An attorney's certificate of service, the written admission of service by the party or his attorney or an affidavit shall be sufficient proof of service. In the case of service by facsimile transmission, proof of service~~

~~shall state the date and time of service and the facsimile telephone number or identifying symbol of the receiving attorney. The provisions of § 15-6-5 shall not apply to the service of a summons or other process or of any paper to bring a party into contempt.~~

(2) Unless otherwise ordered by the court, all documents filed with the court electronically through the Odyssey® system or served electronically through the Odyssey® system are presumed served upon all attorneys of record at the time of submission.

(3) Documents not filed with the court may be served upon an attorney by any of the following methods:

- A. electronically through the Odyssey® system;
- B. by electronic mail, using the email address designated by the attorney or law firm for service, or if none, the email address published in the Membership Directory of the South Dakota State Bar Association;
- C. by first class mail to the attorney's last known address, which is complete upon mailing;
- D. by facsimile transmission subject to the following conditions:
 - (i) the attorney upon whom service is made has the necessary equipment to receive such transmission;
 - (ii) the attorney has agreed to accept service by facsimile transmission, or has served the serving party in the same case by facsimile transmission; and
 - (iv) the time and manner of transmission comply with the requirements of § 15-6-6(a), unless otherwise established by the Court; or
- E. by delivery to the attorney, or an employee of the attorney, at the attorney's office.

(4) An attorney's certificate of service, the written admission of service by the party or his attorney, or an affidavit of service are sufficient proof of service.

(5) Service upon a party not represented by counsel must be

made using one of the following methods:

- A. by delivery to the party or leaving it at the party's dwelling house or usual place of abode with some person over the age of fourteen years then residing therein;
- B. by first class mail to the party's last known address, which is complete upon mailing; or
- C. if no address is known, by leaving it with the clerk of the court.

(6) The provisions of § 15-6-5 do not apply to the service of a summons or other process or of any paper to bring a party into contempt.

15-6-5(c) Service on numerous defendants

In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

15-6-5(d). Filing of papers-Originals-Copies

The original of all papers served upon a party or presented to any court or judge in support of any application or motion and including the summons, all pleadings, notices, demands, offers, stipulations, affidavits, written motions, briefs, memorandums of law, and orders shall, if not filed before service, be filed with the court, together with proof of such service, forthwith upon such service. The foregoing requirement of filing applies to the notice of filing of an order and the notice of entry of a judgment together with proof of service thereof, both

of which shall be filed forthwith; if not filed within ten days after service thereof, the time of service shall be deemed to be the date of filing of the notice and proof of service. If papers are not to be served, they must be filed with the court at the time of their presentation to the court for any action or consideration.

Any electronic version of any paper or document shall have the same force and effect as the original. A certified copy of an original made by electronic transmission shall have the same force and effect as a certified copy of an original.

15-6-5(e) Definition-Filing with the court

~~Except as specifically exempted by these rules or court order, t~~The filing of pleadings and other papers with the court as required by this chapter ~~must~~shall be made ~~through the Odyssey® electronic filing system~~by filing them with the clerk of the court. ~~Self-represented parties may file electronically, but are not required to file electronically. Upon leave of court, an attorney required to file electronically may be granted leave of court to file paper documents with the clerk of the court., except that~~ Tthe judge may permit ~~a party the papers to be filed papers~~ with him ~~or her~~, in which event ~~the judge must~~ shall note thereon the filing date, and forthwith transmit them to the office of the clerk.

~~15-6-5(f) Service by facsimile transmission (fax) to parties represented by attorney~~

~~Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, such service may be made by facsimile transmission pursuant to the following conditions:~~

~~(1) The attorney upon whom service is made has the necessary equipment to receive such transmission;~~

~~(2) The attorney has agreed to accept service by facsimile transmission, or has served the serving party in the same case by facsimile transmission; and~~

~~(3) The time and manner of transmission comply with the~~

~~requirements of § 15-6-6(a), unless otherwise established by the Court.
—The signature on the facsimile shall constitute a signature under §
15-6-11(a).~~

15-6-5(g) Documents not to be filed-Depositions

No depositions (except notices to take depositions), interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall be filed with the clerk of the court except as provided in this section. Any such filing shall be made electronically in full-size print unless otherwise ordered by the court. Any exhibits to such documents shall be clearly identified and included as a separate electronic file or hyperlinked within the transcript file.

Any discovery materials necessary for the disposition of any motion filed with the court or referenced in any filing with the court shall be attached as an exhibit ~~to and filed with~~ the party's motion ~~in its entirety~~ or as an exhibit to a declaration, affidavit, or other similar filing. Financial account information filed with the court as an exhibit under this section shall be confidential pursuant to §§15-15A-8 and 15-15A-9, and shall remain confidential unless and until access is granted by the court under §15-15A-10.

If any party designated any or all of any deposition as evidence to be offered in the trial of any case, such deposition shall be filed in electronic format in its entirety with the clerk of the court at the same time as that party's designation.

Depositions used by a party only for the purpose of contradicting or impeaching the testimony of deponent as a witness, pursuant to subdivision 15-6-32(a)(1), shall not be filed unless otherwise ordered by the judge presiding at the hearing or trial.

All depositions which have been read or offered into evidence by agreement of parties, or at the trial or submission of the case to the court, shall become a permanent part of the file.

15-6-5(h) Civil Case Filing Statements

Whenever a party or an attorney representing a party commences a civil action, files a notice of appearance, or files an answer or first responsive pleading in a civil action, the party or attorney representing the party shall file a completed civil case filing statement containing identifying information available to that party or attorney regarding all parties, including the adverse party, with the clerk of the court. A statement must also be filed whenever a new party is added to the action. The statement shall be available from the clerk or online at the Unified Judicial System's website. The identifying information for the filing party must be submitted on the filing statement. If the party or attorney representing a party is unable to provide the required information for the filing party, he or she may seek a waiver from the judge assigned to the action. After the information is recorded in the Unified Judicial System docketing system, the filing statement may be destroyed or kept by the clerk of the court in a nonpublic file for internal record management use by the Unified Judicial System. Access to the filed statement will only be available to court personnel or by court order.

15-6-5(i) Service of discovery requests by electronic mail or portable storage media device ~~computer diskette~~-Costs

Any party or attorney serving discovery requests pursuant to § 15-6-31, § 15-6-33, § 15-6-34 or § 15-6-36 shall also, upon receipt of a written request, serve those items on the opposing party or attorney by electronic mail or on a portable storage media device~~computer~~. Failure to comply with such a request shall not make service invalid or extend the time to file a response, but the court shall order payment of the actual costs of reproducing the item and may award such other terms as it deems proper under § 15-6-37 unless good cause for failure to comply with the request is shown.

~~15-6-5(j) Service by electronic mail (email) to parties represented by attorney~~

~~Whenever under these rules service is required or permitted to be~~

~~made upon a party represented by an attorney, such service may be made by email transmission pursuant to the following conditions:~~

~~—— (1) The attorney upon whom service is made has the necessary equipment to receive such transmission;~~

~~—— (2) Prior to the service, the attorney upon whom service is made has agreed in writing to accept service by email, or has served the serving party in the same case by email;~~

~~—— (3) The time and manner of transmission comply with the requirements of § 15-6-6(a), unless otherwise established by the court; and~~

~~—— (4) The sending attorney by facsimile or mail sends a certificate of service specifying the items electronically served.~~

~~—— The signature or electronic signature on the email shall constitute a signature under § 15-6-11(a). If within two days after the certificate of service is received, the attorney upon whom service is made attests in writing that he or she did not receive the electronic mail submission, then service shall not have been deemed to have been made.~~