

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT)
SDCL 15-6-54(d)) RULE 06-54

A hearing was held on February 16, 2006, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-54(d), and the Court having considered the proposed amendment, the correspondence and oral presentations relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-6-54(d) be and it is hereby amended to read in its entirety as follows:

SDCL 15-6-54(d). Judgment for costs-Attorneys' fees.

- (1) Costs and disbursements other than attorneys' fees. Except as otherwise provided by statute, costs and disbursements, other than attorneys' fees, shall be allowed as of course to the prevailing party unless the court otherwise directs. If a party wishes to have disbursements and costs of the action assessed, that party must file an application for taxation of costs, and a certificate of service, with the clerk of court. The application shall include a statement in detail of the costs and disbursements claimed and shall be verified by affidavit. The party preparing the application shall forthwith serve a true copy of the application and the certificate of service upon all other parties. A motion for default judgment may include the application for taxation of costs of the action and be filed, with a certificate of service, with the clerk of court and be served upon all other parties.

A party who objects to any part of the application shall serve and file his objections with the clerk of court in writing within ten days of the service of the application on him or he will be deemed to have agreed to the taxation of the costs and disbursements proposed. The written objections must be accompanied by a notice of hearing thereon and shall set forth in

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concise language the reasons why the costs should not be allowed. Upon receipt of such written objections and the notice of hearing, the clerk shall file the same and forward copies thereof, together with a copy of the application, to the court. Where the application is included in a motion for default judgment, the ten days to object to the application for costs is waived.

The decision rendered at the hearing shall be filed as a written order with the clerk, directing that the approved amount of costs and disbursements be inserted in the judgment and docketed.

If no written objection to the taxation of costs is filed within ten days of service, the clerk shall tax the costs and disbursements as set forth on the application, insert the amount in the judgment, and docket it.

Costs and disbursements under this section shall be waived if proper application is not made within thirty days of the entry of the judgment. For good cause shown, the court may extend the time.

(2) Attorneys' fees.

(A) Claims for attorneys' fees and related nontaxable expenses shall be made by motion unless the substantive law governing the action provides for the recovery of such fees as an element of damages to be proved at trial.

(B) Unless otherwise provided by statute or order of the court, the motion must be filed no later than 14 days after entry of judgment; must specify the judgment and the statute, rule, or other grounds entitling the moving party to the award; and must state the amount or provide a fair estimate of the amount sought. If directed by the court, the motion shall also disclose the terms of any agreement with respect to fees to be paid for the services for which claim is made.

On request of a party or class member, the court shall afford an opportunity for adversary submissions with respect to the motion. The court may determine issues of liability for fees before

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receiving submissions bearing on issues of evaluation of services for which liability is imposed by the court. The court shall find the facts and state its conclusions of law as provided in § 15-6-52(a).

(D) The provisions of subparagraphs (A) through (C) do not apply to claims for fees and expenses as sanctions for violations of these rules.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2006.

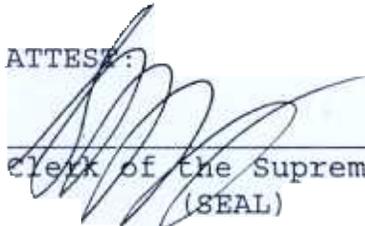
DATED at Pierre, South Dakota, this 17th day of March, 2006

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:


Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

MAR 17 2006


Clerk