

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

\* \* \* \*

IN THE MATTER OF THE AMENDMENT)  
SDCL 15-6-37(a) ) RULE 06-33

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A hearing was held on February 16, 2006, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-37(a), 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 15-6-37(a) be and it is hereby amended to read in its entirety as follows:

SDCL 15-6-37(a). Motion for order compelling disclosure or discovery.

A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

- (1) Appropriate court. An application for an order to a party may be made to the court in which the action is pending. An application for an order to a person who is not a party shall be made to the court in the circuit where the discovery is being, or is to be, taken.
- (2) Motion. If a deponent fails to answer a question propounded or submitted under § 15-6-30 or 15-6-31, or a corporation or other entity fails to make a designation under subdivision 15-6-30(b)(6) or § 15-6-31(a), or, a party fails to answer an interrogatory submitted under § 15-6-33, or if a party in response to a request for inspection submitted under § 15-6-34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.
- (3) Evasive or incomplete disclosure, answer, or response. For purposes of this subdivision an evasive

or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer, or respond.

(4) Expenses and sanctions.

- (A) If the motion is granted or if the requested discovery is provided after the motion was filed, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorneys' fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response or objection was substantially justified or that other circumstances make an award of expenses unjust.
- (B) If the motion is denied, the court may enter any protective order authorized under § 15-6-26(c) and shall, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorneys' fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.
- (C) If the motion is granted in part and denied in part, the court may enter any protective order authorized under § 15-6-26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

**SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED**

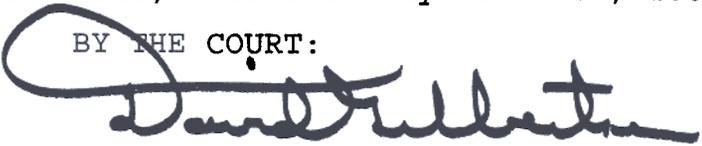
**MAR 17 2006**

*Shirley A. Johnson Long*  
Clerk

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)