IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

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AMENDED EMERGENCY ORDER REGARDING COURT REPORTERS, WITNESSES AND NOTARIZATION IN MIDST OF THE COVID-19 PANDEMIC

WHEREAS on March 13, 2020, the South Dakota Supreme Court entered an Order Declaring Judicial Emergency to address health risks posed by the COVID-19 Pandemic;

WHEREAS mitigating the effects of COVID-19 is a high priority in the South Dakota Unified Judicial System;

WHEREAS, a public health emergency currently exists in South Dakota that requires mitigation of its effects by adopting "social distancing" measures meant to reduce the increase in person-to-person transmission of the virus that causes COVID-19;

WHEREAS, important legal work needs to continue to meet the needs of the citizens of the State of South Dakota;

NOW, THEREFORE, pursuant to the Court's authority to administer justice and to ensure the safety of court personnel, litigants and the public,

IT IS HEREBY ORDERED THAT:

1. South Dakota Codified Law 15-6-30(b)(7) currently provides that parties may stipulate to have depositions taken by remote means. While this Emergency Order is in place, the burden will be on the non-stipulating party to demonstrate that the failure to stipulate to conducting a deposition in this manner was made in good faith; and, if a court finds that such failure was not in good faith, it will impose costs and fees for any motion arising from that failure upon the non-stipulating party. The proponent of the remote deposition shall make reasonable provisions for ensuring the integrity of the

process including identifying a means of identifying the witness, ensuring that the court reporter and attorneys can see and/or hear the witness, and making arrangements for providing paper or electronic copies of all proposed deposition exhibits to the witness, court reporter and participating attorneys.

2. Pursuant to SDCL 29A-2-502, and except as otherwise provided by SDCL 29A-2-503, wills that are not holographic must be witnessed by "two or more individuals who, in the conscious presence of the testator, witnessed either the signing of the will or the testator's acknowledgement of that signature." While this Emergency Order is in place, "conscious presence" in this context includes instances where the witnesses and the testator could communicate with each other simultaneously by sight and sound by means of an electronic device or process that allows a one person and another person or persons not in the physical presence of the first person to communicate with each simultaneously by sight and sound (hereinafter referred to as "communication technology").

Pursuant to SDCL 34-12D-2, a declaration (i.e. a Living Will or Advance Directive) must be witnessed by two adult individuals; however, while this Emergency Order is in place, declarations may also be witnessed by individuals who, at the time of the execution of the declaration, could communicate with the declarant by means of communication technology.

When using communication technology, the page or pages containing the witnesses' original signatures to the declaration shall be promptly mailed to the declarant or his or her attorney or representative.

3. Notaries and other persons qualified to administer an oath in the State of South Dakota may swear a witness remotely by communication technology, provided they can positively identify the witness.

4. All rules of procedure, court orders and opinions applicable to remote testimony, depositions and other legal testimony that can be read to limit or prohibit the

use of communication technology equipment to administer oaths remotely are hereby suspended and will remain suspended until removed by further order of this Court.

5. While this Emergency Order is in place, a petitioner's signature on a Petition for Modification of Child Support pursuant to SDCL 25-7A-22 need not be notarized in order to be filed by the Clerk of Courts.

This order is effective immediately and until further order of the Court.

DATED at Pierre, South Dakota, this 14 day of April, 2020.

BY THE COURT:

David Gilbertson, Chief Justice

ATTEST:

Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

APR 14 2020

Clerk