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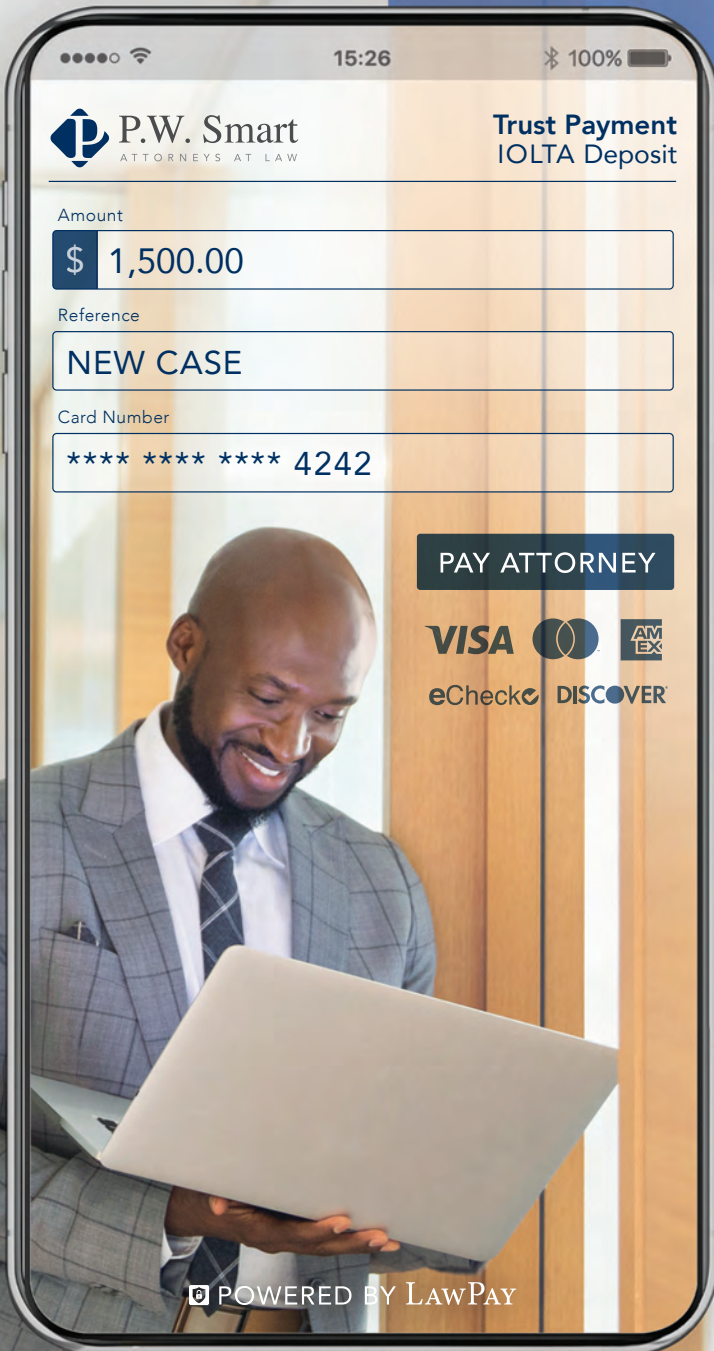
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State Bar of South Dakota

April 2020

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President's Corner

Steven K. Huff

Dear Members of the State Bar of South Dakota:

The State Bar has been working diligently to develop a plan for the bar's operation that considers guidance received from federal and state authorities and also our duty and obligation to serve you. As such, we want to ensure communication with you remains open and will plan to provide weekly updates on bar happenings through email and Facebook. Here are updates for this week:

Legal Services as Essential Services

The Bar Commission directed Andy Fergel to contact the Governor's office and request that if a "Shelter-In-Place" Executive Order goes into effect, that the Administration exempt "legal services" from any prohibitions or restrictions that might otherwise be applicable, and include "legal services" as critical and essential services to our state. The Bar Commission's understanding is that such an approach would be consistent with the March 19, 2020 guidance of the federal government ("Memorandum on Identification of Essential Critical Infrastructure Workers During COVID-19 Response") and several other state orders that have already been issued. The Bar Commission believes that such a provision is necessary for the well-being of South Dakota citizens and to the integrity of our system of justice.

Annual Meeting and other State Bar Functions

All in-person programming has been cancelled or postponed through May 31, 2020. That includes the Ask A Lawyer program and May 8th CLE. The Bar Commission will still have monthly meetings by phone. The Bar Commission will also decide by May 1, 2020, as to whether we cancel or postpone our Annual Meeting currently scheduled for June 17-19, 2020. If

cancellation does occur, we will do our best to move all CLE programming online. If postponed, we will provide adequate notice to you for any scheduling and reservations you need to make to be able to attend.

Resources Available to Members

Information on public health, state and federal court links, employment articles, and other topics can be found here: <http://www.statebarofsouthdakota.com/page/covid19>.

Health & Wellness Resources

Wellness Resources, including access information to a 24/7 hotline (SandCreek) as well as cell phone numbers for members of Lawyers Concerned for Lawyers can be found here: <http://www.statebarofsouthdakota.com/page/pandemic-resources>
Please take advantage of these resources if you need to talk to someone.

Resiliency Program

The State Bar is offering a four-part series on **Resiliency Tools for Uncertain Times**. The program description says, "Let's support each other so that we all feel anchored and in turn are able to support our families, friends and community." We hope you can take some time for yourself and join us for this program series. The first seminar is April 2, 2020 at 3:00PM (CST). You can learn more about this offering and register here: <https://bit.ly/2QH4VXZ>

We plan to build on resources available to our members. If you have any suggestions or have a resource you would like to share, please contact any member of our state bar staff.

State Bar Office Operations

The State Bar office will continue to operate during regular business hours by phone and email as many of our employees will be working remotely until May 1, 2020, when we can determine appropriate next steps. All staff remain available to assist you when needed.

I wish you and your family continued health as we navigate this unknown territory together. If you have questions or concerns, please email or call.

COVID-19: FROM THE IN-HOUSE COUNSEL LENS

Join SD In-House Counsel attorneys as they discuss their experiences in dealing with the COVID-19 pandemic.

APRIL 7, 2020 AT 3:00PM (CST)

Panelists:

Nicole Tupman (Midco)

Dan Rafferty (Avera)

Mike Traxinger (Agtegra)

Moderator: Jason Unger

REGISTER HERE

STATE BAR OF SOUTH DAKOTA
YOUNG LAWYERS SECTION



by: Nathan Chicoine
YLS President



Are you tired of the same old blabber that Nate Chicoine writes in the bar newsletter?

Do you have a structured settlement but you need cash now? Well, I can help with the former, and you know who to call for the latter. I always appreciate learning how other young lawyers live and practice, and I wanted to share with the bar the perspective of a young lawyer in a rural community:



This is Rachel Mairose, writing to you from the cozy little town of Plankinton. Nathan asked me to write a guest column on behalf of the YLS for this month's newsletter, and it's made me reflect back on my first seven months as a practicing attorney. I'm a 2018 USD law

grad and clerk alumna for the First Circuit Court. After my clerkship ended last August, I started working for John Steele at his practice in Plankinton, and in January, we formed a new partnership—Mairose & Steele, Prof. LLC. I've also been appointed to serve as the State's Attorney for Aurora County. It's amazing how fast my life changed in a matter of weeks from writing research memos and opinions as a clerk to running a private practice, filing taxes, taking court appointments, and handling county criminal and civil matters.

I've found that hardest part of practicing law is coping with the monumental amount of responsibility we take on as attorneys. Wills, partnership agreements, land sale agreements, separation agreements—the effectiveness of everything we draft is dependent on our

consideration of the “what if’s” and choice of words. I've spent countless sleepless nights wondering if the draft I finally gave my stamp of approval was complete or if I gave my clients the right advice. This is where I think having a mentor to collaborate with is crucial as a young attorney. My partner, John, plans on sticking around a few more years before he retires, but I'd prefer that he stick around for all of my law career. He's been an invaluable resource to me and I'm grateful for his guidance.

As a clerk, I was familiar with the criminal side of being a State's Attorney, but almost every day I'm confronted with civil issues that I've never considered. Just in the last couple weeks, I've had to learn about captive cervid reporting requirements, raffle requests under our lottery law, and now, how to keep citizens safe during a pandemic. I might be done with law school, but that doesn't mean I'm done learning.

A highlight of my practice is being able to serve the community I grew up in and participate in the Project Rural Practice program. My family farms near Kimball, which is only a short drive away for when my mom sends me a dinner invite. I've lost track of how many times towards the end of client consultations that my client will tell me that we're related and explain how. I've now added memorizing my family tree to my list of things to learn. Joking aside, it's rewarding to know that people trust me because we're family.

Being a new attorney, I've often been told that I don't look old enough to be an attorney. Most of the time, I give a chuckle and admit that I don't feel old enough to be one, either! I've still got lots of growing and learning to do, but I know in my heart that I'm right where I'm supposed to be. If you're ever driving through Plankinton, stop by and say hi!



YOUNG LAWYERS SECTION STATE BAR OF SOUTH DAKOTA

THE YOUNG LAWYERS SECTION SEEKS NOMINATIONS FOR THE YOUNG LAWYER OF THE YEAR AWARD

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Members of the South Dakota Bar Association are invited to submit nominations for the 2020 South Dakota Young Lawyer of the Year. The Young Lawyer of the Year Award will be presented at the State Bar Convention in June. Please consider nominating a South Dakota Young Lawyer for this award.

In order to be considered for the award, the nominee must be a member of the State Bar of South Dakota in good standing and must not have (1) reached the age of 36 years by June 17, 2020, or (2) been admitted to practice in SD or any other state(s) for more than 10 years. Past recipients of the award and lawyers currently serving on the Young Lawyers Board are ineligible for consideration. Nominees should exemplify the following characteristics:

1. *Professional excellence;*
2. *Dedication to serving the legal profession and the Bar;*
3. *Service to their community; and*
4. *A reputation that advances legal ethics and professional responsibility.*

Nominating attorneys should submit a brief letter in support of their nominee to Caroline Srstka at Caroline.Srstka@state.sd.us by Friday, May 29, 2020. The letter should detail the reason(s) for the nomination and how the nominee meets the above-mentioned characteristics. We sincerely look forward to receiving your submissions. Thank you in advance.

March 27, 2020

Fellows of the South Dakota Bar Foundation

Many South Dakota lawyers have risen to the challenge of making the SD Bar Foundation a favorite charity. Such generosity deserves public acknowledgement. Therefore, the Bar Foundation Board of Directors has created a "Fellows" program to not only make such acknowledgement, but also to provide an opportunity for more of our members to participate and determine their personal level of professional philanthropy. Participation can be on an annual basis or by pledge with payments over a period of time. All contributions made to the "Fellows" program will be deposited in the Foundation's endowment account managed by the SD Community Foundation – famous for low management fees and excellent investment returns. Donations to the endowment are tax deductible and a perpetual gift to our profession and the educational and charities the Foundation supports.

Thank you!

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Fellows of the South Dakota Bar Foundation

Foundation funds go to very important projects, including: Legal Services Programs in SD, Rural Lawyer Recruitment, SD Public Broadcasting of Legislative Sessions, SD Guardianship Program, Teen Court, Ask-A-Lawyer and Educational videos on aging, substance abuse and mental health issues.

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- Platinum Fellow – \$10,000, cumulative.
- Gold Fellow – \$5,000, cumulative.
- Silver Fellow – \$1,000 per year.
- Fellow – \$500 per year.

In Memoriam

Donations in memory of a lawyer or judge may be made and will be deposited in the endowment fund. Such donations will be combined to qualify the deceased lawyer/judge as a fellow.

Today I am sending \$_____ (amount) to begin my gift.

Mail payment to:

State Bar of South Dakota
111 W Capitol Ave. #1
Pierre, SD 57501

Or you can email this form to:

tracie.bradford@sdbar.net or call 605-224-7554 to set up a payment.

Donations to the endowment are tax deductible and a perpetual gift to our profession and the education and charities the Foundation supports.

Dean's List: News from the Law School



by: *Neil Fulton*
Dean
USD School of Law

“525,600 minutes; 525,000 moments so dear.
525,600 minutes; how do you measure, measure a
year?”

These lyrics come from the musical *Rent* which came out in the 90s, (or as most Law School students know those years, “grade school”). They were going to introduce a column giving you an overview of everything that has happened around the Law School over the last year. But circumstances change and the reality is that I need to devote this column to telling you about our response to the COVID-19 outbreak.

I should start by saying that I’m typing this on March 19th. By the time you read it, the information will almost certainly be out of date. Circumstances are changing hourly, not even daily. But hopefully it can give you some picture of the Law School during this unprecedented time in history.

Following the first identified cases of COVID-19 in South Dakota, USD (along with the other Regental institutions) extended spring break by a week. During the extended spring break period, faculty met to begin preparing remote delivery of their classes. “Remote delivery” will take several forms. For some classes it is as simple as recording lectures through Zoom and putting them up on USD’s distance learning platform. Some professors are doing lectures live so that students can maintain continuity, some recording asynchronously to give students flexibility. Some skills classes take a bit more adaptation. Trial techniques is having students record openings and closings, circulate them for class critique via YouTube and then do second rounds incorporating feedback. Faculty

are adding mid-term assessments to track student progress in a new deliver environment and to reduce the singularity of final exams since students are facing unprecedented disruption in their lives and may not be able to prepare for exams in the manner they would hope. It is a situation unlike any the Law School has faced in the lifetime of any member of the community. Faculty are brilliantly stepping up to this challenge to adapt and provide academic continuity to students.

Adjusting to remote delivery presents a lot of questions for students. Some were around campus when the announcement of extended spring break and remote delivery came, but many were not. We are working with students to make sure that they have access to their books. Publishers are helping to provide online texts for those students not able to get back to their hard copies. Some students lack Internet access from home, so we are working to keep campus facilities safe and accessible while observing proper protocols to reduce the opportunities for virus transmission.

All USD on campus events have been canceled through the end of April. Some events have just been postponed until a better time like our Native American Law Student Association Indian Law Symposium, the Law Review banquet to honor Justice Steven Zinter and Professor Frank Pommersheim, and our Indian Law field trip to the Rosebud Indian Reservation. We hope to pull a few events online so that students, faculty, and staff continue to have some outlets, but our initial focus is getting prepared for remote delivery of classes and completion of the academic elements of the semester. That will also include sorting through how to conduct final exams and deliver grades in a remote environment. That will be less than ideal, but everyone is working together with flexibility, patience, and persistence to make it work.

Adaptability is the name of our game right now. The Moot Court board is planning to conduct the annual Sam Masten Moot Court contest through Zoom. Law review is working through email, Zoom,

and other tools to get their current volumes out on time. The recruiting office is conducting virtual visits for future law students. Student organizations are finding ways to build online connections among the classes so that nobody feels too isolated. We are conducting Student Bar Association election and co-curricular board selections through Zoom and other techniques. We are working to adjust bar exam preparation for online delivery. Career Services is conducting remote sessions on resume preparation, career counseling, and finding ways to work with employers who have had their own operations disrupted. Again, none of this is ideal, but everyone is working well with what is available to us to the best with what we can.

As I write, there's a lot that remains unclear. Our graduation plan is uncertain. The March LSAT was canceled so fall applications are not guaranteed. Faculty and students are adjusting daily to conduct legal education in a remote environment. I am trying to find ways to effectively communicate with everyone in the USD Law community so that we are on the same page. This is all difficult and disorienting. But we remain focused on who we are—a community of excellence, service, and leadership; South Dakota's law school, and the home of the law in South Dakota. And when times are hardest, it is most important that you can always come home. Know that everyone at the Law School is working to find ways to serve South Dakota in this challenging environment.

To close, I would bring it all the way back around to Rent, my friends. With all that is going on now, there is perhaps no better way to summarize the year at USD than this:

“its time to sing out, though the story never ends; let's celebrate, remember a year in the life of friends.”

The year has been trying at times, particularly in recent weeks. But friends of the Law School, it has also been a great one. And together the year to come will be great as well. Thank you for your friendship and support of the Law School. Be safe. Be well.

**"ITS TIME TO SING OUT,
THOUGH THE STORY NEVER
ENDS; LET'S CELEBRATE,
REMEMBER A YEAR IN THE
LIFE OF FRIENDS."**



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- Master of Science in Rehabilitation Sciences
- Occupational therapist, registered and licensed
- Certified Life Care Planner

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A2J JUSTICE SQUAD

Thank you to the following attorneys for accepting a pro bono or reduced rate case from Access to Justice, Inc., this month! You are now a member of the the A2J Justice Squad - an elite group of South Dakota lawyers who accept the responsibility to defend justice, uphold their oath and provide legal representation to those who need it.

- **KYLIE RIGGINS**
- **DICK ERICSSON**
- **STEPHANIE POCHUP**
- **CESAR JUAREZ***
- **LORIE MELONE**
- **SARAH BARON HOUY ****
- **RON VOLESKY**
- **DIANA BONI**

*Accepted **TWO** cases this month

Accepted **THREE cases this month

AND MUCH THANKS TO:

Scott Moses

Beth Baloun

Bob Morris

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Are you interested in becoming a legal superhero
and member of the A2J Justice Squad?

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IT'S WHEN
YOU KNOW
YOU'RE
LICKED
BEFORE
YOU
BEGIN,
BUT YOU
BEGIN
ANYWAY
AND SEE
IT
THROUGH
NO
MATTER
WHAT.
”

HARPER LEE

TRIVIA: April 28th is
Harper Lee's Birthday



State Bar of South Dakota

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Dear State Bar of South Dakota Members:

As President-Elect, it is my privilege to fill vacancies on State Bar Standing and Special Committees for the 2020-2021 Association year. To assist our Appointments Committee with this important process, please complete the following survey to indicate your desire to *join or retain* your appointment to our State Bar Committees.

This survey also provides you the opportunity to join Sections of the Bar. State Bar Sections are self-governing and do not require presidential appointment but indicating your desire to join the Sections through this survey provides us with the information we need in order to add you to the Section's community on the State Bar website and notify Section leadership of your affiliation with the Section.

Requests for appointment should be made electronically, beginning on **March 1, 2020** at:

<https://www.surveymonkey.com/r/36KB9PP>

Requests must be received by **April 15, 2020** for consideration. In addition to your request, we hope that you will encourage any other interested members to fill out the electronic application.

Thank you in advance for your assistance. Although there are a limited number of vacancies to fill, I will give each application thorough consideration. If you would like to discuss this process or application process, please feel free to contact Elizabeth Overmoe at (605) 929-5980, or elizabeth.overmoe@sdbar.net.

The Appointments Committee and I look forward to hearing from you and thank you for your assistance in this important process for our State Bar.

Sincerely,

Terry

Terry Westergaard
President-Elect
State Bar of South Dakota



Lisa K. Cagle
Gunderson, Palmer, Nelson & Ashmore, LLP

Written on March 20th, 2020

Disclaimer: The Congressional response to the COVID-19 coronavirus is continuing to develop and change as new challenges emerge. This is a summary of only a portion of the law that was passed on March 18, 2020. Every situation is different. Please consult with counsel to determine how these changes may impact you.

President Trump signed into effect the Families First Coronavirus Response Act on March 18, 2020. This Act will be effective from April 2 until December 31, 2020. The Act provides funding for several programs, several of which apply to employers and their employees. In particular, the Act contains a temporary expansion of the Family and Medical Leave Act (FMLA), adds an Emergency Paid Sick Leave, and establishes a tax credit for employers who are required to pay their employees for leave under this Act.

Emergency Family and Medical Leave Expansion Act

As the name suggests, the FMLA has been temporarily expanded. The keys expansions are explained below:

- An employee is eligible for FMLA leave after being employed by the employer for at least 30 days rather than the 12 months previously required. An eligible employee may take up to 12 weeks of job-protected leave. There are some specific exceptions to this requirement such as for health care providers and certain employers with fewer than 25 employees.

- Previously, only employers with more than 50 employees were required to provide FMLA leave. Now any employer with fewer than 500 employees must provide FMLA leave. The Act does provide an exemption for employers with fewer than 50 employees if providing the FMLA leave would jeopardize the viability of the business.
- The Act adds coverage for leave due to a “qualifying need related to a public health emergency.” A “qualifying need related to a public health emergency” means an employee is unable to work or telework because he or she must care for a child under the age of 18 if the child’s school or place of care is closed or unavailable due to a public health emergency.
- The Act has a provision allowing for paid leave after the first 10 days.

Emergency Paid Sick Leave Act

This act requires all employers, with some specified exceptions, with fewer than 500 employees to provide paid sick leave when an employee is unable to work or telework due to the following reasons:

1. The employee is subject to a quarantine or isolation order related to COVID-19.
2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
3. The employee has symptoms of COVID-19 and is seeking a medical diagnosis.

4. The employee is caring for an individual subject to a quarantine or isolation order or advised by a health care provider to self-quarantine due to concerns related to COVID-19.
5. The employee is caring for a child because the child's school or place of care is closed or unavailable due to COVID-19 precautions.
6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

An employee is eligible for paid sick leave regardless of how long he or she has been employed with the employer. Additionally, an employer cannot require an employee to use other paid leave before using the emergency paid sick leave.

Employers are required to post notice of the requirements of the Emergency Paid Sick Leave Act in a conspicuous place. The details what must be included in this notice are expected to be released in the next several days.

Employer Tax Credits for Paid Sick and Paid Family and Medical Leave

The Act provides employers a refundable tax credit equal for the wages paid in compliance with the Emergency Paid Sick Leave Act and the Emergency Family and Medical Leave Expansion Act.

One of our attorneys, Lisa K. Cagle, wrote this article. Please reach out to her or our firm if you have any questions regarding this act. We want to be able to help answer any of your questions.



Lawyer, Coe I. Crawford to be honored on the Trail of Governors

by: Chuck Schroyer

Since its creation in 2010, the Trail of Governors project in Pierre has become a principle attraction in the Capital city and is nearing completion with 25 full size bronze statues honoring South Dakota's 31 former chief executives installed to date. On June 12, 2020, three additional former Governors will be honored, including former Governor Coe I. Crawford (1907-1908).



A graduate of the University of Iowa Law School, Crawford moved to Dakota Territory in 1883, establishing a practice in Pierre. He served as Hughes County State's Attorney, State Senator and Attorney General before his election as Governor and thereafter in the

U.S. Senate before returning to establish a practice in Huron.

The statue of Governor Crawford will be among the last of the 15 lawyers who have to date served as Governor of South Dakota to be included on the Trail. As such, the State Bar and the owner of the historic Hyde Block building in which the new Bar headquarters is located, suggested that Governor Crawford's statue be placed nearby at the corner of Pierre Street and



Capitol Avenue. The building is also home to the offices of Senator Mike Rounds, the Office of the Federal Public Defender and the local office of the Gunderson, Palmer Nelson & Ashmore law firm and located in close proximity to the Capitol and the Hughes County Courthouse.

To assist in the funding of the Crawford statue, the Trail Foundation feels it would be fitting for members of the Bar to consider tax deductible donations to the Trail. Those individuals, firms or organizations contributing \$18,000 or more to the \$72,000 cost of the statue will, as Sponsors, have their names included on the accompanying bronze plaque. Contributions may be made as memorials or in honor of legacy partners. Should the collective non Sponsor contributions of State Bar members exceed the one-quarter funding level, reference to "Members of the State Bar of South Dakota" will also be included on the plaque, allowing the Bar to join the many statewide business and professional organizations as a Trail Sponsor. The generous contributions of all donors, regardless of amount, are also recognized on the Trail of Governors website.

Donations may be forwarded to the State Bar of South Dakota, 111 W Capitol Ave., #1, Pierre, SD 57501 or the South Dakota Community Foundation, 1714 N. Lincoln, Pierre, SD 57501. Please note that the donation is to "Trail of Governors/Crawford". Information about the Trail is available on the Trail website: www.TrailofGovernors.com. State Bar Members are also encouraged to attend the unveiling of the 2020 class of Governors on June 12, 2020 in the Capitol Rotunda and to visit the Trail in conjunction with the State Bar Annual Meeting in Pierre, June 17-19, 2020.

If questions or for further information please contact Pierre lawyer and Bar member, Chuck Schroyer who serves as a member of the Trail of Governors Board at (605) 280-2623.



February 28, 2020

Mr. Andrew Fergel
Secretary-Treasurer
South Dakota Bar Foundation
111 Capitol Avenue #1
Pierre, SD 57501

Dear Mr. Fergel,

On behalf of the members of the South Dakota Teen Court Association, thank you for the recent grant award of \$5,000 to the Association. The continued generosity of the Bar Foundation in making this grant is greatly appreciated.

Teen court programs continue to operate in all judicial circuits on the State. These programs provide options and alternatives for states' attorneys, defense attorneys and judges when dealing with juvenile defendants. We appreciate the support of lawyers from across the state in making these programs possible, and in allowing teen courts to play a role in this important effort to address juvenile offenders.

Thank you for your continued partnership with the South Dakota Teen Court Association to help provide additional opportunities for youth to be held accountable for their actions, while at the same time contributing in a positive way to the community where they live.

For the Association,



Jennifer L. Stalley
Statewide Coordinator

Post Office Box 116 ♦ Pierre, SD 57501

The South Dakota Teen Court Association encourages development of new teen courts in South Dakota, seeks to enhance and sustain existing teen court programs and promotes interagency cooperation and information sharing among state and national teen courts.

ANNOUNCEMENTS

Effective April 1, 2020,

Schaffer Law Office

will be moving. Their new address is:

Schaffer Law Office, Prof. LLC
5132 S. Cliff Avenue, Suite 5
Sioux Falls SD 57108

Telephone: (605) 274-6760
Facsimile: (605) 274-6764

mikes@schafferlawoffice.com
paull@schafferlawoffice.com

Gunderson, Palmer, Nelson & Ashmore, LLP
is pleased to announce that

Matthew E. Naasz

is now a partner of the firm.

Gunderson, Palmer, Nelson & Ashmore LLP
506 6th Street
Rapid City, SD 57701

Telephone: (605) 342-1078
Facsimile: (605) 342-9503

mnassz@gpna.com

www.gpna.com

Lockwood & Zahrbock Kool Law Office
is pleased to announce that

Rachel Preheim

has joined the firm effective March 2, 2020.

Lockwood & Zahrbock Kool Law Office
400 N. Main Ave. Suite 202
Sioux Falls, SD 57104

Telephone: (605) 331-3643
Facsimile: (605) 330-9856

rachel@lockwoodlaw.com



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YOU'RE INVITED

Statewide Swearing-In Ceremony

The State Bar of South Dakota Young Lawyers Section requests the honor of your presence at the Statewide Swearing-In Ceremony for new South Dakota attorneys

3:00 P.M.
Friday, October 23



Capitol Rotunda
Pierre, South Dakota

Please **RSVP** by October 9th to
Caroline.Srstka@state.sd.us
Or (605) 367-5883

Reception to
Follow

BROOKINGS

Edward Hruska
Beth Overmoe
Ramon Ortiz*
Tony Teesdale
Kelly Collinsworth
Steve Brtizman

*by phone

The USD Veterans Legal Education Group ("VLEG") would like to thank the attorneys who volunteered during the Veterans Walk-In Legal Clinics on March 6-7, 2020, in Brookings and Sioux Falls. Special thanks to the State Bar of South Dakota Young Lawyers Section and Veterans Committee for their support in planning and supporting the two-day event. We helped 69 veterans at the clinics.

SIoux FALLS

Edward Hruska
Beth Overmoe
Ramon Ortiz
Gary Thimsen
Josh Brown
John Hamilton
Adam Oster
Nichole Mohning
Tyler Coverdale
Rick Ramstad
Jon Olson
Greg Brewers
Amber Walter
Alex Moreno
John Miscione

**YOU
ARE
GOLD**

STUDENT BAR ASSOCIATION

University of South Dakota School of Law
414 East Clark St.
Vermillion, SD 57069



Members of the State Bar of South Dakota,

Marshall M. McKusick, who served the legal profession and the University of South Dakota School of Law for nearly six decades, truly made a lasting impact. The resources he has provided have been of great benefit and value to law students, past and present, and will continue to have a positive impact on those entering into the legal profession for generations to come.

Each year, in honor and celebration of Marshall McKusick's dedication and service to the legal community in South Dakota, the Student Bar Association recognizes an outstanding member of the South Dakota Bar for their contribution to the profession. The McKusick Award will be presented at the State Bar Convention this June.

Nominations are now open for the 2020 McKusick Award. Please consider submitting a nomination. Nominations can be submitted via e-mail to whitney.reed@coyotes.usd.edu, or addressed to Whitney Reed c/o Student Bar Association, University of South Dakota School of Law, 414 East Clark Street, Vermillion, South Dakota 57069.

We look forward to receiving your nominations prior to the due date of May 7, 2020.

Respectfully,

Whitney Reed
President, USD Law Student Bar Association



SBA President Whitney Reed and USD Law alumni Jason KW Krause pose for a photo after Jason was awarded the inaugural USD Law Student Bar Association Alumni Service Award.

SBA Secretary Nolan Welker and USD Law alumni Raleigh Hansman pose for a photo after Raleigh was awarded the inaugural USD Law Student Bar Association Alumni Service Award.

STUDENT BAR ASSOCIATION

University of South Dakota School of Law
414 East Clark St.
Vermillion, SD 57069



The USD School of Law Student Bar Association has set forth a goal to recognize School of Law alumni who have gone above and beyond in their contributions to furthering educational and experiential growth among students at the School of Law. The resulting Student Bar Association Alumni Service Award will be given to deserving recipients who have demonstrated devotion, passion, and drive to enhance the education experience by volunteering, assisting and contributing their time and resources in furtherance of the needs and mission of the School of Law. This award will not be given annually. The Student Bar Association Alumni Service Award is reserved to recognize only those who have exemplified the spirit and characteristics of the purpose of the award. In the award's inaugural year, two recipients have been chosen as stellar examples of alumni who have contributed in substantial and meaningful service to the School of Law. The Student Bar Association is proud to recognize Raleigh Hansman and Jason KW Krause. Consideration for this award, while thorough, was not necessarily difficult in terms of alumni who give of their time and talent to students. Raleigh and Jason's dedication to the students of the University of South Dakota School of Law since their graduation in 2012 is what we want students to aspire to in their own professional lives.

From Raleigh's support at student organization events, such as our First Generation Law Student Organization's panel to her support of co-curricular board competitions to her willingness to come present to students at the school for panels and classes, along with a plethora of other examples, there is no question that Raleigh is deserving of this recognition and award. When students are asked about alumni who give back and are present, Raleigh is one of a select group that comes to mind, with her impact on students in the school being profound. Similarly, Jason's support at student-run events to his support of co-curricular board competitions to his representation of students who need his help, along with a plethora of other examples, there is again no question that he is also deserving of this recognition and award. A statement that has continued to stand out about why Jason chooses to engage and work with the students at the law school has been "I don't do it for an award but because someone once did it for me."

It is that statement and the same type of belief we hope students will learn to value for years to come and incorporate into their professional lives in the future, the same way Raleigh and Jason both have. It is an honor and privilege to give them both this award, in its inaugural year, as they have been and will hopefully continue to be for years to come, alumni who support and inspire students at the law school.

Jason and Raleigh were recognized at an awards ceremony on March 2, 2020 at the law school along with the 2019 Adjunct Professor of the Year, Alex Hagen, for exceptional teaching during 2019 for Business Organizations. Also recognized at the awards ceremony was the John Wesley Jackson recipient, Professor Tom Simmons.

Student Bar Association Executive Board
University of South Dakota School of Law

Whitney Reed
President

Dylan Kirchmeier
Vice President

Nolan Welker
Secretary

Eddie Swiontek
Treasurer

Lexi Baca
ABA LSD Rep.

What's Your Plan?

While it may seem near impossible to prepare for all potential threats of devastation, a few areas of focus that will not only bail you out in tough times but could also add value to your business are outlined below:

- Succession Plan- In the event of the proverbial bus hitting a key employee, having trained employees to step in could allow for business continuity.
- Operating/Shareholder Agreement- A well-executed agreement that has been thoroughly discussed by company owners could help to reduce the "what now" questions any time a major event occurs such as key employee resignation, disability, termination, or death.
- Disaster/Emergency Plan- An outline of steps to take in the event of disaster can be lifesaver if disaster strikes.

Ultimately, having thoughtful conversations and well-documented plans for potential threats are just good business, and could decrease risk and consequently increase the value of your business.




Ericka Heiser,
MBA, CVA, Director
ericka@ktllp.com


Paul Thorstenson,
CPA/ABV, CVA, Partner
paul@ktllp.com

Ketel Thorstenson, LLP

Certified Public Accountants/Business & Personal Consultants

ktllp.com

810 Quincy St. | Rapid City, SD | 605-716-8997  609 Mount Rushmore Rd. | Custer, SD | 605-673-3220

123 East Jackson Boulevard, Ste. 2 | Spearfish, SD | 605-642-7676  305 S. Garner Lake Rd., Ste. A | Gillette, WY | 307-685-4433



With coronavirus impacting our homes and our work, so much has changed in a short amount of time. To support our legal community in these evolving times, attend this webinar to practice various resiliency tools including guided meditation to support us in staying centered when things are unpredictable. Let's support each other so that we all feel anchored and in turn are able to support our families, friends and community. Participants will get instruction on resiliency, meditation, and breathing techniques to help feeling more anchored and grounded.

Presenter: Rudhir Krishtel is an executive coach and facilitator focusing on workplace wellness and intensity. Many lawyers struggle with stress

and lack of purpose in their practice. As a former lawyer, Rudhir coaches clients and hosts workshops to identify the issues that hold lawyers back from advancing in their career with clarity and fulfillment.

Prior to becoming an executive coach and consultant, Rudhir practiced law for 15 years as a federal clerk, patent litigation partner at Fish & Richardson, and then as senior patent counsel at Apple.

His lawyer days led him to train as a teacher for yoga and mindfulness meditation, and as a Professional Certified Coach to serve as a much-needed support for the legal community.

- Apr 2, 2020 03:00 PM
 - Apr 9, 2020 03:00 PM
 - Apr 16, 2020 03:00 PM
 - Apr 23, 2020 03:00 PM
- Time shows in Central Time (US and Canada)

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Supreme Court
STATE OF SOUTH DAKOTA

David Gilbertson
CHIEF JUSTICE

March 9, 2020

South Dakota State Bar
111 West Capitol #1
Pierre, SD 57501

To All Members of the State Bar:

At the February rules hearing, the Court considered a proposed amendment to Rule 8.4 of the South Dakota Rules of Professional Conduct submitted by the State Bar. The proposed amendment would add the following paragraph to the definition of professional misconduct:

(g) engage in harassing or discriminatory conduct by the known use of words or actions based upon race, sex religion, national origin, disability, age, or sexual orientation when that conduct is directed to litigants, witnesses, lawyers, judges, court personnel; or others and that conduct is prejudicial to the administration of justice. This rule does not apply to legitimate advocacy when race, sex religion, national origin, disability, age, or sexual orientation is an issue in any legal proceedings, action or forum where said counsel provides advice. This rule is not intended to prevent an attorney from declining to represent a client. A finding that a preemptory challenge is exercised in a biased or prejudicial fashion on any of the above-named does not violate this rule. Any violation of the rule may be used solely for disciplinary proceedings and shall not form the basis of a private civil cause of action or a criminal or quasi-criminal complaint or charge.

As related to the Court, the history behind the proposed amendment to Rule 8.4 began with the American Bar Association's adoption of a number of changes to the model Rules of Professional Conduct in 2016. The State Bar Commission declined to submit the ABA's amended model Rule 8.4 to the membership for consideration. However, the State Bar Ethics Committee and Bar Commission examined whether an alternative form of the rule should be proposed. After the Ethics Committee suggested three variations of the rule, the Commission, in a closely divided vote, ultimately agreed upon a different version proposed by a commissioner. This version was submitted to the membership at the June 2019 Annual Business Meeting. The membership, after a sharply divided vote, passed the currently proposed rule for submission to this Court at the February 2020 Rules Hearing.

As part of the hearing process, the Court considered a number of written and oral responses to the proposed amendment. The proponents argue the amendment is necessary to address the issue of

discrimination and harassment in the legal profession. Proponents acknowledge that the Rules may already prohibit discriminatory and harassing treatment by members of the profession in South Dakota, but urge that a specific rule is necessary to establish a clear expectation that such behavior is unacceptable within the profession.

The opponents argue that the language of the proposed amendment is too broad in its scope, and is vague in describing the words and conduct that could subject a lawyer to discipline. Opponents laud the effort to address discriminatory and harassing behavior within the profession, but assert the language of the proposed amendment will result in unintended consequences by infringing upon lawyers' constitutional rights of free speech and free exercise of religion.

Following the hearing, the State Bar presented the Court with a membership survey from 2018 that was part of the backdrop leading to the proposed amendment. The survey shows that 20% of the respondents indicated they had experienced some form of sexual harassment in the legal profession. Sexual harassment was not the focus of the survey, but a majority of those respondents who reported having experienced such harassment indicated that they were reluctant to report the incident. Half of those who did report indicated that the incident was not adequately addressed.

After carefully considering the submissions received from those on both sides of this issue, the Court has unanimously decided to deny the proposed amendment to Rule 8.4. The Court is not convinced that proposed Rule 8.4(g) is necessary or remedies an identified problem.

However, the State Bar survey does raise significant concern about the issue of sexual harassment in the profession. As such, the Court will appoint a Commission of justices, judges, lawyers, and others in the justice system to study and make recommendations to the Court regarding how best to prevent and redress sexual harassment within the legal profession in South Dakota. The Court will direct the Commission to study whether the current Rules provide the necessary framework to address any issues identified, including the underreporting of complaints. The Commission may recommend procedures to ensure that appropriate investigations are undertaken and responses are made to complaints, and may propose rules as needed. The Court expects to have a Commission in place by April 15, 2020 and a report from the Commission before the end of the calendar year.

The Court is grateful to the State Bar and the Ethics Committee for its work in drafting and presenting the proposed amendment to Rule 8.4, and the willingness of individual members to present their perspectives on the amendment.

Sincerely,



David Gilbertson
Chief Justice

cc: Supreme Court Justices

ATTORNEYS - OATH OF ATTORNEY

I do solemnly swear, or affirm, that:

I will support the Constitution of the United States and the Constitution of the State of South Dakota;

I will maintain the respect due to courts of justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with a client's business except from that client or with the client's knowledge or approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.

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U.S. Department of Justice

*Ronald A. Parsons, Jr.
United States Attorney
District of South Dakota*

515 Ninth Street #201
Rapid City, SD 57701
605.342.7822
FAX: 605.342.1108

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FAX: 605.224.8305

PO Box 2638
Sioux Falls, SD 57101-2638
605.330.4400
FAX: 605.330.4410

March 30, 2020

PROCESS FOR SERVICE OF CIVIL PLEADING WITHIN THE DISTRICT OF SOUTH DAKOTA UNDER EXIGENT CIRCUMSTANCES CREATED BY COVID-19/CORONAVIRUS

EFFECTIVE IMMEDIATELY, the United States Attorney's Office – District of South Dakota will not accept personal service of pleadings, including those that are initiating suit, such as civil complaints, petitions for writs of habeas corpus, motions for temporary restraining orders, etc. We strongly recommend that you mail a hard copy of the pleading, certified mail, return receipt requested, to the Civil Process Clerk at our Sioux Falls office AND that you email a .pdf version of the pleading to: usasd.civilpleadings@usdoj.gov. Be advised that nothing in this notice is intended to alter the service requirements contained in the Federal Rules of Civil Procedure. This does not apply to bankruptcy petitions or other bankruptcy pleadings, which must be served according to the Bankruptcy Rules.

For further questions, please contact the US Attorney's Office at (605) 330-4400 between the hours of 8:00 am – 5:00 pm, Monday through Friday.

RONALD A. PARSONS, JR.

A handwritten signature in blue ink that reads "RARPARSONS".

United States Attorney
District of South Dakota

STUDENT BAR ASSOCIATION

University of South Dakota School of Law
414 East Clark St.
Vermillion, SD 57069



March 31, 2020

The University of South Dakota School of Law Student Bar Association held elections on Monday, March 30, 2020 to elect a new executive board for the 2020-2021 school year. The election produced high turnout for student voters with 125 students participating in the SBA Presidential Election. The 2019-2020 SBA Executive Board is proud to announce the new executive board.

Lexi Baca-President

MarieClaire Christenson-Vice President

Levi Mitchell--Secretary

Matt Gaul-Treasurer

Renee Gallagher-ABA LSD Representative

Congratulations to our new board! I know we are all excited to see what they accomplish next year at USD Law. Their term begins upon completion of the 2019-2020 school year, but if anyone would like to get to know members of the board better, please reach out to me via e-mail (whitney.reed@coyotes.usd.edu) and I will get you connected!

Kind regards,

Whitney Reed

President, USD Law Student Bar Association

Whitney Reed
President

Dylan Kirchmeier
Vice President

Nolan Welker
Secretary

Eddie Swiontek
Treasurer

Lexi Baca
ABA LSD Rep.



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COVID-19 Update

March 26, 2020

We are facing an ever-changing landscape with how COVID-19 is impacting our communities and businesses. This update will provide information on the following topics:

- The Families First Coronavirus Response Act (Paid Leave and E-FMLA)
- ADA Changes to allow for the taking of temperatures of employees
- Temporary modifications to the way I-9 documents are reviewed
- Benefit Considerations for leave, furloughs and layoffs
- Minnesota Shelter-in-Place Order

THE FAMILIES FIRST CORONAVIRUS RESPONSE ACT PAID LEAVE PROVISIONS

The Families First Coronavirus Response Act (the “FFCRA”) was signed into law last week. The FFCRA provides additional benefits for employees impacted by the COVID-19 crisis including a limited period of paid sick leave and expansion of the Family and Medical Leave Act (“FMLA”) to provide an extended period of unpaid or partially paid leave for a public health emergency (“E-FMLA”).

On March 24, 2020, the Department of Labor issued the first guidance for implementation of the FFCRA paid sick leave and FMLA expansion. We now have clarification on some items, but questions still remain. Additional guidance will be forthcoming.

Of importance, both of these provisions will go into effect on April 1, 2020 for leave taken April 1, 2020 through December 31, 2020 for qualifying reasons. There will not be a retroactive application of the leave provisions. Thus, any leave taken prior to April 2, 2020, will be treated under employer’s current policies and/or existing laws.

The summaries of the act provisions with current information is as follows:

THE EMERGENCY PAID SICK LEAVE ACT

- **Covered Employers:** The Emergency Paid Sick Leave Act applies to private employers who employ fewer than 500 employees and government employers.
- **Qualifying Reasons for leave:** The Act provides paid sick leave to employees to the extent that the employee is unable to work (or telework) because:
 1. The employee is subject to a federal, state or local quarantine or isolation order related to COVID-19.
 2. The employee has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
 3. The employee is experiencing symptoms of COVID-19 and is seeking a medical diagnosis.
 4. The employee is caring for an individual who is subject to a quarantine or isolation order or has been advised by a health care provider to self-quarantine.

5. The employee is caring for a son or daughter because the child's school or place of care has been closed or the child's childcare is unavailable due to COVID-19 precautions.
 6. The employee is experiencing any other substantially similar condition specified by the Secretary of the HHS in consultation with the Secretary of the Treasury and the Secretary of Labor.
- **Exception:** Employers of health care providers or emergency responders may elect not to provide this leave to those employees.
 - **Qualifying Employees:** Paid sick time must be made available to all employees, no matter how long their tenure.
 - **Notice Procedures:** Employers may require employees to follow reasonable notice procedures to continue to receive Paid Sick Leave after the first workday (or portion thereof) an employee receives paid sick time.
 - **How Much Leave Will Qualified Employees be Entitled To?**
 - Full-time employees are entitled to 80 hours of paid sick leave.
 - Part-time employers are entitled to an amount of leave equal to the average number of hours the employee works over a two-week period.
 - There is no carryover from year to year for this paid sick time, and once the employee returns to work the employer is not required to provide any further paid sick leave as required by the Act.
 - Employers cannot require an employee to find a replacement before allowing the employee to take this paid sick time.
 - **Calculation of Pay**
 - If time off is taken for the employee's own medical condition (Reasons 1, 2 or 3 above), employees must be compensated at the higher of
 - (1) the employee's regular rate of pay,
 - (2) federal minimum wage, or
 - (3) the local minimum wage.
 - If time off is taken to care for a sick family member or a child who is not in school (Reasons 4, 5 and 6), employees must be compensated at two-thirds of their regular rate of pay.
 - There is a cap on the amount an employer is required to pay to employees receiving Paid Sick Leave. These caps differ depending on whether the employee is receiving full wages or two-thirds wages.
 - Cap of \$511 per day and an aggregate limit of \$5,110 for those receiving full wages (Reasons 1, 2, and 3 above)
 - Cap of \$200 per day with \$2,000 aggregate when leave is to care for another (Reasons 4, 5, and 6 where the employee would be paid at a two-thirds rate).
 - The Regular Rate of Pay is calculated under the FLSA regulations which can be found here: <https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate>

- **Required Posting** - Employers will be required to post an approved notice regarding the Act in a conspicuous place. The poster can be found via this link:

https://www.dol.gov/sites/dolgov/files/WHd/posters/FFCRA_Poster_WH1422_Non-Federal.pdf

The FAQ regarding the posting requirements can be found here:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-poster-questions>

- **Employee Protection** – Employers cannot take any retaliatory action against an employee who takes leave under the Act.
- **Compliance Penalties**- Employers will be subject to FLSA penalties for failing to comply with the Act, but there is a 30-day penalty moratorium as long as the violation is not willful.
- **Available Tax Credits.**
 - The Act provides for a limited refundable employment tax credit equal to the amount that an employer pays to an employee under the Act.
 - Those amounts are increased by the amount of nontaxable health insurance premiums paid by the employer for employees who are out on paid leave under the Act increased by the amount of Medicare tax owed by the employer.
 - Further details regarding the credits are forthcoming.

EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT (the “E-FMLA”).

In addition to the Emergency Paid Sick Time Act, the Families First Coronavirus Response Act also contains expanded leave under FMLA. The E-FMLA expands the protections of the Family and Medical Leave Act to add Public Health Emergency Leave.

- **Covered Employers:** All employers with fewer than 500 employees will be required to provide the COVID-19 related leave. Employers with over 500 employees still have the same obligations under the FMLA as before, but not to provide the expanded COVID-19-specific leave.
- **Eligible Employees:** An employee is eligible for E-FMLA if the employee seeking leave has been employed for at least 30 calendar days (before the first day of leave).
- **Exempt Employers:** Employers of health care provider or emergency responder employees may exempt those employees from coverage.
- **Qualifying Reasons for Leave**

Emergency FMLA leave is available under these amendments if a qualifying employee is unable to work (or telework) due to a need to care for a child under 18 years of age if:

- The child's school or place of care has been closed, or

- Their child care provider is unavailable due to a public health emergency involving COVID-19 and declared by a federal, state or local authority.
- **Pay During Leave**
 - The first 10 days (two weeks) of E-FMLA are unpaid, but an employee may elect (and an employer may require an employee) to substitute any accrued vacation, personal leave, or medical or sick leave for unpaid leave.
 - Emergency Paid Sick Time Act leave may also be used.
 - After 10 days, employers shall provide partial paid leave at an amount that is not less than two-thirds of an employee's regular rate of pay for the number of hours the employee would otherwise be scheduled to work.
 - For employees who have weekly working hours that fluctuate, the employer is allowed to take an average over a six-month period.
 - Not exceed \$200 per day and \$10,000 in the aggregate.
- **Job Restoration**
 - FMLA's standard job restoration requirements will apply to employers with 25 or more employees.
 - For employers who employ fewer than 25 employees, job restoration is not required if all the following conditions are met:
 - The employee takes E-FMLA
 - The position held by the employee does not exist due to economic conditions or other changes in operating conditions.
 - The employer makes reasonable efforts to restore the employee to an equivalent position
 - If no equivalent positions are available at the time, the employer must attempt to contact the employee if an equivalent position becomes available in the next year.
- **Exemptions and Special Treatment**
 - The Secretary of Labor has the authority to exempt certain employers, including health care providers, emergency responders, and businesses with under 50 employees.
 - Exemptions will be granted only if the leave requirement would jeopardize the business as an ongoing concern. We are still awaiting the regulations on how that will be determined.
 - Employers with fewer than 50 employees cannot be sued for violations of the E-FMLA provisions.
- **Tax Credits**
 - As with the Emergency Paid Sick Time Act, employers may claim a limited refundable employment tax credit equal to payments made to employees for E-FMLA leave, subject to a maximum per employee of \$200 for each day of qualifying leave up to \$10,000 per employee for the year.

- Also like the credit for Emergency Paid Sick Time benefits, those amounts are increased by the amount of nontaxable health insurance premiums paid by the employer for employees who are out on E-FMLA Leave, for the days of leave, and further increased by the amount of Medicare tax owed by the employer with respect to the E-FMLA leave payments.
- The employer's total available credit amount is also added to its income for the year.
- Unlike the credit for Paid Sick Time, however, there is already a general business credit available to certain employers who provide paid FMLA leave, and the new E-FMLA credit is not allowed with respect to any wages for which the general business credit is allowed ("double dipping" is not permitted).

The Wage and Hour Division will be taking comments through March 29, 2020 on both leave provisions on its website. You may participate in the comments via the following link: <https://ffcra.ideascale.com>

The State of South Dakota Department of Labor has also updated its COVID-19 resources. There are links to items related to Reemployment Assistance (formerly unemployment insurance), workers' compensation and other matters. These may help you and your employees as we work through some of the state and local matters.

https://dlr.sd.gov/covid_19_resources.aspx

BENEFITS ISSUES

If employees are going to be placed on leave or FMLA leave do make sure that you have determined how benefits such as health insurance, voluntary insurance options, retirement contributions, etc. will be addressed. This is also the case if employees will be placed on furlough (temporary reduction of hours/schedule) or laid off. Most health plans are now issuing special guidance on how eligibility will be impacted by COVID-19 related items. Please make sure that you have looked at these issues before you make decisions on how to proceed.

ADA CHANGES

The EEOC announced that it will view employers taking the temperature of employees as a permitted medical exam. Thus, if you wish to take the temperature of employees to ensure that they are not running a fever at the time they are at work it can be done. However, you must have the necessary equipment to do this including the PPE for the person taking the temperatures. Any employee who is running a fever or displaying other symptoms can be sent home pursuant to CDC guidelines.

I-9 DOCUMENT REVIEW

In light of social distancing precautions related to COVID-19, the requirement to review an employee's I-9 documents in the employee's presence have been relaxed. However, the documents must still be reviewed remotely (via video, fax or email).

Employers must insert "COVID-19" as the reason for the personal inspection delay. Once practicable employers must actually conduct the personal inspection and should add a notation on the I-9 "Personal inspection completed on _____(date)" in the Additional Information field.

All other requirements of the I-9 process remain in place, and these relaxed provisions are only in place for 60 days or three (3) days after the end of the National Emergency, whichever comes first.

MINNESOTA SHELTER IN PLACE

On March 25, 2020, Governor Walz issued an executive order requiring Minnesota residents to stay home except to perform any of the following activities, and while doing so, they should practice social distancing:

- Health and safety activities, such as obtaining emergency services or medical supplies
- Outdoor activities, such as walking, hiking, running, biking, hunting, or fishing
- Necessary Supplies and Services, such as getting groceries, gasoline, or carry-out
- Essential and interstate travel, such as returning to a home from outside this state
- Care of others, such as caring for a family member, friend, or pet in another household
- Displacement, such as moving between emergency shelters if you are without a home
- Relocation to ensure safety, such as relocating to a different location if your home has been unsafe due to domestic violence, sanitation, or essential operations reasons
- Tribal activities and lands, such as activities by members within the boundaries of their tribal reservation

Employees who are in an excepted business may also travel to and from work and daycare facilities as needed. The full of businesses that are deemed critical and exempted from the order can be found in the Executive Order.

<https://www.leg.state.mn.us/archive/execorders/20-20.pdf>

The Order is to remain in place through at least April 10, 2020. If you have employees who work in Minnesota or who reside in Minnesota and work in another state, please look to see how this may impact their movements.

Counsel for Those Considering Entering into Of Counsel Relationships

Mark Bassingthwaighte, Esq.
Risk Manager, ALPS
mbass@alpsnet.com

Of counsel is one of those terms that has multiple meanings. This term has been used as an honorary designation for retired partners, as a special designation for firm attorneys who are neither a partner nor an associate, and as a way to describe part-time attorneys who have created an association with a firm. In recent years however, more attorneys seem to want to use the term solely as a way to generate additional business. After all, the public presentation of close ties with another firm can be an effective marketing tool that will drive additional business to your firm, right? Well perhaps, but there are risks that come into play and these risks should not be taken lightly.

What is an Of Counsel Attorney?

The Of Counsel designation as envisioned by the authors of various ethics opinions refers to something altogether different from a traditional attorney within a firm. These opinions generally define an Of Counsel attorney as an attorney who is not a partner, associate, shareholder, or member of a firm, and they further state that an attorney may only be designated Of Counsel to the firm if the attorney will have a close and continuing relationship with the firm. This means that any attorney that works with your firm and has a significant degree of shared liability with your firm or managerial responsibilities to your firm and/or its staff should never be designated as Of Counsel. Related terms such as Special Counsel, Tax Counsel, Senior Counsel, and the like are understood to have the same meaning as Of Counsel and thus the requirement of a close and continuing relationship will apply there as well.

The requirement of a close and continuing relationship has been defined as providing for close, ongoing, regular, and frequent contact for the purpose of consultation and advice. Further, the Of Counsel attorney must be more than an advisor on only one case or just a forwarder or receiver of legal business. Attorneys can get into serious disciplinary trouble by designating someone who is merely a referral attorney as Of Counsel because that is usually considered to be a misleading client

communication in violation of the ethical rules. This is why the idea of creating Of Counsel relationships solely for marketing purposes falls flat.

Who Can Properly Be Designated Of Counsel?

Evaluating the appropriateness of the designation in the light of what a disciplinary committee could perceive as misleading can help one avoid some of the common Of Counsel designation pitfalls. Remember the average person will take the term at face value so come at the decision from the perspective of the average person's expectations. If you are thinking about being listed on another firm's letterhead as Of Counsel, only do so if you are able to be readily available and actually will provide counsel to that firm.

Examples of acceptable relationships for the Of Counsel designation have included, but are not limited to: 1) retired lawyers, 2) withdrawing partner or associate, 3) part-time practitioner, 4) permanent non-partner/non-associate, 5) partner on leave, and 6) probationary partner-to-be. Examples of unacceptable relationships for the Of Counsel designation have included, but are not limited to: 1) outside consultants, 2) suspended lawyers, 3) when the affiliation involves only a single case, 4) those who merely share office space and nothing more, and 5) public officials who are not engaged in active practice with their former firm.

Can a law firm be Of Counsel to another firm? Can an attorney be of counsel to more than one firm? Can an attorney be Of Counsel to an out-of-state firm? While the answers to these questions can be yes, the reality is that the answers to these questions and a number of others will differ depending upon the jurisdiction in which you practice. Given the numerous and varying state specific rules regarding this designation, I would recommend that prior to establishing any Of Counsel relationship you review any relevant ethics opinions and/or contact bar counsel in your jurisdiction.

What Are the Risks?

There are a few generally applicable issues that take on special significance in an Of Counsel affiliation. In particular, imputed disqualification, vicarious liability, and insurance coverage disputes warrant special attention.

Imputed Disqualification - For conflict purposes the Of Counsel affiliation means that the affiliated firm and the Of Counsel attorney will often be treated as one entity. This does mean that the conflicts the Of Counsel attorney brings to the table may prevent the affiliated firm from continuing to represent current or future clients. Likewise, the Of Counsel attorney has to be concerned about apparent or actual conflicts between his own clients and those of the affiliated firm. The imputed disqualification rule is a two-way street and there is little that can be done to correct the problem once it has arisen. Conflict checks can be burdensome and the potential cost in lost business if a conflict is ever missed can be substantial. Always address the conflict issue prior to establishing Of Counsel relationships so that everyone understands what the additional burden will be and can agree that the benefits outweigh the costs.

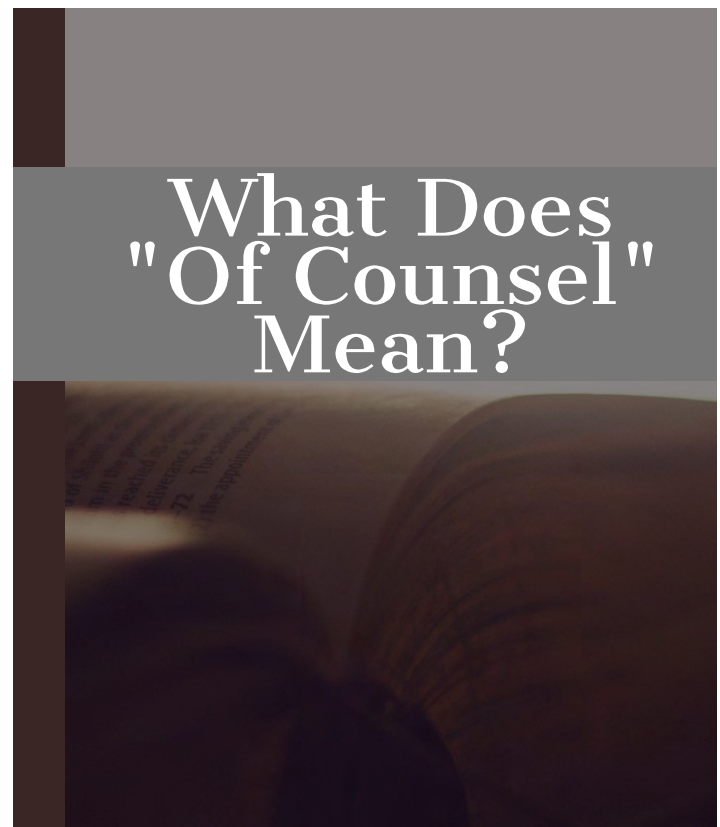
Vicarious Liability - While the affiliated firm is not going to be liable for the independent acts and omissions of the Of Counsel attorney that were outside of the apparent scope of the Of Counsel's involvement with the affiliated firm, this doesn't prevent claims from arising. Problems can and will arise based upon any given client's perspective of the affiliation. Unrestrictive use of letterhead listing the Of Counsel attorney by the affiliated firm or the Of Counsel attorney sends the message that all participants are involved on any and all matters of the firm and/or the Of Counsel attorney even if this isn't the case. To help avoid becoming a named co-defendant in each other's suits, create two versions of letterhead. One will list the Of Counsel attorney and the other will not. Then only use letterhead showing the Of Counsel attorney's name when that attorney is actually working on a firm matter. Likewise, make sure that the Of Counsel attorney abides by the same rule.

Insurance Coverage Disputes - In the unfortunate event of a claim, coverage problems can arise when an affiliated firm has done work on a matter that the Of Counsel attorney had no involvement in or awareness of, but was unfortunately listed as Of Counsel on the letterhead that was in use. Should this Of Counsel attorney not have coverage under the affiliated firm's malpractice policy there may be a significant problem because the Of Counsel attorney's own policy will often not afford coverage either. Why is this? The Of Counsel attorney's own policy will only cover work done on behalf of clients of the named insured which

is the Of Counsel's own firm. In this situation the Of Counsel attorney would be facing a claim that arose out of work done for a client of the affiliated firm thus the coverage gap. These sorts of "who is the client," "who is the attorney of record," and "who is the named insured" are common challenges that underscore the necessity of investigating and addressing the insurance coverage issues early on. Appropriate coverage for the exposures of both the affiliated firm and the Of Counsel attorney can usually be obtained, if the issue is addressed at the outset.

Closing Thoughts

Beyond the above, the best risk management advice that I can give regarding Of Counsel relationships is to encourage you to always keep in mind joint accountability. Of Counsel relationships can be quite valuable but clients will rightly respond to these affiliations as if they represent a single "entity." Mutual accountability will be in play, particularly when a client is directly involved with both parties to the Of Counsel affiliation. I do believe that Of Counsel relationships are of significant value as long as these relationships are entered into with client interests in mind as opposed to being a marketing strategy. Overlook this, and problems may lie just around the corner.

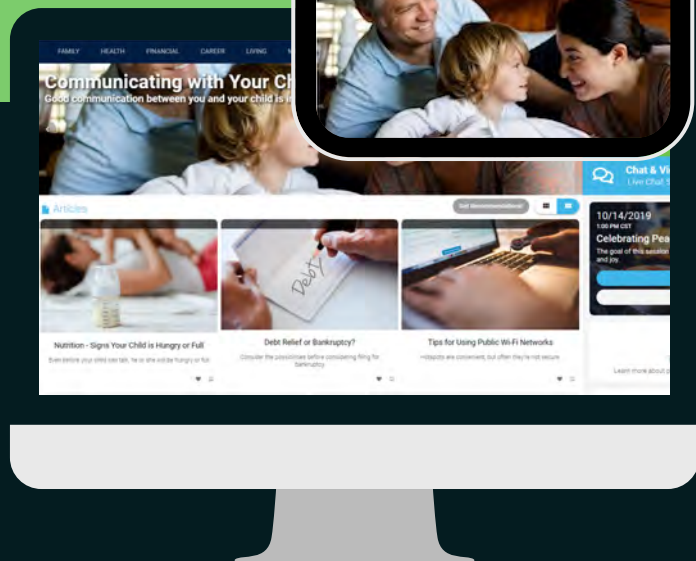




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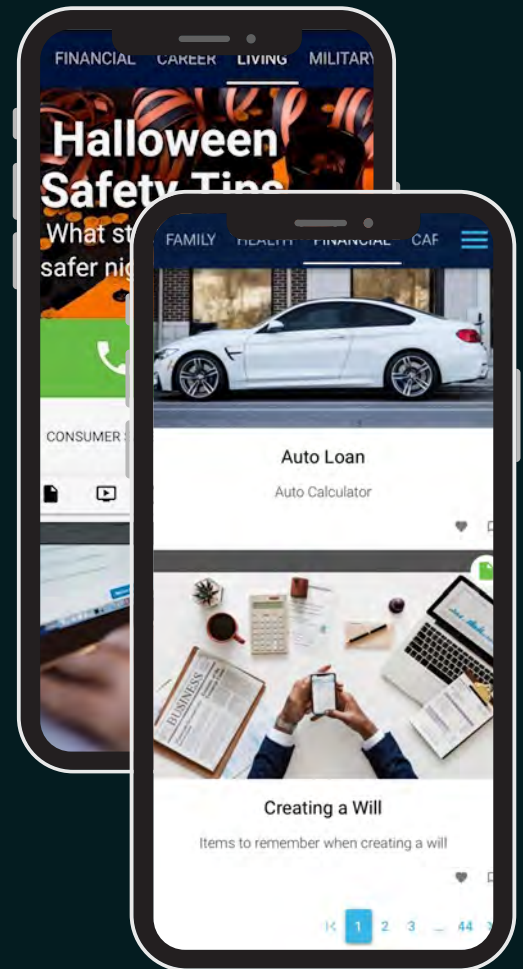
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COVID-19: Force Majeure to the Rescue?

While businesses are battling the coronavirus disease 2019 (COVID-19)—the most challenging epidemic the world has faced since the Spanish Flu outbreak that occurred after World War I—their contractual obligations do not disappear. Force majeure may, however, excuse those obligations. But as discussed below, force majeure may be a limited potential solution, rather than a panacea.

A brief overview of force majeure

Force majeure generally refers to the excusing of performance under contracts because of either “acts of God” (e.g., hurricanes) or human events beyond a party’s control (i.e., wars). In the United States, force majeure can be asserted either as an affirmative defense to breach of contract, or by a preemptive declaratory judgment action.

Most U.S. jurisdictions, including Texas, look first to the language of the force majeure clause and only use common law rules to “fill in the gaps” where the contract is silent.¹ However, some U.S. jurisdictions (notably New York and California) will typically read additional common law requirements into force majeure clauses; for example, the event giving rise to the force majeure claim must be “unforeseeable” or “beyond the reasonable control” of the party.² While force majeure clauses vary from short boilerplate to full-page bespoke provisions, clauses typically include:

- a laundry list of events which may give rise to force majeure (sometimes expressly including epidemics);
- a “catch-all” provision for other events “beyond the reasonable control” of the party asserting force majeure;
- a requirement that the party claiming force majeure give notice to the counterparty; and

- a requirement that the party claiming force majeure uses reasonable diligence to perform despite the force majeure event.³

But even if an event is expressly listed in the force majeure clause, to successfully claim force majeure, a party typically must be prevented from performing its obligations by the event.⁴ In other words, force majeure is not a “get out of jail free” card in tough economic times. U.S. courts typically hold that economic hardship standing alone is insufficient to excuse performance under a force majeure clause.⁵

Precedent of force majeure in past outbreaks and epidemics

Despite the history of the Spanish Flu, we could find no reported cases from any U.S. jurisdiction that addressed force majeure in the context of an epidemic, pandemic, or disease outbreak in the human population. Instead, caselaw from the time of the Spanish Flu focused on whether parties were excused from contractual performance using the common law impossibility⁶ defense rather than force majeure.⁷ So, the few cases addressing force majeure in the context of epidemics all concern epidemics in domesticated animals (such as avian flu, swine flu, or similar diseases).

For instance, in *Rembrandt Enterprises*, the court reasoned that a force majeure clause in a contract for an egg producer to purchase an industrial egg dryer would not apply, as the producer’s performance (paying cash for the dryer) was not prevented by the 2015 avian flu outbreak that caused the purchaser to eliminate over a million chickens and cut egg production by 50 percent.⁸ Likewise, in *Macromex SRL*, the Southern District of New York confirmed an arbitration award rejecting a force majeure claim in a contract for the sale of chicken to a Romanian company, when the Romanian government imposed an import ban on chicken based on an avian flu outbreak (in

chickens, not people).⁹ In rejecting the seller's force majeure defense, the arbitrator pointed to the fact that the U.C.C. allows for commercially reasonable alternatives for performance, and that the buyer had proposed the seller ship the chicken to a nearby country unaffected by the import ban. These few cases addressing force majeure and epidemics illustrate that, even in the face of an epidemic such as COVID-19, parties must also satisfy the other elements of their force majeure clauses to secure relief.¹⁰

While not directly relevant to its force majeure analysis, the court in *Rembrandt Enterprises* noted that the egg producer "declared a force majeure to its buyers and began distributing eggs and egg products on a pro rata basis."¹¹ The court also noted that the egg producer in *Rembrandt Enterprises* "was largely compensated for the damages from the avian flu outbreak by insurance and government payments."¹²

Analysis: considerations for assessing COVID-19 force majeure issues

In the limited caselaw applying force majeure clauses to epidemics, courts appear to apply force majeure clauses narrowly. Where COVID-19 has a direct effect on a party's performance, force majeure may excuse performance (depending on the specific terms, including whether epidemics are specifically included), such as the egg producer's successful declaration of force majeure to its egg buyers. In contrast, where COVID-19 affects issues secondary to performance, such as impairing a party's ability to pay, it is possible that force majeure will not excuse performance. Caselaw also suggests that courts analyzing force majeure clauses may also consider other factors related to a party's ability to perform its contractual obligations during an epidemic like COVID-19. A business may have insurance policies that provide coverage for losses due to an epidemic like COVID-19.

Likewise, the government may support businesses impacted by COVID-19.

However, unlike the situations in cases addressing animal epidemics, governments have taken actions in response to the COVID-19 pandemic that we have not seen since the Spanish Flu, such as: imposing shelter-in-place orders; prohibiting entire categories of businesses (such as bars and restaurants) from being open to the public; and issuing construction moratoriums, emergency declarations, and the like. For example, if a city has issued a construction moratorium, general contractors and subcontractors may have arguments supporting force majeure claims and extensions of time under their contracts. As governments take increasingly aggressive steps to slow the spread of COVID-19, we expect many businesses will be prevented from performing their contractual obligations in one way or another.¹³

In summary, depending on the specific language of the force majeure clause, failure to perform a contractual obligation due to COVID-19 may be excused. But a party should be prepared to prove how COVID-19 prevented performance and that there were no other reasonable alternatives to performance. A party should also be ready to prove that it used due diligence to overcome the effects of COVID-19.

Russell Lewis is a partner and department chair of litigation for the Houston office of Baker Botts, LLP where he advises clients on complex commercial cases, crisis response, class actions, and government investigations.

Jonathan Havens is a senior associate in the Houston office of Baker Botts, LLP; Mr. Havens advises clients on a broad range of energy and complex business matters, including force majeure claims.

Cornelius Sweers is an energy litigation and construction associate in the Houston office of Baker Botts, LLP; Mr. Sweers advises clients on a broad range of energy, construction, and general commercial matters, including force majeure claims.

¹ E.g., *TEC Olmos, LLC v. ConocoPhillips Co.*, 555 S.W.3d 176, 181 (Tex. App.—Houston [1st Dist.] 2018, pet. denied).

² See, e.g., *Watson Labs. Inc. v. Rhone-Poulenc Roher, Inc.*, 178 F. Supp. 2d 1099, 1110 (C.D. Cal. 2001) (under California common law, courts read an unforeseeability requirement into force majeure clauses); *Goldstein v. Orensanz Events LLC*, 146 A.D.3d 492, 493 (N.Y. App. Div. [1st Dept.] 2017) (A force majeure clause “must be interpreted as if it included an express requirement of unforeseeability or lack of control.”).

³ See, e.g., *TEC Olmos, LLC*, 555 S.W.3d at 179.

⁴ See, e.g., *Sherwin Alumina L.P. v. Aluchem, Inc.*, 512 F. Supp. 2d 957, 967 (S.D. Tex. 2007) (finding that in order for the force majeure clause to excuse performance, a party must not be able to produce the product at all or within the time specified in the contract).

⁵ See *Valero Transmission Co. v. Mitchell Energy Corp.*, 743 S.W.2d 658, 663 (Tex. App.—Houston [1st Dist.] 1987, no writ) (“An economic downturn in the market for a product is not such an unforeseeable occurrence that would justify application of the force majeure provision, and a contractual obligation cannot be avoided simply because performance has become more economically burdensome than a party anticipated.”); *U.S. v. Panhandle E. Corp.*, 693 F. Supp. 88, 96 (D. Del. 1988) (noting that “American courts routinely refuse to excuse performance” because of adverse economic conditions); *Route 6 Outparcels v. Ruby Tuesday, Inc.*, 910 N.Y.S.2d 408, 2010 WL 1945738 (N.Y. Sup. Ct. May 12, 2010) (unreported) (granting summary judgment on defendant’s defense that recession was a force majeure event because recession was foreseeable and did not prevent performance); *OWBR LLC v. Clear Channel Comm’ns*, 266 F. Supp. 2d 1214, 1223 (D. Haw. 2003) (rejecting force majeure claim based on post-September 11 travel disruption and economic downturn, finding that “nonperformance dictated by economic hardship is not enough” to be excused under a force majeure provision).

⁶ The impossibility defense was focused on an “act of God” and so was narrower than a typical force majeure event, which can include human events beyond a party’s control.

⁷ Several cases have analyzed force majeure’s common law precursor, impossibility, in the context of pandemics, but the cases are of limited applicability because the holdings were based on policy reasons, not contractual language. Compare *Phelps v. Sch. Dist. No. 109, Wayne County, Ill.*, 221 Ill. App. 500, 503 (Ill. App. Ct. 1921) (holding that a teacher was entitled to her monthly salary of \$50 per month even though the “school was closed because of the influenza epidemic” because the teacher was ready, willing, and able to teach), with *Sandry v. Brooklyn Sch. Dist. No. 78 of Williams Cty.*, 182 N.W. 689, 690 (N. D. 1921) (holding that a bus driver was not entitled to his salary while the school was closed because of the epidemic of influenza despite being ready, willing, and able to drive).

⁸ See *Rembrandt Enters., Inc. v. Dahmes Stainless, Inc.*, No. C15-4248-LTS, 2017 WL 3929308, at *1–3, *13 (N.D. Iowa, Sep. 7, 2017).

⁹ See *Macromex SRL v. Globex Int’l, Inc.*, No. 08 Civ. 114(SAS), 2008 WL 1752530 (S.D.N.Y. Apr. 16, 2008), *aff’d* 330 F. App’x 241 (2d. Cir. 2009).

¹⁰ See *id.* (confirming arbitral award finding performance in contract for sale of chicken not excused by Romanian government’s import ban on chicken imposed in response to avian flu outbreak when substitute performance was available and suggested by the buyer); *SNB Farms, Inc. v. Swift & Co.*, C01-2077, C01-2078, C01-2080, 2003 WL 2232881 (N.D. Iowa Feb. 7, 2003) (while it was undisputed that outbreak of Porcine Reproductive and Respiratory Syndrome, which led to hog production problems, qualified as force majeure event under hog production contract, the court found a fact issue on whether hog producer provided proper notice of the force majeure event).

¹¹ See *Rembrandt Enters.*, 2017 WL 3929308, at *1–3.

¹² *Id.*

¹³ The analysis in this article discusses contracts between and among private parties. Force majeure issues also arise as to agreements with administrative agencies of federal, state, and local governments. Those agreements may present unique force majeure issues not addressed above.

Career Center



STATE BAR OF SOUTH DAKOTA CLASSIFIEDS

Email your employment announcement to tracie.bradford@sdbar.net by March 26th to have it included in the April Newsletter. Please be sure to include a closing date. To see more jobs listings, visit www.statebarofsouthdakota.com

PUBLIC NOTICE REAPPOINTMENT OF INCUMBENT MAGISTRATE JUDGE

The current appointment of Magistrate Judge Scott Bogue is due to expire on July 2, 2020. Magistrate Judge Scott Bogue serves in the Seventh Judicial Circuit.

The duties of a magistrate judge include conducting preliminary hearings in all criminal cases, acting as committing magistrate for all purposes and conducting misdemeanor trials. Magistrate judges may also perform marriages, receive depositions, decide temporary protection orders and hear civil cases within their jurisdictional limit.

Pursuant to UJS policy members of the bar and the public are invited to comment as to whether Magistrate Judge Scott Bogue should be reappointed to another four-year term.

Written comments should be directed to:

Chief Justice David Gilbertson
Supreme Court
500 East Capitol
Pierre, SD 57501

Comments must be received by May 4, 2020

**Judicial Qualifications Commission
State of South Dakota**

500 East Capitol Avenue

Pierre, SD 57501

Telephone: (605) 773-3474

Fax: (605) 773-8437

Email: lori.grode@ujs.state.sd.us

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Hon. Bruce V. Anderson, Acting Secretary

Kimberley A. Mortenson

Hon. Robin J. Houwman

Timothy M. Engel

Rebecca A. Porter

Lori Grode, Executive Assistant

Notice of Judicial Vacancy

TO: All Active Members of the State Bar of South Dakota

FROM: Bruce V. Anderson, Acting Secretary, Judicial Qualifications Commission

The retirement of the Chief Justice David Gilbertson in January 2021 will create a vacancy for a Supreme Court Justice position in the Fifth Supreme Court District of South Dakota. The Judicial Qualifications Commission is now taking applications for this position.

All lawyers and judges interested in applying should obtain the application form at <http://ujs.sd.gov/>, or contact Lori Grode at the State Court Administrator's Office. The application must be returned to the Administrator's Office and must be postmarked no later than **5:00 PM on May 29, 2020**. Applicants should make sure the application submitted is the 2018 revision.

You may also obtain the application form by writing or telephoning:

Lori Grode
State Court Administrator's Office
500 East Capitol Avenue
Pierre, SD 57501
Telephone: 605-773-2099
Email: lori.grode@ujs.state.sd.us

Or, visit <http://ujs.sd.gov/> for current job openings.

The Fifth District is comprised of the following counties: Harding, Butte, Perkins, Corson, Ziebach, Dewey, Campbell, Walworth, Potter, McPherson, Edmunds, Faulk, Brown, Spink, Marshall, Day, Clark, Roberts, Codington, Hamlin, Grant, and Deuel.



Supreme Court
STATE OF SOUTH DAKOTA

David Gilbertson
CHIEF JUSTICE

March 9, 2020

Mr. Andrew L. Fergel
Secretary-Treasurer
State Bar of South Dakota
111 West Capitol Ave.
Pierre, SD 57501

Re: Vacancy on Board of Pardons and Paroles

Dear Mr. Fergel:

The Court has accepted the resignation of Shannon Riter-Osborn as a member of the Board of Pardons and Paroles, effective March 5, 2020.

Accordingly, we take this opportunity to announce that any attorney interested in serving as a member of the Board of Pardons and Paroles is invited to indicate that interest by advising the Court no later than April 9, 2020.

Letters and resumes should be directed to:

Chief Justice David Gilbertson
Supreme Court of South Dakota
500 East Capitol Avenue
Pierre, South Dakota 57501

The Court takes this opportunity to publicly express its appreciation to Ms. Shannon Riter-Osborn for her dedication and service as a member of the Board of Pardons and Paroles.

Very truly yours,

David Gilbertson
Chief Justice

PUBLIC NOTICE

REAPPOINTMENT OF INCUMBENT MAGISTRATE JUDGE

The current appointment of Magistrate Judge Sara Pokela is due to expire on August 15, 2020. Magistrate Judge Sara Pokela serves in the Second Judicial Circuit.

The duties of a magistrate judge include conducting preliminary hearings in all criminal cases, acting as committing magistrate for all purposes and conducting misdemeanor trials. Magistrate judges may also perform marriages, receive depositions, decide temporary protection orders and hear civil cases within their jurisdictional limit.

Pursuant to UJS policy members of the bar and the public are invited to comment as to whether Magistrate Judge Sara Pokela should be reappointed to another four-year term. Written comments should be directed to:

Chief Justice David Gilbertson
Supreme Court
500 East Capitol
Pierre, SD 57501

Comments must be received by May 17, 2020

ATTORNEYS

Attorney - Pierre

The Federal Public Defender for the Districts of South Dakota and North Dakota is accepting applications for an ASSISTANT FEDERAL PUBLIC DEFENDER in the Pierre, South Dakota office. The Defender's Office provides legal representation to indigent people charged with federal crimes, largely violent crimes from Indian Country with a heavy trial calendar. This is a full time attorney position dedicated exclusively to criminal defense work in federal district court and the U. S. Court of Appeals. Some travel is be required. Job qualifications include excellent oral advocacy and writing skills, along with recent, substantial criminal trial experience. Salary is negotiable based on qualifications and experience and includes federal government benefits.

Qualified applicants should send a resume and three references to: Jason J. Tupman, Federal Public Defender, 200 W. 10th Street, Suite 200, Sioux Falls, SD 57104; or via email to Jason_Tupman@fd.org. Applications will be considered upon receipt and interested applicants are encouraged to submit their application as soon as practicable. The selected candidate will be subject to a background check as condition of employment.

Equal opportunity employer.

Deputy State's Attorney - Butte County

DEPUTY STATE'S ATTORNEY with the Butte County State's Attorney's Office. Full-time salaried position to start in January 2020; Salary: DOE. Closing Date: open until filled. Job description: Successful applicant will represent Butte County in all stages of court, with a primary focus on magistrate court. Position requires strong oral and written communication skills, the ability to work with minimum direction, the ability to work as part of a team, and the ability to organize and prioritize. Duties shall include working with law enforcement as well as members of the community in the preparation of criminal cases, legal research and writing, motion preparation, and litigating cases in court. Successful applicant must be willing to continue education to further enhance litigation skills. Qualifications for employment: Juris Doctorate degree and admitted to practice law in the State of South

Dakota. No experience required. Interested individuals are encouraged to apply by submitting a resume and cover letter to Cassie J. Wendt, Butte County State's Attorney, 839 Fifth Avenue, Belle Fourche, South Dakota, 57717, phone (605) 892-3337, fax (605) 892-6768, email: bcsa@buttesd.org Butte County is an equal opportunity, affirmative action employer.

Attorney - Sioux Falls

Ver Beek Law, Prof. L.L.C. is seeking an ESTATE PLANNING ATTORNEY for our Sioux Falls office. We are looking for candidates with experience levels ranging from newly licensed lawyers to those with several years of experience. Only candidates seeking a long-term employment opportunity will be considered. The position offers competitive salary. Interested applicants should send their cover letter and resume to kelsey@verbeeklaw.com.

Associate Attorney- Sioux Falls

Boyce Law Firm, LLP, a top-rated 20+ lawyer firm located in Sioux Falls, is accepting applications for ASSOCIATE ATTORNEYS in the firm's litigation section. Applicants must be self-starters with a strong desire to learn. Superior written and verbal communication skills are of utmost importance. Visit our website at www.boycelaw.com to learn more about the firm, our history, and our people. All applicants are welcome to apply. Preference will be given to applicants in the top 1/3 of their class, to those who have prior work experience, and to those currently licensed to practice in South Dakota. Start Date: Upon hiring. Benefits include generous 401K match, profit sharing, health insurance, annual CLE tuition, professional dues and memberships, and numerous incidental benefits. Direct resume, cover letter, and law school transcript to Michele Benson, Boyce Law Firm, LLP, PO Box 5015, Sioux Falls, SD 57117-5015 or to mlbenson@boycelaw.com.

Attorney - Lesterville

Town of Lesterville seeks new Town Lawyer.

Area of practice - administrative law.

Duties - attend monthly town meetings and any special meetings as scheduled, provide legal advice as to ordinances, writing ordinance enforcement tickets, advice to the Board of Trustees.

Rate - negotiable.

All applicants please contact Janelle Munkvold by phone at (605) 760-3284 or by email at jmunkvold29@gmail.com.

STAFF ATTORNEY – FORT THOMPSON

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a Managing Attorney position in our Fort Thompson, South Dakota, branch office. The Fort Thompson office serves the Crow Creek and Lower Brule Indian Reservations in South Dakota and Brule, Buffalo, Hughes, Hyde, Lyman, Stanley and Sully counties in South Dakota.

QUALIFICATIONS/RESPONSIBILITIES:

Applicants must have a JD degree and be licensed to practice, or by reciprocity be able to obtain a license to practice, in South Dakota, or be qualified to take the next South Dakota Bar Exam; must be a bright, motivated, self-starter; must have the tenacity to assume immediate

practice responsibilities, including handling a significant caseload touching on many different areas of law with regular appearances in court; must demonstrate an interest in poverty law and working with Native American and low income clients. Applicant must have at least one year's experience in the practice of poverty law or Indian law, with trial and appellate experience in state and federal courts or two years' experience in the general practice of law. If Applicant does not possess this experience we would consider Applicant for a staff attorney position until qualified to be a Managing Attorney.

SALARY: Competitive, depending on experience. DPLS has an excellent fringe benefits package including generous leave benefits and employee insurance coverage (medical, dental, life, disability).

CLOSING DATE: Open until filled.

APPLICATION INFORMATION: Please submit a letter of interest and resume to: Thomas S. Mortland, Executive Director, Dakota Plains Legal Services, PO Box 727, Mission, SD 57555, (605) 856-4444, dpls@venturecomm.net
Native Americans, Women and Minorities are encouraged to apply. Dakota Plains Legal Services is an Equal Opportunity Employer.

Northern Plains Weather Services

Dr. Matthew Bunkers of Northern Plains Weather Services is a certified consulting meteorologist (CCM) and forensic meteorologist with over 25 years of weather analysis and forecasting experience. He can provide reports, depositions, and testimony in the areas of weather and forecasting, severe summer and winter storms, rain and snow estimates, fire weather, flooding, applied climatology and meteorology, agriculture meteorology, and statistics. More information is provided at <http://npweather.com>. Contact Matt at nrnplsweather@gmail.com or 605.390.7243.



STAFF ATTORNEY - PINE RIDGE

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a Staff Attorney position in our Pine Ridge, South Dakota, branch office. The Pine Ridge office serves the Pine Ridge Indian Reservation in South Dakota and Oglala Lakota, Jackson and Bennett counties in South Dakota.

QUALIFICATIONS/RESPONSIBILITIES:

Applicants must have a JD degree and be licensed to practice, or by reciprocity be able to obtain a license to practice, in South Dakota, or be qualified to take the next South Dakota Bar Exam; must be a bright, motivated, self-starter; must have the tenacity to assume immediate practice responsibilities, including handling a significant caseload touching on many different areas of law with regular appearances in court; must demonstrate an interest in poverty law and working with Native American and low income clients. Applicant must have at least one-year experience in the practice of poverty law or Indian law, with trial and appellate experience in state and federal courts or two years' experience in the general practice of law.

SALARY: Competitive, depending on experience. DPLS has an excellent fringe benefits package including generous leave benefits and employee insurance coverage (medical, dental, life, disability).

CLOSING DATE: Open until filled.

APPLICATION INFORMATION: Please submit a letter of interest and resume to: Thomas S. Mortland, Executive Director, Dakota Plains Legal Services, PO Box 727, Mission, SD 57555, (605) 856-4444, dpls@venturecomm.net.

STAFF ATTORNEY - MISSION

DAKOTA PLAINS LEGAL SERVICES (DPLS), a non-profit legal services program, has an opening for a Staff Attorney position in our Mission, South Dakota, office. The Mission office serves the Rosebud Sioux Indian Reservation and Gregory, Jones, Mellette, Todd and Tripp counties in South Dakota.

QUALIFICATIONS/RESPONSIBILITIES:

Applicants must have a JD degree and be licensed to practice, or by reciprocity be able to obtain a license to practice, in South Dakota, or be qualified to take the next South Dakota Bar Exam; must be a bright, motivated, self-starter; must have the tenacity to assume immediate practice responsibilities, including handling a significant caseload touching on many different areas of law with regular appearances in court; and must demonstrate an interest in poverty law and working with Native American and low income clients.

SALARY: Competitive, depending on experience. DPLS has excellent fringe benefits, including generous leave benefits and employee insurance coverage (medical, dental, life, disability).

CLOSING DATE: Open until filled.

APPLICATION INFORMATION: Please submit a letter of interest and resume to: Thomas S. Mortland, Executive Director, Dakota Plains Legal Services, PO Box 727, Mission, SD 57555, (605) 856-4444, dpls@venturecomm.net. Native Americans, Women and Minorities are encouraged to apply. Dakota Plains Legal Services is an Equal Opportunity Employer.

Attorney - Pipestone, MN

Full-time attorney position with the Pipestone County Attorney's Office and O'Neill, O'Neill & Barduson law firm. This is a dual government-private practice position; the attorney will be employed by both the Pipestone County Attorney's Office and O'Neill, O'Neill & Barduson.

As Assistant Pipestone County Attorney, duties will include prosecution of adult criminal cases and juvenile delinquency cases, handling child protection cases, civil commitments, and child support matters. As associate attorney with the law firm, the attorney will be practicing in the areas of estate planning and real estate. This is a unique opportunity to gain government courtroom experience while simultaneously gaining valuable private practice experience with potential rapid advancement. We are looking for someone who wants to live in Southwest Minnesota, just 50 miles from Sioux Falls, SD. Email resume and references to ooblaw@iw.net.

Attorney - Worthington, MN

Assistant County Attorney I
Nobles County Attorney's Office
Provides legal services, representation, prosecution and advice for Nobles County. **QUALIFICATIONS:** Minimum of Juris Doctor degree from accredited law school; current license to practice law in Minnesota, or will obtain prior to start date. Experience preferred but not required. Valid driver's license required. Salary DOE. Nobles County offers a competitive benefits package.

APPLY TO: Nobles County Administration Office. Visit our website at www.co.nobles.mn.us for application and to view full job description and benefit sheet. **REQUIRED:** County application forms are required. Closing Date for Applications: Open until filled. EEO/AA Employer



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Resilience Tools for Uncertain Times	•••• April 2, 2020	••••••••••••••••••••	3:00pm CST Webinar
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Resilience Tools for Uncertain Times	•••• April 9, 2020	••••••••••••••••••••	3:00pm CST Webinar
Resilience Tools for Uncertain Times	•••• April 16, 2020	••••••~••••••••••••~	3:00pm CST Webinar
Resilience Tools for Uncertain Times	•••• April 23, 2020	••••••••••~••••••~	3:00pm CST Webinar
Bar Commission Teleconference	••••••••••~••••~	April 30, 2020	••••••~••••~
Bar Commission Teleconference	••••~••••~	May 21, 2020	••••~••••~
Jackrabbit Bar Meeting	••••~••••~	June 11-13, 2020	••••~••••~ Sandpoint, ID
Annual Meeting	••••~••••~	June 17-19, 2020	••••~••••~ Ramkota Hotel, Pierre
Disciplinary Board	••••~••••~	June 15-16 2020	••••~••••~ Red Rossa, Pierre

For all upcoming webinars, check out the calendar on the State Bar website at www.statebarofsouthdakota.com.