



State Bar of South Dakota

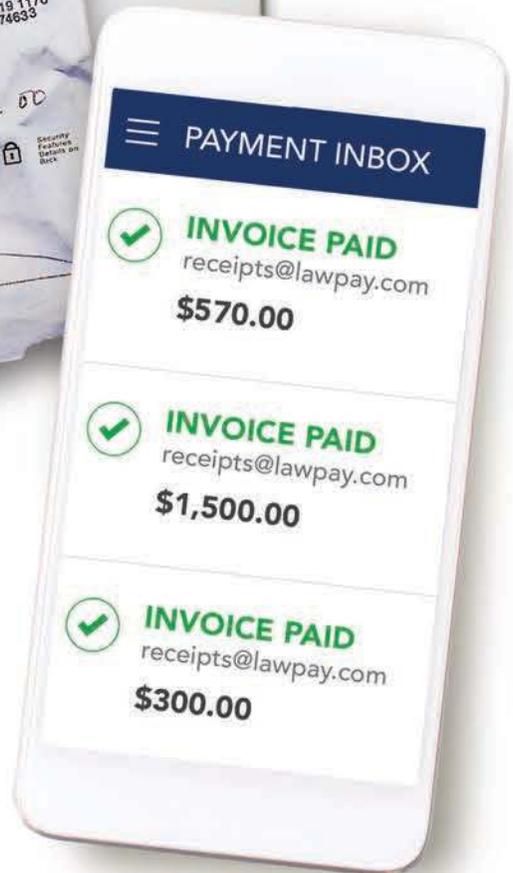
Happy Holidays from all of us at the State Bar!

December 2019

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State Bar of South Dakota

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President's Corner

Steven K. Huff

It seems like only yesterday I recall law offices using dot matrix printers, big heavy monitors, phones with obscenely long extension cords, carbon paper and the like. Well, hardware and software are not the only arenas for major sea change. Advances in technology also bring threats like hacking and cyberattacks to the forefront of our practices and what our clients face everyday.

I am pleased to announce to our membership that our state bar is partnering with Identillect to offer free education as well as cybersecurity services at substantial discounts to interested members. Identillect will soon be setting up free continuing legal education for our members so they are properly educated on the risks and rewards of being ahead of this curve, as well as the perils of being behind.

Some folks ask why do state bar leaders attend out of state conferences like the Jackrabbit Bar or the national American Bar Association? Well, it is at those conferences you can learn more about what other state bar memberships face and opportunities to partner with organizations to help lawyers protect themselves and their clients. Tools such as encryption, secured off site and/or cloud data storage, IP address and Metadata security and the like all help us and our clients secure their identities, social security information, as well as credit and medical information, among other sources of information clients and their loved ones entrust to lawyers for assistance with addressing their problems and resolving their claims.

It is also at these conferences you learn seemingly trivial but actually important facts such as 36 states

have already adopted legal standards requiring lawyers to have some degree of proficiency in technological competence, including ours. This kind of competence is not just theoretical, it is our obligation under our South Dakota Rules of Professional Responsibility that are implicated.

Just over one year ago, the American Bar Association's Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 483 that sets forth the ABA's most recent opinion concerning the need for lawyers to notify clients of data breaches affecting client confidential data. The opinion outlines certain reasonable steps the ABA believes lawyers should take in the context of a data breach in order to meet their ethical obligations. This opinion builds on the ABA's prior Formal Opinion 477R that the ABA published in May 2017, which focused upon lawyers' need to secure protected client information when using electronic communications.

ABA Formal Opinion 483 identifies six separate categories of rules that parallel our South Dakota rules and could be implicated in the context of a data breach:

SDCL 16-18-A 1.1 (Competence): Requires lawyers to "provide competent representation to a client," including exercising the requisite "legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

SDCL 16-18A 1.4 (Communication): Requires, among other things, that lawyers "keep the client reasonably informed about the status of the matter" and to explain matters "to the extent reasonably necessary to permit a client to make an informed decision regarding the representation."

SDCL 16-18A 1.6 (Confidentiality): Requires that lawyers "not reveal information relating to the representation of a client unless the client gives informed consent" and "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."

SDCL 16-18A 1.15 (Safekeeping Property): Requires lawyers to “appropriately safeguard” clients’ documents and property.

SDCL 16-18A 5.1 (Responsibilities of Partners, Managers and Supervisory Lawyers): Requires that lawyers with “managerial authority in a law firm . . . make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.”

SDCL 16-18A 5.3 (Responsibilities Regarding Nonlawyer Assistance): requires that lawyers in supervisory capacities “make reasonable efforts to ensure that [any non-lawyer’s] conduct is compatible with the professional obligations of the lawyer.”

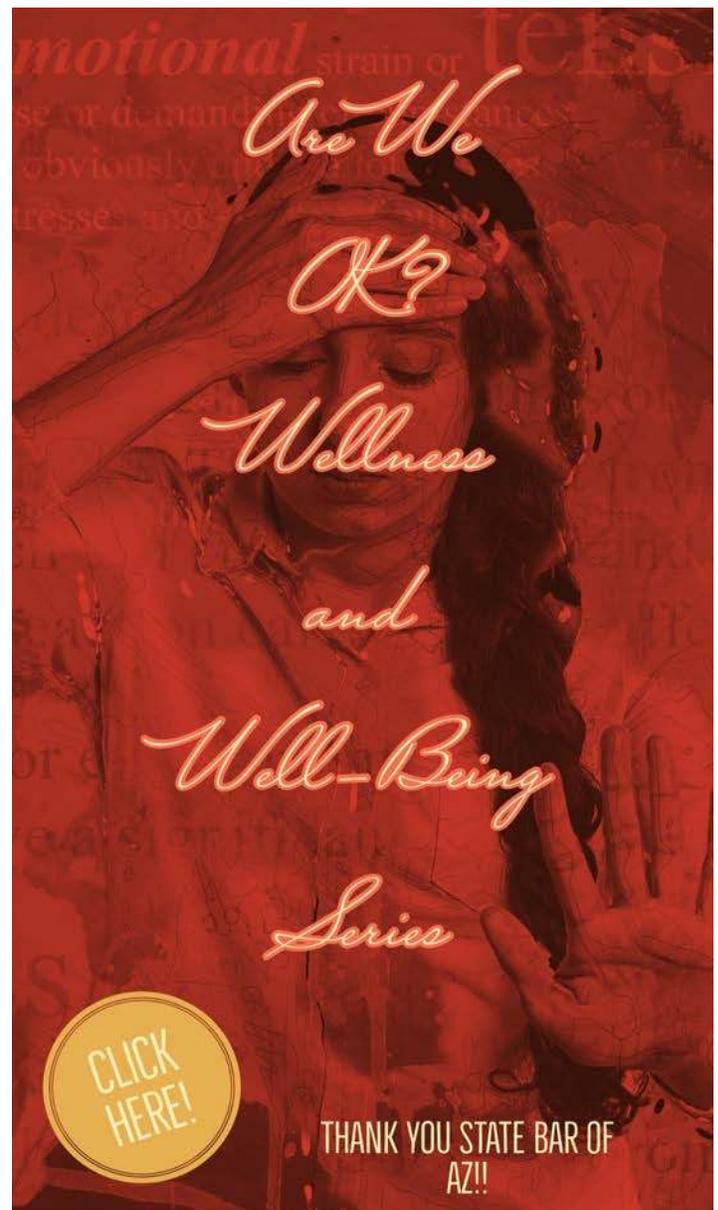
Consider 80% of all legal documentation is digital and 98% of all lawyers use email to communicate with their clients. Yet, according to a 2019 Cyber-Security Legal Review, only 46% of lawyers use file encryption, 38% use email encryption, and only 24% use whole disk or flash drive encryption. A 2018 Solo and Small Firm Technology survey revealed that 70.1% of solo firms and 63.2% of small firms do not take sufficient security measures.

Moreover, cyberattacks focus on systems we all use, whether desktops, laptops, tablets or even mobile phones. Nationally, 57% of our clients use devices infected by a virus or other security threat. In 2017, 143 million Americans were affected by cybercrime. Part of the reason these problems exist is basic lack of knowledge and cost. A substantial number of lawyers surveyed (36%) indicated they did not know how to protect the information and that cost was a substantial deterrent.

Identillect offers a variety of services to bar members across the United States, just as they have successfully done with other state bar association including Nevada, Idaho, Montana, Wyoming, Nebraska, Minnesota, and Wisconsin. These services will include free education and discounted services on email encryption which includes their advanced security measures such as smart scan technology,

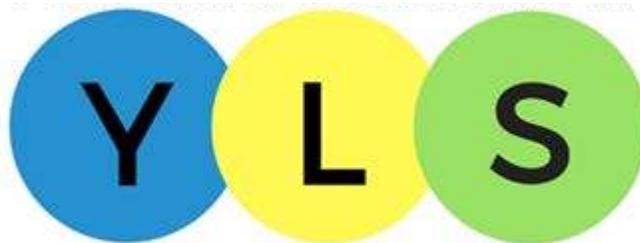
audit trails, restriction of forwarding/printing as well as message recall.

Your bar commission is committed to making sure it and its members have the best opportunities to meet the ever-changing technological landscape. We are confident that our partnership with Identillect will provide our members with top shelf education as well as discounted protective services that will best serve our clients and protect us and our clients from hacking, cyberattacks, and other technology based harms, those that exist now and will evolve down the road. We have obligations to meet and will soon have better tools and education for addressing these evolving challenges.





STATE BAR OF SOUTH DAKOTA
YOUNG LAWYERS SECTION



by: Nathan Chicoine
YLS President

“When the hard times come, I think the only thing that enables me to bring the best I have to work is my sense of vocation.” – John Morris

As I thought about my December newsletter column, I sought inspiration from the late John Hagemann and his quotation collection, “A Scholar’s Pursuit.” Young lawyers across the state are focusing on mentorship and related social events, and I was looking for a message to reflect what’s happening in the Young Lawyers Section. One of our primary purposes is to unify our bar by connecting young lawyers and veteran lawyers. This quote is a fitting reminder that although we may fall on different sides of the caption, we are connected by our vocation – all of us dedicated to the common core values of the law and service to our clients and the public. The Young Lawyers Section is connecting lawyers through its Hagemann-Morris mentorship coin program.

Here’s an introduction: The mentorship program was created ten years ago to elevate the competence, professionalism, and success of young lawyers through positive mentoring relationships and to foster lawyering skills, activities, and experiences for young lawyers and mentors. Mentors can share experiences and strategies and pass on knowledge of legal customs. They can impart what brings them a sense of vocation and integrity in the profession. The program symbolizes affiliation among members of the bar. Participation is commemorated by a specially minted coin that represents the knowledge and friendship shared between mentor and mentee. The mentee is not a client to whom mentors give legal advice, and the mentor does not take on the mentee’s clients as his or

her own. The mentor and mentee are not associates or a referral source. The mentor and mentee do not have a confidential or privileged relationship. The connection is a teaching relationship. Ultimately, the mentor and mentee determine the parameters of their relationship

If you’ve ever considered participating in the mentorship program, take the opportunity. Young lawyers are always in need of mentors, and I suspect veteran lawyers may need a mentee just as well without realizing it. Regardless of your time commitment, we can find a way for you to contribute. Not all mentorship relationships come with weekly lunch outings or sharing a prized form bank. Mentors and mentees can achieve the goals of the program with as little as quarterly coffee or periodic phone calls and emails just to check in and offer friendship. Mentorship might not necessarily mean being paired with a greenhorn and being forced into a relationship. Mentorship might entail annual participation in a career day at a local high school or a Law Day event, or perhaps allowing an undergraduate student to shadow for a day. However you want to participate, if you are committed to excellent lawyering and service to the profession and your community, you can be a mentor.

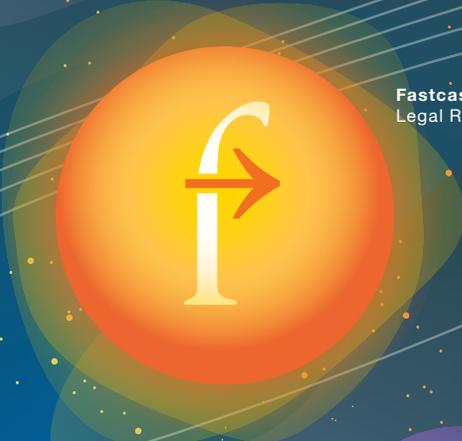
To borrow again from “A Scholar’s Pursuit,” Professor Hutton remarked in her memorial to John, that he aspired to foster a community with an ethic of caring among the bar. A strong mentorship program in our bar can meet John’s aspiration. If you are interested in any form of mentorship, please see our state bar page or send me a note (nathan@demjen.com) or give me a call (605-342-2814). We will find a place for you.

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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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Andrew L. Fergel

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★★ Richard D. Casey ★★ Terry L. Hofer ★★ Eric C. Schulte

★★ Hon. Michael Day ★★ Steven K. Huff ★★ Jeffrey T. Sveen

★★ Robert B. Frieberg ★★ Hon. Charles B. Kornmann

★★ Thomas H. Frieberg ★★ Bob Morris ★★ Charles M. Thompson

★★ David A. Gerdes ★★ Thomas J. Nicholson ★★ Richard L. Travis

★★ Hon. David R. Gienapp ★★ Gary J. Pashby ★★ Thomas J. Welk

★★ Patrick G. Goetzinger ★★ Stephanie E. Pochop

★★ G. Verne Goodsell ★★ Reed A. Rasmussen

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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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- Life Patron Fellow – \$100,000 or more, cumulative.
- Sustaining Life Fellow – \$50,000 or more, cumulative.
- Life Fellow – \$25,000 or more, cumulative.
- Diamond Fellow – over \$10,000, cumulative.
- 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
222 E. Capitol Ave., #3
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.

A New Home for the State Bar of South Dakota

The State Bar of South Dakota (“SBSD”) will be moving soon! On January 1, 2020, the Bar Office will have transitioned from the Sahr Building to the first floor of the Hyde Building located at the corner of Pierre Street and Capitol Avenue in Pierre. Our new address will be 111 West Capitol Avenue, Suite 1, Pierre, SD 57501.

The space the State Bar will be occupying is in a building on the National Historic Registry built in 1906 and was occupied by a drug store and bank for most of its life. The second and third floors of the building were historically occupied by law offices. Other tenants currently occupying the building are the United States Federal Public Defenders; United States Senate Office for Senator Rounds; Gunderson, Palmer, Nelson & Ashmore LLP (Pierre Branch Law Office); Edward Jones Financial; Pure Bliss Café; Bokay Studio Flower Shop; and Pankratz and Associates.

Like our current space, the new office is close enough to the Capitol to accommodate meetings during the upcoming legislative session. It is also conveniently located across the street from the Hughes County Court House and two blocks from the Federal Court House.

The State Bar’s new office space was designed and built out to meet the Bar’s needs. It has six offices, a conference room, a copy and supply room, a reception area, and adequate room for storage. The good news is that our new landlord bore the expense of the renovation.

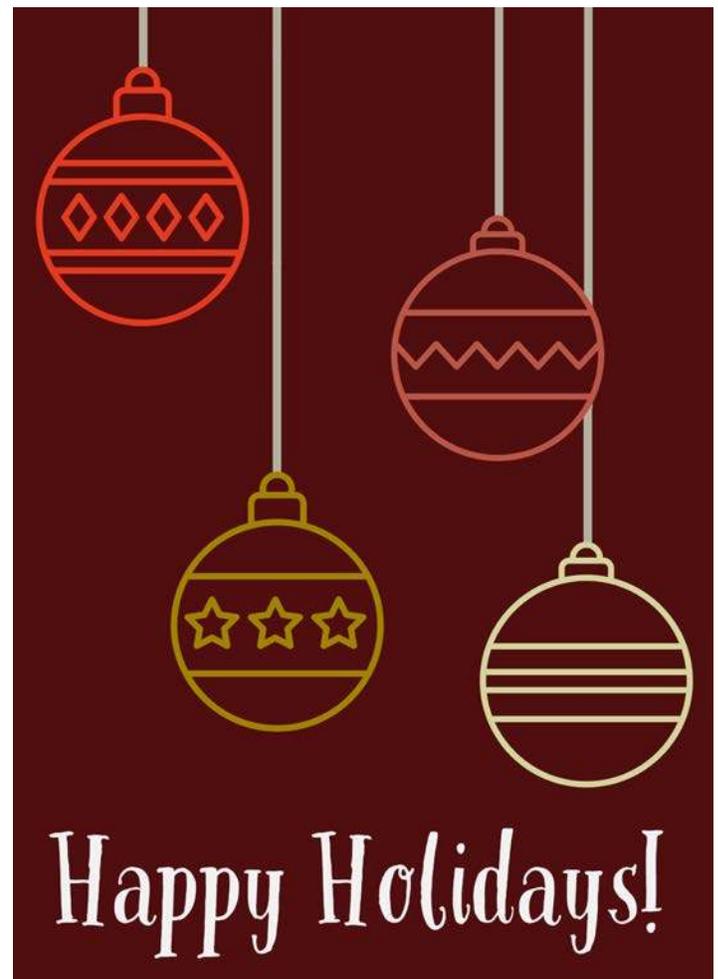
One of the features of the new office will be an office space which will be available to SBSB members. If members have a deposition, mediation, a client meeting, or other need for short-term space in Pierre, the State Bar will have the ability to accommodate them.

Relocating has also provided our organization with an opportunity to obtain more efficient

and effective technology to support the way our employees work, provide for cyber security, and institute managed IT (information technology) services. Additionally, the office will have a new hosted VOIP telephone system that will allow us to better communicate with and serve our members.

Moving to a new home always brings a sense of excitement and anticipation. It also causes one to reflect and look back. The State Bar of South Dakota has called the Sahr building home for decades and the Sahr family has been a good partner and host to staff and members during all that time. For that we say thank you.

So, as the seasons change, so will we. Happy holidays to everyone! And please come visit us at the new State Bar of South Dakota office in the new year.



A miniature dollhouse scene featuring a blue car, a white chair, and a green polka-dot sofa. The scene is set against a dark background with a yellow square in the top left corner.

WE ARE MOVING!

The State Bar office is moving to a new office! Because of this transition, we will be available during limited office hours beginning December 16th to January 6th. The best way to reach us during this time is by email. We appreciate your patience as we move into our new space.

**NEW ADDRESS:
STATE BAR OF SOUTH DAKOTA
111 WEST CAPITOL AVENUE, #1
PIERRE, SD 57501**

Dean's List: News from the Law School



by: *Neil Fulton*
Dean
USD School of Law

Like most higher education institutions, the Law School is subject to accreditation. Our accrediting agency is the ABA Section on Legal Education and Admissions to the Bar. Within the Section, the Section Council formally promulgates and enforces the standards for legal education (here's the website if you're interested https://www.americanbar.org/groups/legal_education/accreditation/). The Law School is due for reaccreditation this year. So, it is a good time to tell all of you a little bit about the process and how we stand.

The ABA Standards govern operations for any accredited law school. One group of standards governs law school organization and administration. They address issues like school governance, financial resources, and compliance with applicable laws. Curriculum standards address the scope of course offerings, distance education, field placements, academic advising and support, and bar passage rates. The qualifications, size, professional support, and responsibilities of faculty are addressed. The standards on student life are extensive. They address admissions, undergraduate educational requirements, use of standardized admissions tests like the LSAT in admissions, student loans, and non-JD program credit. Lastly, there are standards setting minimum expectations about library, IT, and physical facility resources. As I hope you can see, the Standards are comprehensive touching on all aspects of law school operations.

On an annual basis we must report certain information to the Council. This includes our cost of attendance (tuition and fees plus estimated living costs), the number of scholarships awarded (broken down into groups of full tuition, more than half, and less than half), and a breakdown of our application volume and

acceptance rates. We provide a lot of data about our student makeup. That includes the size of the most recent 1L class, their demographics and academic credentials (LSAT score and undergraduate grade point averages at various percentiles), the size of the current student body as a whole, class demographics, and the number of transfers and other attrition. We must provide an enumeration of our current class offerings, number of experiential classes offered, breakdown of courses by class enrollments, and the numbers of required and elective courses. Lastly, we provide the number and demographics of full time and other faculty.

All this information is required to be published on the Law School website. It is here if you'd like to take a look: <https://www.usd.edu/law/aba-disclosures>. There is also information about bar passage rates, the academic calendar, career placement, and academic policies. In short, the ABA Standards, reporting requirements, and publication mandate lets the public see data to have a clear picture of a law school. It also lets the Council track the compliance with Standards for a particular law school.

Assembling this data takes quite a bit of time. There are other reporting requirements like the U.S. News rankings that, if not mandatory, are basically impossible to avoid. So, we do spend a lot of time and energy in tracking, verifying, and reporting data. But it must be done, and it must be done correctly.

Every ten years (recently changed from every seven) the ABA sends a site visit team to conduct a comprehensive review of the law school and report to the Council. That visit just took place in November.

The site team does a lot during their three-day visit. They conduct entry and exit interviews with President Gestring, Provost Hackemer, and me. They observe classes and interview faculty. They review syllabi, course exams, model answers, and student evaluations of faculty. They meet with students. They review financial documents to ensure that the law school has adequate resources. They assess law review articles, books, and other publications for the scholarly output and quality of faculty. The team also evaluated admissions files, placement records,

and academic to gauge compliance with the ABA standards. Lastly, they reviewed an extensive self-assessment and questionnaire that the Law School completed. Chief Justice Gilbertson also graciously met with the team to provide valuable background about South Dakota, the law school, Project Rural Practice, and other key issues.

While the Council ultimately decides whether the Law School is in compliance with the Standards, it does so based on the report produced by the site visit team. And their exit interview was very positive.

The site team recognized that the teaching and scholarship of Law School faculty is very strong. While our class offerings are limited in comparison to larger schools, our focus is on fundamentals are they are taught very effectively. Our investment in bar preparation is paying off and we are successful in placing students after graduation. Academic advising was cited as a strength which depends on the work of faculty advisers and our registrar Teresa

Carlisle. Although we are not entirely out of the woods, the team recognized that we are moving in a positive financial direction due to larger classes, the investment by USD and the Legislature in the Law School, and the generosity of donors. I am hopeful to have the site visit formal report soon and feedback from the Council soon thereafter. There will certainly be internal issues that we can improve based on the report, but none that put in question the fundamental soundness and governance of the law school.

It can be easy to see regulation like this as unpleasant or disruptive. As a new dean, I viewed it as a tremendous opportunity to get insight about the Law School from experienced professionals around the country. Their observations provided me a road map and list of internal priorities for the coming months. It also confirmed what I have seen as I have settled in in Vermillion: this is a community of excellence, service, and leadership. I am proud of the law school, and hope that you are too.

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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BY
HIS
HEART...**

- Roger Bart

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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.

- Jordyn Bangasser
- Rick Ribstein
- Rick Mickelson
- Tim Hogan
- Stanton Anker
- Hannah Purtell
- Koln Fink
- Chris McClure*

*Mentor Attorney

AND MUCH THANKS TO:

SCOTT MOSES

TOM SIMMONS

BETH BALOUN

SARAH BOUWMAN

**FOR THEIR ASSISTANCE ON SD FREE LEGAL
ANSWERS THIS MONTH!**

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

Please send a message to Denise Langley at:
access.to.justice@sdbar.net.



HERO

a person who is admired
or idealized for courage,
outstanding achievements,
or noble qualities

EXTENDED LAW FOR LUNCH

TOPICS

- GENERAL TAX UPDATE
- IRS RESOLUTIONS
- TAX PLANNING FOR ESTATES & TRUSTS

Tax Update



CASEY PETERSON



December 5, 2019
11:30 - 1:30 pm,
CST



Jennie
Steinmetz,
CPA

**CLICK HERE TO
REGISTER!**

Mark your Calendars

PLEASE JOIN US

SIXTH CIRCUIT
WOMEN IN LAW

Perkins, Fort Pierre,

Up next: December 19, 2019,

*Karen Authier, Exchange
Club*

QUESTIONS:

KIRSTEN.JASPER@USDOJ.GOV

LIKE US ON FACEBOOK:

6TH CIRCUIT WOMEN IN LAW

SIXTH CIRCUIT

Women In Law



2ND CIRCUIT HOLIDAY PARTY

Hotel on Phillips
Friday, December 13, 2019,
5 PM to 7 PM.

The event will include appetizers and a cash bar, along with the opportunity to spend quality time with your colleagues. We are encouraging business casual for the event. We look forward to seeing you all at the Holiday Party!

2019 John R. Justice Student Loan Repayment Program

Applications are being accepted until December 31st, 2019. All applications must be received or postmarked on or before this day.

Full time state prosecutors and public defenders as well as federal public defenders may qualify for John R. Justice funds. Elected officials and federal prosecutors are not eligible. Be sure to submit a copy of a recent statement for the loan you would like the award to be applied to. You may access the application form and service agreement options at the following website:

<https://atg.sd.gov/OurOffice/JohnJusticeProgram.aspx>

For more information, you may call the Office of Attorney General at (605) 773-3215.

ANNOUNCEMENTS

Davenport, Evans, Hurwitz & Smith, LLP
is pleased to announce that

Brendan W. Reilly
has re-joined the firm as partner.

Davenport, Evans, Hurwitz & Smith, LLP
206 West 14th Street
P.O. Box 1030
Sioux Falls, SD 57101-1030

Telephone (605) 357-1254
Facsimile: (605) 335-3639

breilly@dehs.com

www.dehs.com

Lynn, Jackson, Shultz & Lebrun, P.C.
is pleased to announce that

Jason C. Thomas
has become an associate with the firm.

Lynn, Jackson, Shultz & Lebrun, P.C.
311 N. 27th Street, Suite 4
Spearfish, SD 57783

Telephone: (605) 722-9000

jthomas@lynnjackson.com

www.lynnjackson.com

Lynn, Jackson, Shultz & Lebrun, P.C.
is pleased to announce that

Cesar A. Juarez
has become an associate with the firm.

Lynn, Jackson, Shultz & Lebrun, P.C.
110 N. Minnesota Avenue, Suite 400
Sioux Falls, SD 57104

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STATE BAR OF SOUTH DAKOTA

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Please join Lynn, Jackson, Shultz & Lebrun, P.C. in extending best wishes to

Gene N. Lebrun,

who after years of dedication and outstanding service, is retiring from the practice of law on December 31, 2019.

Gene's retirement is Lynn Jackson's loss, but a very well-deserved respite for him and his wife Pat.

Lynn, Jackson, Shultz & Lebrun, P.C.
909 Saint Joseph Street, Suite 800
Rapid City, SD 57701
(605) 342-2592

glebrun@lynnjackson.com
lynnjackson.com

ATTENTION!

MEMBER FEES ARE DUE BY

DECEMBER 31, 2019

PLEASE INCLUDE YOUR INVOICE WITH YOUR CHECK AND ANY CONTACT INFO UPDATES!

PAY ONLINE AT

www.statebarofsouthdakota.com



STATE BAR HEADQUARTERS IS MOVING!



Please note:

OUR NEW
ADDRESS
EFFECTIVE 1/1/20

111 W Capitol Ave. #1
Pierre, SD 57501

The Service Subcommittee of the Labor and Employment Law Committee



has coordinated the donation of office furniture and decor to nonprofit legal organizations. We are looking to expand this effort to include helping solo and small law firms in need of office furniture and decor. If you are a non-profit organization or a law firm in need of office furniture OR you would like to donate furniture, please contact **MEGHANN ROCHE**.

Meghan.Roche@usdoj.gov



SEARCHING FOR A WILL FOR
ROB ROY JAMES FROM
RENNER, SD.

If anyone has any information,
please call Mindy at 808-333-7000.
Thank you!



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ATTORNEYS AT LAW

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DONALD P. KNUDSEN



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Application for Pro Bono Emeritus Status

I, _____, an active member of the State Bar of South Dakota, do hereby apply for Pro Bono Emeritus Status, for the year 2019.

I understand that if approved, rather than pay regular dues for the year 2020, I will only be required to tender the sum of \$100 (same as inactive dues) but I will be entitled to all the rights and privileges of an active member of the State Bar.

Further, I recognize that this status means that I will be requested to take a referral from East River Legal Services, Dakota Plains Legal Services, or Access to Justice, and I am willing to accept at least one referral in the year 2020.

Finally, I acknowledge that pursuant to the Pro Bono Emeritus Status, I have retired from the active practice of law and I cannot accept private clients, cases for friends or relatives (even if no fee is charged) and that my practice is limited to such referral cases as I accept from the Legal Services Programs, Access to Justice or a non-profit specifically approved by the State Bar. In the event that I decide to accept cases other than those referred to me and which I accept, that I will tender regular active dues and withdraw from the Pro Bono Emeritus Status Program.

I understand that the Pro Bono Emeritus Status Program will provide me with professional negligence insurance limited to those referral cases of which I accept.

Dated this _____ day of _____, 2020

Signature _____

Printed Name _____

Address _____

City, State, Zip Code _____

Phone _____ Email _____



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YOU'RE INVITED TO

USD School of Law Class of 2020 Night!



vs.



Date: Saturday, January 11 • **Where:** Sanford Coyotes Sports Center and Dakota Dome • **Time:** 12 pm - 6 pm

Double Header Basketball

Social: 12 pm and in between games in the entrance of the Dakota Dome

Women: 1:00 pm

Men: 3:30 pm

This event is open to all USD Law students and alumni. Tickets are **\$20**. To reserve tickets, call 605-677-5959 and tell them you're with the USD Law event. Please enter through the north public entrance.

Tickets are reserved for USD Law alumni and friends as a 2 for 1 deal!

FOOD AND DRINKS WILL BE PROVIDED

If you are a person with a disability and need a special accommodation to fully participate, please contact Disability Services at 605-658-3745 or email disabilityservices@usd.edu 48 hours before the event. This document is available in alternative formats upon request, contact Disability Services.

BOARD OF BAR COMMISSIONERS

Minutes, October 18, 2019

Red Rossa, Plains Room

Pierre, South Dakota

President Steve Huff called the meeting to order at 8:30 a.m. Central Time on Friday, October 18, 2019, in Pierre, South Dakota. Present at the meeting were Huff, President Elect Westergaard, and Commissioners Aasen, Christensen, Ginsbach, Hruska, Kempema, Pilcher, Roby, Trefz, Williams (by telephone), Wurgler, and Zea (by telephone), and Executive Director/Secretary-Treasurer Andrew Fergel. Also, present during all or part of the meeting were Strategic Plan Coordinator Elizabeth Overmoe, Assistant Executive Director Nicole Ogan, Access to Justice, Inc. Co-Coordinator Denise Langley, Young Lawyer Section President Elect Carrie Srstka, and Lawyers Assistance Program Director Rebecca Porter.

Minutes of September 19, 2019 Meeting by Teleconference: President Elect Westergaard moved to approve the minutes of the September 19, 2019 meeting held by teleconference. Commissioner Aasen seconded the motion. Motion passed.

Update on “Life Above the Bar” Pilot Project: Lawyers Assistance Program Director Rebecca Porter presented a report on her work for the Life Above the Bar Pilot Project. Ms. Porter provided a detailed report on her activities, demonstrating that she has been extremely busy the past 3 months and will remain busy for the remainder of the year. At the end of Ms. Porter’s presentation, she made two requests related to her work on the project. She first requested that she be reimbursed or granted the sales tax on those services in addition to the monthly grant money she receives for her services. Ms. Porter next requested a \$1,500.00 travel budget to cover travel expenses related to the performance of her duties as LAP Director. Executive Director Fergel will present Ms. Porter’s requests to the Board of the South Dakota Bar Foundation for its consideration and report the Foundation’s decision to the Commission.

Young Lawyers Section Report: Carrie Srstka, President Elect of the Young Lawyers Section, updated the Commission on the section’s recent activities and provided information on upcoming activities and projects.

Financial Report: Fergel presented a financial report to the Commission that included information about fund balances in all the operational accounts for the State Bar of South Dakota, SD CLE, Inc., and Access to Justice, Inc.

Transition of State Bar Office to New Location: Executive Director Fergel reported that everything is on schedule for the State Bar of South Dakota to move from its current office location to an office located in the Hyde Building at the end of

December. The new address for the South Dakota State Bar Office will be 111 West Capitol Avenue, Suite #1, Pierre, SD 57501, effective January 1, 2020.

Group Health Plan for State Bar Employees: Executive Director Fergel informed the Commission that the State Bar's DAKOTACARE coverage will come to an end because beginning in 2019, DAKOTACARE stopped offering Small Group ACA coverage options and the selection of new small group health insurance provider and policy is necessary. Fergel requested authorization to contract with Avera Health Plans for small group health coverage under the Avera 2000 Group Health Plan. Fergel also described how the Avera 2000 plan compares with the Bar's current policy in cost, copays, deductible, and maximum out of pocket limits. Commissioner Roby made a motion to allow the Executive Director to contract with Avera Health Plans for the Avera 2000 Group Health Plan to cover the State Bar's eligible employees. President Elect Westergaard seconded the motion. Motion passed.

Podcast Request: The Law Practice Management Committee and the Solo Practitioner Committee requested that the Commission consider and approve the creation of a State Bar Podcast. After a short discussion concerning the minimal costs and potential benefits of State Bar Committee podcasts, Commissioner Aasen made a motion to approve the request. Commissioner Ginsbach seconded the motion. Motion passed.

Strategic Plan Progress Report: Strategic Plan Coordinator Overmoe presented a progress report on implementation of the State Bar's newly adopted 2019-2022 strategic plan. Ms. Overmoe supplemented the progress report with a goal progress chart that set forth the tasks to be achieved, timeframes for implementation, progress status, who is responsible for task, and key performance indicators.

2020 Membership Dues and Fees Invoice: Executive Director Fergel presented a draft 2020 Bar Dues Notice to the Commission for its review and approval. After discussion, Commissioner Hruska made a motion to approve the 2020 Bar Dues Notice in form and to authorize the 10% late fee to be assessed on dues not received by the State Bar Office by January 1, 2020. Commissioner Kempema seconded the motion. Motion passed.

Lawyer Referral Service Update: Executive Director Fergel updated the Commission on the Bar's on-line Lawyer Referral Service Program. Fergel stressed that the program needs more attorneys to participate in the program in order to meet the needs of individuals utilizing the service to find counsel. Fergel reported that there are fewer attorneys participating in the program now than six months ago. After some discussion, it was suggested that the Lawyer Referral Service Committee begin implementing its marketing plan to promote the Lawyer Referral Service Program to see if that improves attorney participation. The Commission

was in general agreement with the suggestion, and Ms. Overmoe will relay the suggestion to the Lawyer Referral Service Committee.

2020 Legislative Session: Executive Director Fergel updated the Commission on work being done for the upcoming Legislative Session.

Supreme Court Rules Hearing: Executive Director Fergel informed the Commission that proposals for the Supreme Court February Rules Hearing on February 11, 2020, need to be filed with the Supreme Court Clerk no later than December 6, 2019. Fergel informed the Commission that he will prepare the rule proposals that the Bar membership approved at the annual meeting in June. Thereafter, the Commission discussed a request by a Bar member to not present the Rule 8.4 amendment, passed by a majority of members present at the annual meeting, to the Supreme Court. A majority of the Commission members thought it would be inappropriate to withhold presenting the rule and no action was taken on the request.

Other Items Discussed: The Commission discussed a potential partnership with a vendor to offer encryption services for State Bar members, the Bar's membership list policy, the Client Assistance Fund, and the possibility of posting formal public disciplinary dispositions on the public side of the State Bar's website. The Commission took no action these matters.

There being no further business, President Huff adjourned the meeting.

Respectfully submitted,

Andrew L. Fergel
Executive Director/Secretary-Treasurer



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Office of the State Court Administrator

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500 East Capitol Avenue
Pierre, SD 57501-5070

November 15, 2019

Andrew Fergel
State Bar of South Dakota
222 E. Capitol Avenue
Pierre, South Dakota 57501

RE: 2020 Court-Appointed Attorney Fees and Mileage

Dear Mr. Fergel:

Please publish the following announcement in the December 2019 issue of the State Bar Newsletter:

“Court-appointed attorney fees for 2020 will be \$97 per hour pursuant to UJS policy which provides that these fees increase in an amount equal to any cost of living increase approved for state employees by the Legislature. Mileage for court-appointed attorneys will be paid at the rate of \$1.00 per mile.”

If you have any additional questions, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Sattizahn".

Greg Sattizahn
State Court Administrator

Our Mission: Justice for All
Our Vision: We are stewards of an open, effective, and accessible court system, worthy of the Public's trust and confidence.

When Sharing Office Space, Make Sure You Have Your Ducks in a Row

Mark Bassingthwaighe, Esq.
mbass@alpsnet.com

Someone recently shared a comment on a blog that talked about how malpractice insurance companies and those who write our rules of professional conduct are behind the times. Apparently those of us who run in the ethics or insurance circles just don't understand how lawyers practice in today's world. Let's just say that I respectfully disagree and the following explains one of the many reasons why.

Years ago I visited a small law firm that was part of an office share arrangement located in Chicago's Loop. Of course I understood that the cost of maintaining an office in the Loop would be prohibitively expensive for the typical solo or small firm so this was no surprise. What did take me off guard was the reception area. As soon as I walked in, the first thing that I saw was a large reception desk staffed by six to eight receptionists. I quickly realized that far more than two or three distinct firms were operating out of this common space which made me think that this was going to be a longer day than I had planned. Why? Well, while I do appreciate the benefits that can come with office share arrangements, there are ethical, malpractice, and insurance coverage concerns that can easily arise in the context of an office share situation. Due to the amount of client traffic in that reception area I suspected little thought had been given to any of those concerns by anyone in this group.

In order to set the stage, let's talk about my response to walking into that space. From the outset, I viewed the arrangement as misleading and thus a possible ethics violation in and of itself because there were no clear signs informing the public that the space housed a number of independent firms. Making matters worse, anyone entering simply approached the first available receptionist. The result was that the common reception area suggested that all of the attorneys who practiced in that space practiced together as one firm when in fact they did not and that's a problem. For example, should one of the solo attorneys practicing there ever be sued for malpractice, other occupants may also be named in that suit given the public presentation of the group as a firm. Now here is where it gets interesting. Malpractice policies generally exclude coverage for any

and all claims that arise out of or in connection with any act, error or omission committed by an attorney with whom an insured shares common office space and who is not an insured under the insured's policy. So if your independent office suite mate gets sued for malpractice and you are named in that suite, had no involvement with or perhaps even awareness of the client who filed suit, don't be surprised if your insurance carrier says "good luck with that" after you put your own carrier on notice. Given this, the following tips are provided as a guide in order to assist you in avoiding this coverage problem and others like it.

- Focus on clear indicia of separation. Signage should emphasize the existence of separate practices or firms and not simply be a list of attorney names. Establish and maintain separate phone numbers, letterhead, fax numbers, offices, business cards, file storage areas, support staff, and computer systems. Directory listings and other advertising should not contradict the indicia of separation. Thus running an ad referring to the group with something along the lines of "The Southern Illinois Law Center" might not be in your best interests. Try to look at your space through a client's eyes. If a first-time client might view or experience the arrangement as a firm, you're inviting trouble. Finally, include a statement in every firm's engagement letter and fee agreement that explains there is no partnership relationship with the other attorneys or firms who also occupy the space.
- Prioritize maintaining client confidences! This isn't optional. There should be no talking in the halls, no common fax machine, and file cabinets (or office doors) should be locked when attorneys are away from their offices. Don't leave client material in public places such as shared conference rooms. Close doors when visiting with clients or taking on the phone. Computers should be password protected. If there is a common staff person, this individual should not be involved in opening mail, taking detailed messages, receiving faxes, etc. because a common staff person should never be privy to sensitive client information as the attorney/client privilege could easily be lost as a result.

- Don't minimize conflict of interest issues. If the office sharing arrangement calls for a common employee or the indicia of separation are weak in nature, representation of adverse parties by separate practitioners in the space is ill advised and, in a number of jurisdictions, would be ethically prohibited. Regardless, if adverse parties will be represented by separate attorneys in the space, always obtain client consent in writing at the outset.

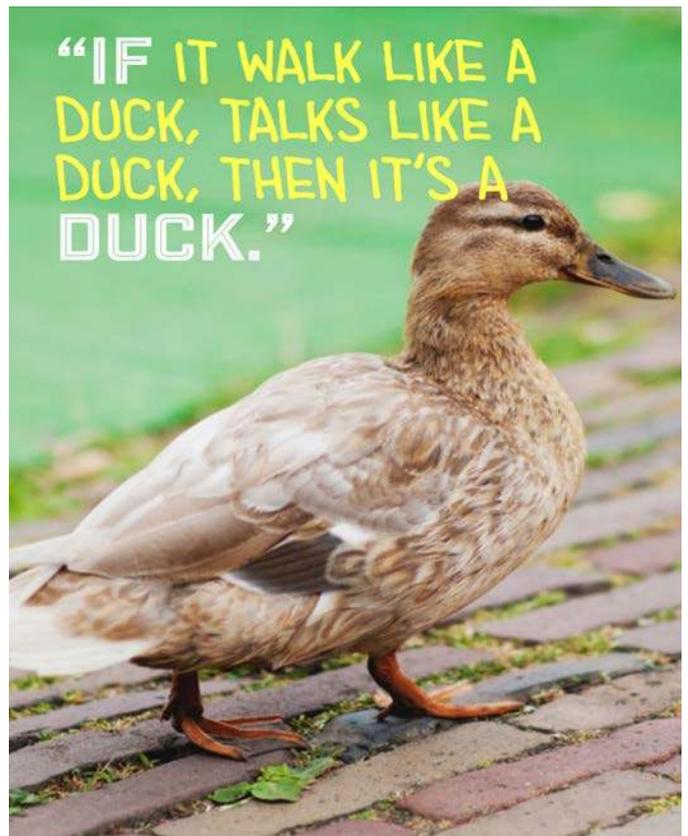
- Don't mislead the public. The use of common advertising to include terms such as "of counsel," "an association of solo practitioners," or "affiliated with" can be a significant misstep if the actual relationship does not support the use of these terms. For example, of counsel means more than being available for an occasional consultation or question. Of counsel is defined as having a close and continuing relationship which involves frequent and continuing contact. If this isn't going to be the case, don't use the term.

- Put the office sharing agreement in writing. Issues worth considering include, what equipment will be shared and who will be responsible for its maintenance and repair? If there will be shared staff, who will hire and fire? How will work be prioritized for the staff, their salaries paid, and who will evaluate these shared employees? Plan for the inevitable attorney arrivals and departures. Who will decide who comes into the space and under what conditions? Will departing attorneys be responsible for finding someone to take their space? Detail all financial responsibilities and the consequences of a failure to meet those responsibilities. Most importantly, require that all office sharing attorneys maintain professional liability insurance in order to remain in the space each year because the lack of insurance is one of the reasons why every attorney in the shared space gets named in malpractice suits.

In contrast to the Chicago situation mentioned at the beginning of this piece, I have also visited a number of office share situations where I have found all of the above

ideas fully implemented. It really is possible to avail oneself of the benefits of an office sharing relationship, yet minimize the risks normally associated with these types of arrangements. The key is in striving to identify and avoid conflicts, in implementing strong policies and procedures that preserve client confidences, and most importantly in doing all that you can to maintain professional independence as viewed and experienced by any and all clients. That said, always remember that in spite of what you might say to a client, if you and your officemates conduct yourselves in a way that would lead a reasonable person to believe you are a firm, ethical and/or liability trouble may be just around the corner. This is a great example of where that old saying "If it walks like a duck, talks like a duck, then it's a duck" rings true.

Now, in reference to the comment left on the blog. It really isn't about us insurance or ethics types being stuck in the 1950's that's the problem. It's that we as lawyers need to deal with the reality that some of our peers will bring a malpractice action against all attorneys practicing in an office share setting and at times that's exactly what should be done because to those of you practicing in this setting, understand that you don't get it both ways. You really do need to have your ducks in a row.



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Issue Presented: Whether a lawyer may inform a client or prospective client regarding third-party financing options or otherwise identify a third party lender that might loan the client/prospective client funds to pay for the lawyer's services?

Answer: Yes, so long as the lawyer (1) explains the potential arrangement to the client or clarifies that the client must rely solely on information provided by the third-party lender to make the decision; (2) clarifies there may be other options to pay for legal services including other lenders; (3) does not charge an unreasonably higher fee for the representation because of the financing arrangement and does advise the client if the lawyer will charge a higher fee to account for finance charges; (4) treats the funds as the client's until they are earned and delivers them to the client upon termination of representation; (5) informs the client if the lawyer believes the financing arrangement conflicts with the client's best interests and obtains the client's written consent to continuing representation; and (6) addresses any financial or attorney-client relationship lawyer has or has had with the lender.

Rules Implicated: 1.2, 1.4, 1.5, 1.6, 1.7, 1.9, 1.15, and 1.16.

FACTS

Some of Lawyer's Clients or potential Clients have financial difficulty paying a retainer or flat fee. Lawyer knows of finance companies ("Lenders") willing to lend people money to pay for legal services. Lawyer has inquired whether Lawyer may include a link to these Lenders' websites on Lawyer's own website, or otherwise identify Lenders for and to Clients or potential Clients. Lawyer has provided the committee with a formal opinion from the American Bar Association, (https://www.americanbar.org/content/dam/aba/images/news/2018/11/formal_opin_484.pdf), which Lawyer believes addresses the issue.

DISCUSSION

The Committee agrees ABA Formal Opinion 484 ("ABA Opinion") addresses most, if not all, of the issues implicated by Lawyer's inquiry, and other matters outside the specific scope of Lawyer's request. However, the Committee will separately address the Lawyer's specific inquiry here, including the issues the Committee believes are relevant.

- 1. The Lawyer must either (1) explain the details of the potential financing arrangement in sufficient detail to satisfy Rule 1.4(b); or (2) sufficiently clarify (to satisfy Rule 1.2(c)) that the Lawyer is not offering any advice about the arrangement or the Lender, and that the Client must obtain that information and advice from the Lender.**

Rule 1.4(b) requires Lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Relatedly, Rule 1.2(c) states

that Lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the Client gives informed consent.

Read in concert, these two provisions require Lawyer to do one of two things when presenting the Client or potential Clients with a third-party financing arrangement as an option for paying for Lawyer's services. As noted in the ABA Opinion, Lawyer's identification of a Lender, whether directly to the Client or generally to the public, such as through a link on Lawyer's website, could be construed as an implied representation that Lawyer has vetted that Lender or otherwise endorses the Lender's qualifications and services. Lawyer must either actually investigate that Lender and confirm that it will properly serve the Client's needs, and confirm that Client has the financial wherewithal to enter into such an arrangement, or clarify that Lawyer has not done so, is not vouching for that Lender's qualifications or reputation, and is deferring to the Lender to determine Client's financial condition and advise the Client. Regarding links to the Lender's website on Lawyer's website, the Lawyer must present a sufficiently-prominent disclaimer to similar effect.

Relatedly, Lawyer should advise Client that financing with Lender is only one of multiple potential options for obtaining funds for the representation (such as borrowing from a traditional bank, borrowing from friends or family, etc.) and should likewise note there may be other Lenders willing to provide equal or superior financing options for the Client. Lawyer should include similar disclosures/disclaimers on Lawyer's website if a link to Lender's website is provided.

2. If the Lawyer will charge a higher fee because of the Client's arrangement with a Lender, the Lawyer must communicate that Lawyer will do so, and must not charge an unreasonably higher fee.

The Lender might require Lawyer to be enrolled with or subscribed to the Lender's program for a fee paid by Lawyer either on a per-client or flat-fee basis. Lawyer can charge a higher fee to account for these charges, but the fee must still be "reasonable" as required by Rule 1.5(a), and Lawyer must communicate this surcharge to the Client, preferably in writing as contemplated by both Rule 1.4(b) and 1.5(b). The Committee cannot articulate a standard for what would be "reasonable" in any situation. However, obviously, Lawyer cannot increase the fee by more than the fee the Lender charges for that particular Client matter, or by more than is necessary for Lawyer to defray the cost of a periodic flat-fee subscription with the Lender over multiple client matters. Likewise, the matter the Lawyer is addressing for Client may incur a sufficiently low legal fee that the subscription fee to be passed on to the Client is unreasonably high as a proportion of the fee itself.

3. The Lawyer must treat the funds the same as any other Client funds under Rules 1.15 and 1.16

The Lender might transmit or deliver the funds directly to the Lawyer so the Client never has them. The funds still belong to the Client. The funds received by Lawyer from the Lender must remain segregated in a separate trust account until earned (See Rule 1.15(a) and (d)), and any unearned funds must be returned to the Client upon completing the representation (See Rule 1.16(d)).

4. The Lawyer must not reveal information protected by Rule 1.6 to the Lender

It is possible that, instead of disbursing the funds as a lump sum to Client or Lawyer at the outset of representation the Lender will pay Lawyer on a monthly or other periodic basis, requiring Lawyer to submit monthly statements or invoices to the Lender. Under Rule 1.6(a), Lawyer may not reveal information related to the representation of the Client unless the Client gives informed consent or there is an exception to the general rule including those articulated in Rule 1.6(b). None of the exceptions apply here. If Lawyer must submit periodic statements to Lender to receive payment, Lawyer must not provide confidential information related to the representation without Client's informed consent. The Committee's opinion is that an invoice that does not list the services provided, but simply states an amount due "for services rendered" or words to that effect will not violate Rule 1.6(a).

5. The Lawyer must obtain Client's informed written consent to the representation if Lawyer believes financing is not in the Client's best interest

Even if Lawyer has adequately communicated to the Client that Lawyer is not advising Client regarding whether borrowing funds from the Lender is in Client's best interest, Lawyer may still receive information from the Client indicating that it is not in Client's best interest, financial or otherwise, to borrow funds from the Lender. Lawyer would then have a concurrent conflict of interest under Rule 1.7(a)(2) arising from Lawyer's responsibility to represent Client's best interests and the Lawyer's "personal interest" in being compensated for Lawyer's services. Before Lawyer can continue representing Client under these circumstances, Lawyer must obtain Client's written informed consent to further representation, as contemplated by Rule 1.7(b), which would include advising the Client that Lawyer does not believe obtaining or continuing to obtain Lender's financing is advisable.

6. If the Lawyer has a financial interest in the Lender or if the Lender is a current or former client of Lawyer, the Lawyer must address these potential conflicts.

Lawyer also might have an ownership or other financial interest in the Lender or the Lender may be a current or former client.

The first situation implicates Rule 1.8(a), regarding a lawyer entering a business transaction with or securing an adverse pecuniary interest to a client. Lawyer would have to determine that the arrangement and terms of the financing are fair and reasonable and fully communicated to the Client, advise the Client in writing of the advantages of seeking independent legal advice, allow the Client to seek independent legal advance, and obtain written informed consent from the Client to the general terms of the financing arrangement and of the Lawyer's interest in the Lender and the arrangement.

The second situation may implicate Rule 1.7(a)(2) or Rule 1.9. The Lawyer will need to consider whether Lawyer's relationship with the Lender presents a "material limitation" on Lawyer's ability to advise both Lender and Client (regarding a current Lender client) or whether Lawyer's previous relationship with the Lender presents a "materially adverse" position between Lender and Client regarding a "substantially related" matter, or afforded information Lawyer could use to the Lender's disadvantage now (regarding a former Lender client). If either situation is presented, the informed written consent contemplated by those rules would be required.

CONCLUSION

It is the Committee's opinion that Lawyer may inform Clients or potential Clients about the availability of third-party financing through a Lender to help pay for Lawyer's services subject to the following:

1. The Lawyer must either fully vet the Lender and the advisability of Client entering into an arrangement with Lender or inform the Client or potential Clients that Lawyer is not doing so, but is leaving it to the Client and Lender to have those discussions. Any website links to Lender's website should present similar disclaimers.
2. The Lawyer must clarify that there are other ways to obtain the funds to pay for legal services, and that the Lender is just one of multiple Lenders that might lend the funds. Any website links to Lender's website should present similar information.
3. Any fee the Lawyer charges to the Client to defray fees or costs the Lender charges to Lawyer related to the Lender's financing must be reasonable and clearly communicated to the Client, preferably in writing.
4. The Lawyer must treat the funds received from the Lender like any other Client funds, i.e. segregated in a separate account until earned and returned to the Client upon termination of representation.
5. The Lawyer must not reveal confidential information related to the representation to the Lender absent Client's informed consent.
6. The Lawyer must obtain Client's written informed consent to continued representation if Lawyer believes obtaining financing from a Lender is not in Client's best interest, including disclosing Lawyer's opinion to Client.
7. If Lawyer has or has previously had a financial or attorney-client relationship with the Lender, the Lawyer must address any conflict-of-interest issues that arise from that relationship.

CERTIFICATE OF COMPLIANCE

INSTRUCTIONS

The certificate of compliance for the year 2019 must be submitted to the State Bar of South Dakota by **January 31, 2020**.

IMPORTANT INFORMATION concerning compliance with trust accounting records and procedures, including the reporting form, appear immediately following this notice. All ACTIVE members of the State Bar of South Dakota must file the compliance form with the State Bar not later than January 31, 2020. This rule includes retired lawyers, lawyers engaged in teaching, banking, insurance, full-time government employees, etc. This reporting requirement does NOT include inactive lawyers nor does it include Judges (Federal or Unified Judicial System) who are full time and did not have private clients.

Andrew L. Fergel
Secretary-Treasurer

TRUST ACCOUNT COMPLIANCE FORM INSTRUCTIONS

Immediately following these instructions, a model form has been reproduced. The form may be modified to accommodate multiple signatures where a number of or all partners in a law firm utilize a single trust account. Please type the name of the sole practitioner or, if using a common firm trust account, the names of all lawyers utilizing the trust account. For the balance of the form, fill in the blanks, check the spaces, or leave blank or mark n/a where appropriate.

1 - check (a), (b), or (c) if applicable

2 - self explanatory (usually appropriate for inactive or retired members)

3 - self explanatory (usually exclusive or full-time corporate, legal aid, or public sector lawyer. Please identify the employer.)

3(a)- self explanatory (usually appropriate for part-time Bankruptcy trustees)

4 - self explanatory (usually appropriate for the employee or associate of a law firm who does not have trust account writing authority.) At this point, inactive, retired, full-time corporate, legal aid, or public sector lawyers, and associates without trust account check writing authority may sign the form and stop.

All others should have trust accounts and must provide the following information:

5 - state the name, address, and account number of trust account financial institution

6 - the blanks should be completed with the most recent monthly trust account reconciliation.

Keep in mind monthly reconciliations are required. For example, if this form were completed on 12-15-10, you would insert the closing date of the most recent bank statement (i.e. 11-30-10).

6(a)-(h), and 7 - type or print yes or no in space provided. If you can answer "yes" to each of these questions, you are in compliance with Supreme Court Rule 91-10. If you must answer any of these in the negative, you need to make changes in your trust accounting system. A negative answer will result in further inquiry.

8 - This question merely requires you to confirm that a monthly reconciliation was performed and if there were errors/inconsistencies in the reconciliation, to explain the same. I remind you that the effective date of this rule was July 1, 1991. It is not too late to perform the monthly reconciliations from and after July 1, 1991, through the date of completion of this form; however, monthly reconciliations must be performed prospectively.

I have heard from a number of lawyers who have said that their trust account has an odd amount, such as \$4.54, which has been in the account for ages and the client has disappeared. The compliance report should so note the amount and reason (lawyer unable to disperse the sum of \$4.54 belonging to a client because client is not able to be located).

Thereafter, if the amount remains constant (\$4.54 as in this example), no further explanation is necessary in subsequent compliance forms.

The rule does not require nor do we want the amounts held in trust, the identities of clients, or any other confidential information. If all partners in a law firm use a common trust account, one form may be submitted provided all partners sign the form. Please type your name under your signature. This will avoid nuisance phone calls or letters trying to ascertain who signed the forms.

All lawyers must submit the compliance form no later than January 31, 2020. **Please submit compliance forms after reviewing your December bank statements.** If you have questions, please give me a call. ALF

2019 CERTIFICATE OF COMPLIANCE

TO: The Secretary-Treasurer, The State Bar of South Dakota, 111 West Capitol Avenue, Suite 1, Pierre, SD 57501

Dear Sir: I/we (Please list all persons signing the form here) _____

member(s) of the State Bar of South Dakota certify that during the 12-month period preceding the date of this report: **(check the following items where applicable and/or fill in the blanks)**

1. I (we) have engaged in the private practice of law in South Dakota as:

____ (a) a sole practitioner;

____ (b) a partner or shareholder of a firm practicing under the name of _____;

____ (c) an associate of a sole practitioner or of a firm, as the case may be, practicing under the name of _____

and I maintain separate books, records and accounts showing all legal business performed by me.

____ 2. I have not engaged in the practice of law in South Dakota, and I have neither handled nor been responsible for either clients' trust funds or clients' trust property in South Dakota.

____ 3. I have practiced law in South Dakota exclusively as an employee of (designate name of government agency, corporation, or other non-member of the Bar) _____

and I do not handle or become responsible for money or property in a lawyer-client relationship, other than money or property received in the course of official duties and disposed of in accordance with regulations and practices of (designate name of government agency).

____ a. I have served as a trustee in one or more cases under Title 11 of the United States Code, and I am accountable for all funds I handled in connection therewith to the Office of the United States Trustee, which office is statutorily charged with the responsibility for reviewing and supervising my trust operations; therefore, my handling of such funds is not separately accounted for herein in connection with my private practice of law, and I further certify that I am in compliance with all such accounting requirements of said Office.

____ 4. I have engaged in the practice of law in South Dakota as an employee or as an associate of a sole practitioner or of a firm, as the case may be, practicing under the name of _____

and to the best of my knowledge all legal business performed by me is shown in the books, records and accounts of such sole practitioner or firm.

(Only lawyers checking categories 2, 3, 3a, or 4 may sign below. See instructions.)

(Signature)

Full Name (Print or Type)

Business Address

City, State, Zip

Date _____, 2020

Please state the total number of hours of pro bono service, as defined by the South Dakota Rules of Professional Conduct 6.1, that you (or the whole firm) provided in 2019. Enter 0 if none. Total Hours:_____.

Rule 6.1. Voluntary Pro Bono Public Service

A lawyer should render public interest legal service.

A lawyer may discharge this responsibility by: (a) providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations; or (b) by service without compensation in public interest activities that improve the law, the legal system or the legal profession; or (c) by financial support for organizations that provide legal services to persons of limited means.

(Attorneys checking categories 1a, 1b, or 1c must answer the following questions. See instructions.)

5. My (our) trust account(s) or the trust account(s) of the firm or association of which I am a partner or shareholder is (are) at the (name and address of banking institution) _____

(and bears the following name(s) and number(s)) _____

6. During the fiscal period ended __December 31, 2019_____, to the best of my (our) knowledge I (we), or the firm of which I am a member, as the case may be, maintained books, records and accounts to record all money and trust property received and disbursed in connection with my/our practice, and as a minimum I/we maintained:

- a. A separate bank account or accounts located in South Dakota, in the name of the lawyer or law firm and clearly labeled and designated a "trust account." _____(Yes or No) *(An out of state member may strike "South Dakota" and insert the state where his/her trust account is located.)*
- b. Original or duplicate deposit slips and, in the case of currency or coin, an additional cash receipts book, clearly identifying the date and source of all trust funds received, and specific identification of the client or matter for whom the funds were received. _____(Yes or No)
- c. Original canceled checks or copies of both sides of the original checks produced through truncation or check imaging or the equivalent, for all trust disbursements. _____(Yes or No)
- d. Other documentary support for all disbursements and transfers from the trust account. _____(Yes or No)
- e. A separate trust account receipts and disbursements journal, including columns for receipts, disbursements, and the account balance, disclosing the client, check number, and reason for which the funds were received, disbursed or transferred. _____(Yes or No)
- f. A separate file or ledger, with an individual card or page for each client and matter, showing all individual receipts, disbursements and any unexpended balance. _____(Yes or No)
- g. All bank statements for all trust accounts. _____(Yes or No)
- h. Complete records of all funds, securities and other properties of a client coming into my/our possession, and rendered appropriate accounts to my/our clients regarding them. _____(Yes or No)

7. During the same fiscal period identified in section 6 above, I, or the firm of which I am a member, complied with the required trust accounting procedures, and as a minimum I/we prepared monthly trust comparisons, including bank reconciliations and an annual detailed listing identifying the balance of the unexpended trust money held for each client or matter. _____(Yes or No)

8. In connection with section 7 above, I or the firm of which I am a member, have completed the following procedures during the fiscal period herein: compared each month the total of trust liabilities and the total of each trust bank reconciliation, and there were (check one of the following)

- ____no differences between the totals, excepting those determined to be the result of bank error;
- ____differences. (Give full particulars below, identifying the months in which there were differences, the amounts involved, and the reason for each item contributing to a difference. Attach additional pages if necessary.)

9. a. _____The undersigned lawyer(s) do not have professional liability insurance; ***(If you checked box 9(A), you must attach a representative copy of the letterhead you used to disclose the lack of insurance to your clients.)*** or

b. _____The undersigned lawyer(s) have professional liability insurance, the name of the insurance carrier, policy number and limits are as follows: _____

10. If you are a solo practitioner, have you made arrangements with another lawyer to secure your files and trust account and protect your clients in the event of your death or disability? Yes _____No _____ *(This is not currently a requirement, but very much encouraged. Please check out the state bar website for checklists and forms for solo practitioner planning for unexpected death or disability.)*

I am a member of the State Bar of South Dakota filing this report, and to the best of my knowledge and belief the facts as reported herein are accurate, and I certify that I have at all material times been in compliance with Rule 1.15 of the Rules of Professional Conduct entitled Safekeeping Property and SDCL 16-18-20.1 and 16-18-20.2. (All partners, shareholders, or associates checking categories 1a, 1b, or 1c must sign here.)

(Signatures)

_____, 2020
Date

Additional signature and attachment is needed if responding lawyer checked box 9(A) : The undersigned lawyer(s) not having insurance, do hereby certify that pursuant to Rule 1.4(c), I have advised my clients of the lack of professional liability insurance during the reporting period and I have attached hereto a copy of my law office letterhead disclosing the lack of insurance, in the required format, pursuant to Rule 7.5 of the Rules of Professional Responsibility.

All Responding Lawyer Signatures:

_____, 2020
Date

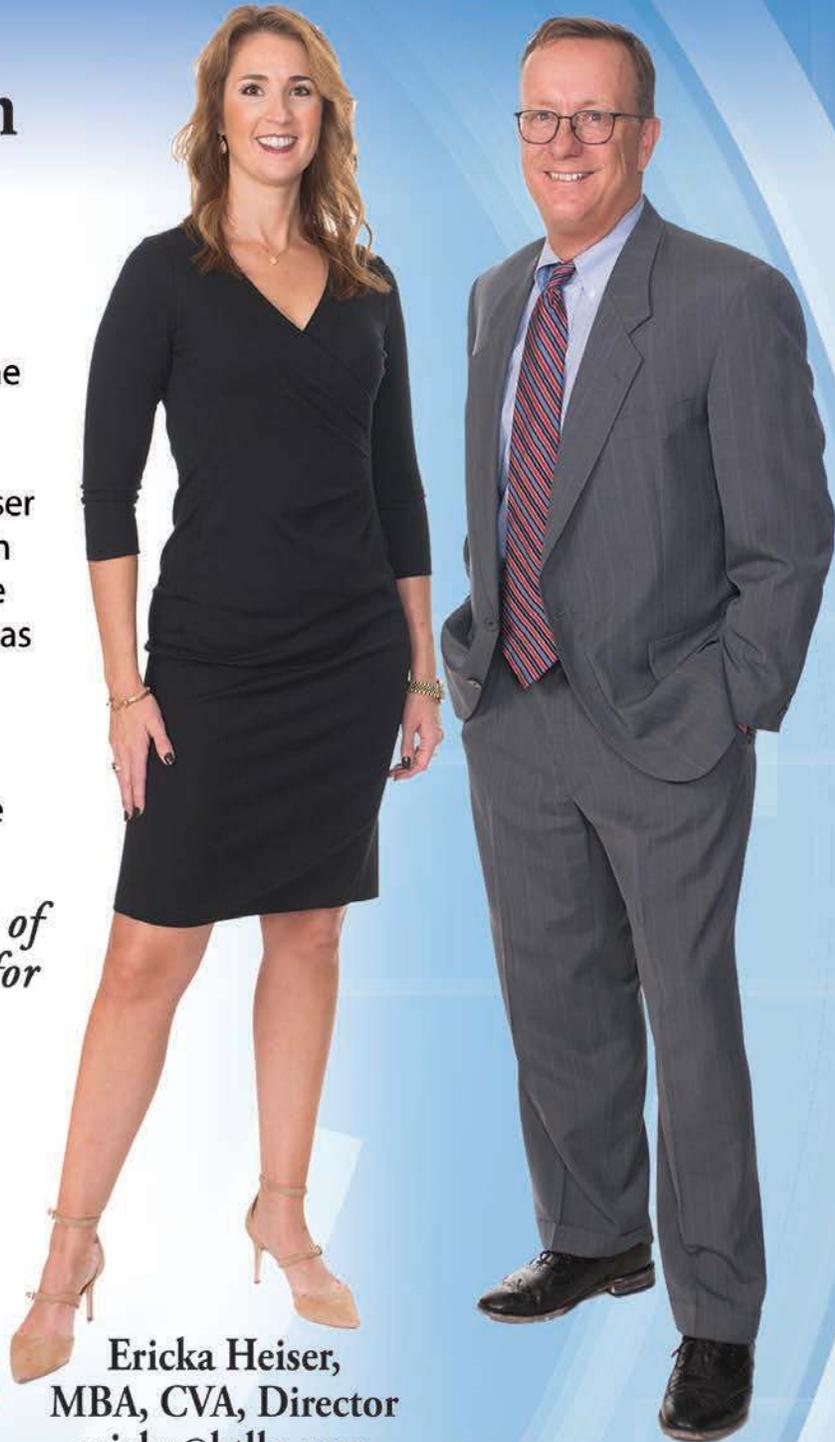
Determine Value

Meet the KTLLP Business Valuation Team

Certified Business Appraisals

If you work with clients in the agriculture industry, you understand that the cash flows generated from even a well-managed farm or ranch are very low in relation to the value of the underlying ground itself. Therefore, when appraising a minority interest in a farm/ranch operating entity, it makes sense for the appraiser to weight the value derived by the entity's cash flow with the highest and best use value of the underlying ground. This weighted approach has been upheld by the US Tax Court in *Estate of Andrews v. Commissioner* (79 T.C. 945) and *Estate of Helen J. Smith v. Commissioner* (99 T.C. 368). The valuation adjustments can be dramatic, but they are real.

If your clients need to know the value of their minority interest, please call us for valuation services.



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 Street | Rapid City | 342-5630  609 Mount Rushmore Road | Custer | 673-3220

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

Lawyers Concerned For Lawyers Lawyers Assistance Committee

Your Bar Leadership has been concerned that members needing help with chemical dependency or mental health issues may be reluctant to call State Bar Headquarters to inquire where to seek help. Phone calls seeking help for themselves or a loved one or a partner have always and will continue to be kept strictly confidential.

That said, Bar Leadership has determined that a referral agency independent of the State Bar staff may reduce any reluctance to call. Thus, beginning July 1st, we have entered into a contract with Disability Rights South Dakota. Both LCL and LAC committees have provided names and contact information for referrals. You will be provided with the names and phone numbers and can proceed to call whomever you select from the appropriate list.

Disability Rights South Dakota: 605-224-8294
or toll free 800-658-4782

Phone calls to Disability Rights of SD are kept strictly confidential.

A group of Sioux Falls and Rapid City area attorneys are holding informal peer-led meetings of lawyers who have faced or are dealing with depression, anxiety and/or similar issues.

Attendance is limited to lawyers.

The groups generally meet twice a month and have confidentiality policies.

CARIBOU COFFEE CLUB



For more information or to receive blind copies of group announcements, send an email to: cariboucoffeeclub@gmail.com

**The Caribou Coffee Club is not affiliated with the State Bar of South Dakota, the Second Circuit Bar Association, or the Pennington County Bar Association.



A project of South Dakota Voices for Peace which provides free legal services to unaccompanied children from Central America and families impacted by separation at the border who are in immigration court.



The Issue:

Since 2012, over 500 Unaccompanied Minors from Central America have been released to sponsors in SD.¹ All of these children are in immigration court proceedings. Immigration court is located in Fort Snelling, MN. These children cannot work, cannot pay for legal services, and cannot navigate through immigration court process on their own.

Who are these children?

Since 2012, hundreds of thousands of children have sought refuge and asylum from abject poverty and increasing violence in Central America. The borders saw a surge of unaccompanied minors (UCs) in 2014-2016. Once entering the border, children are taken to a detention facility. During detention if a child identifies someone they know living in the United States, the federal government conducts a background check and releases children to these sponsors. Sponsors are responsible for keeping UCs safe and assuring they will attend their immigration court dates.

- As a result of the six week zero- tolerance policy in the summer of 2018, over 7000 children were separated from their parents at the US-Mexico border. Currently, we know of children from dozens of families impacted by this policy who are being reunited with their parents living in South Dakota. These children and families are in immigration court proceedings.

What is the process for these children?

- The cost to hire a private attorney for these cases is approximately \$8,000.
- Children cannot work to pay for these costs. Most of their sponsor families cannot afford these costs.

¹ Office of Refugee Resettlement <https://www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state>

- All of these children are involved in immigration court proceedings and have a 60% chance to obtain a path to citizenship with a lawyer’s assistance. Without a lawyer, UCs have a 90% chance of being deported back to the country they painstakingly fled.
- The immigration court process is cumbersome and documentation is in English. Children do not have the capacity to understand the legal nuances of their cases.
- Children cannot arrange transportation for immigration court, located in Minneapolis.

What is Hand in Hand?

In 2018, a group of formidable volunteers came together to build the only organization in SD committed to providing legal services for these particular populations. In less than a year, we raised \$170,000 and launched this service on **November 5, 2019**. Our legal team includes supervisory attorney, Taneeza Islam; immigration attorney, Abigail Schindler; and case manager Yesenia Gonzalez. We currently have a waitlist of 32 UCs.

Hand-in-Hand is a project of South Dakota Voices for Peace (SDVFP). SDVFP is a nonprofit corporation with the state of SD and is fiscally sponsored by Spirit of Peace United Church of Christ – Sioux Falls. Therefore, all donations are tax deductible.

The 2019 Hand in Hand Committee members are: Pastora Maria Acosta, Linda Barker, Sister Pegge Boehm, Dr. Laura Renee Chandler, Irene Chang, Jen Dreiske, Yesenia Gonzalez, Shelley Hefty, Ann Henkin, Elizabeth Hertz, Sister Janet Hortsman, Taneeza Islam, Leann Minister, Rev. Jean Morrow (Chair), Rhonda Morse, Cathy Piersol, Yenny Ruiz Pineda, Sister Lynn Marie Welbig, and Harriet Yocum.

What is our fundraising goal?

Sustainability. To continue this critical work we must raise \$150,000 every year. We do not apply for government grants. In the last year 40% of our donations came from individuals in the SD community, and 60% of funds were granted from faith based organizations and foundations such as the Sioux Falls Area Community Foundation, Sheldon Reese Foundation, and Northwest Area Foundation.

How can I donate?

1. Checks payable to SD Voices for Peace

Memo: Hand in Hand.

Please mail to: PO Box 600 Sioux Falls SD 57101.

2. Online: www.sdvfpeace.org/donate

Need more information?

Schedule a law firm presentation here:

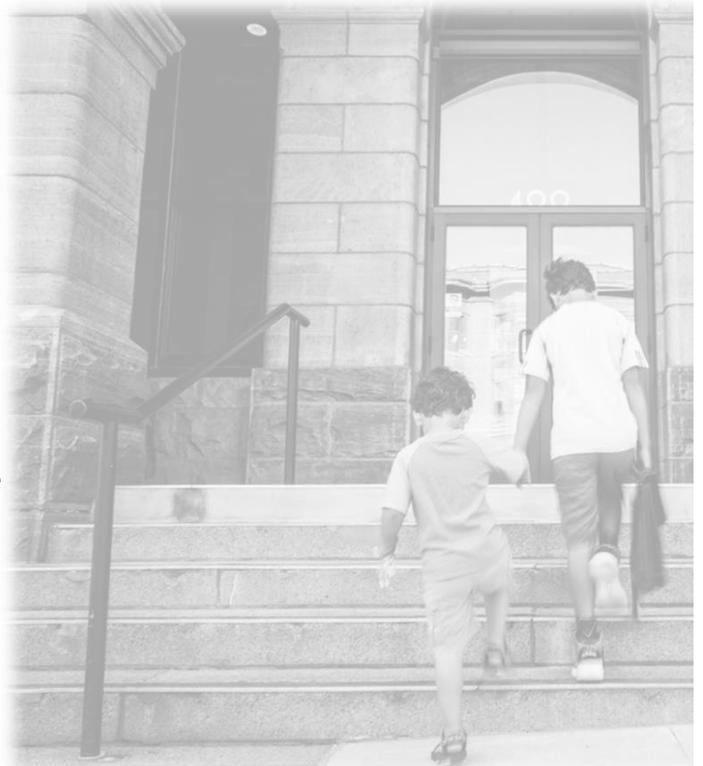
Email info@southdakotavoicesforpeace.org

Visit our website: www.sdvfpeace.org/hand-in-hand

Visit us on Facebook – South Dakota Voices for Peace



Our vision is to create a SD where the fabric is rich, diverse and inclusive.



STRESS and DEPRESSION HELP

Contact information for the regional mental health centers in South Dakota is located at www.statebarofsouthdakota.com ("For SDBAR Members" Under the Health & Wellness tab, click on the Stress/Depression/Addiction link. We have reached an understanding with all these centers and all will honor our agreement. If you are stressed out or you believe that you may be suffering from depression, the State Bar encourages you to seek a professional evaluation. If you don't have insurance or otherwise lack the financial resources, the State Bar project, funded by ALPS and the SD Bar Foundation, will cover the evaluation and several follow-up counseling sessions if indicated. You need only schedule the appointment and show them your 2018 active membership card. This is a confidential project. Counseling records are not, repeat, are not made available to the State Bar. We just pay the bill for those who can't afford it, up to the limit of \$500 per lawyer.

If you have a law partner or lawyer friend that you believe may be suffering from stress and depression, visit with them. Encourage this lawyer to consider having an evaluation. Depression caught at the early stages prior to becoming chronic is much, much easier to address. In just a few counseling sessions, you/your friend can learn techniques to deal with the stress more effectively in our lives, whether personal or professional.



SOLACE PROGRAM

If you are aware of anyone within in the South Dakota Legal Community (lawyers, law office personnel, judges, courthouse employees, or law students) who have suffered a sudden and/or catastrophic loss due to an unexpected event, illness, or injury, the South Dakota SOLACE Program may be able to assist. Please contact solace@sdbar.net if you, or someone you know, could benefit from this program.

We have a statewide (and beyond) network of generous South Dakota attorneys willing to get involved and help. We do not solicit cash but can assist with contributions of clothing, housing, transportation, medical community contacts, and a myriad of other possible solutions through the thousands of contacts available through the State Bar of South Dakota and its membership.

December 2019

Official Publication of the State Bar of South Dakota

If you wish to advertise in our publication or post job opportunities, please contact:
Tracie at tracie.bradford@sdbar.net.

The deadline for submissions in the newsletter is the 26th of each month, excluding December and February when it is the 23rd of the month. If the deadline falls on a weekend, the deadline is the Friday prior.

Address Changes:

email tracie.bradford@sdbar.net or log in to your profile at www.statebarofsouthdakota.com

Board of Bar Commissioners:

President – Steven K. Huff, Yankton

President Elect – Terry G. Westergaard, Rapid City

Executive Director & Secretary/Treasurer –

Andrew L. Fergel, Pierre

1st Circuit - Marilyn Trefz, Vermillion

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3rd Circuit - Mathew Roby, Watertown

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5th Circuit - Rodrick Tobin, Aberdeen

6th Circuit - Brent Kempema, Pierre

7th Circuit - Kirsten Aasen, Rapid City

At Large - Dusty Ginsbach, Buffalo

Edward S. Hruska III, Pierre

Aaron Pilcher, Huron

Jennifer Williams, Rapid City

Joshua Wurgler, Aberdeen

Colleen Zea, Sioux Falls

Sand Creek

WORKPLACE WELLNESS

To: All Members of
The State Bar of South Dakota
From: The State Bar of South Dakota

We all have problems. And, most often, we manage to solve them ourselves, but sometimes we can't handle them alone. Recognizing that attorneys can develop personal problems that may jeopardize their health, family structure or employment, the State Bar of South Dakota provides members with the Sand Creek Member Assistance Program.

Sand Creek is a confidential telephonic counseling service that can help members solve personal and work related problems before they grow into serious and costly crises.

Employee Assistance Services (EAP) are provided by a staff of professional counselors, clinical psychologists, and social workers skilled at helping you identify and hand handle problems such as marital and family issues, chemical dependency, mental and emotional disorders and educational or career problems.

Free confidential telephonic services provided to you by Sand Creek include: problem assessment, action planning, and follow up along with 24-hour crisis telephone services. To access these services - see the box to your right.

The Sand Creek website, www.sandcreekeap.com, is a useful resource designed to help make your life easier. On the website you will find: Child care and elder care referrals; hundreds of articles on important mental and emotional health issues; work-related resources to help manage stress, cope with job changes or deal with a difficult boss; wellness resources including a comprehensive exercise, nutrition and healthy living portal that has hundreds of articles, recipes and tips for healthy living.

Confidentiality is the bedrock of a Member Assistance Program. All discussions and services are kept strictly confidential. The State Bar of South Dakota will not know that you are using the services. We encourage you to use this valuable benefit.

Sand Creek is a HIPPA compliant service.

Go to www.sandcreekeap.com
Click the Work Life Wellness Login Link

Our Company ID is sbsd1

Or call 800-632-7643

Monday-Friday, 7:30am-5pm CT

Immediate, Confidential Support

24 hours a day/7 days a week:

888-243-5744

All discussions and services are kept strictly confidential.



THE STATE BAR OF SOUTH DAKOTA WILL NOT KNOW YOU ARE USING THE SERVICE.
THESE SERVICES ARE FREE. YOU ARE ENCOURAGED TO USE THIS VALUABLE BENEFIT.

In Memoriam

Memorials will be directed to the St. Mary's Hospital Foundation, the Choteau, MT, Lions Club Swimming Pool, or a charity of the donor's choice.



Grant Gormley
1947-2019

Pierre - Grant Gormley, 72, of Pierre, died October 30, 2019, at Dougherty Hospice House in Sioux Falls, SD.

Grant Edward Gormley, son of Robert Gormley and Mary Tempel Gormley, was born in LaCrosse, WI, April 21, 1947. From LaCrosse, the family moved to Racine, WI, and in 1951, to Choteau, MT. He graduated from Choteau High School in 1965 and received a BA in Economics, University of Chicago, MS in Education, University of Wisconsin, and Juris Doctor, University of Montana. He taught at high schools in West Saint Paul and Duluth, MN, and later at the University of Sioux Falls and at Capitol University Center in Pierre.

In 1972 Grant married Anne McQuillen in Sioux Falls, SD. After living in Missoula, MT, and Sioux Falls, SD, the couple moved to Pierre, SD, in 1977, where Grant worked as attorney for the SD Department of Legislative Audit. In 1980 Grant joined the Office of the SD Attorney General. He moved to the Governor's Office in 1987, where he served Governors George S. Mickelson and Walter Dale Miller. He served briefly as Secretary of the SD Department of Labor. In 1995 Grant returned to the Attorney General's Office and worked there until retiring in 2006.

Grant was preceded in death by his parents and several aunts and uncles. He is survived by Anne, his wife of 47 years, his son Joe of Sioux Falls and daughter Ellen (Jesse) Hopper of Watertown, SD, three grandchildren, his sister Gwen (Joe) Brott of Deer Lodge, MT, uncle Bill (Marcia) Tempel of Colfax, WA, sisters-in-law Kathleen (Tom, Sr.) Walsh and Mary McQuillen of Sioux Falls, Ellen (Greg) Cooch of Climbing Hill, IA, brother-in-law John McQuillen of Deadwood, SD, several nephews and nieces as well as numerous cousins.



Judge Leland J. Berndt

Memorial service for Judge Berndt was held at 3 pm on Saturday, November 2nd, 2019, at Family Worship Center, 1708 West Grand Crossing, Mobridge, SD. Judge Berndt passed away Wednesday, October 9th at Mobridge Regional Hospital. His interment will follow in the summer of 2020 at Black Hills National Cemetery in Sturgis, SD. Arrangements entrusted to Kesling Funeral Home.

Leland Jacob Berndt was born on September 25, 1928, on a farm seven miles east of Herreid in Campbell County, SD, to Adam J. and Eva (Schmidt) Berndt. He was the sixth of seven children.

Leland (Lee) attended grade school in a rural, one-room school in Campbell County and graduated from Herreid High School as class valedictorian in 1946. He then taught in that same rural grade school for one year. During the winter days, he spoke of arriving at the school to build a fire in the stove that was in the center of the classroom so it would be warm by the time the students arrived.

After teaching for one year, he took two years of pre-law at Northern State College in Aberdeen, SD (now known as Northern State University). He then transferred to the University of South Dakota in Vermillion, where he graduated with a BA in history and government and also a Doctorate of Law degree (JD) in January, 1953.

On March 7, 1953, he married Della Schneider,

daughter of the late William and Emma (Werre) Schneider, of Java, SD. He then enlisted in the US Navy and was accepted in the Officer's Candidate School, graduating as a legal specialist from the School of Military Justice. He attended the Judge Advocates College at Newport, Rhode Island, to study Naval laws and procedures. He then served at various duty stations as a Legal Officer.

After completion of his service in the US Navy in the fall of 1956, he served for one year as County Judge in Faulk County, and then moved to Mobridge in the fall of 1957 with his wife and their first three boys. He joined Ervin E. Dupper Law Office, and together they formed the Law Firm of Dupper and Berndt. During this time, Leland also served four years as Walworth County State's Attorney. He also continued serving in the US Naval Reserves until October 1970, where he was promoted to the rank of Lieutenant (LT).

Leland was elected and served as 12th District County Judge from January 1, 1969 to January 1, 1975, serving the five counties of Campbell, Edmunds, McPherson, Potter, and Walworth. He was then elected to the office of 5th Circuit Court Judge, serving nine counties from January 7, 1975 to January 1, 1993. In January 1993, he retired from his judicial career in which he served for 25 years.

He was very involved in his community. In the past, Leland had served on the board of directors for the Mobridge Community Hospital, Boy Scout Council, Commander of Parker-Browder American Legion, Post #4, America Legion State Judge Advocate and District Americanism Officer, President of the Oahe Sportsman's Club, President of The South Dakota Judges Association. He was also a charter member of the Loyal Order of the Moose, had participated in Jaycees, Rotary Club, as well as other community activities and organizations.

Leland loved Mobridge and enjoyed raising his family here. Leland and Della raised eight children—six boys and two girls: Mark, Neil, Paul, Bruce, Craig, Randy, Leann, and Laura. When he was not working, he spent his time with his family. He enjoyed attending his children's school functions and taking them camping, fishing, and hunting. Once retired, he exchanged his gavel for a fishing rod! He enjoyed fishing with his friends.

Leland is survived by his wife Della of 66 plus years, eight children: Mark (Maria) of Auburn, WA; Neil (Botan) of Cedar City, UT; Paul (Janice) of Kansas City, MO; Bruce of Mobridge, SD; Craig of Mobridge, SD; Randy of West Lafayette, IN; Leann (Randy Teigen) of Hannibal, MO; and Laura (Jesse Gunther) of Mobridge, SD; 13 grandchildren and 4 great-grandchildren; his youngest brother Lauren of Herreid, SD; sister-in-law, Verna (husband was Clinton) of Bismarck, ND; and many nieces and nephews.

He was preceded in death by his father Adam (1963) and mother Eva (1975); brother Clinton (2006) of Bismarck, ND; sister, Iva (2000) and husband, Dan Orth (1996) of Herreid SD; sister, Sena (2004) and husband, Godfred Bauer (1989) of Mound City, SD; sister, Eunice (2008) and husband, John Leno (1980); brother, Harold (2008) and wife, Emma (2019) of Herreid, SD; sister-in-law, Violet (2018) of Herreid, SD; and nephew, Carter Bauer (2011) of Mound City, SD.

Any memories you would like to share of Leland are comforting and welcome. Please email his daughter Laura at Ljberndt@westriv.com or text Laura at 605-848-2723, or mail a note to his wife, Della Berndt, at 1008 4th Ave. West, Mobridge, SD 57601.

In lieu of flowers, the family asks that contributions be made in memory of Judge Leland Berndt to the Mobridge Senior Citizens Center for their new bus. They still need to raise another \$10,000. The Senior Bus is a needed service in our community and is a huge blessing. Thank you.



John H. Davidson

John H. Davidson of rural Vermillion died November 16, 2019 at the age of 77. Per his wishes there will be no memorial service.

John was the middle child of John H. and Estous (Lee) Davidson of Washington, Pennsylvania, where he was raised with his sisters; Estous Lee Davidson and Mary

D. Brown. He was the father of Benjamin Beard Davidson and Felix Beard Davidson, and grandfather to William Beard Davidson, Mason Andrew Davidson, and Jaxson Miles Davidson.

He enjoyed a fortunate childhood, educated in the public schools, played sandlot sports of every kind, and passing summers in West Virginia with his sisters and numerous Lee family relatives. He was also fortunate in his educational experiences at Wake Forest College, University of Pittsburgh School of Law, and George Washington University.

The great event in John's life was his marriage with Catherine Fellowes (Cathy) Beard, which began on October 14, 1967 and brought love, life, laughter, and a rich understanding to his days. Together, they built a life on their farm, North of Vermillion, where the joys, hazards, surprises, and repose of rural living filled their time together. In later years their fields were restored prairie, which, along with their gardens, orchards, and endless projects, framed their days. Together they respected and admired all animal life and living things. John died overwhelmed with gratitude for the days and years spent with Cathy Beard.

John entered the Bar in Pittsburgh in 1967 and, after practicing law in that city, embarked on a career in legal education and scholarship which brought him to the University of South Dakota School of Law at a time when the law program was expanding. In 2007 he became Professor Emeritus but continued to teach and speak on a reduced schedule. During his years at USD, John was recognized for his expertise in areas pertaining to the law of water, agriculture, natural resources, and protection of the environment, fields to which he contributed numerous books and other writings. Throughout his career he participated in significant legal actions seeking protection of the natural environment.

He was a leader in the region's conservation community, serving Northern Prairies Land Trust for many years, among numerous similar activities.

A reserved man, he was not inclined to join, but when he did he typically did so with enthusiasm. A reflective man, he found no home or comfort in institutional religions.

John wrote this!



John C. Wiles
February 12, 1948 –
November 19, 2019

John C. Wiles, age 71, died on November 19, 2019 in Sioux Falls, South Dakota with his loving family by his side.

Born in Watertown, South Dakota to C.B. and Vonnie (Balsiger) Wiles. He led a full and happy life, devoted to his faith, family, friends, work and community. John had a passion for hunting, traveling and simple things like playing with his grandchildren, grilling out, sitting around a fire, having morning coffee on the deck, gardening, taking a spin on the dance floor, watching sunsets over Lake Kampeska and being a pyromaniac on the 4th of July.

John had a long and prosperous career as an Attorney at Law. He was purposely dedicated to his community, state and country.

John is survived by and will be deeply missed by his loving wife, Phyllis; children, Chad Wiles and wife Lisa (Lexi and Cruz) of Knoxville, TN, Shannon Bahr and husband Jeff (Soren and Carlin) of Cypress, TX, Amber Nogelmeier and husband Lucas (Sophia and Miles) of Watertown, Shantel Ries and husband Justin (Dylan) of Castlewood and Chris TeKrony (Hudson) of Castlewood; sister, Cheryl B. Wiles and husband Bill Kocher (Crista) of Nederland, CO; mother-in-law, Nellie Larson of Watertown; father-in-law, Emil Wiese of Watertown and extended in-laws, nieces, nephews and friends.





Supreme Court of South Dakota

OFFICE OF THE CLERK
500 East Capitol Avenue
Pierre, South Dakota 57501-5070
(605) 773-3511

Shirley A. Jameson-Fergel
Clerk

Laura J. Graves
Chief Deputy

Amy Hudson
Deputy Clerk

Sarah L. Gallagher
Deputy Clerk

October 7, 2019

Mr. Andrew L. Fergel
Executive Director
State Bar of South Dakota
222 E Capitol Ave
Pierre SD 57501-2596

Re: February 2020 Rules Hearing

Dear Mr. Fergel:

A Supreme Court Rules Hearing will be held Tuesday, February 11, 2020, at 11:00 a.m., CT in the Courtroom of the Supreme Court, Capitol Building, Pierre, South Dakota.

An original and five copies of proposals for amendment or adoption of rules should be filed with the Clerk of the Court no later than December 6, 2019. Please comply with SDCL 16-3-5.1 when submitting proposals.

Please publish this letter in the November and December 2019 editions of the State Bar Newsletter. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shirley A. Jameson-Fergel".

Shirley A. Jameson-Fergel

OFFICE OF ATTORNEY GENERAL CRIMINAL LITIGATION

DETAILS: The Office of Attorney General seeks an attorney for a position with the Criminal Litigation Division. The attorney will prosecute general crimes in state court and accordingly litigation experience is preferred. The individual must have strong research and writing capabilities. Must be able to communicate well to clients and the courts and must have strong legal advocacy skills.

OFFICE LOCATION: This position will be stationed in Pierre.

STARTING SALARY: Entry level salary is \$68,000 annually or greater, depending upon experience. The State of South Dakota has an excellent benefit package including retirement, employee insurance coverage and paid leave.

QUALIFICATIONS: Applicants must have a JD degree and be licensed to practice law in South Dakota. The person eligible for this position must be a motivated self-starter, have strong research and writing capabilities, be able to communicate well to clients and the courts, and have strong legal advocacy skills. Prior litigation experience is preferred but not required.

APPLICATION PROCESS AND DEADLINE DATE: Interested persons should send a resume containing three references, a writing sample and a letter describing their qualifications to the address below. The position will be opened until filled.

JASON RAVNSBORG, OFFICE OF ATTORNEY GENERAL, 1302 E. HIGHWAY 14, SUITE 1, PIERRE, SOUTH DAKOTA 57501.

PUBLIC NOTICE

REAPPOINTMENT OF INCUMBENT MAGISTRATE JUDGE

The current appointment of Magistrate Judge Eric Johnson is due to expire on March 28, 2020. Magistrate Judge Eric Johnson 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 Eric Johnson 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 December 31, 2019

CAREER CENTER

CLASSIFIEDS Contact | Email your employment announcement to tracie.bradford@sdbar.net by December 24th to have it included in the January newsletter. Please be sure to include a closing date. To see more jobs listings, visit www.statebarofsouthdakota.com.

ATTORNEYS

Deputy State's Attorney - Meade County

The Meade County State's Attorney is soliciting applications for the position of: Meade County Deputy State's Attorney. Closing date: November 22, 2019.

See: www.meadecounty.org/human-resources for application instructions.

Great West Casualty Company - South Sioux City, Nebraska

Great West Casualty Company, a leader in the truck insurance industry for 60 years, is hiring for multiple attorney positions in South Sioux City, Nebraska. All of these jobs offer comprehensive benefits packages, relocation assistance, and excellent work-life balance.

Corporate Counsel: Start your legal career with Great West, where you will gain valuable experience working with a team of legal experts. In this role, you will gain exposure to all aspects of the company, including Underwriting, Claims, Coverage, and HR. We are looking for someone with strong attention to detail, the ability to read and analyze policy and apply it to a scenario confidently, and excellent communication skills.

Coverage Attorney: As a Coverage Attorney for Great West, you will focus on the motor carrier policy, providing counsel, training, and assistance to the regions' claims departments to foster consistent, efficient, and appropriate claims practices. You will prepare coverage opinions and memoranda on claims legal topics as well as oversee litigation and declaratory judgment action while supervising outside counsel. We are looking for someone with litigation, insurance defense, regulatory compliance, or administrative law experience.

Subrogation Attorney: Have you recently passed the Bar Exam? Are you an experienced attorney looking for a healthy work-life balance? We have two openings for Subrogation Attorneys, and varying levels of professional experience are encouraged to apply. In this job, you will investigate, negotiate, and litigate files where there is potential for third party

recovery. We are looking for someone with experience in or a willingness to learn subrogation, workers' compensation, product liability, plaintiff's practice, and/or insurance defense law.

VISIT WWW.GWCCNET.COM/CAREERS FOR COMPLETE DETAILS AND TO APPLY.

Deputy Public Defender - Deadwood

The Lawrence County Public Defender's Office is seeking applications for a full-time Deputy Public Defender position. Duties of the position are as follows: Representation of indigent clients through all stages of the state court system in criminal and some civil matters. This includes pre-trial proceedings, motions, various court hearings and jury trials in criminal matters, appeals, habeas corpus proceedings, abuse and neglect actions, and juvenile proceedings.

The successful applicant must possess a J.D. degree and be a current member in good standing or eligible for admission to the South Dakota Bar. Criminal trial experience or clinical program experience in criminal law are preferred. Applicant must be a resident of Lawrence County or willing to become a resident within eleven months of start date. Applications will be reviewed until position is filled with a start date dependent upon availability. Salary will be a range of \$61,993.10 - \$73,814.00 annually (DOE). Lawrence County offers health, dental and life insurance, paid vacation and sick leave and retirement benefits and is an equal opportunity employer. Please contact the the Lawrence County Public Defender's Office for more information at (605) 578-3000.

A resume with references and writing sample should be submitted to: Amber L. Richey, Director, Lawrence County Public Defender Office, 90 Sherman Street, Deadwood, SD 57732.

Prosecuting Attorney - Lower Brule Sioux Tribe

ESSENTIAL FUNCTIONS:

Represent the Tribe in prosecution of adults committing criminal acts within tribal jurisdiction, including fish and wildlife offenses.

Represent the Tribe in prosecution of juveniles committing delinquent acts or status offenses within tribal jurisdiction.

Represent the Tribe in juvenile proceedings of child abuse/neglect/dependency occurring within tribal jurisdiction and ICWA proceedings transferred to Tribal Court.

Oversight of juvenile diversion program.

Attend court hearings, including drug court.

Evaluates evidence, interviews witnesses, prepare legal pleadings including subpoenas, search warrants, arrest warrants, and juvenile pick-up and detain orders.

Work closely with the police department

Draft written complaints, motions, proposed orders, legal briefs, jury instructions, sentencing recommendations, and other legal documents as appropriate.

Conduct all necessary case preparation before Tribal Court hearings and trial.

Assist in developing and improving the Tribe's criminal justice system, including code development.

Ability to communicate effectively, both orally and in writing.

Ability to multitask, prioritize assignments and remain organized.

Argue and present cases as appropriate in Tribal Court and appeals therefrom.

Maintain criminal and juvenile case statistics.

KNOWLEDGE, EXPERIENCE, SKILLS, AND ABILITIES REQUIRED BY POSITION:

Have Juris Doctor degree from an accredited law school and be a member in good standing of the bar of any state, South Dakota licensure preferred.

Experience and competence in criminal advocacy, criminal jury trial experience preferred.

Experience and competence handling juvenile and child protection cases.

Knowledge of federal Indian law; criminal law and procedure; and juvenile law and procedure.

Respect for the culture and traditions of the Lower Brule Sioux Tribe.

Computer skills, including knowledge of Word, Excel and Access programs.

Salary: Negotiable, depending on experience

Closing Date: December 15, 2019

Applications shall be in writing, to include a professional resume, legal qualifications and any other submissions at the option of the applicant.

Native American preference applies.

Applications may be obtained from the LBST

Personnel Office, Lower Brule, South Dakota (605-473-5561) or contact Chief Judge Lorrie Miner at Lower Brule Tribal Court (605-473-5528).

DEPUTY STATE'S ATTORNEY - 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.

Deputy/Senior Deputy State's Attorney - Minnehaha County

All applications must be submitted by 5:00 p.m. on the date the position closes.

SALARY: \$2,681.60 - \$3,186.40 Biweekly

OPENING DATE: 10/25/19 CLOSING DATE:

Continuous

GENERAL INFORMATION:

The Minnehaha County State's Attorney's Office is accepting applications for attorneys to join our top performing team of prosecutors. Supported by experienced investigators, victim/witness assistants, paralegals, and legal office assistants, our attorneys enjoy a strong sense of camaraderie working in a think tank of legal minds.

Minnehaha County prosecutors are an integral part of the criminal justice system closely collaborating with law enforcement, probation, parole, juvenile justice

centers, and numerous community agencies. With a high volume caseload in a fast-paced environment, our office provides an intriguing challenge for attorneys who want to make a difference in their community by helping victims of crime and ensuring due process for the accused. Even our new attorneys experience the excitement of a job regularly engaged in hands-on courtroom trial work.

Attorneys who work in the Minnehaha County State's Attorney's office have had impressive accomplishments! Two of our former attorneys have been appointed as magistrate judges and another serves as a circuit court judge. Since 2002, six of our prosecutors have been named South Dakota State's Attorney's Association's **Prosecutor of the Year**. To be considered for this extraordinary opportunity, submit your application today. Contact us for more information, or with questions, at 605-367-4337. Posting to remain open until positions are filled. Application review begins on November 18, 2019.

MINIMUM QUALIFICATIONS:

Vacancies will be filled at either a Deputy State's Attorney or a Senior Deputy State's Attorney level, depending on our selected candidate's level of experience. (Click on the job titles for complete job descriptions and a list of qualifications.)

Compensation for appointment as a Deputy State's Attorney will be between \$2,681.60 - \$2,747.20/bi-weekly. Consideration for appointment as a Senior Deputy State's Attorney requires a minimum of two years of relevant work experience, and compensation will be between \$2,817.60 - \$3,186.40/bi-weekly dependent upon qualifications. Full earning potential for position is \$3,881.60/bi-weekly.

We also offer a comprehensive benefits package including paid holidays; health, dental, vision, and life insurance; generous PTO program; extended sick leave program; inclusion into the South Dakota Retirement System (SDRS); and an optional deferred compensation plan. Our insurance rates for single, E+1, & family are highly competitive! (Contact HR for more information at 605-367-4337.)

APPLICATIONS MAY BE FILED ONLINE AT: <http://jobs.minnehahacounty.org>

OUR OFFICE IS LOCATED AT: 415 N Dakota Avenue, Sioux Falls, SD 57104

605-367-4337 jobs@minnehahacounty.org

Job #20-02

DEPUTY/SENIOR DEPUTY STATE'S ATTORNEY

Minnehaha County is an Equal Opportunity Employer and does not discriminate on the basis of race, color, creed, religion, national origin, citizenship, ancestry, gender, gender identity, sexual orientation, marital status, pregnancy, age, disability, veteran's status, genetic information, or any other protected group in accordance with state and federal law. Arrangements for accommodations required by disabilities can be made by contacting Human Resources at (605) 367-4337.

TRUST ACCOUNT ADMINISTRATOR

Personal Trust Account Administrator - Sioux Falls

The First National Bank in Sioux Falls is accepting applications for a Personal Trust Account Administrator. This is a great opportunity to join an industry leading Wealth Management team who focuses on providing excellent service and expertise. This position will handle independent administration of accounts naming The First National Bank in Sioux Falls in fiduciary capacities, maintain close communication with clients, professionals, and beneficiaries to accomplish goals and objectives of the account relationship, assume responsibility for administration of complex accounts, and act as the relationship manager, coordinating with all areas of the Bank to meet the customer's needs. Candidates must have a Bachelor's Degree and attain a CFP or CTFA within five years of employment. Three to Five years of Trust or Banking/Financial services experience or an advanced degree are preferred. Please visit our Careers page to learn more about us and to apply: www.fnbsf.com/careers.

LEGAL ASSISTANT/PARALEGAL

Legal Assistant/Paralegal - Pierre

We are currently seeking a full-time legal assistant/paralegal in Pierre, SD. Applicant must be detailed oriented, present a professional appearance, possess a positive attitude, and have excellent communication skills. Typing skills, knowledge of legal documents and electronic court filing are important considerations for this position.

Salary dependent on experience. Excellent benefits package. If interested, please send your cover letter and resume to Kassandra Cross at Kcross@gpna.com

December

2019



Extended Law for Lunch- Tax Update	December 5	
Wellness Series (Part 3) Webcast	December 9	
Bar Commission Teleconference	December 19	
Disciplinary Board	January 9-10, 2020	Red Rossa, Pierre
Bar Commission Meeting	January 10, 2020	Red Rossa, Pierre
Bar Commission Teleconference	February 20	
Disciplinary Board	April 2-3, 2010	Clubhouse Hotel, SF
Bar Commission Meeting	April 30, 2020	The Lodge at Deadwood
Strategic planning Retreat	May 1, 2020	The Lodge at Deadwood
Bar Commission Teleconference	May 21, 2020	
Annual Meeting	June 17-19, 2020	Ramkota Hotel, Pierre
Disciplinary Board	June 15-16 2020	Red Rossa, Pierre