

State Bar of *South Dakota* Newsletter

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January 2018

www.statebarofsouthdakota.com

January 2018 - Issue 1

PRESIDENT'S CORNER - *Pamela Reiter*



Our Law School needs our help. Many of you already provide your time and financial support to the USD School of Law. A myriad of factors, however, have caused an urgent need for a large fundraising campaign, specifically to allow the Law School to offer full-ride scholarships to applicants with

high LSAT scores and GPAs. A significant national decline in the number of law school applicants and a decrease in bar passage rates has led to dramatically increased competition for law students with high credentials. Law school applicants with these highly sought-after credentials, who would otherwise choose to attend USD, are being lured away from South Dakota by full-ride scholarship offers from other law schools. Thus, we are losing our own to other states, which increases the likelihood that they will not return to South Dakota to practice law.

Moreover, some of you are likely aware of the low bar exam pass rates since 2014. That year the nation saw a dramatic decline in the pass rate, in some cases decreasing over 40%. USD Law was no exception in 2014 and the pass rate continues to be low. The Law School believes the unprecedented decrease in pass rates is attributable to three factors, which vary in weight: (1) the inexplicable decrease in pass rates nationally in 2014; (2) the increased score required to pass the SD Bar Exam and bifurcating of the two parts of the exam in 2015; and (3) the admission of more lower-credentialed applicants to USD Law (note the law school never lowered its admittance standards but has admitted more students with credentials closer to the minimum standards). Dean Tom Geu says, "The Law School's mission is to train lawyers. Being a lawyer requires passing the Bar Exam. No excuses." Accordingly, the Law School and USD has made the following changes: (1) set minimum standards for

admission credentials based on USD Law's unique statistical correlation of credentials to bar passage; (2) began requiring attendance in a semester-long bar prep course for all 3L students, free of charge to the students, taught by a full-time lecturer experienced in bar prep. Bar prep will also begin for 2Ls; (3) provided faculty with resources to better tailor their lessons to the bar exam; and (4) added a course to the first-year curriculum.

In addition, our Law School recently started a fundraising campaign to raise scholarship dollars to offer 15 full-ride scholarships each year, beginning in the fall of 2018, to law students with high credentials. Statistics demonstrate that students with a minimum LSAT score of 152 and a GPA of 3.3 have a 90% chance of passing the bar exam. The very students that other schools have the ability to offer full-ride scholarships. USD Law does not have the same advantage now. But it can with our help. In-state tuition is approximately \$15,000 per year. Thus, \$45,000 will fund a full-ride scholarship. While the focus of this campaign is to secure fully funded scholarships for immediate award, the USD Foundation and the Law School will also be seeking endowed funds for future scholarships.

The Law School began this campaign in December 2017 and has already secured a few fully funded scholarships. We are already seeing the results of these efforts! For example, one Class of 2018 applicant, who has an excellent LSAT score and GPA, was offered a full scholarship to attend Creighton. After receiving the same offer from USD Law, which was not possible without the recent new scholarship money, the applicant accepted the USD offer and intends to attend our law school this fall.

The law school and Dean Geu are leading this campaign with Sara Hughes, the USD Foundation's Director of Development for the School of Law. I recently informed them that as a 1994 graduate, I am not aware of any campaign that asked each law class to contribute to such an important cause. Thus, I am issuing a friendly challenge to each USD Law class to band together and fund one full-ride scholarship with your classmates. This challenge is in addition to any other personal or law firm contribution you make to the campaign. If you are willing to lead for your class, please contact me or Sara at sara.hughes@usdfoundation.org or 605-941-0291. We will give you the most current

contact information available for your classmates. As an example, if 15 to 20 of your classmates join you, the individual contribution will range from \$2,250 to \$3,000 to help USD School of Law attract the great legal minds of tomorrow and continue our tradition of excellence.

I am giving you a fighting chance to beat the Class of 1994 to be the first class to fund a full-ride scholarship because I will not begin my efforts with my classmates until this article is published. But then it is game-on. Classes who meet this challenge will be recognized at the Bar Convention this June and we will also recognize these classes at the Law School in a special way so that future generations of law students are aware of those who helped with this effort.

I encourage members who graduated from other law schools to support this crucial campaign as well. You likely know a USD Law graduate who is a colleague or has helped you in your practice, possibly as a law partner or mentor. The number of new South Dakota lawyers has decreased dramatically, already putting a strain on our legal system to fill the needs in our state for state's attorneys, public defenders, rural lawyers, government lawyers and associates in our law firms. Have you noticed the significant increase in the number of job announcements in the State Bar Newsletter? Please consider helping curb this trend from becoming a real crisis for our state.

You may contribute to the this campaign online at www.onwardsd.org/donate/supportlaw or by contacting Sara Hughes (contact information above). If you intend to contribute toward your class goal, please indicate in the "Notes" section "Class of _____" to ensure your class receives credit for your contribution.

Please support the USD School of Law today and help it continue to move Onward.



Practice Tip: Never underestimate the value of talking through legal issues with a colleague or mentor. Sometimes a five-minute conversation with a fellow lawyer can bring to light solutions to the issue you may be struggling with or at least narrow the issues to research.

Pamela Reiter



YOUNG LAWYERS SECTION

by: Abbey Howard, YLS President



hour of her work for her, and so she asked her boss, Attorney General Marty Jackley, to share his thoughts on her and being a young lawyer. Thanks, Carrie & Marty, for sharing your insight with us.



Carrie Srstka

Happy New Year! A new year always feels like a fresh opportunity for a new start, personally or professionally. If you are a young lawyer new in your practice, I encourage you to consider attending the Young Lawyers Section 2018 Bootcamp! The Bootcamp will take place in both Sioux Falls and Rapid City on March 2, 2018 from 9am to 4pm. In Sioux Falls, you can head to the Lumber Exchange Building, and in Rapid City, the event will be at the Pennington County Courthouse. This year, the YLS Board has decided to get creative with the Bootcamp Agenda. The morning will feature Transactional sessions such as Contracts, Employment Law, Business Law, and Trusts and Estates. The afternoon will be focused on Litigation with sessions focusing on Evidence, Construction Law, Personal Injury and Experts. The Bootcamp will be followed by social mixers in both cities. The day is certain to be a truly beneficial opportunity for new attorneys who are seeking a bit of guidance in many areas of the law. We hope you will join us!

I have asked my friend and 6th Circuit YLS Representative, Carrie Srstka, to share a bit about her story as a Young Lawyer with us this month. I have known Carrie through our mutual roles as prosecutors and over the years on the Young Lawyer Board. Carrie is not only a huge asset to the State Bar by her service on our Board, but an asset to our profession. Carrie had the chance, as few young lawyers do, to have her boss do an

Today's assignment – Getting to know Caroline Srstka through the eyes of the Attorney General.

The most exceptional quality of Carrie isn't her extraordinary work, it's her most amazing smile that can lift anyone up during difficult times. It represents her positive outlook on work and life. I always thought my experience and the expectations that come from having a father who has been a reputable attorney were high. For Carrie, she fulfilled the expectation that comes from having two highly respected parents practicing law that formed a wonderful young lawyer that I know made them very proud.

To give you a flavor of what Carrie's career really means to her, I went back to the words she chose in her job application:

I thoroughly enjoyed examining cases through varying critical lenses, developing ideas, plans, and theories with my supervisors, and working towards advancing the cause of justice in our

state. The Attorney General's Office opened my eyes to a career that was fascinating and unique – where one could better lives, create opportunities, and remedy racial, political and social wrongs. I wanted to pursue a career that would give me the chance to leave the world a better place, and it seemed that through the Attorney General's office, I could have the opportunity.

From past experience, I know that being a young lawyer can at times be scary with the tremendous responsibility you are given and never ending work that at times can involve disappointment. Whether you are a young lawyer or seasoned veteran, it's important to understand we don't have

all the answers. Carrie has experienced sitting in my office and while seeking guidance hearing me respond, "if I knew that answer, I wouldn't need Assistant Attorneys General. Go seek out the truth and act upon it." While we don't have all the answers, I can assure you that Carrie Srstka, as an Assistant Attorney General, has engaged in a "fascinating and unique" job and she clearly has taken and fulfilled that "chance to leave the world a better place." For this, she has earned a thank you from us all.

Marty J. Jackley
South Dakota Attorney General

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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.

Raising the Bar: Our Profession. Our Responsibility.

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SILVER FELLOWS: \$1,000 per year

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Hon. Kathleen Trandahl (renewed 16-17)

Timothy J. Rensch (17-18)

Brandon M. Taliaferro (renewed 16-17)

Gregory A. Yates (renewed 17-18)

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Hon. Judith Meierhenry (renewed 17-18)

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Mary Jane Cleary (renewed 17-18)

Kimberley Mortenson (17-18)

Jason Robert-Feil Sutton (17-18)

Craig A. Kennedy (renewed 16-17)

Hon. Bobbi Rank (17-18)

Richard Kolker (17-18)

Robert C. Riter (renewed 16-17)

YOU ARE INVITED TO JOIN!

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 ageing, substance abuse and mental health issues.

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*Alternatively, you can call The State Bar (605-224-7554) to setup your payment(s).

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



You are not Alone

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

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.




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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.



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.

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.



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 South Dakota Advocacy. Both LCL and LAC committees have provided names and contact information for referrals.

You will be provided with the names and phone numbers and 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.



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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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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 2017 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.

January 2018

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:

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In Memory of:

Thomas F. Martin died on his 77th birthday on December 4, 2017, at The Neighborhoods at Brookview in Brookings, SD. Mass of Christian Burial will be held at St. Thomas More Catholic Church on Monday, December 11, at 11:00 AM, with Father Terry Anderson officiating. On Sunday, December 10, at 3:00 PM, a liturgical wake service will be held at the church, followed by visitation until 5:00 PM.

In lieu of flowers, memorials may be made to St. Thomas More Catholic School, Jacks for Life, and the Martin Family Scholarship Fund Honoring Teachers.

Tom was born on December 4, 1940, in Huron, SD, to Clair and Mary Alice Martin. He grew up with three brothers and one sister and attended St. Martin's Catholic School for eight years and then attended and graduated from Huron High School. After high school, he attended and graduated from Huron College with a BA in psychology. He then attended the University of South Dakota Law School and graduated with honors. Immediately after law school, Tom joined William McCann, Esq., where he pursued a practice of general law. During his career, he also served for several years as an Assistant District Attorney for Brookings County and on various committees within the South Dakota State Bar Association. He regularly served the community, including as the United Fund Chairman and in various roles for his church.

Tom married his wife, Judy, on June 6, 1963, at St. Joseph's Cathedral in Sioux Falls. Their annual anniversary tradition was to attend Mass at St. Joseph's Cathedral and enjoy dinner at their favorite restaurant in Sioux Falls. They were married for more than 53 years.

God's greatest blessing to Tom and Judy was a family of six children—Suzanne (Donald), Jane, Laura (Mark), Patrick (Kirsten), Joe (Chin), and Michael—and twelve grandchildren—Lauran, Lincoln, Madison, Benjamin, Wilson, Connor, Peyton, Amelia, Joseph, Jack, Matthew, and Cora. Providing for and encouraging them in their faith, education, and extracurricular activities was his greatest passion—one that he and Judy shared together to the very end.

His favorite activities were spending time with his family, playing golf, reading about and advocating for various social concerns of the times, and ferociously cheering on the SDSU Jackrabbits and Notre Dame

Fighting Irish.

Tom is also survived by his three brothers and one sister—Joseph (Sandy), Eugene (Sandra), Robert (Deborah), and Patricia—with whom he shared many annual gatherings. He was preceded in death by his parents.

William Frank Day, Jr., age 87, was born September 22, 1930 in White River, SD to William and Pearl (Coash) Day. As a young man Bill excelled in many sports, especially boxing. He was a Gold Gloves champion in several states. Many said that Bill was the fastest “slap hands” player there ever was. Bill attended several different high schools and graduated from Rapid City High School in 1948. He attended the University of South Dakota and entered the United States Army under the ROTC program at USD. Bill received his basic training in Fort Benning, GA and received the rank of Second Lieutenant. During his first stint of military service, the Army sent Bill to a communications school in Georgia. Thereafter, Bill and Major Burke prepared a two hour lecture entitled “Communications in Small Unit Operations.” Bill and Major Burke presented a lecture tour in every major city in eight western states. Upon his discharge, Bill attended the University of South Dakota School of Law. While at USD, Bill joined the Delta Tau Delta and Phi Delta Phi fraternities. During law school, Bill's plans were suddenly interrupted when he received a Reserved Commission grade of First Lieutenant on March 2, 1955, and was back in the military. He subsequently received his L.L.B. Degree (replaced by J.D. Degree) from the Law School in 1956. Bill married Donna Mae Hansen on September 4, 1955. After Bill and Donna both obtained their degrees from



USD, they moved to Winner, SD so that Bill could begin his law practice and Donna could teach elementary school. To this union two children were born: Michael William and Lori Ann. Once again Bill's plans were changed, and his law practice was interrupted when he was called to active military service due to the Berlin crisis. Bill received a Reserved Commission grade of Captain on February 16, 1962, and took his wife and young family to Fort Riley, Kansas. Bill was honorably discharged on August 10, 1962. Also during 1962 Bill was selected as the Democratic candidate for Attorney General, but later declined the nomination. After his military service, Bill returned to the practice of law in Winner and did so with distinction for 33 years. While in Winner, Bill served as State's Attorney for Tripp and Todd Counties from 1958-1961, and as City Attorney for Winner in 1958, 1961, 1963, and 1968. Bill was appointed by Governor Archie Gubbrud to a post on the State Police Civil Service Commission. On September 14, 1964, President Cato Valandra of the Rosebud Sioux Tribe appointed Bill to the office of Judge of the Sioux Tribal Court of Rosebud, where he served until 1971. Bill had a general law practice but excelled in trial work, both civil and criminal. Bill credited the late George Johnson for many of his early successes as a lawyer. He practiced law in Winner with Mick Grossenburg for many years until 1989 when he joined the firm of Lynn, Jackson, Shultz & Lebrun, P.C. While with Lynn Jackson, Bill's primary focus was litigation and mediation. Bill retired from the practice of law in 2005 at which time he and Donna moved to Spearfish, SD so that they could be closer to their grandchildren and their beloved cabin and friends located in Mystic Valley. Bill and Donna loved traveling and were wonderful dancers. They enjoyed summers at the cabin with their many close friends and family. Throughout his career, Bill was active in various associations devoted to the public welfare and the legal profession. Bill held a special place in his heart for the Children's Care Hospital and School and Children's Care Foundation. Bill spent 26 years on these boards, as well as serving as Board President from 1985 to 1986 and Chairman of the Children's Care Foundation from 2003 to 2005. Bill also served as the first Legal Aid-Civil Legal Services Coordinator for the State Bar of South Dakota. Bill served as President of the South Dakota Junior Bar Association from 1962-1963, was President of the Eleventh Judicial Circuit Bar Association, and was President of the South Dakota State Bar from 1974-1975. Bill also served as a Commissioner on the Judicial

Qualifications Commission, served as Chairman of the Task Force on Professionalism Committee and was Chairman of the Advisory Committee for the Civil Justice Reform Act of 1990. Bill served as President of the South Dakota Trial Lawyers Association from 1969 to 1970. He was also the proud recipient of the prestigious McKusick Award and in 2003 was honored as the South Dakota Trial Lawyer of the Year. Bill was a long time member of the American Bar Association, American Trial Lawyers Association, State Bar of South Dakota, Rosebud Bar, Jackrabbit Bar, American Judicature Society, South Dakota Trial Lawyers Association, American College of Trial Lawyers, American Board of Trial Advocates, International Academy of Trial Lawyers, American Counsel Association, and a Fellow in the International Society of Barristers. Bill also had a great deal of experience practicing law in tribal courts and was a member of the Sicangu Oyate Bar Association, Rosebud Sioux Tribal Court, Lower Brule Sioux Tribal Court, Crow Creek Tribal Court and the Sisseton-Wahpeton Sioux Tribal Court. Bill also had the privilege of arguing before the United States Supreme Court. Bill was an active member of the Episcopal Church, Masonic Lodge, Shriners, American Legion, Chamber of Commerce, Rotary, and Elks. Bill passed away on January 2, 2018 at the Belle Fourche Healthcare Community. Happy to have shared his life and love are son and daughter-in-law Michael and Mary Srstka Day of Belle Fourche, daughter Lori Day of Sioux Falls, his beloved "three Catholic granddaughters" Katie Weitzel and husband Derek Weitzel of Omaha, NE, Allie Day and fiancé Jason Braning of Belle Fourche, and Liz Day of Saint Joseph, MN. He is survived by great grandchildren Jackson and Madison Braning of Belle Fourche. He is also survived by brother and sister-in-law Jack and Mary Ann Day of Winner, sister and brother-in-law Judy and Ray Bartels of Winner, sister-in-law Marvel Hansen of Sioux Falls, brother-in-law and sister-in-law Larry and Carol Hansen of Cape Coral, FL and many cousins, nieces, nephews and many special friends. Bill was preceded in death by his parents, and wife of 57 years, Donna. Bill loved lawyers, his family and friends and they loved him. Bill was one of a kind, and may God bless the life and memory of Bill Day.

ANNOUNCEMENTS

Richard A. "Rico" Johnson

has completed the Family Law Mediation Training Course at Northwestern University's School of Professional Studies and will now be available to provide mediation services for Family Law matters beginning in January 2018.

To schedule mediation you may contact him by calling 605-339-4500 or 605-338-2799. You may also contact him by email at rico@strangelaw.com or rico@ricojohnson.com

Goosmann Law Firm
is pleased to announce that

Attorney Sam Ferguson

has joined their team as their estate planning attorney at their Sioux Falls, South Dakota location.

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Sioux Falls SD 57108

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Facsimile (605) 275-2039

Dennis L. Duncan
dlduncan@ddlawsd.com

and
Drew C. Duncan
dcduncan@ddlawsd.com

are pleased to announce the formation of their new law partnership

The Duncan Law Firm, LLP

as of January 1, 2018.

The firm's new Sioux Falls address effective February 1, 2018 will be:

The Duncan Law Firm, LLP
515 West Landscape Place, Suite 101
Sioux Falls, SD 57108
(605) 361-9840
(605) 271-7872 facsimile

The firm's Parker, South Dakota office will continue to serve its clients at its current address.

Attorney Amanda W. Engel will remain associated with The Duncan Law Firm, LLP
amanda@ddlawsd.com

DEADLINE COMING SOON:

- Are you using File & Serve HTML5 to efile? Link: <https://southdakota.tylerhost.net/OfsWeb>
- If not, please start now. By the end of Q4, you will be automatically redirected to the HTML5 site. The Silverlight version (<https://southdakota.tylerhost.net/default.aspx>) will be disabled at that time.
- Need HTML5 training? Register for a training session – click [here](#) to register

The Mumford & Protsch Law Office
is pleased to announce that

Kristian Danae Ellendorf

has joined the firm as an associate attorney

115 N Main St.
PO Box 189
Howard SD 57349

Telephone: 605-772-4488
Facsimile: 605-772-5720
E-mail: ellendorf-mpp@alliancecom.net

Clayborne, Loos & Sabers, LLP
is pleased to announce that

Travis B. Jones

is joining the law firm
effective January 1, 2018

2834 Jackson Boulevard, Ste. 201
P.O. Box 9129
Rapid City, South Dakota 57709-9129

Phone: (605) 721-1517
Fax: (605) 721-1518

Please note that the law firm of

Strange, Farrell, Johnson & Brewers, P.C.


has relocated their office to

4420 S. Technology Drive, Sioux Falls SD 57106
(All phone numbers and email addresses will remain the same)



JOIN US FOR THE MIDWEST'S PREMIER ESTATE PLANNING EVENT

Thursday, April 26 and Friday, April 27, 2018
Overland Park Convention Center • Overland Park, Kansas

 Like us on Facebook

"It's the big conference with the small conference feel. In two days you can get the equivalent of a week's worth of education." ~ Prof. Sam Donaldson, J.D. Georgia State University College of Law

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Presented in cooperation with the Estate Planning Society of Kansas City and the University of Missouri Kansas City School of Law. To register online or for a complete schedule and information, [visit KCEPS.org](http://www.kceps.org) or call 816-235-1648.

\$375 with a digital book; \$450 with a hardcopy and digital book. One-day pricing is also available.

"I can no other answer make, but, thanks, and thanks." - William Shakespeare

THANK YOU!

From the State Bar of South Dakota, much thanks to our committee and section leaders during the 2017-2018 bar year.

ANDREW L. FERGEL
MICHAEL E. TRAXINGER
MICHAEL S. MCKNIGHT
AMY L. ARNDT
JOHN R. STEELE
JASON SUTTON
AMY R. BARTLING
JASON R. ADAMS
ROBERT R. NELSON
TAMARA NASH
SAMUEL D. KERR
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DWIGHT A. GUBBRUD
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PATRICK G. GOETZINGER
BOB L. MORRIS
ERIC R. JOHNSON
MCLEAN A. THOMPSON KERVER
REECE ALMOND
THOMAS E. GRASLIE
KATIE JOHNSON
RICHARD D. CASEY
KATHLEEN F. TRANDAHL
SARAH SHARP THEOPHILUS
GARY P. THIMSEN
ASHLEE A. WENDT
DANIEL E. ASHMORE
REBECCA L. MANN
QUENTIN RIGGINS

*Thank
You!*

THANK YOU TO THE
FOLLOWING ATTORNEYS
FOR ACCEPTING A PRO
BONO OR MODEST MEANS
CASE FROM ACCESS TO
JUSTICE, INC. IN
DECEMBER!

AND, THANK YOU TO:

Scott Moses
Amber Hardy
Kyle Krause
Paul Tschetter
Joseph Hogue
Brandy Rhead
Tom Simmons

FOR ANSWERING
QUESTIONS
POSTED ON SD
FREE LEGAL
ANSWERS THIS
MONTH!

Gary Blue*
Jeremiah (Jay) Davis*
Jessica Hegge
Chet Groseclose
Reece Almond
Kirsten Aasen
Drew Johnson
Patrick Goetzinger
Roger Gerlach

*Accepted multiple cases since January 2017.

Are you interested in volunteering with Access to Justice?

Send a message to Denise Langley at:

access.to.justice@sdbar.net



ACCESS TO JUSTICE, INC.



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Access to Justice 2017 Honor Roll of Super Heros!!!

Access to Justice would like to thank the following attorneys for accepting or mentoring one or more cases through the Access to Justice Pro Bono and Modest Means programs in 2017:

Aaron Sandvig
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Alvin Pahlke
Amber Hardy
Anonymous
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Ashley Miles Holtz
Benjamin Tronnes
Bob Morris
Brad Lee
Brenda Ask
Brian Utzman
Candi Thomson
Cathy Mattson
Cesar Juarez
Chet Groseclose
Chris Nipe
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Clint Sargent
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Dava Wermers
David Barari
David Fransen
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Deborah DuBray
Debra Watson
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Dennis Whetzal
Donald Knudsen

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Kylie Riggins
Laura Kulm Ask
Laura Shattuck
Lee Magnuson
Linda Lea Viken
Lindsay Hovden
Lisa Marso
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Michael Stevens
Mike Whalen
Mitchell O'Hara
Patrick Goetzinger

Rachel Hale
Raleigh Hansman
Reece Almond
Rick Mickelson
Rob Meadors
Robert Konrad
Roger Gerlach
Russ Janklow
Ryan Kolbeck
Sarah Baron Houy
Scott Heidepriem
Sheila Woodward
Shelly Munson
Stacy Johnson
Stan Anker
Steve Aberle
Steve Huff
Steven Nolan
Thomas Cogley
Thomas Frankman
Thomas Frieberg
Thomas Keller
Thomas Von Wald
Tim Hogan
Timothy Cummings
Tom Fritz
Tom Welk
Will Mortenson
William Kunstle



YOUNG LAWYERS SECTION 2018 BOOTCAMP

Date and Time: March 2, 2018 from 9-4 (mixer to follow)

Sioux Falls Location: Lumber Exchange Building, 101 S. Reid Street, RSVP to Nicole Tupman, nicole.tupman@midco.com

Rapid City Location: Pennington County Courthouse, 315 St. Joseph Street, 3rd Floor, RSVP to Kassie Shiffermiller, kshiffermiller@lynnjackson.com

Transactional Agenda

- 8:45-9:00: Registration for morning session and welcome
- 9:00-9:30: Contracts 101: Tips and Tricks for Contract Drafting
- 9:30-10:00: Employment 101: Identifying and Drafting Employment Policies and Contracts
- 10:00-10:20: Fit2Practice Break
- 10:20-11:00: Business 101: Drafting Purchase Agreements for Business & Real Estate
- 11:00-11:15: Break
- 11:15-12:00: Trust & Estates 101: Identifying Appropriate Documents for Your Client's Needs

- 12:00-1:00: ALPS-sponsored lunch with the Judges for small group discussions

Litigation Agenda

- 12:45-1:00: Registration for afternoon session and welcome
- 1:00-1:45: Evidence 101: Pretrial Evidentiary Motions, and Objections During Trial
- 1:45-2:00: Break
- 2:00-2:30: Construction Law 101: Litigating a Construction Deficiency Case
- 2:30-3:00: Personal Injury 101: Investigating and Litigating a Personal Injury Case
- 3:00-3:20: Fit2Practice Break
- 3:20-4:00: Experts 101: Examining a Financial Expert

Circuit Mixer Beginning at 4 p.m. – All Attorneys Are Invited

Sioux Falls: Remedy Brewing, 401 E. 8th Street, #120, Sioux Falls

Rapid City: Minerva's, 2111 N Lacrosse S., Rapid City



December 21, 2017

Dear State Bar Member:

The State Bar of South Dakota, the University of South Dakota School of Law (“the Law School”) and the National Institute of Trial Advocacy (“NITA”) announce that the 2018 Trial Academy will be held at the Law School beginning on July 9 through July 13, 2018. This is the sixth Trial Academy. This year’s program will focus on a civil jury trial involving a product liability fact situation. Since the Trial Academy was established in 2004, over 100 lawyers have participated in the Trial Academy. The South Dakota Trial Lawyers Association, the South Dakota chapter of the American Board of Trial Advocates (“ABOTA”), and the South Dakota Defense Lawyers Association have been the sustaining members of the Trial Academy providing scholarships. Scholarships have been offered to lawyers who are working with various South Dakota legal service organizations and to those lawyers in solo or small practice settings who would be unable to attend the Trial Academy without financial assistance. We are proud to say that since the beginning of the Trial Academy over \$50,000 has been contributed. Over 40 participants have been provided scholarships.

In order to institutionalize the Trial Academy, David Gienapp, the current trial director, and myself, have asked and ABOTA, who has accepted, that it will assume the responsibility for the future operation of the Trial Academy. This program is too important to the members of the State Bar to be placed in the hands of a few individuals. In today’s current climate, participation in simulated jury trials with seasoned practitioners teaching trial skills based on proven teaching materials has become even more important than when the Trial Academy was established.

In addition, I am pleased to announce that Dick Casey has agreed to assume a role as trial director as David Gienapp and I begin to reduce our level of participation. The current lawyers on the ABOTA subcommittee, who are transitioning to assume responsibility are: Lonnie Braun and Gary Jensen of Rapid City; Melanie Carpenter and Clint Sargent of Sioux Falls; Jim Roby of Watertown; and Stephanie Pochop of Gregory.

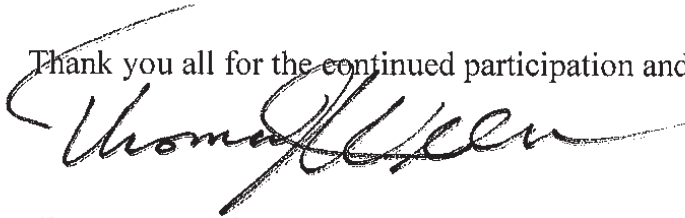
Devra Herмосilla from the Law School is assuming the administrative functions of the Trial Academy. NITA continues to provide a strong contribution to the Trial Academy as it provides the training to the faculty and the substantive teaching materials. This year’s training by NITA will be provided seasoned NITA executive Mark Caldwell, who has been a great resource for all of us.

This year’s faculty includes: Lonnie Braun and Heather Lammers-Bogard of Rapid City; Bob Morris of Belle Fourche; Jana Miner of Pierre; James Roby of Watertown; and Renee Christensen, Shawn Nichols and Clint Sargent of Sioux Falls. Please thank these lawyers for their contribution as they donate their time and skills without compensation for the benefit of our young practitioners.

Applications for scholarships are contained in the State Bar Newsletter. If you know of someone who would qualify, please encourage them to do so as we want this program to be available to all our members regardless of practice setting and financial resources.

The maximum number of participants is twenty-four. Those who are interested, please complete the application contained in the State Bar Newsletter and send in the deposit to assure placement.

Thank you all for the continued participation and support.



Thomas J. Welk



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Trial Academy Registration

Sponsored by the State Bar of South Dakota, National Institute for Trial Advocacy, and the USD School of Law

July 9 to 13, 2018 (Vermillion, SD)

Name: _____ Date: _____

Address: _____

Phone: _____

Email: _____

Please register me for the Trial Academy. I enclose a deposit of \$500 (made payable to SD CLE, Inc.) toward the tuition cost of \$1500. I acknowledge that the deposit, should I be accepted and subsequently am not able to attend, is non-refundable unless a replacement is found. If I am not accepted, I understand that my deposit will be returned to me. I understand that no interest will be payable on returned deposit. I further understand that I will be responsible for motel and meal costs. If I am accepted, I will tender the balance of \$1000 no later than June 25, 2018.

I acknowledge that there may be more applicants than available student slots and that the Trial Academy is primarily intended for lawyers with limited trial experience who desire to further develop his or her trial skills. The following professional information relative to my professional experience will be used by the admissions committee solely to determine whether I will be accepted for the Trial Academy and the information will be used for no other purpose nor shared with any other entity. In the event that there are more applicants than available space, I recognize that the admissions committee will accept the earlier application with deposit for similarly situated applicants.

Size of law firm _____ Years of practice _____

of civil jury trials (estimated): _____ #of criminal jury trials (estimated): _____

Brief description of your current law practice:

Mail this registration form, together with a check in the sum of \$500, payable to SD CLE, Inc.

To:

State Bar of South Dakota

222 E. Capitol Ave.

Pierre, SD 57501

Trial Academy Scholarship Application

The undersigned does hereby apply for a scholarship to the State Bar/NITA/USD School of Law Trial Academy to be held **July 9 to 13, 2018** in Vermillion, SD. I recognize that this scholarship, if awarded, covers the \$1500 tuition and reasonable meal and motel expenses. I further recognize that the scholarship for which I am applying is intended for a sole practitioner or a member of a small law firm. For the sole purpose of assisting the screening committee, I have answered the following professional demographic information:

Name: _____

Address: _____

Phone: _____

Email: _____

Years as a Lawyer: _____ Size of firm: _____

of civil jury trials (estimated): _____ # of criminal jury trials (estimated): _____

Brief description of my career as a lawyer: _____

Attached is my letter setting forth the reasons I should be awarded this scholarship. I understand that this application and attached letter will be kept confidential and will be used solely by the committee to award the scholarship.

Signed: _____

Dated: _____

FAMILY LAW MEDIATION—A MORE PEACEFUL RESOLUTION

Linda Lea M. Viken

Mediation in family law cases has grown exponentially in my 39 years of practicing family law. In recent years I began providing family law mediation services as well and found it a way to provide a more peaceful resolution to family disputes.

We are all familiar with SDCL 25-4-56 which requires mediation in custody disputes. That statute was put in place while I was serving in the South Dakota Legislature. Its purpose was to bring parents together in a setting where they could focus solely on what was best for their children, without equating custody and parenting time with alimony or property division. The statute was designed to avoid the necessity of a custody evaluation and to help the parties set up a system of communication to deal with issues about their children.

Mediation can be effective and helpful for the parents. Unless one party is adamant about the form of physical custody, the success rate is very high. But even in those instances where one parent wants shared parenting or one parent wants only minimum parenting time, participating in mediation can be beneficial. When the parties do nothing more than agree on how holidays will be handled, how they will communicate about their children's activities, and common rights and responsibilities are agreed upon, that little bit of success in working together can be powerful in advancing their ability to work together as parents after the divorce.

There are important steps you should take to increase the likelihood of success in a custody/parenting time mediation. First, encourage your client to go into mediation with an open mind and explain the benefits of reaching an agreement. Discuss how an agreement will benefit their children. Second, prepare your client. Review the issues they should discuss at mediation. Third, don't go to the

mediation. When a lawyer is present, the client relies on counsel to speak for them. That reduces the opportunity to learn how to work together as parents.

With encouragement and guidance, custody/parenting time mediation is a great benefit for your clients and their children.

In recent years, the use of mediation to settle an entire divorce has become more popular. Mediation can be a very effective tool to privately reach a settlement without the time, money and emotional demands of going through trial, where someone comes out the winner and someone comes out a loser in the minds of the parties.

Oftentimes when the client hears from a mediator the same realities their attorney has been telling them, the case is resolved. A mediator can suggest alternatives or compromises the parties haven't considered.

Mediation in family law cases can prevent further damage to an already damaged relationship. Your approach as counsel makes a difference as to whether mediation for parenting/custody or the whole divorce will be successful. Encouraging your client to be open when considering alternatives will dramatically increase the likelihood of success.

Experience Matters

Meet the KTLLP Business Valuation Team

Certified Business Appraisals

What should I know about valuations for the agricultural industry?

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 interest's cash flows 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, Senior Manager
ericka@ktllp.com

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

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CERTIFICATE OF COMPLIANCE

INSTRUCTIONS

The certificate of compliance for the year 2017 must be submitted by **January 31, 2018**.

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, 2018. 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.

Tom Barnett
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 the 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 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, 2018. Please submit compliance forms after reviewing your December bank statements. If you have questions, please give me a call. TCB

2017 CERTIFICATE OF COMPLIANCE

TO: The Secretary-Treasurer, The State Bar of South Dakota, 222 East Capitol Avenue, 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 _____, 2018

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 2017. Total Hours:_____.

Rule 6.1. Voluntary Pro Bono Publico 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, 2017_____, 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)
- 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; or

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

(*An out of state member may strike "South Dakota" and insert the state where his/her trust account is located.)

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)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

_____, 2017
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:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

_____, 2017
Date

***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.**

Job Postings and Classified Advertisements

CLASSIFIEDS Contact | Email your employment announcement to tracie.bradford@sdbar.net by January 26th 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

Business Attorney: Swier Law Firm, Prof. LLC is seeking a BUSINESS ATTORNEY in Rapid City with a minimum 2 years of experience. Candidates must possess outstanding oral and written skill and a desire to excel. Attracting and retaining top talent is the key to Swier Law Firm's success. Our compensation structure rewards contributions to our clients and reflects the competitiveness of the legal market. This is an opportunity for a top candidate to become part of a growing law firm with a state, regional, and national client base. Please send a resume and cover letter to Executive Director Sara Travis at sara@swierlaw.com. All inquiries will remain confidential.

Business Attorney: Swier Law Firm, Prof. LLC is seeking a BUSINESS ATTORNEY in Sioux Falls with a minimum 2 years of experience. Candidates must possess outstanding oral and written skill and a desire to excel. Attracting and retaining top talent is the key to Swier Law Firm's success. Our compensation structure rewards contributions to our clients and reflects the competitiveness of the legal market. This is an opportunity for a top candidate to become part of a growing law firm with a state, regional, and national client base. Please send a resume and cover letter to Executive Director Sara Travis at sara@swierlaw.com. All inquiries will remain confidential.

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

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

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

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

Opened until filled.

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

Applicants must have a JD degree and be licensed to practice, or by reciprocity be able to obtain a license to practice, in South Dakota, or be qualified to take the next South Dakota Bar Exam; must be a bright, motivated, self-starter; must have the tenacity to assume immediate practice responsibilities, including handling a significant caseload touching on many different areas of law with regular appearances in court; must demonstrate an interest in poverty law and working with Native American and low income clients. Applicant must have at least one year's experience in the practice of poverty law or Indian law, with trial and appellate experience in state and federal courts or two years' experience in the general practice of law. If Applicant does not possess this experience we would consider Applicant for a staff attorney position until qualified to be a Managing Attorney.

Competitive, depending on experience. DPLS has an

excellent fringe benefits package including generous leave benefits and employee insurance coverage (medical, dental, life, disability).

Open until filled.

Please submit a letter of interest and resume to: John J. Buchy, Executive Director, Dakota Plains Legal Services, PO Box 727, Mission, SD 57555, (605) 856-4444, dpls1@gwtc.net

Native Americans, Women and Minorities are encouraged to apply. Dakota Plains Legal Services is an Equal Opportunity Employer

Coverage Attorney: Great West Casualty Company has a Coverage Attorney position open on our Corporate Legal team in South Sioux City, NE. As a Coverage Attorney for Great West Casualty Company, 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 judgement action while supervising outside counsel. We are looking for candidates with: JD degree. You must be licensed to practice in at least one state. CPCU/AIC designations helpful. At least 3 years of litigation experience with insurance, regulatory compliance, and administrative law emphasis. Prefer Insurance Defense Litigation experience. Strong attention to detail with above average multi-tasking skills and the ability to adapt quickly to situations that require immediate transition. The ability to read and analyze a policy and apply th to a fact scenario while confidently laying out your reasoning and rationale. Excellent communication and public speaking skills. To learn more about Great West and our office location: please visit our website www.gwccnet.com.

REQUEST FOR PROPOSALS

The Standing Rock Sioux Tribe (Tribe) is now accepting Proposals from qualified individuals, organizations or firms for the development of a Children's Code for the Standing Rock Sioux Tribe's Code of Justice. The Tribe currently has a Children's Code but the current version is in need of revision to reflect changes in the law and current practices. The successful Proposal should reflect experience working with Tribes and Tribal Courts. Experience in Code drafting and development, knowledge of the

issues facing Children's Courts, knowledge of the law as it pertains to Abuse and Neglect proceedings, Delinquency, Status offenses, Indian Child Welfare proceedings, Custody, Termination and Adoptions issues/ proceedings and Title IVE requirements. The Tribe also seeks to implement traditions and customs where applicable or necessary.

Requested Information: A) Cover Letter B) Outline of Experience working with: (1) Abuse & Neglect cases; and, (2) Title IV(e). C) Two (2) years minimum experience in each case type is recommended but not required. D) Whether the Bidder is Tribal or Indian Owned. Copies of tribal identification cards must be included to support the statement. Indian owned is defined as any business that is at least fifty-one percent (51%) owned by an individual who is an enrolled member of a federally recognized tribe; E) detailed breakdown of cost(s) of preparation; and, F) References.

Deadline for submission is January 19, 2018 at 4:00pm CST. The Tribe reserves the right to select, any bid or no bid. Proposals should be submitted in PDF format via email to: dagard@standingrock.org. Sealed proposals will be received in person at SRST Tribal Court, c/o Melvin White Eagle Building, 101 Agency Avenue, Fort Yates, ND 58538 or mailed to SRST Court, P.O. Box 363 Fort Yates, ND 58538, Attn. D. Agard, Court Administrator.



Judicial Qualifications Commission State of South Dakota

500 East Capitol Avenue

Pierre, SD 57501

Telephone: (605) 773-2099

Fax: (605) 773-8437

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

Kimberley A. Mortenson, Chair

Mark S. Roby, Vice Chair
Hon. Robin J. Houwman
Mark Haigh

Hon. Bruce V. Anderson, Secretary
Jim D. Seward
Rebecca A. Porter

Lori Grode, Executive Assistant

Notice of Judicial Vacancy

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

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

The retirement of the Hon. Glen A. Severson in June 2018 will create a vacancy for a State Supreme Court Justice position in the Second District. The Judicial Qualifications Commission is now taking applications for this position.

All lawyers and judges interested in applying should obtain the application form at <http://ujs.sd.gov/>, or contact Lori Grode at the State Court Administrator's Office. The application must be returned to the Administrator's Office and must be postmarked no later than **5:00 PM on February 20, 2018**.

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

Lori Grode

State Court Administrator's Office

500 East Capitol Avenue

Pierre, SD 57501

Telephone: 605-773-2099

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

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

The Second District is comprised of the following county: Minnehaha.

1. Proposed Amendment of SDCL 16-21A-2(4). Electronic filing.

(1) Documents filed electronically in the circuit courts or magistrate courts, excluding small claims, shall be submitted through the Odyssey® electronic filing system in all counties where available. Any user shall be required to register with the court and designate an email address prior to using the electronic filing system. The presiding judge of a judicial circuit may direct that small claims cases be filed through the electronic filing system except as specifically exempted by these rules or court order.

(2) Effective July 1, 2014, except as specifically exempted by these rules or court order, all filings, notices, petitions, pleadings, motions, briefs or documents, with the exception of small claims, shall be filed electronically for all civil case types. For criminal case types all documents, except the initiating pleading or documents specifically exempted by these rules or court order, shall be filed electronically. Self-represented litigants may file electronically, but shall not be required to file electronically. On a showing of good cause, an attorney required to file electronically may be granted leave of court to file paper documents with the clerk of court. The service of any summons or subpoena shall follow the requirements of § 15-6-4 or 15-6-45(c) as applicable.

(3) Registered users will receive electronic notice when documents are entered into the system. Registration for electronic filing constitutes written consent to electronic service of all documents filed in accordance with these rules and the Rules of Civil Procedure. Electronic service through the electronic filing system shall be deemed service by mail for purposes of adding an additional three days to any prescribed period.

(4) Documents that will not be accepted for electronic filing, unless otherwise directed to be filed electronically by the court, include:

- (a) New criminal case initiating documents;
- (b) Motions requesting that a document be sealed and original sealed documents;
- (c) Trial or hearing exhibits;
- (d) Wills to be retained for safekeeping pursuant to § 29A-2-515;
- (e) Oversized documents that cannot be scanned effectively;
- (f) Documents not of sufficient graphical quality to be legible when scanned;
- ~~(g) Administrative appeal records filed with the court pursuant to § 1-26-33;~~
- (hg) Discovery documents as provided by § 15-6-5(g); and
- (ih) Any other documents directed by the court not to be filed electronically.

(5) A document filed or served electronically has the same legal effect as a paper document.

(6) Any signature on a document filed electronically is considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall strike the filing.

(7) Documents requiring signatures of more than one party may be electronically filed either by (a) submitting a scanned document containing all necessary signatures; (b) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than seven days after filing; or (c) in any other manner approved by the court. When filing documents that require signatures from other parties, it is not permissible to insert a "/s/" for another person's signature.

(8) All paragraphs, excluding attachments, shall be numbered in all documents, except briefs, filed electronically. Reference to material in such documents shall be to paragraph number, not page number.

2. Proposed Amendment of SDCL 1-26-33. Record transmitted to circuit court--Limitation of record--Corrections and additions. Within thirty days after the service of the notice of appeal, or within further time allowed by the court, the agency shall transmit to the reviewing court the ~~original or a certified~~ electronic copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

It shall be the duty of the agency to assemble and consecutively number the pages of all documents, papers, and exhibits filed with the agency, including any opinions and decisions which the agency may have filed or authorized for filing. The agency shall then prepare and attach an alphabetical and chronological index to the electronic record and shall serve a copy of such index on all parties to the review proceedings at the time the record is submitted to the reviewing court. If any portions of the record are not legible or are altered when converted to an electronic image they must be provided in hardcopy format.

3. Proposed Amendment of SDCL 16-21A-2(3). Electronic filing.

(1) Documents filed electronically in the circuit courts or magistrate courts, excluding small claims, shall be submitted through the Odyssey® electronic filing system in all counties where available. Any user shall be required to register with the court and designate an email address prior to using the electronic filing system. The presiding judge of a judicial circuit may direct that small claims cases be filed through the electronic filing system except as specifically exempted by these rules or court order.

(2) Effective July 1, 2014, except as specifically exempted by these rules or court order, all filings, notices, petitions, pleadings, motions, briefs or documents, with the exception of small claims, shall be filed electronically for all civil case types. For criminal case types all documents, except the initiating pleading or documents specifically exempted by these rules or court order, shall be filed electronically. Self-represented litigants may file electronically, but shall not be required to file electronically. On a showing of good cause, an attorney required to file electronically may be granted leave of court to file paper documents with the clerk of court. The service of any summons or subpoena shall follow the requirements of § 15-6-4 or 15-6-45(c) as applicable.

(3) Registered users will receive electronic notice when documents are entered into the system. Registration for electronic filing constitutes written consent to electronic service of all documents filed in accordance with these rules and the Rules of Civil Procedure. Electronic service through the electronic filing system shall be deemed service by ~~mail~~ electronic mail transmission for purposes of ~~adding an additional three days to calculating~~ any prescribed period.

(4) Documents that will not be accepted for electronic filing, unless otherwise directed to be filed electronically by the court, include:

- (a) New criminal case initiating documents;
- (b) Motions requesting that a document be sealed and original sealed documents;
- (c) Trial or hearing exhibits;
- (d) Wills to be retained for safekeeping pursuant to § 29A-2-515;
- (e) Oversized documents that cannot be scanned effectively;
- (f) Documents not of sufficient graphical quality to be legible when scanned;
- (g) Administrative appeal records filed with the court pursuant to § 1-26-33;
- (h) Discovery documents as provided by § 15-6-5(g); and
- (i) Any other documents directed by the court not to be filed electronically.

(5) A document filed or served electronically has the same legal effect as a paper document.

(6) Any signature on a document filed electronically is considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall strike the filing.

(7) Documents requiring signatures of more than one party may be electronically filed either by (a) submitting a scanned document containing all necessary signatures; (b) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than seven days after filing; or (c) in any other manner approved by the court. When filing documents that require signatures from other parties, it is not permissible to insert a "/s/" for another person's signature.

(8) All paragraphs, excluding attachments, shall be numbered in all documents, except briefs, filed electronically. Reference to material in such documents shall be to paragraph number, not page number.

4. Proposed Amendment of SDCL 15-6-5(g). Documents not to be filed-Depositions. No depositions (except notices to take depositions), interrogatories, requests for documents, requests for admissions, and answers and responses thereto shall be filed with the clerk of the court except as provided in this section. Any such filing shall be made electronically in full-size print unless otherwise ordered by the court. Any exhibits to such documents shall be clearly identified and included as a separate electronic file or hyperlinked within the transcript file.

Any discovery materials necessary for the disposition of any motion filed with the court or referenced in any filing with the court shall be attached as an exhibit and filed with the party's motion in its entirety. Financial account information filed with the court as an exhibit under this section shall be confidential pursuant to §§ 15-15A-8 and 15-15A-9, and shall remain confidential unless and until access is granted by the court under § 15-15A-10.

If any party designated any or all of any deposition as evidence to be offered in the trial of any case, such deposition shall be filed in electronic format in its entirety with the clerk of the court at the same time as that party's designation.

Depositions used by a party only for the purpose of contradicting or impeaching the testimony of deponent as a witness, pursuant to subdivision 15-6-32(a)(1), shall not be filed unless otherwise ordered by the judge presiding at the hearing or trial.

All depositions which have been read or offered into evidence by agreement of parties, or at the trial or submission

of the case to the court, shall become a permanent part of the file.

5. Amendment of SDCL 15-6-30(f). Certification and filing by officer--Exhibits--Copies.

(1) The officer shall prepare an electronic copy of the deposition transcript, including any changes as provided in 15-6-30(e), and shall certify on the deposition that the witness was duly sworn by the officer and that the deposition is a true record of the testimony given by the witness. This certificate must be in writing and accompany the record of the deposition. The officer shall promptly send the certified electronic original of the deposition to the attorney who arranged for the transcript or recording who must store it for filing purposes if necessary. ~~who must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.~~ Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and electronic files annexed to and returned with the deposition, and may be inspected and copied by any party, except that (A) the person producing the materials may substitute copies to be marked for identification, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, and (B) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

(3) The party taking the deposition shall give prompt notice of its filing to all other parties.

6. Amendment of SDCL 15-6-6(a). Computation of time.

In computing any period of time prescribed or allowed by this chapter, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of court inaccessible, in which event the period runs until the end of the next day which is not one of the aforementioned days. When the period of time prescribed or allowed is less than eleven days,

intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes those holidays listed in § 1-5-1.

Service by facsimile ~~and~~, electronic mail transmission, and through the Odyssey® electronic filing system must be completed by 5:00 p.m., ~~receiver's~~ filer's time, on a weekday, which is not a legal holiday, or service shall be deemed to be made on the following weekday, which is not a legal holiday.

7. Amendment of SDCL 15-12-32. Review of affidavit--Designation of substitute judge or magistrate. The presiding judge of the circuit court or in his absence or disqualification as the judge sought to be changed, the senior judge of the circuit shall review the affidavit and certification, if any, and it is determined that the affidavit is timely and is filed in good faith and that the right to file the affidavit has not been waived or is not otherwise legally defective, shall assign some other circuit judge or magistrate of that circuit as is appropriate to preside in such action, by filing an order of such appointment with the clerk of the court of the county wherein said action is pending. From the filing of such order the judge or magistrate therein designated shall have full power, authority and jurisdiction to proceed in the matter. In the event that the reviewing judge cannot determine upon the face of the affidavit that it has been filed in good faith, or if the affidavit is challenged by any other party to the action, then the issue of the impartiality of the judge will be heard by the reviewing judge and the burden will be upon the party filing the affidavit to show by clear and convincing evidence that it has been filed in good faith and that there is an objective basis to support the same. If such burden cannot be met, then the affidavit shall be rejected and the original judge shall continue on the case.

8. Amendment of SDCL 16-3-5.1. Court rules--Filing of notice of rule changes proposed by Supreme Court--Publication hearing--Combined notices--Rules governing internal operation effective on filing. Any new rule, amendment, or repeal of existing rules or statutes relating to the administration of the courts, the number and composition of circuits and judges assigned to the circuits, to pleading, practice, or procedure, or to the admission, disbarment, discipline, and reinstatement of attorneys to practice the profession of law may be adopted by the Supreme Court.

A proposed new rule, amendment, or repeal shall be filed in the office of the clerk of the Supreme Court with deletions shown by strike-throughs and additions shown by underscore. The

proposed new rule, amendment, or repeal shall include together
~~with a discussion of the proposed change which shall including:~~

- (1) The identity of the proponent or proponents of the change;
- (2) A detailed explanation of the change and the reasons for the change;
- (3) An analysis of the state or federal rule or statute that the change is based upon, if any;
- (4) A comparison of the change with federal rules or local federal rules on the same subject, if any, and an explanation of any differences, if any, and;
- (5) An analysis of how the change affects existing rules or statutes.

The clerk of the Supreme Court shall give thirty days' notice of an intention to adopt, amend, or repeal rules by electronic mail notification to members of the State Bar of South Dakota, by posting notice at the Unified Judicial System's website at <http://www.ujs.sd.gov/> or at the State Bar of South Dakota's website at <http://www.sdbar.org/>, or such other notice as the Court may order. Any member of the State Bar of South Dakota may request notification of an intention to adopt, amend, or repeal rules through first class mail by contacting the clerk of the Supreme Court. The notice shall fix a time and place when any person interested may appear and be heard with reference to the adoption, amendment, or repeal of rules.

Notice of adoption of several rules, amendments, or repeals of rules may be given at one time and in one notice.

All other rules adopted by the Supreme Court concerning its internal operations under its constitutional or statutory rule-making power shall be filed with the clerk of the Supreme Court and unless otherwise ordered shall become effective when so filed without further notice.

**9. Proposed Amendments and Adoptions to:
APPENDIX A. APPENDIX TO CHAPTER 16-16
REGULATIONS OF THE BOARD OF BAR EXAMINERS
STATE OF SOUTH DAKOTA**

4. Passing Score.

The bar examination is comprised of three portions:

- (A) The combined MPT, MEE, and Indian law portion,
- (B) The MBE, and
- (C) The MPRE.

~~An applicant must pass each portion of the examination. A general average of 75% or higher on the combined MPT, MEE, and Indian law portion of the examination shall be deemed a passing score on that portion of the examination. A scaled score of 135 or higher shall be deemed a passing score on the MBE portion of the examination. A scaled score of 85 shall be deemed a passing score on the MPRE portion of the examination. The Board of Bar Examiners shall determine the passing score on each portion of the bar examination in advance of the examination. Written notice of any deviation from the scores enumerated in this regulation will be given to the dean of the University of South Dakota School of Law and all applicants for admission to practice law by examination.~~

~~An applicant who has failed only one portion of the exam must only reapply to sit for the failed portion; however, a passing score on one portion of the examination shall only be valid for a period of two years to exempt the applicant from retaking that portion of the examination. An applicant who fails either the MPT, MEE, and Indian law portion of the examination and/or the MBE portion of the examination three times must receive Supreme Court permission pursuant to § 16-16-11 to take another examination.~~

The combined score of the MPT, MEE and Indian Law portion is to be given equal weight as the MBE scaled score portion utilizing the standard deviation method to determine an applicant's final score on that portion of the bar examination. The total combined passing score of the MPT, MEE and Indian Law portion combined with the MBE scaled score portion utilizing the standard deviation method shall be 260.

A separate passing score is set for the MPRE portion of the examination and a scaled score of 85 shall be deemed a passing score on the MPRE portion of the examination.

4.1 Retroactive Admission of Past Applicants Meeting the Standard in Regulation 4. Any applicant who has taken the bar examination in South Dakota between February 2015 and the date this rule takes effect may, upon written request to the Board of Bar Examiners, have the applicant's South Dakota examination(s) during that time period re-totaled consistent with the standard set forth in Regulation 4. Re-totaling shall consist of any combination of scores from one or more bar examination(s) that totals the highest possible total combined score. The re-totaled score shall be the highest combined score of the MPT, MEE and Indian law portion, as defined in Regulation 4, on any examination combined with the highest MBE scaled score portion, as defined in Regulation 4, on any examination. Applicants achieving a total combined passing score as defined in Regulation 4 after re-totaling shall be deemed to have passed the combined MPT, MEE and Indian law portion and the MBE portion of the South Dakota bar examination.

4.2 Option for Qualifying Applicants to Re-take the Whole Bar Examination or Failed Portion. Any applicant who does not attain a total combined score of 260 but receives a minimum scaled score of 130 or above on either the combined MPT, MEE and Indian law portion or the MBE portion, may elect to:

1. Re-take the combined MPT, MEE and Indian law portion and the MBE portion of the examination again; or
2. Re-take the portion of the bar examination on which the applicant did not attain a scaled score of at least 130. In order to pass the re-taken portion, the applicant must attain a final scaled score of 130 without combining the previously passed portion of the examination.

This regulation and the minimum scaled scores required to qualify within this regulation shall only be effective if an applicant does not attain a total combined passing score of 260.

4.3 Notice Required for Proposed Change to the Final Scaled Score. The Board of Bar Examiners shall forthwith provide written notice to the Dean of the University of South Dakota School of Law of any proposed change to the scores set forth in Regulation 4. If the final scaled score is being raised on any portion of the examination, and the change has been approved by the South Dakota Supreme Court, that change shall not be effective until three years after the order has been signed by the South Dakota Supreme Court.

5. Acceptance of Multistate Bar Examination Results from Other States. In its discretion, the Board of Bar Examiners may accept an applicant's previous scores on the MBE administered in a jurisdiction other than South Dakota if taken within two years prior to the next scheduled examination, if the score on the MBE is a scaled score of ~~135~~ 130 or above and if the applicant passed the bar examination in the other jurisdiction. The Board of Bar Examiners may accept an applicant's MPRE score if taken within twenty-eight months prior to the next scheduled examination and if the score is a scaled score of 85 or above.

9. Written Notice of Non-Passing Score. Applicants shall be notified in writing of non-passing score(s) for the MPT, MEE and Indian law portion and/or MBE portion. If an applicant does not receive a passing score for the MPT, MEE and Indian law portion, the applicant shall be allowed to review the applicant's answers with the model answer. This review shall take place in person at the Board of Bar Examiners in Pierre, South Dakota.

10. Standing Committee to be Created. A standing committee is hereby created to periodically review issues related to legal education, examination, and bar eligibility and to make recommendations thereon. This committee shall provide an annual report to the State Bar of South Dakota, the Board of Bar Examiners, and the University of South Dakota School of Law on the state of these subjects in South Dakota, including the impact of the same on the administration of justice in and the legal needs of the State of South Dakota.

Members of this committee shall be: The Dean of the University of South Dakota School of Law; a member of the Board of Bar Examiners; the president of the Student Bar Association for the University of South Dakota School of Law; the president of the State Bar Association for South Dakota; the president of the Young Lawyers Section Board; and three (3) other members of the South Dakota State Bar to be appointed by the South Dakota Supreme Court.

10. Proposed Amendments and Adoptions to:
APPENDIX A. TO CHAPTER 16-18
SOUTH DAKOTA RULES OF PROFESSIONAL CONDUCT

CLIENT-LAWYER RELATIONSHIP.

Rule 1.0 Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and e-mail electronic communications. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent ~~except for disclosures that are impliedly authorized in order to carry out the representation or the disclosure is permitted by, and except as stated in paragraph.~~

~~(b).~~ the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;

(2) to secure legal advice about the lawyer's compliance with these Rules;

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

(4) to the extent that revelation appears to be necessary to rectify the consequences of a client's criminal or fraudulent act in which the lawyer's services had been used; ~~or~~

(5) to comply with other law or a court order; ~~or~~

(6) to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Rule 1.10 Imputation of Conflicts of Interest General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless

(1) the prohibition is based on a personal interest of the ~~prohibited~~ disqualified lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; ~~or~~

(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a

statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) The matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

Rule 1.13 Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law. ~~In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's~~

~~representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:~~

~~(1) asking for reconsideration of the matter;
(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and~~

~~(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law.~~

~~(e) If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act on behalf of the organization insists upon action, or a refusal to act, that is clearly a violation of law and is likely to result in substantial injury to the organization, the lawyer may resign in accordance with Rule 1.16.~~

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

~~(d)~~ (f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

~~(e)~~ (g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

Rule 1.18 Duties to Prospective Client

(a) A person who ~~discusses~~ consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has ~~had discussions with~~ learned information from a prospective client shall not use or reveal that information ~~learned in the consultation~~, except as in Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

ADVOCATE

Rule 3.5 Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate *ex parte* on the merits with such a person during the proceeding unless authorized to do so by law or court order;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(d) engage in conduct intended to disrupt the tribunal.

Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to exculpate the guilt of the accused, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged exculpatory information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence relating to the lawyer's representation of a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from

making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees of other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall:

(1) promptly disclose that evidence to an appropriate court or authority, and

(2) if the conviction was obtained in the prosecutor's jurisdiction,

(i) promptly disclose that evidence to the defendant unless a court authorizes delay, and

(ii) undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the defendant was convicted of an offense that the defendant did not commit.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant in the prosecutor's jurisdiction was convicted of an offense that the defendant did not commit, the prosecutor shall seek to remedy the conviction.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS.

Rule 4.4 Respect for Rights of Third Persons.

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document electronically stored information was inadvertently sent shall promptly notify the sender, and or sender's lawyer if sender is represented.

LAW FIRMS AND ASSOCIATIONS.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistancets

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in

effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the rules of professional conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Rule 5.5 Unauthorized practice of law; multi-jurisdictional practice of law.

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice, and

(5) in all cases, the lawyer obtains a South Dakota sales tax license and tenders the applicable taxes pursuant to Chapter 10-45.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction or the equivalent thereof, or a person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction, may provide legal services through an office or other systematic and continuous presence in this jurisdiction that:

(1) are provided to the lawyer's employer or its organizational affiliates, and are not services for which the forum requires pro hac vice admission, and when performed by a foreign lawyer and requires advice on the law of this or another U.S. jurisdiction or of the United States, such advice shall be based upon the advice of a lawyer who is duly licensed and authorized by the jurisdiction to provide such advice; or

(2) are services that the lawyer is authorized to provide by federal law or other law ~~of~~ or rule to provide in this jurisdiction, provided that the lawyer obtains a South Dakota sales tax license and tenders the applicable taxes pursuant to Chapter 10-45.

(e) For purposes of paragraph (d):

(1) the foreign lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent, and subject to effective regulation and discipline by a duly constituted professional body or a public authority; or

(2) the person otherwise lawfully practicing as an in-house counsel under the laws of a foreign jurisdiction must be authorized to practice under this rule by, in the exercise of its discretion, the South Dakota Supreme Court.

INFORMATION ABOUT LEGAL SERVICES.

Rule 7.2 Advertising

(a) Definition. "Lawyer" is defined in Rule 7.1(a)(2).

(b) Permitted Advertising. Subject to the requirements of Rules 7.1 and 7.3, 7.4 and 7.5, a lawyer may advertise legal services through written, recorded, internet, computer, e-mail or other electronic communication, including public media, such as a telephone directory, legal directory, newspapers or other periodicals, billboards and other signs, radio, television and

other electronic media, and recorded messages the public may access by dialing a telephone number, or through other written or recorded communication. This rule shall not apply to any advertisement which is broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and is reasonably expected by the lawyer not to be received or disseminated in the State of South Dakota.

(c) Record of Advertising. A copy or recording of an advertisement shall be kept by the advertising lawyer for two years after its last dissemination along with a record of when and where it was used.

(d) Prohibited Payments. Except as provided in Rule 1.17 and except as provided in subparagraph (c)(13) of Rule 7.1, a lawyer shall not give anything of value to a person for recommending the lawyer's services, except that a lawyer may:

(1) pay the reasonable costs of advertisements or communications permitted by this Rule and may pay the usual charges of a not-for-profit legal service organization;

(2) pay the usual charges of a not-for-profit 501(c)(3) or 501(c)(6) qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority;

(3) pay for a law practice in accordance with Rule 1.17- ; and

(4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

(e) Prohibited Cost Sharing. No lawyer shall, directly or indirectly, pay all or part of the cost of an advertisement by another lawyer with whom the nonadvertising lawyer is not associated in a partnership, professional corporation or limited liability company for the practice of law, unless the advertisement conspicuously discloses the name and address of the nonadvertising lawyer, and conspicuously discloses whether the advertising lawyer contemplates referring all or any part of the representation of a client obtained through the advertisement to the nonadvertising lawyer.

(f) Permissible Content. The following information in advertisements and written communications shall be presumed not to violate the provisions of this Rule 7.2:

(1) Subject to the requirements of Rule 7.5, the name of the lawyer, a listing of lawyers associated with the lawyer for the practice of law, office addresses and telephone numbers, office and telephone service hours, and a designation such as "lawyer," "attorney," "law firm," "partnership" or "professional corporation," or "limited liability company."

(2) Date of admission to the South Dakota bar and any other bar association and a listing of federal courts and jurisdictions where the lawyer is licensed to practice.

(3) Technical and professional licenses granted by the State of South Dakota or other recognized licensing authorities.

(4) Foreign language ability.

(5) Fields of law in which the lawyer is certified subject to the requirements of Rule 7.4.

(6) Prepaid or group legal service plans in which the lawyer participates.

(7) Acceptance of credit cards.

(8) Information concerning fees and costs, or the availability of such information on request, subject to the requirements of this Rule 7.2 and the other Rules of Professional Conduct.

(9) A listing of the name and geographic location of a lawyer as a sponsor of a public service announcement or charitable, civic or community program or event. Such listings shall not exceed the traditional description of sponsors of or contributors to the charitable, civic or community program or event or public service announcement, and such listing must comply with the provisions of this rule and the other Rules of Professional Conduct.

(10) Schools attended, with dates of graduation, degree and other scholastic distinctions.

(11) Public or quasi-public offices.

(12) Military service.

(13) Legal authorships.

(14) Legal teaching positions.

(15) Memberships, offices and committee assignments in bar associations.

(16) Memberships and offices in legal fraternities and legal societies.

(17) Memberships in scientific, technical and professional associations and societies.

(18) Names and addresses of bank references.

(19) With their written consent, names of clients regularly represented.

(20) Office and telephone answering service hours.

(g) Permissible Fee Information.

(1) Advertisements permitted under this Rule 7.2 may contain information about fees for services as follows:

(i) the fee charged for an initial consultation;
(ii) availability upon request of a written schedule of fees or an estimate of fees to be charged for specific legal services;

(iii) that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery, provided that the advertisement conspicuously discloses whether percentages are computed before or after deduction of costs, and only if it specifically and conspicuously states that the client will bear the expenses incurred in the client's representation, regardless of outcome, except as permitted by Rule 1.8(e);

(iv) the range of fees for services, provided that the advertisement conspicuously discloses that the specific fee within the range which will be charged will vary depending upon the particular matter to be handled for each client, that the quoted fee will be available only to clients whose legal representation is within the services described in the advertisement, and the client is entitled without obligation to an estimate of the fee within the range likely to be charged;

(v) the hourly rate, provided that the advertisement conspicuously discloses that the total fee charge will depend upon the number of hours which must be devoted to the particular matter to be handled for each client, and that the client is entitled without obligation to an estimate of the fee likely to be charged;

(vi) fixed fees for specific legal services, provided that the advertisement conspicuously discloses that the quoted fee will be available only to a client seeking the specific services described.

(2) A lawyer who advertises a specific fee, range of fees or hourly rate for a particular service shall honor the advertised fee or rate for at least ninety (90) days unless the advertisement conspicuously specifies a shorter period; provided, for advertisements in the yellow pages of telephone directories or other media not published more frequently than annually, the advertised fee or range of fees shall be honored for no less than one year following publication.

(h) Electronic Media. Advertisements by electronic media, such as television and radio, may contain the same information as

permitted in advertisements by print media, subject to the following requirements:

(1) if a lawyer advertises by electronic media and a person appears in the advertisement purporting to be a lawyer, such person shall in fact be the advertising lawyer or a lawyer employed full-time by the advertising lawyer; and

(2) if a lawyer advertises a particular legal service by electronic media, and a person appears in the advertisement purporting to be or implying that the person is the lawyer who will render the legal service, the person appearing in the advertisement shall be the lawyer who will actually perform the legal service advertised unless the advertisement conspicuously discloses that the person appearing in the advertisement is not the person who will perform the legal service advertised.

(3) Advertisements disseminated by electronic media shall be prerecorded and the prerecorded communication shall be reviewed and approved by the lawyer before it is broadcast.

(i) Law Directories. Nothing in this Rule 7.2 prohibits a lawyer from permitting the inclusion in reputable directories intended primarily for the use of the legal profession or institutional consumers of legal services and contains such information as has traditionally been included in such publications.

(j) Acceptance of Employment. A lawyer shall not accept employment when he knows or should know that the person who seeks his services does so as a result of conduct prohibited under this Rule 7.2.

(k) Lawyers Responsible for Advertising. Every lawyer associated in the practice of law with or employed by the lawyer which causes or makes an advertising in violation of this rule may be subject to discipline for the failure of the advertisement to comply with the requirements of this rule.

(l) Mandatory Disclosure. Every lawyer shall, in any written or media advertisements, disclose the absence of professional liability insurance if the lawyer does not have professional liability insurance having limits of at least \$100,000, using the specific language required in Rule 1.4(c)(1) or (2).

Rule 7.3 ~~Direct Contact with Prospective~~ Solicitation of Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment ~~from a prospective client~~ when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment ~~from a prospective client~~ by written, recorded or electronic communication or by in-person, live telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) The ~~prospective client~~ target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) The solicitation involves coercion, duress, or harassment.

(c) A copy of every written or recorded communication from a lawyer soliciting professional employment from anyone a ~~prospective client~~ shall be deposited no less than thirty days prior to its dissemination or publication with the Secretary-Treasurer of the South Dakota State Bar by mailing the same to the Office of the State Bar of South Dakota in Pierre, postage prepaid, return receipt requested.

(d) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2). Where the communication is written, the label shall appear in a minimum 18-point type or in type as large as the largest type otherwise used in the written communication, whichever is larger. This labeling requirement shall not apply to mailings of announcements of changes in address, firm structure or personnel, nor to mailings of firm brochures to persons selected on a basis other than prospective employment.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

**11. Proposed Amendments and Adoptions to:
APPENDIX A. TO CHAPTER 16-19
DISCIPLINE OF ATTORNEYS**

SDCL 16-19-22. Supreme Court exclusive power to disbar or suspend attorney. The Supreme Court has the sole power to disbar and strike from the roster any attorney ~~or~~ The Supreme Court also has the power to suspend any attorney from the

practice for such time not to exceed three years, to publicly censure an attorney, and to impose probation or conditions as shall seem just for cause shown.

SDCL 16-19-24. Disciplinary board of State Bar-- Appointment and terms of members--Vacancies. There is hereby established a seven member board to be known as "the disciplinary board of the State Bar of South Dakota" (hereinafter referred to as the "board"), ~~consisting of.~~ The President of the State Bar shall appoint six active members of the State Bar, and the Chief Justice shall appoint one lay member who. ~~The lay member shall be a resident of South Dakota of and~~ twenty-one years of age or more, appointed by the Chief Justice. Attorney vacancies shall be filled by the President of the State Bar, and a lay vacancy shall be filled by the Chief Justice.

The term of service for members shall be one term of five years. Except as provided herein, no member shall serve for more than five years. An appointment to fill an unexpired term shall not constitute an appointment prohibiting an appointment for a subsequent term provided that the appointment for an unexpired term does not exceed three years. It is the intent of this rule to provide for the orderly and systematic rotation of board members such that not more than two ~~lawyer~~ attorney members complete terms each calendar year. In the event of death, disability, or resignation, resulting in multiple members completing terms in a single calendar year and in order to restore the ~~orderly and~~ systematic rotation of board membership, the term of appointment by the appointing person may be either shortened or extended, not to exceed two years' deviation from a five year term.

SDCL 16-19-26. Meetings of the board-Quorum--Vote required for action. The board shall meet at least quarterly at times fixed by the chair. The board may meet by the use of audio or visual medium. Four members shall constitute a quorum. The board shall act only with the concurrence of four or more members. ~~The board may meet by the use of audio or visual medium.~~

SDCL 16-19-28. Disqualification of board members in particular proceedings--Ad hoc appointments to restore full membership. Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. In the event of recusal of attorney members of the board, the President of the State Bar shall appoint active members of the State Bar, preferably members with previous service on the board, to restore the board to full membership. In the event of the recusal of the lay member, the Chief Justice shall appoint a lay person having the qualifications set forth in

~~subdivision~~ § 16-19-24. Each such member shall fulfill all the responsibilities of the board member replaced.

SDCL 16-19-29. Powers and duties of disciplinary board generally. The board shall exercise the powers and perform the duties conferred and imposed upon it by rule of the Supreme Court, including the power and duty:

(1) To consider and investigate any alleged ground for discipline or alleged ~~incapacity~~ medical condition of any attorney called to its attention, or upon its own motion, and to take such action ~~with respect thereto as shall be appropriate to~~ effectuate the purposes of this chapter. As used in this chapter, "medical condition" is any condition that deprives an attorney of the ability to act in compliance with the Rules of Professional Conduct and any other standards required of practicing attorneys.

(2) To appoint a board secretary, board counsel, deputy board counsel, and such personnel and legal counsel as may from time to time be required to assist in the performance of the functions and duties of the board.

(3) To hold informal conferences

(4) To privately reprimand attorneys for misconduct.

(5) To maintain permanent records of all matters processed and the disposition thereof.

(6) To prosecute all disciplinary proceedings before the Supreme Court.

(7) To prosecute all proceedings before the Supreme Court to determine the ~~incapacity~~ medical condition of attorneys as set forth in §§ 16-19-88 to 16-19-91, inclusive.

(8) To hear applications for approval ~~or~~ and complaints for revocation of approval of disqualified persons to act as legal assistants under ~~subdivisions~~ §§ 16-18-34.4(2) to 16-18-34.4(4), inclusive.

(9) To adopt internal rules of procedure not inconsistent with this chapter and to file the same with the clerk of the Supreme Court.

~~(10) Provided, however, that~~ Jurisdiction for complaints against members of the judiciary for conduct that occurred prior to becoming a member of the judiciary shall be vested with the Judicial Qualifications Commission.

SDCL 16-19-31. License to practice law as trust--Duty to conform to standards. A license to practice law in this state is a privilege and a continuing proclamation by the Supreme Court that a licensed attorney is an officer of the ~~court~~ Court, is fit to be entrusted with legal and judicial matters, and is able to aid in the administration of justice. It is the duty of an attorney to act, both professionally and personally, in conformity with the standards of conduct governing members of the bar.

SDCL 16-19-32. Violations by attorneys as grounds for discipline. An act or omission by an attorney, individually or in concert with others, which violates the attorney's oath of office, the laws governing attorney conduct, or the Rules of Professional Conduct, or other disciplinary rules adopted by the Supreme Court, is misconduct and is grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

SDCL 16-19-33. Specific grounds for discipline of attorneys. The following shall similarly constitute misconduct and shall be grounds for discipline:

- (1) Conviction of a crime as set forth in § 16-19-36;
- (2) Disobedience to, or violation of an order of the court requiring the attorney to act or refrain from acting in a particular manner;
- (3) Violation of any of the duties of an attorney ~~or counselor~~ as prescribed in chapter 16-18;
- (4) Conviction of any of the offenses relating to attorneys ~~or counselors~~ set out in chapter 16-18;
- (5) Violation of ~~any bylaw, rule, or regulation duly adopted by the State Bar and approved by the Supreme Court~~ the provisions of § 16-17-10;
- (6) Engaging or attempting to engage in the practice of law in this state, while not being an active member of the State Bar in good standing;
- (7) Violation of the prohibitions of § 16-18-29;
- (8) Violation of §§ 16-18-20.1 or 20.2;
- (9) Violation of §§ 16-18-34 to 16-18-34.5, inclusive, by a supervising attorney or by a legal assistant under the attorney's supervision.
- (10) Violation of the applicable provisions of the South Dakota Code of Judicial Conduct, appendix to chapter 16-2.

SDCL 16-19-34. Deceit and collusion as grounds for disbarment--Treble damages. An attorney ~~and counselor~~ who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court or judge, or party to an action or proceeding, is liable subject to discipline, and shall forfeit to the injured party treble damages to be recovered in a civil action.

SDCL 16-19-35.1. Petition by board for temporary suspension. The board may petition the Supreme Court to temporarily suspend an attorney from the practice of law or to impose restrictions or conditions on the attorney's practice pending full investigation ~~and disposition~~, where the attorney poses a risk or danger to clients, clients' property, or the public, where the board can demonstrate a substantial likelihood that the attorney will ultimately be disciplined, and where the charges under investigation, if ultimately proven, would likely

result in a suspension or disbarment. The board counsel shall serve a copy of the petition upon the ~~respondent~~ attorney by certified mail. The ~~respondent~~ attorney shall file with the Supreme Court a response within ten days of service or at such time as the Supreme Court may direct, and serve a copy of the response on the board counsel. The Supreme Court may schedule a hearing before the Supreme Court or order a hearing to be conducted by a referee. To the extent possible, these proceedings shall be conducted on an expedited basis. The Supreme Court may deny the petition, suspend the attorney pending formal proceedings, or impose ~~such~~ upon the attorney restrictions or conditions for the continued practice of law ~~upon the respondent attorney~~, or enter protective and remedial orders as the Supreme Court deems appropriate.

A temporarily suspended attorney shall not practice law or act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive.

SDCL 16-19-36. Attorney's conviction of serious crime to be reported to ~~Supreme Court~~ Definition of serious erimedisciplinary board. Any attorney and the clerk of any court in this state in which an attorney is convicted of a serious crime, except those misdemeanor traffic offenses or traffic ordinance violations not involving the use of alcohol or drugs, shall within ten days of said conviction transmit a ~~certificate thereof~~ certified judgment of conviction to the Supreme Court erimedisciplinary board. If such certified judgment of conviction is for a serious crime as defined in §16-19-37, the board shall promptly transmit the same to the Supreme Court. ~~The term "serious crime" includes any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime.~~

SDCL 16-19-37. Suspension from practice on conviction of serious crime--Setting aside order. If any attorney has been convicted of a serious crime ~~as defined in § 16-19-36~~, the Supreme Court may enter an order immediately suspending the attorney from engaging in the practice of law, pending final disposition of a disciplinary proceeding to be commenced upon such conviction. The term "serious crime" includes any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit,

bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime. Upon good cause shown, the Supreme Court may set aside such order suspending the attorney from engaging in the practice of law when it appears in the interest of justice so to do. An order suspending an attorney from the practice of law pursuant to this section is a suspension of the attorney for the purpose of §§ 16-19-74 to 16-19-82, inclusive, unless the Supreme Court shall otherwise order.

SDCL 16-19-38. Reinstatement of suspended attorney on reversal of conviction--Pending proceedings unaffected. An attorney suspended under the provisions of § 16-19-37 will be reinstated immediately upon the filing of a certificate-certified document demonstrating that the underlying conviction of a serious crime has been reversed ~~but the~~. The reinstatement will not terminate any disciplinary proceeding then pending against the attorney.

SDCL 16-19-42. Complaint and reference for investigation and report in proceeding initiated by Attorney General. If the investigation of an attorney's conduct is initiated by the Attorney General, the Attorney General shall file a written complaint with the Supreme Court. The Supreme Court ~~which~~ shall refer the matter to the board for an investigation and report pursuant to §§ 16-19-45 to 16-19-64, inclusive.

SDCL 16-19-44. Individual complaint filed with board or Supreme Court--Reference for investigation and report.

(A) An individual may initiate an investigation of an attorney's conduct by filing a written and signed complaint with the board secretary ~~or designee~~ in such form as the board may prescribe. The complaint must allege facts. Conclusions, opinions, and suppositions shall not be considered.

(1) Board counsel or an attorney board member shall dismiss complaints outside the board's jurisdiction, frivolous complaints, and complaints that fail to state a claim upon which relief could be granted utilizing the same standard of review as would be used by a court reviewing a matter under § 15-6-12(b) (5).

(2) Copies of such dismissals shall be provided to the board and the complainant. A complainant dissatisfied with such a dismissal may, within ten days of such dismissal, request in writing a review by the board. The board shall review the complainant's written request at its next regular or special meeting.

(3) The board shall proceed on ~~such~~ all other complaints in accordance with §§ 16-19-50 to 16-19-64, inclusive.

~~(B) The board secretary or designee shall dismiss complaints outside the board's jurisdiction, frivolous complaints and complaints which fail to allege facts which give rise to the board's jurisdiction utilizing summary judgment standards set forth in chapter 15-6. Conclusions, opinions, suppositions and arguments shall not be considered. Copies of such dismissals shall be provided to the board. A complainant dissatisfied with such a dismissal may, within ten days of such dismissal request in writing a review by the board which review shall be considered by the board at its next regular or special meeting.~~

(EB) In the alternative, an individual may initiate an investigation of an attorney's conduct by filing a written complaint with the clerk of the Supreme Court ~~a written complaint~~. A complaint of attorney misconduct made directly to the Supreme Court shall comply with the following requirements:

(1) The complaint shall be signed and sworn to by the complainant.

(2) The complaint shall fully state all the facts relied upon by the complainant and shall identify all sources of the factual information. Conclusions, opinions, and suppositions of the complainant shall not be considered.

(3) If the alleged misconduct arose in a criminal case, the complaint shall state the county, court, and file number of the case file, whether there was a conviction, and the status of all appellate review, including pending habeas corpus or other post-conviction relief. Copies of any final decision of appellate or habeas corpus review, ~~or~~ post-conviction proceedings, or if pending, ~~of~~ the petition, shall be attached.

(4) The complaint shall state whether complainant has previously filed a complaint with the board alleging similar misconduct by the attorney. A copy of any ~~board's disposition~~ letter of disposition by the board shall be attached.

(EC) If the complaint fails to comply with any of the requirements of subsection (EB), the clerk of the Supreme Court shall forward the complaint to the board secretary-treasurer ~~of the State Bar~~ and the complaint shall be treated as if it had been initiated with the board pursuant to ~~subsection~~ S 16-19-44(A).

(ED) In the event that all requirements of this rule have been met, the Supreme Court shall proceed as follows:

(1) If the Supreme Court shall determine the alleged facts raise an issue of noncompliance with the Rules of Professional Conduct, the Supreme Court shall refer the matter to either the board or the Attorney General for an investigation and report pursuant to §§ 16-19-45 to 16-19-64, inclusive.

(2) Complaints that are frivolous, unfounded in fact, or fail to raise an issue of noncompliance with applicable Rules of Professional Conduct shall be dismissed by the Supreme Court.

(3) Allegations of ineffective assistance of counsel or other attorney conduct which has been raised on appeal or habeas is deemed to be res judicata to the extent addressed by the reviewing court. The complaint process is neither a substitute for nor a precursor to a habeas corpus or post-conviction petition, and complaints alleging misconduct that would appropriately be alleged in a habeas corpus or post-conviction petition shall be deemed premature and dismissed by the Supreme Court.

(4) If the Supreme Court determines the board has previously investigated the complaint, the Supreme Court may, in its discretion, order the board to file a report with the ~~court reporting~~ Court on the nature and results of the board's investigation. Upon receipt of the report, the Supreme Court may determine whether the complaint presents new or additional facts which warrant further investigation. If the Supreme Court determines it is warranted, it may order further investigation, or, if not warranted, may dismiss the complaint.

SDCL 16-19-45. Investigation by board on reference-- Report and recommendation filed with Supreme Court. When an investigation of an attorney's conduct has been referred to the board for investigation ~~it~~, the board shall proceed to make a thorough investigation as provided in this chapter and file a report and recommendation with the Supreme Court.

SDCL 16-19-46. Proceedings not to be abated for failure to prosecute, or settlement or restitution. Failure of a complainant to sign a complaint or to prosecute a charge, or the settlement or compromise between the complainant and the attorney, shall not justify abatement of the processing of any complaint.

SDCL 16-19-48. Transfer to medical inactive status of respondent pleading disability for a medical condition. If, during the course of a disciplinary investigation or proceeding, the ~~respondent attorney~~ claims to suffer from a disability by reason of mental or physical infirmity or illness, or an addiction to drugs or intoxicants, which makes it impossible for the respondent to make an adequate defense be unable to assist in the attorney's defense to a disciplinary complaint because of a medical condition, the Supreme Court shall enter an order immediately transferring the ~~respondent attorney~~ to disability medical inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of § 16-19-89 attorney's ability to comply with the Rules of Professional Conduct and § 16-19-31. The determination shall be made in a proceeding instituted in accordance with the provisions of § 16-19-89. An attorney transferred to disability medical inactive

status shall not ~~(be permitted to)~~ practice law ~~or~~. An attorney transferred to medical inactive status shall not act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive. The Supreme Court shall enter such orders as are necessary to notify the attorney's clients of the attorney's change in status.

SDCL 16-19-49. Resumption of disciplinary proceedings when ~~respondent not incapacitated~~ attorney no longer on medical inactive status. If the Supreme Court ~~shall~~ determines that ~~a respondent an attorney described by § 16-19-48 is not incapacitated from practicing law~~ able to assist in the attorney's defense to a disciplinary complaint, it shall take such action as it deems ~~proper and advisable~~ necessary including a direction for the resumption of the disciplinary proceeding against the ~~respondent~~ attorney.

SDCL 16-19-50. Accused attorney to be given opportunity to state position. Except in matters dismissed in accordance with ~~subsection § 16-19-44 (B) (A) (1)~~, no disposition shall be undertaken by the board or recommendation made by the Attorney General until the ~~accused~~ attorney shall have been afforded a reasonable opportunity to state the attorney's position with respect to the allegations.

SDCL 16-19-51. Procedure required in investigations by board or attorney general. Attorney General. Investigations by the board or by the ~~attorney general~~ Attorney General shall be conducted as provided by §§ 16-19-52 to 16-19-62, inclusive.

SDCL 16-19-53. Methods of investigation to be used-- Informal conference. An investigation by the board or by the Attorney General may entail inquiries by mail, consultation with the ~~accused~~ attorney, taking sworn statements or depositions, and investigation by the board's counsel or the Attorney General's staff.

SDCL 16-19-54. Attorney's duty to respond to board. Every attorney shall promptly and appropriately respond to any complaint ~~or~~, letter, or inquiry provided by any member of the board. In the event of failure to respond an attorney is subject to private reprimand by the board, or, after hearing on recommendation of the board, to discipline by the Supreme Court. An attorney must appear at any hearing unless excused by the board or the Supreme Court.

SDCL 16-19-55. Subpoena power of board and Attorney General--Disobedience as contempt. A member of the board, the ~~board secretary,~~ its counsel or the Attorney General may issue a subpoena requiring any witness to attend at any place within the

state and requiring such witness to produce pertinent books, papers, and documents, including client files and records of client funds, and may administer oaths and take testimony in regard to such matters. The willful failure of any person to respond to a subpoena, or the willful refusal of any person to testify, is a contempt against the Supreme Court and may be punished accordingly.

SDCL 16-19-58. Certificate-Certified judgment of conviction as evidence against attorney. A certificate-certified judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding based upon the conviction.

SDCL 16-19-59. Dismissal of complaint on finding not meritorious. If the board determines after an investigation that the complaint is not meritorious, it shall dismiss the complaint and notify the complainant, the ~~accused~~ attorney, and such other persons as the board may deem appropriate. If the Attorney General determines after an investigation that the complaint is not meritorious, the Attorney General shall report such findings to the Supreme Court and recommend dismissal.

SDCL 16-19-60. Conditions imposed on attorney on finding of meritorious complaint--Dismissal on compliance. If it is determined after an investigation by the board that the complaint is meritorious, but that formal disciplinary proceedings are not warranted, the board and the attorney may agree in writing to hold the proceedings in abeyance for an appropriate period, provided the attorney ~~throughout the period~~ complies with specified reasonable conditions, including throughout the period. If it is determined that a medical condition as defined in § 16-19-29(1) is relevant to such complaint, the specified reasonable conditions shall include board access to the attorney's healthcare and medical-information records relevant to the medical condition. Upon satisfactory compliance, the board may thereafter dismiss the proceedings and notify the complainant and such other persons as the board deems appropriate. If, after an investigation, the Attorney General finds such action warranted, the Attorney General shall report the Attorney General's findings to the Supreme Court and recommend that such action be taken by the board.

SDCL 16-19-61. Notice to attorney of report and proposal for private reprimand. If it is determined after an investigation and hearing that the complaint is meritorious and a private reprimand is warranted, a written report of the findings and proposed action shall be prepared and sent by certified mail to ~~an accused~~ the attorney by the board.

SDCL 16-19-62. Response by attorney to proposal for private reprimand--Report and findings by board. ~~An accused--The~~ attorney shall have twenty days in which to agree ~~to~~, or object to the findings and proposed action and demand that formal proceedings be initiated in lieu of a private reprimand. Silence shall be deemed to be an agreement with the findings and proposed action. After twenty days or upon the ~~accused~~ attorney's agreement, the board shall report its findings to the Supreme Court. Upon filing, the findings constitute a private reprimand.

SDCL 16-19-65. Consent by attorney to disbarment--Contents of affidavit. An attorney who is the subject of an investigation into, or a pending proceeding involving allegations of misconduct, may consent to disbarment, but only by delivering to the board an affidavit to be prepared by the board in the following form:

IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

In Re: _____)
(Name) _____) RESIGNATION
_____)

State of _____) ss
_____)
County of _____)

I, _____, being duly sworn on oath, depose and say that my business address is _____ (Building No. and Name, if any, or Box No.), _____ (Street address, if any), _____ (City), _____ (State), _____ (Zip Code); and that my residence address is _____ (No. Street), _____ (City), _____ (State), _____ (Zip Code)., ~~and that I hereby~~ tender my resignation from membership in the State Bar of South Dakota and request and consent to my removal from the roster of those admitted to practice before the courts of this state and from membership in the State Bar.

I am aware that there is pending against me a formal complaint concerning alleged misconduct and/or that complaints, allegations, or instances of alleged misconduct by me are under investigation by the State Bar Disciplinary Board and that such complaints, allegations, and/or instances include:

(Brief description of alleged misconduct, including designation of provisions of the South Dakota Rules of Professional Conduct and statutes, if any, violated ~~and~~. Also, incorporate incorporation by reference of any formal complaint in a pending disciplinary proceeding.)

I do not desire to contest or defend against the above-described complaints, allegations, or instances of alleged misconduct. I am aware of the rules of the Supreme Court and of the bylaws and rules of procedure of the State Bar of South Dakota with respect to admission, discipline, resignation, and reinstatement of members of the State Bar, including SDCL 16-19-80. I understand that I shall not be permitted to practice law or act as a legal assistant within the State of South Dakota except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive. I understand that any future application by me for reinstatement will be treated as an application by one who has been disbarred for misconduct, and that, on such application, I shall not be entitled to a reconsideration or reexamination of the facts, complaints, allegations, or instances of alleged misconduct upon which this resignation is predicated. I am aware that the Supreme Court may impose judgment for costs pursuant to SDCL 16-19-70.1.

Dated at _____, this ____ day of _____, 20 ____.

(Signature of Attorney)

Subscribed and sworn to before me this ____ day of _____, 20 ____.

Notary Public
My Commission Expires: _____

SDCL 16-19-66. Disbarment by consent--Public disclosure of order. Upon receipt of an affidavit required by § 16-19-65, the board shall file it with the Supreme Court, and the ~~court~~ Court shall enter an order disbarring the attorney on consent. The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of § 16-19-65 shall not be publicly disclosed or made available for use in any other proceeding except upon order of the Supreme Court. The clerk of the Supreme Court shall ~~order that redact~~ the portions of the affidavit which may identify the complainant or other persons whose privacy interests have not been waived or otherwise made public ~~be redacted by the clerk of the court~~ before public disclosure.

SDCL 16-19-67. Findings of fact, conclusions of law, and recommendation of investigating agency shall constitute a formal accusation. Formal disciplinary proceedings shall be conducted as follows:

(1) After investigation as provided in this chapter, the investigating agency may file with the Supreme Court, findings of fact, conclusions of law or conclusions pertaining to violations of applicable Rules of Professional Conduct, and a recommendation for formal discipline. Such filing constitutes a formal accusation against the ~~respondent~~ attorney.

(2) A copy of the formal accusation shall be served upon the ~~respondent~~ attorney by certified mail. Unless otherwise directed by the Supreme Court, the investigating agency shall continue to prosecute the formal proceedings. If the recommendation is for suspension or disbarment, it shall also include a finding as to the qualifications of the ~~accused~~ attorney to act as a legal assistant and a recommendation as to the restrictions or conditions of employment and supervision if the accused is allowed to act as a legal assistant under §§ 16-18-34.4 to 16-18-34.7, inclusive.

(3) The ~~respondent~~ attorney shall answer the formal accusation within thirty days and admit or deny the allegations therein. If the ~~accused~~ attorney admits the allegations or fails to answer, the Supreme Court may proceed to render judgment.

(4) If the ~~issue is joined it attorney denies the~~ allegations, the matter shall be tried by the Supreme Court ~~which~~, or the Court may refer the matter for the taking of testimony and the making of findings and recommendations.

(5) A reference may be to any circuit court judge or to a referee appointed by the Supreme Court in the same manner as provided for reference of cases in the circuit court so far as applicable.

(6) The reference shall include the files and records of the board's investigation of the ~~accused~~ attorney, including the transcript of any hearing conducted by the board.

(7) If the referee recommends suspension or disbarment, the referee shall also make a finding as to the qualifications of the ~~accused~~ attorney to act as a legal assistant and a recommendation as to restrictions or conditions or employment and supervision if the ~~accused~~ attorney is allowed to act as a legal assistant under §§ 16-18-34.4 to 16-18-34.7, inclusive.

SDCL 16-19-68.1. Accused attorney to appear before Supreme Court. At any hearing before the Supreme Court, the ~~accused~~ attorney shall appear in person unless the attorney's presence is excused by the Court.

SDCL 16-19-70.1. Costs and expenses of disciplinary proceedings.

(a) State Bar of South Dakota. Costs and expenses incurred by the ~~Disciplinary Board of the State Bar of South Dakota board~~ in the investigation or prosecution of any disciplinary or reinstatement proceeding under this chapter shall be paid by the State Bar, provided, however, that the expenses of a disciplinary proceeding may, in the discretion of the Supreme Court, be assessed against the attorney who is the subject of such proceeding.

(b) Attorney General. The Attorney General shall pay the costs and expenses ~~his~~ the Attorney General's office incurs in

the investigation or prosecution of any disciplinary proceeding under this chapter.

(c) Unified Judicial System. The Unified Judicial System shall pay the costs and expenses incurred by the referee, the court reporter, and witnesses when a disciplinary action is referred to a referee under § 16-19-~~68~~67.

SDCL 16-19-70.2. Allowable costs and expenses.

Expenses incurred by the board, the Attorney General, or the Unified Judicial System that were not covered by advance deposit and that have not been previously paid by the attorney who is the subject of a disciplinary or reinstatement proceeding, may be assessed by the Supreme Court against said attorney in favor of the State of South Dakota and/or the State Bar of South Dakota according to their respective interests ~~to~~. The assessments may cover the costs of a referee's mileage, meals, and rooms; a court reporter's mileage, meals, rooms, and transcript preparation; disciplinary counsel's mileage, meals, rooms, telephone charges, copying fees, and hourly charges for investigation and preparation for hearings, trials, and appeals, and appearances at hearings, trials, and appeals; witnesses' fees and mileage; and the board members' mileage, meals, and rooms, provided that proof of such costs shall be made as hereafter provided in § 16-19-70.3.

SDCL 16-19-70.3. Proof of costs and expenses

required. An assessment for costs and expenses against an attorney requires the following proof:

(a) State Bar of South Dakota. A sworn statement of unreimbursed allowable costs filed with the clerk of the Supreme Court by the ~~state bar~~ State Bar prior to issuance of a final judgment.

(b) Attorney General and Unified Judicial System. Copies of approved expense vouchers for reimbursement of allowable costs and expenses associated with the disciplinary proceeding filed with the clerk of the Supreme Court by the ~~attorney general~~ Attorney General or the finance office of the Unified Judicial System prior to issuance of a final judgment.

SDCL 16-19-70.4. Judgment for costs against

attorney. When judgment is rendered against an ~~accused the~~ attorney or whenever judgment for reinstatement of an attorney is entered, said attorney may, at the discretion of the Supreme Court, be directed to make appropriate reimbursement of costs and expenses as provided in §§ 16-19-70.1 and 16-19-70.2.

SDCL 16-19-72. Notice to attorney of disciplinary

order from other jurisdiction. Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this state has been disciplined in another jurisdiction, the

Supreme Court shall ~~forthwith~~ issue a notice directed to the attorney and a copy to the board containing:

- (1) A copy of the order from the other jurisdiction; and
- (2) An order directing that the attorney inform the Supreme Court, within thirty days from service of the notice, of any claim by the attorney predicated upon the grounds set forth in § 16-19-74 that the imposition of the identical discipline in this state would be unwarranted and the reasons therefor.
- (3) Any claim by the attorney that imposition of identical discipline is unwarranted may be referred to the board for an investigation and report to the Supreme Court.
- (4) In the event discipline imposed in another jurisdiction has been stayed, any reciprocal discipline in this state shall be deferred until such stay expires.

SDCL 16-19-74. Imposition of identical reciprocal discipline--Grounds for other disposition. The Supreme Court shall impose the identical discipline imposed in another jurisdiction unless the board or the attorney demonstrates, and the Supreme Court finds that on the record upon which the discipline is predicated, it clearly appears:

- (1) That the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (2) That there was such an infirmity of proof establishing the misconduct ~~as to give rise to the clear conviction~~ that the Supreme Court could not, consistent with its duty, accept as final the conclusion on that subject; or
- (3) That the misconduct established warrants substantially different discipline in this state; or
- (4) That the attorney's conduct subject of discipline in another jurisdiction has been or is currently under investigation by the board.

Where the Supreme Court determines that any of said elements exist, the Supreme Court shall enter such other order as it deems appropriate.

SDCL 16-19-75. Newspaper publication of suspension or disbarment. The clerk of the Supreme Court shall cause a notice of every suspension or disbarment to be published in a newspaper of general circulation in the judicial circuit or circuits in which the disciplined attorney maintained an office for the practice of law.

SDCL 16-19-78. Notice to office clients of disbarment or suspension. A disbarred or suspended attorney shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the attorney's disbarment or suspension and consequent inability

to act as an attorney after the effective date of the disbarment or suspension ~~and~~. The notice shall advise such clients to seek legal advice of the client's own choice elsewhere.

SDCL 16-19-79. Notice to opposing counsel and clients involved in litigation of ~~disbarment or suspension~~ or administrative proceedings--Leave of court or agency to withdraw. A disbarred or suspended attorney shall promptly notify, or cause to be notified, by certified mail, return receipt requested, each client who is involved in pending litigation or administrative proceedings, and each attorney for an adverse party in such cases, of the disbarment or suspension and the attorney's consequent inability to act as an attorney after the effective date of the disbarment or suspension. The notice to be given to the client shall advise the client of the ~~desirability and importance~~ of prompt substitution of another attorney of the client's own choice.

In the event the client does not obtain substitute counsel before the effective date of the disbarment or suspension, the disbarred or suspended attorney shall move in the court or agency in which the proceeding is pending for leave to withdraw.

The notice to be given to the attorney or attorneys for an adverse party shall state the mailing address and place of residence of the client of the disbarred or suspended attorney.

SDCL 16-19-80. Affidavit of compliance filed by disbarred or suspended attorney. Within ten days after the effective date of disbarment or suspension the disbarred or suspended attorney shall file with the Supreme Court an affidavit showing:

(1) That the attorney has fully complied with the provisions of the order and with this chapter; and with

(2) All That the attorney has fully complied with all requirements of other state, federal, and administrative jurisdictions to which the attorney is admitted to practice.

(3) Such affidavit shall also set forth the residence or other address of the disbarred or suspended attorney where communications to the attorney may thereafter be directed.

SDCL 16-19-82. Noncompliance by attorney as contempt. The failure of an attorney, including an attorney who has been disbarred or suspended, to comply fully and promptly with any of the provisions of this chapter or with any order or judgment entered in disciplinary proceedings, shall constitute contempt and shall be punishable as such by the Supreme Court.

SDCL 16-19-83. Reinstatement order required before resumption of practice--Time of application--Waiting period after denial of reinstatement. No attorney suspended for more than three months or disbarred may resume practice until reinstated by

order of the Supreme Court. ~~A person~~ An attorney who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment. No petition for reinstatement under § 16-19-87 may be filed within one year following denial of a petition for reinstatement filed by or on behalf of the same person. An attorney suspended or disbarred shall not be permitted to act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive.

SDCL 16-19-84. Petition and hearing on reinstatement--
Advance cost deposit--Burden of proof. A petition for reinstatement by a disbarred or suspended attorney under § 16-19-87 may be filed with the board secretary, ~~or designee of the board and~~ The petition shall be accompanied by a deposit in an amount to be set by the board to cover prior proceedings and anticipated expenses of the reinstatement proceeding. Upon receipt of the petition and the deposit, the board shall promptly schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that the petitioner has the moral qualifications, competency, and learning in law required for admission to practice law in this state and that petitioner's resumption of the practice of law within the state will not be detrimental to the integrity and standing of the bar, ~~or~~ the administration of justice, or subversive of the public interest.

16-19-86. Board findings and recommendation on reinstatement--Placement on court Court calendar. After conducting a hearing on reinstatement, the board shall promptly file a report with the Supreme Court containing its findings and recommendations, together with the record. The Supreme Court shall then place the petition on the calendar for argument.

SDCL 16-19-88. Transfer to ~~disability medical inactive status of attorney judicially found incompetent subject to certain judicial determinations or orders.~~ Where an attorney has been judicially declared incompetent or involuntarily committed on the grounds of incompetency or disability, the Supreme Court, upon proper proof of the fact, shall enter an order transferring such attorney to disability inactive status effective immediately and for an indefinite period until the further order of the court. Where there is a determination by a court in any state that an attorney is a protected person as that term is defined in § 29A-5-102 or is the subject of a court order directing commitment to or inpatient treatment in a healthcare or treatment facility for a medical condition, the Supreme Court, upon proof of that fact, shall enter an order transferring such attorney to medical inactive status effective immediately and until the further order of the Court. A copy of such order shall be served upon such attorney, his the attorney's guardian, and/or the

director of the institution to which the attorney he has been committed in such manner as the court may direct. The Supreme Court shall enter such orders as are necessary to notify the attorney's clients of the attorney's change in status.

SDCL 16-19-89. Petition by board for determination of impairment of attorney's competency to practice law--Directions for investigation. The Disciplinary Board may petition the Supreme Court to suspend an attorney from the practice of law pending final hearing and disposition by the Supreme Court, upon good cause shown that ~~the attorney, by reason of physical, mental, or other condition, including the abuse of drugs or alcohol, is impaired and that the impairment substantially adversely affects the attorney's ability to competently practice law.~~ The court may take or direct such action as it deems necessary or proper to determine whether the attorney is so impaired, including the examination of the attorney by such qualified medical experts as the court shall designate. attorney's ability to competently practice law is adversely affected by a medical condition as defined by § 16-19-48. The Court may take or direct such action as it deems necessary to determine whether the medical condition adversely affects the attorney's ability to competently practice law, including the examination of the attorney by such qualified medical experts as the Court shall designate.

SDCL 16-19-90. Notice to ~~respondent~~attorney of disability medical inactive status proceedings--Representation of respondentattorney. The Supreme Court shall provide for such notice to the attorney respondent of proceedings in the matter as it deems proper and advisable necessary and may appoint an attorney to represent the ~~respondent~~ attorney if ~~he~~ the attorney is without adequate representation.

SDCL 16-19-91. Burden of proof in disability medical inactive status and reinstatement proceedings. In a proceeding seeking a transfer an attorney to disability medical inactive status under § 16-19-92, the burden of proof shall rest with the board. In a proceeding seeking an order of reinstatement to active status under § 16-19-98, the burden of proof shall rest with the attorney. In either case, the burden of proof shall be by clear and convincing evidence.

SDCL 16-19-92. Order transferring ~~disabled~~ attorney to medical inactive status--Pending disciplinary proceedings. If, upon due consideration of the matter, the Supreme Court concludes that the attorney is incapacitated from continuing not competent to continue to practice law because of a medical condition as defined by § 16-19-48, it shall enter an order transferring ~~him~~ the attorney to disability medical inactive status on the grounds

~~of such disability for an indefinite period and until the further~~
order of the ~~court~~Court. Any pending disciplinary proceeding
against the attorney shall be held in abeyance. An attorney
transferred to ~~disability~~medical inactive status shall not be
permitted to practice law or act as a legal assistant except as
provided by §§ 16-18-34.4 to 16-18-34.7, inclusive. The Supreme
Court shall enter such orders as are necessary to notify the
attorney's clients of the attorney's change in status.

SDCL 16-19-93. Reinstatement order required before
~~disabled attorney on medical inactive status resumes practice.~~ No
attorney transferred to ~~disability~~medical inactive status under
the provisions of §§ 16-19-88 or 16-19-92 may resume active
status until reinstated by order of the Supreme Court.

SDCL 16-19-94. Petition for reinstatement by attorney
~~in disability on medical inactive status.~~ Any attorney
transferred to ~~disability~~medical inactive status under the
provisions of §§ 16-19-88 or 16-19-92 shall be entitled to
petition for reinstatement to active status once a year or at
such shorter intervals as the Supreme Court may direct in the
order transferring the ~~respondent attorney to disability~~medical
inactive status or any modification thereof. An attorney who has
been placed on medical disabilityinactive status may not apply
for reinstatement until any pending disciplinary investigation or
proceeding has been concluded.

SDCL 16-19-95. Reinstatement of disabled attorney on
~~judicial declaration of competency to active status.~~ Where an
attorney has been transferred to ~~disability~~medical inactive
status by an order in accordance with the provisions of § 16-19-
88 and, thereafter, ~~in proceedings duly taken, he has been~~
~~judicially declared to be competent, the Supreme Court may~~
~~dispense with further evidence that his disability has been~~
~~removed and may direct his reinstatement to active status upon~~
~~such terms as are deemed proper and advisable the attorney has~~
shown that the attorney's ability to competently practice law is
no longer adversely affected by the medical condition giving rise
to the judicial determination or order, the Supreme Court may
direct reinstatement to active status upon such terms as are
deemed necessary.

SDCL 16-19-96. Waiver of physician-patient privilege
~~by petition for reinstatement of disabled attorney--Disclosure of~~
~~names by petitioner.~~ The filing of a petition for reinstatement
to active status by an attorney transferred to ~~disability~~medical
inactive status because of disabilitya medical condition that
adversely affected the attorney's competency to practice law
shall be deemed to constitute a waiver of any doctor-patient
privilege with respect to any treatment of the attorney received

that is relevant to that medical condition during the period of ~~his disability~~ medical inactive status. The attorney shall be required to disclose the name of every psychiatrist, psychologist, physician, and hospital or other institution by whom or in which the attorney ~~has had~~ been examined or treated for the medical condition since ~~this the attorney's~~ transfer to ~~disability medical inactive status and he the attorney~~ shall furnish to the Supreme Court written consent to each to divulge such information and records as requested by court-appointed medical experts.

SDCL 16-19-97. Examination of petitioner for reinstatement--Expense of examination--Additional proof of competence ~~required to practice law~~. Upon application for reinstatement by an attorney ~~in disability on medical inactive status~~, the Supreme Court may take or direct such action as it deems necessary ~~or proper to a determine determination of whether the attorney's disability has been removed including a direction for an examination of the attorney by such qualified medical experts as the court shall designate. In its discretion, the court may direct that the expense of such an examination shall be paid by the attorney, and that the attorney establish proof of competence and learning in law, which proof may include certification by the bar examiners of his successful completion of an examination for admission to practice~~ medical condition no longer affects the attorney's ability to competently practice law, including an examination of the attorney by such qualified medical experts as the Court shall designate. In its discretion, the Court may direct that the expense of such an examination be paid by the attorney. The Supreme Court may require that the attorney establish further proof of competence and learning in law, which proof may include providing certification by the board of bar examiners that the attorney successfully completed all or any portion of the South Dakota bar examination after transfer to medical inactive status.

SDCL 16-19-98. Order of reinstatement ~~on removal of disability to active status from medical inactive status~~. A petition for reinstatement of an attorney ~~in disability on medical inactive status~~ shall be granted by the Supreme Court upon a showing by clear and convincing evidence that the attorney's ~~disability has been removed and he is fit~~ competent to resume the practice of law. An attorney who has been placed on ~~disability medical inactive status~~ may not be reinstated until any pending disciplinary investigation or proceeding has been concluded.

SDCL 16-19-99. Attorney discipline--Proceedings ~~confidential--Violation as contempt--Exceptions~~. All proceedings involving allegations of misconduct by an attorney or the

disability of an attorney's competency to practice law because of a medical condition as defined by § 16-19-48 shall be kept confidential until

(a) a formal complaint asking for disciplinary action is filed with the Supreme Court by the board or the attorney general, or the respondent-attorney requests that the matter be public, or the investigation is predicated upon a conviction of the respondent-attorney for a crime or, in matters involving alleged disability,

(b) upon the request of the attorney to have the matter be public, or

(c) if the investigation into the attorney's alleged misconduct is predicated upon a conviction for a crime reportable under § 16-19-37.

If the disciplinary proceeding involves alleged misconduct due to an attorney's medical condition as defined by § 16-19-29(1) and the Supreme Court enters an order transferring the respondent-attorney to disability medical inactive status pursuant to §§ 16-19-88 or 16-19-92, only the order shall be public. The record shall remain confidential absent a written waiver by the attorney or an order of the Supreme Court. All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceeding. Any violation by any person of the requirement of confidentiality shall constitute contempt and shall be punishable as such by the Supreme Court. An attorney on medical inactive status shall be permitted to relate necessary information from the proceedings to the attorney's treating healthcare or medical practitioners for the purpose of restoring the attorney to active status. This section shall not be construed to deny access to relevant information to authorized agencies investigating the qualifications of judicial candidates, the board of bar examiners, or to other jurisdictions investigating qualifications for admission to practice; or to an agency acting pursuant to order of the Chief Judge of the United States District Court for South Dakota concerning reciprocal discipline; or to law enforcement agencies investigating qualifications for government employment. In addition, the clerk of the Supreme Court shall transmit notice of all public discipline imposed by the Supreme Court on an attorney or the transfer to medical inactive status ~~due to disability~~ of an attorney to the national discipline data bank maintained by the American Bar Association.

SDCL 16-19-100. Retention of files and records of disbarred, suspended, or reinstated attorney. The board shall, unless otherwise ordered by the Supreme Court, retain its files and records of any attorney who has been disbarred, suspended, placed on probationary status, placed on medical inactive status pursuant to §§ 16-19-89 or 16-19-92, publicly censured, or who has been later reinstated after a prior discipline until such

time as the attorney dies, at which time the records may be expunged.

**RULES OF PROCEDURE OF THE DISCIPLINARY BOARD
OF THE STATE BAR OF SOUTH DAKOTA**

These rules describe the usual procedures employed by the board in the discharge of its duties to investigate complaints alleging attorney misconduct. However, procedures may vary in individual cases as the board may in its discretion determine necessary according to the circumstances ~~of the matter~~ being investigated and the conduct of the ~~respondent attorney as the board may in its discretion determine to be appropriate~~. Questions or requests for variance should be addressed to the member to whom a complaint has been assigned.

1. Each complaint received by the board secretary ~~or~~ designee that is not dismissed pursuant § 16-19-44 shall be distributed to the members of the board and board counsel for investigation and assigned ~~by the secretary or designee~~ to one member of the board who shall administer the initial investigation. The ~~board secretary or designee~~ shall

(a) Acknowledge receipt and notify the complainant of the name and address of the board member to whom the complaint has been assigned;

(b) Provide a copy of the complaint to the ~~respondent~~ attorney who is the subject of the complaint along with the name and address of the assigned board member;

(c) Instruct the ~~respondent~~ attorney to respond in writing, not to exceed ten pages, to the assigned board member within ten days along with nine copies of the response for distribution; and

(d) Advise the complainant and the ~~respondent~~ attorney of the provisions of § 16-19-99 concerning confidentiality.

2. Upon receipt of the ~~respondent~~ attorney's written response the assigned board member shall distribute copies to the board members and board counsel and shall mail a copy to the complainant for a written reply.

3. The assigned board member shall continue the investigation by mail or in person until the matter is ready for board determination and may engage the assistance of board counsel.

4. The board may act on the complaint by mail or at a regular or special meeting as follows:

(a) Dismiss the complaint if the alleged facts do not constitute a violation of the rules governing attorney conduct or the ~~attorneys'~~ attorney's oath. The board may, by a separate and unanimous vote, expunge the ~~respondent~~ attorney's record of the dismissed complaint.

(b) Continue the investigation or take such further action with respect to the attorney's conduct as the board deems appropriate.

5. In the event that the board deems it appropriate to have a hearing before the board concerning the ~~respondent~~-attorney's alleged conduct, the hearing shall be conducted in the following manner:

(a) Notice shall be given to the ~~respondent~~-attorney by board counsel by certified mail, return receipt requested, not less than ten days prior to the hearing and shall include a reference to these rules and to the Rules of Professional Conduct.

(b) A transcript shall be kept by a court reporter.

(c) The chair or a board member designated by the chair shall conduct the hearing with a quorum of the board present.

(d) The chair shall advise the ~~respondent~~-attorney of the right to be heard, to offer witnesses, to be represented by counsel, and to have a record of the proceedings kept. The procedure shall be as follows:

(1) The ~~respondent~~-attorney, after being sworn or the ~~respondent's~~attorney's counsel may make a statement and may examine the ~~respondent~~-attorney.

(2) Witnesses on behalf of the ~~respondent~~-attorney may testify after being sworn. Witnesses will be ~~first~~ examined first by ~~respondent~~ the attorney or ~~respondent's~~ the attorney's counsel and thereafter by board counsel and members of the board.

(3) ~~Respondent~~ The attorney shall be examined by board counsel and board members.

(4) The complainant or other witnesses may be called and examined by board counsel and members of the board ~~with cross examination by respondent or respondent's counsel.~~ The attorney or the attorney's counsel may cross-examine the complainant or other witnesses called by the board.

(5) ~~Respondent or respondent's~~ The attorney or the attorney's counsel or both may make a closing statement subject to such time limits as the board may require.

(6) The board shall consider the matter off the record and out of hearing of the ~~respondent~~-attorney and in closed session.

(e) The board may dismiss the complaint, caution or admonish the ~~respondent~~-attorney, impose conditions on ~~respondent~~ the attorney pursuant to § 16-19-60, impose a private reprimand pursuant to § 16-19-61, or commence formal disciplinary proceedings pursuant to § 16-19-67, et seq.

(f) If the board's decision is within the purview of § 16-19-61, the ~~respondent~~-attorney may, within ten days of receipt of the board's decision, file written objections. The objections will be considered by the board by means of written or electronic correspondence among the members or at a special meeting if deemed appropriate.

(g) The board shall notify the ~~respondent~~-attorney by mail of changes, if any, in the findings and recommendations made as a result of the objections.

(h) The board shall notify the complainant of the board's decision when it is final.

12. Proposed Amendment of SDCL 23A-4-1. (Rule 5(a))
Arrested person taken before magistrate--Complaint filed on arrest without warrant. A law enforcement officer shall, without unnecessary delay, take the arrested person before the nearest available committing magistrate. Any person, other than a law enforcement officer, making an arrest shall, without unnecessary delay, take the arrested person before the nearest available committing magistrate or deliver him to the nearest available law enforcement officer. If a person arrested without a warrant is brought before a committing magistrate, a complaint shall be filed forthwith. ~~When a~~ A person, arrested with or without a warrant or given a summons, shall appear ~~appears~~ initially before a committing magistrate in person or via ITV, without unnecessary delay, at which time the committing magistrate shall proceed in accordance with the applicable provisions of §§ 23A-4-2 to 23A-4-5, inclusive.

13. Proposed Amendment of SDCL 23A-35-4.3. Search Warrant for installation, use, and maintenance of tracking device.

(a) Tracking Device Defined. As used in this section the term tracking device means an electronic or mechanical device which permits the tracking of the movement of a person or object, including GPS, "pole camera", or any other covert surveillance device.

(b) Contents. A search warrant for a tracking device may be issued by any magistrate authorized in § 23A-35-2 for the installation, use, and maintenance of a tracking device. There must be probable cause to search and seize property as set forth in this chapter and that such installation and use of this device will lead to the discovery of evidence under § 23A-35-3. The tracking-device warrant must identify the person or property to be tracked, designate the magistrate to whom it must be returned, and specify a reasonable length of time that the device may be used. The time may not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. The warrant must command the officer to complete any installation authorized by the warrant within a specified time no longer than 10 days.

(c) Scope. Any tracking-device warrant issued under this section may authorize the use of the tracking device within the jurisdiction of the magistrate, and outside that jurisdiction if the tracking device is installed within the magistrate's

jurisdiction. The executing officer must perform any installation authorized by the warrant during the daytime, unless the magistrate for good cause expressly authorizes installation at another time.

(d) Return. The tracking-device warrant must command the executing officer to return the warrant to the magistrate designated in the warrant. The officer executing a tracking-device warrant must enter on it the exact time and date the device was installed and the period during which it was used.

(e) Service. Within 10 days after the use of the tracking-device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the state, the judge may delay notice for reasons set forth in subsection (f).

(f) Sealing of Contents of Warrant. With respect to the issuance of any warrant under this section, a judge may, upon a showing of good cause, seal the contents of a warrant and supporting documents until the termination of an investigation, an indictment or information is filed, or as otherwise ordered by the court for purpose of preventing

- (1) endangerment of life or physical safety of an individual;
 - (2) flight from prosecution;
 - (3) destruction of or tampering with evidence;
 - (4) intimidation of potential witnesses; or
 - (5) if failure to seal would otherwise seriously jeopardize an investigation or unduly delay a trial
-

14. Proposed Amendment of SDCL 23A-44-5.1(5). Time allowed for disposition of criminal case--Periods excluded--Dismissal.

(1) Every person indicted, informed or complained against for any offense shall be brought to trial within one hundred eighty days, and such time shall be computed as provided in this section.

(2) Such one hundred eighty day period shall commence to run from the date the defendant has first appeared before a judicial officer on an indictment, information or complaint.

(3) If such defendant is to be tried again following a mistrial, an order for a new trial, or an appeal or collateral attack, such period shall commence to run from the date of the mistrial, filing of the order granting a new trial, or the filing of the mandate on remand.

(4) The following periods shall be excluded in computing the time for trial:

Notice of Rules Hearing No. 137 - February 13, 2018

(a) The period of delay resulting from other proceedings concerning the defendant, including but not limited to an examination and hearing on competency and the period during which he is incompetent to stand trial; the time from filing until final disposition of pretrial motions of the defendant, including motions brought under § 23A-8-3; motions for a change of venue; and the time consumed in the trial of other charges against the defendant;

(b) The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel provided it is approved by the court and a written order filed. A defendant without counsel shall not be deemed to have consented to a continuance unless he has been advised by the court of his right to a speedy trial and the effect of his consent;

(c) The period of delay resulting from a continuance granted by the court at the request of the prosecuting attorney if the continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date and provided a written order is filed;

(d) The period of delay resulting from the absence or unavailability of the defendant;

(e) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance. In all other cases the defendant shall be granted a severance so that he may be tried within the time limits applicable to him;

(f) The period of delay resulting from a change of judge or magistrate obtained by the defendant under chapter 15-12; and

(g) Other periods of delay not specifically enumerated herein, but only if the court finds that they are for good cause. A motion for good cause need not be made within the one hundred eighty day period.

(5) If a defendant is not brought to trial before the running of the time for trial, as extended by excluded periods, prejudice to the defendant is presumed. Unless the prosecuting attorney rebuts the presumption of prejudice, the defendant shall be entitled to a dismissal with prejudice of the offense charged and any other offense required by law to be joined with the offense charged.

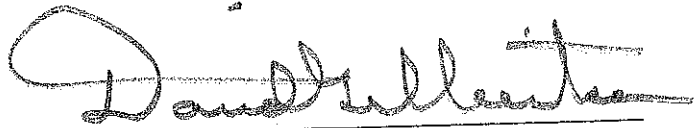
Notice of Rules Hearing No. 137 - February 13, 2018

Any person interested may appear at the hearing and be heard, provided that all objections or proposed amendments shall be reduced to writing and the original and ten copies thereof filed with the Clerk of the Supreme Court no later than January 30, 2018. Subsequent to the hearing, the Court may reject or adopt the proposed amendments or adoptions or any rule germane to the subject thereof.

Notice of this hearing shall be made to the members of the State Bar by electronic mail notification, by posting notice at the Unified Judicial System's website at <http://www.ujs.sd.gov/> or the State Bar of South Dakota's website at <http://www.sdbar.org/>.

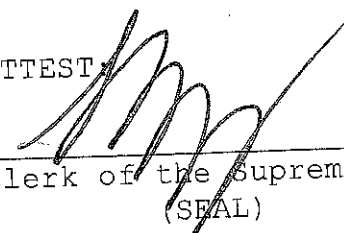
DATED at Pierre, South Dakota this 28th day of December, 2017.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST


Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

DEC 28 2017


Clerk

Upcoming

EVENTS

January 2018

Bar Commission Meeting.....	January 5.....	Red Rossa, Pierre
Disciplinary Board.....	January 4-5.....	Red Rossa, Pierre
Disciplinary Board.....	April 5-6.....	ClubHouse, Sioux Falls
ABA Day.....	April 9-12.....	Washington D.C
Bar Commission Meeting.....	April 12.....	ClubHouse, Sioux Falls
Juvenile Law CLE.....	April 13 am.....	Ramkota, Sioux Falls
Alternative Dispute Resolution.....	April 13 pm.....	Ramkota, Sioux Falls
2018 Jackrabbit Bar Conference.....	May 31 - June 2, 2017.....	Medora, ND
2018 Annual Meeting.....	June 20-22.....	Ramkota, Sioux Falls