



State Bar of South Dakota



122nd President of the
State Bar of South Dakota
Steven K. Huff



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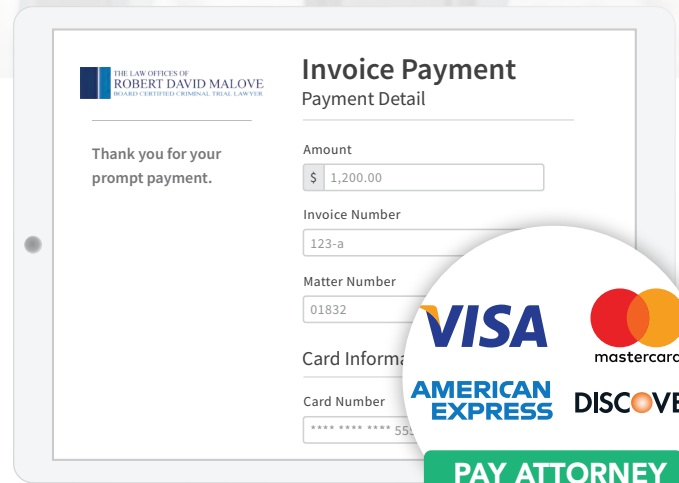
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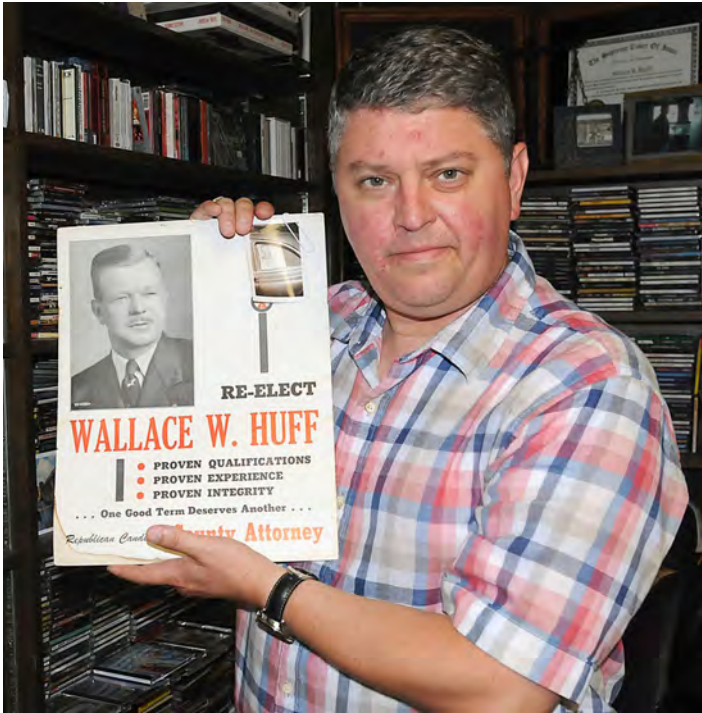
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Yankton attorney Steve Huff shows a photo of his grandfather, Wallace ("Wally") Huff. Steve is a fourth-generation lawyer who recently started his year-long term as South Dakota Bar Association president.

Steve Huff's legal career began on a wrestling mat.

"In high school, I was wrestling for Sioux City North," the Yankton man said. "We were wrestling at Sioux Falls, and I was badly injured during a match. That ended my sports career, and I turned to debate."

As a debater, you could say Huff found many good arguments for entering the legal profession. He has made his case as an attorney, practicing law in Yankton for two decades.

"I didn't intend to become an attorney, but I'm now the fourth generation of lawyers in my family," he said. "My grandfather, Wally, came back from the Navy and became a county attorney for 80,000 residents, and my dad has practiced law for years with a Sioux City firm."

In making his own mark, Steve Huff has ascended to president of the South Dakota Bar Association (SDBA).

He was installed last week at the SDBA convention in Rapid City and will take the reins for the next year.

The State Bar of South Dakota has more than 3,000 members and 1,800 active in-state members.

"The way it's structured, I've served on the board for several years, moving up the ladder each year until I became president this year," Huff said.

STARTING A CAREER

Huff graduated from the University of Northern Iowa (UNI) in 1993 with a major in political science and a minor in English. Three days after graduating from UNI, he started law school at the University of Iowa, obtaining his law degree in two years and three months.

Huff then left Iowa City to work as a law clerk for the State of Iowa's district court judges surrounding Des Moines from July 1996 to May 1998.

"I practiced law in the Des Moines area until my wife, Tracy, and I moved to Yankton in September 1999," he said. "It meant being close to family, and I had a really good opportunity with a great local law firm. Yankton was where we wanted to live, and we've raised our two children here."

Huff became associated with Johnson, Miner, Marlow, Woodward & Huff. In 2004, he became a partner with Mike Marlow and Sheila Woodward.

Huff served as the Yankton County Bar Association president from 2000-2006 and has served several two-year terms as a South Dakota Bar Commissioner. He has been a member of the East River Legal Services board of directors for 15 years, serving as its president for the last six years.

TAKING THE MANTLE

And now, he's ready to take on the leadership of the state's legal profession.

"I have some priorities during my year as president," he said. "There are thousands of underserved people, and they need to get good, competent legal counsel and representation. We need to find ways to serve them."

Those under-represented groups could fall into any number of categories, he said.

"They need protection of their civil rights," he said. "They need legal service, and we need to get to them."

Huff has served as a long-time advocate for equality under the law, including the LGBTQ community. He has also spoken out for protecting all individuals' freedom of speech, religion and other fundamental rights.

He acknowledged that some of his stands may prove unpopular with conservative South Dakotans, including members of his own state bar association.

The State Bar of South Dakota has sought to make legal services accessible to all of the state's citizens. Those efforts include programs such as "Ask A Lawyer" and "Access To Justice" (also known as "A2J").

However, not all of the legal access issues are tied to affordability, Huff said. Many challenges arise because of South Dakota's large, sparsely-populated areas where lawyers may not be readily available.

He also seeks to change the face of lawyers to reflect more sectors of the population. "I'm also working for more diversity in the South Dakota legal profession," he said.

He noted, among other things, the increasing number of women entering law. The trend has accelerated during the past quarter-century, he added.

"In 1993, when I was at the University of Iowa, we had more women than men attending law school," he said. "And today, we're seeing more women in the profession."

Women have also filled more judgeships, Huff said. He credited pioneers who blazed trails for today's female lawyers.

"When I came to this law firm, Celia Miner was one of the partners," he said. "And we had Judith Meierhenry as the first woman on the South Dakota Supreme Court."

Since then, more women have been appointed to the Supreme Court and also to circuit judgeships, including the First Circuit which covers 14 counties in south-central and southeast South Dakota.

Those judges, along with their male colleagues, have distinguished themselves on the bench, Huff said.

In particular, he pointed to a 2012 case that drew national attention and eventually found its way to an Elk Point courtroom in 2017.

Circuit Judge Cheryle Gering presided over the Union County case, where Beef Products Inc. (BPI) of North Sioux City sued the American Broadcasting Companies (the parent of ABC News) and reporter Jim Avila. Other parties were dismissed from the lawsuit.

BPI sought \$1.9 billion in its defamation lawsuit, alleging it was financially damaged by the news reports' use of the term "pink slime" in its coverage of lean finely textured beef. Under South Dakota's agricultural disparagement law, the final judgement could have tripled in its amount.

The parties in the lawsuit later reached an undisclosed financial settlement. The proceedings moved into uncharted territory for South Dakota. Besides the complex and controversial nature, the proceedings themselves created a number of challenges. Those factors included providing adequate courtroom space, seating a jury for the lengthy trial and working with local and national media requests.

"Judge Gering rose to the occasion," Huff said.

MEETING OTHER NEEDS

Huff has set his sights on other groups with unmet legal needs.

Native Americans need more attorneys for the adequate representation of defendants and in meeting other legal needs, he said. In turn, South Dakota holds a continued need for more Native Americans entering law, he added.

"We need to work with tribes, sometimes in areas where trust has not always existed (toward the state and federal legal system)," Huff said.

The need is further complicated by the often remote location of the American Indian reservations from any legal services, Huff added.

"But the client in Mission has just as many needs as the one in Sioux Falls, Rapid City or Aberdeen," he said.

The need extends throughout South Dakota's rural areas, Huff said. The state's lawyers are concentrated in four cities. The challenge lies in attracting attorneys — particularly recent law school graduates — to practice in sparsely-populated areas.

Currently, many rural residents must travel long distances for the handling of even simple legal matters.

"We need to ensure legal access across the state," Huff said.

The Unified Judicial System and the South Dakota Bar Association has implemented the Rural Attorney Recruitment Program to help meet those needs, Huff said.

LOOKING TO THE FUTURE

During his presidency, Huff also wants to work closely with the University of South Dakota Law School and its new dean, Neil Fulton.

Fulton brings a strong, broad legal background to the law school, Huff said.

"Neil has served as chief of staff for (then-) Governor Mike Rounds, and he has headed the federal public defender program (for the Dakotas)," Huff added. "Neil brings a vitality and strong work ethic to the position."

Fulton will face challenges at the USD Law School, Huff acknowledged. The school has seen declining enrollment and a lower bar passage rate. The numbers have started stabilizing and even turning around.

However, South Dakota isn't alone in its situation, Huff said. The decline in law opportunities and the rising cost of a law degree have led many potential students to consider other careers.

"It's a situation seen in a number of other states. You're seeing enrollment dropping at a number of the major

law schools around the nation. Alaska doesn't even have a law school," Huff said.

"Now, you have many more lawyers retiring versus those coming out of law school. And in South Dakota, they're going to cities like Sioux Falls, Rapid City, Pierre, Aberdeen, Yankton and Mitchell."

Huff has already learned from other state's experiences. He has participated in a consortium of Western states' bar associations.

"We share common problems and talk about issues," he said.

Huff's presidency comes on top of a heavy workload with his firm. He works for multiple national banks and regulated lenders in many states. He has worked on more than \$100 million in foreclosed or bankruptcy stayed assets in South Dakota, Nebraska and Iowa.

But his interests and involvement aren't limited to the law. He has served as president of the local Chamber of Commerce, the local Big Friend Little Friend program and the Verve organization. In addition, he has presided over 20 Yankton County Teen Court trials.

And for good measure, the Huffs have become a popular continuing feature about their passion for cooking in "Her Voice" magazine, published by the Press & Dakotan.

Despite such a hectic schedule, Huff said he looks forward to his year as the SDDBA president. In many ways, the position reminds him of why he entered and feels a passion for the legal profession.

"You need to be a good listener, selfless in your efforts and care more about your client than yourself," he said. "And above all else, never stop fighting."



STATE BAR OF SOUTH DAKOTA YOUNG LAWYERS SECTION

by: Nathan Chicoine
YLS President



Thank you all for welcoming me as the President of the Young Lawyers Section. Special thanks to Tamara Nash, Hon. Abby Howard, Paul Tschetter, and previous leadership for planting strong roots for our Section. In assuming a leadership position, I find it best to review the organization's fundamental purposes and determine how the organization can advance its goals. Members of the Young Lawyers Section would be well-served to similarly evaluate, and all South Dakota lawyers may discover a common interest by joining me in this exercise. So, what does the Young Lawyers Section do? Many may think we belong at a card table in the living room during holiday dinners. Not so.

The general purpose of the Section is to foster the identification, discussion, and interchange of ideas unique to South Dakota young lawyers. We aid and promote the advancement of young lawyers and encourage their interest and participation in the activities of The State Bar. Some of our identified specific purposes include: (a) educating young lawyers and the general public; (b) improving the image of the legal profession and advancing the role of the legal profession in serving the public; (c) scholarship in the legal profession among young lawyers; (d) informing, educating, and assisting young lawyers in the practice of law; (e) communicating with young lawyers and the bar; and (f) serving as liaison between the ABA and South Dakota young lawyers.

If you scanned over that list, the Young Lawyers Section fundamentally focuses on education, mentorship, and public service. We want to connect young lawyers to the bar and the public. We as lawyers thrive on strong connections, whether it is clients, victims, stakeholders, colleagues, or others. Understanding and appreciating those we interact with improves our advocacy and representation. We'll continue our regular events that connect young lawyers and advance our purposes.

- Young lawyers will be at Law School Orientation to connect with 1Ls. Join us in welcoming them into the profession.

- The annual Statewide Swearing-in Ceremony will be held on Friday, October 18, 2019. This distinguished event is a great opportunity for friends, family, and colleagues to celebrate the achievements of new lawyers. Come and connect with us.

- The Nuts & Bolts CLE will be held in conjunction. Young lawyers will get a crash course on the first few years of practice, and it would act as a good refresher for any bar member. In the spring, look for more CLE programs at our annual Bootcamp. Offer to present on your specialty.

- Mixers will be hosted across the state to further our Hagemann-Morris Mentorship Program. If you're a young lawyer, apply for a mentor. If you're an experienced lawyer, offer to mentor. The program kicked off ten years ago and continues to connect young lawyers with experienced lawyers.

- Veterans Legal Clinics will again be hosted with the law school's Veterans Legal Education Group (VLEG) and our State Bar. Volunteer to serve and connect with our veterans.

- Representatives of the State Bar Young Lawyers Section will attend ABA/Young Lawyers Division Conferences to stay connected to affiliates of other states. Conference takeaways will be reported in future newsletters.

- Our efforts to reach out to students in Indian Country will continue with Project Destination, which encourages a career in the legal profession. This program has been recognized

as showing promise to increase diversity and inclusion in our State Bar.

- YLS can be found lending a hand at next summer's Annual Meeting programs.

I encourage young lawyers and all State Bar members to take these opportunities and connect with the profession. We'll explore ways to improve our regular events and incorporate new ways to educate, mentor, and serve. Ideas for projects that the Young Lawyers Section can undertake should be shared with the Board of Directors.

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Let's make this a year of connections. When you encounter a young lawyer in your practice, connect with them personally in addition to discussing your file. When you are working with a young lawyer and look up contact information on the State Bar website, add him/her to your network by clicking "connect" and reviewing

the profile. When an experienced lawyer is introduced to you, ask about connecting over coffee or lunch. Our State Bar, the legal profession, and the general public will benefit if we are better connected.

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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.

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2019 PRESIDENT'S PRO BONO AWARD

Scott Moses

"For Scott's involvement in the SD Free Legal Answers, and his continued support of the Access to Justice pro bono program, I am honored to award him the President's Pro Bono Award for 2019."

-President Reed Rasmussen

Dean's List: News from the Law School



by: *Neil Fulton*
Dean
USD School of Law

Communication is at the heart of what we do as lawyers. When we explain possible outcomes in a case to a client, when we argue a motion to the court, or when we argue a case to a jury we're engaged in a tradition of oral communication. When we write a demand letter, a brief on appeal, or a column like this we take an additional step of communicating in a way that is more readily distributed and preserved. When we set internal meetings, public forums, or define chains of command or mission statements within our organizations we communicate in an organizational fashion, defining who we are and how we function. We go even one step further when we pass laws, promulgate administrative rules, or adopt professional codes of conduct. In these we articulate in an organic way who we are as a society, how we will lie together, and how we will maintain those values and structures against transgressions. Communication is a fundamental act, and it is an act lawyers must be fundamentally good at.

Communication is inevitably difficult, however. Start with the simple reality that words are slippery things, typically vested with multiple shades of meaning and open to multiple interpretations. Add the reality that interpretation can often depend on the perspective of the person engaged in the communication; an idea or position seemingly clear to the person expressing it may seem less so the person hearing by virtue of their different experiences, perspectives, and purposes (as a trivial example, "clean up your room now" means very different things to my sons than Molly and me in terms of what is "clean" and when "now" is). Communication can also be challenged by not being regular. A greater base of shared experience, meaning, and history inevitably makes communication richer and more effective, but communication between irregular partners can readily be undermined by differing vocabulary and viewpoints. Lastly,

communication is increasingly difficult in light of the competition for our mental bandwidth as communication comes in ever greater volume from ever expanding sources. Just in my time as a lawyer the channels of communication to and from me have exploded. I would have been stunned as a law clerk to contemplate the ubiquity of the Internet (then in its infancy), specialized cable channels, social media sites, podcasts, webinars, texts, smart phones with the world at our fingertips, and an increased expectation that we can and will communicate at all hours with all people.

In this environment, it is increasingly critical to be intentional about our communication. We need to thoughtfully decide who we will communicate with, when, how, and about what. And we need to prioritize communication with our most important relationships—families, co-workers, and key professional partners.

In that spirit, one of the things I am thinking about most in my first year at the Law School is communication. In order to function well the law school needs to communicate well. Our community must be effectively engaged internally with students, faculty, and staff fully connected and informed so that our teaching, scholarship, and service is the best it can be. Likewise, we need to be effectively connected to external partners like alumni and friends, the bench and bar, the business community, and government officials. This allows us to be a resource to South Dakota in a variety of ways, a critical role for a public law school—and the only one at that—to fulfill. This is a process that is beginning, not complete, and listing each aspect of the Law School's communication is beyond the scope of this article (I'm kind of glad you're still reading, honestly). I'd like to highlight some ways we are working to strengthen communication with the Bar.

First, I've been meeting with key Bar leaders. In May, the Strategic Planning Committee let me sit in on one day of their meeting to discuss how the Law School and the Bar can work together on key issues facing South Dakota's legal community. The State Bar Law School Committee and I met in June to engage in some strategic planning of how the Law School and the Committee can better exchange information, build connections between the Law School and the Bar, and

connect Bar members to support key initiatives at the Law School.

Second, we are working through a variety of platforms to push out information about what is happening at the Law School. This column is one way. So are our social media platforms, so check out the Law School on Facebook ([University of South Dakota School of Law](#)) and Twitter ([@USDLawSD](#)) along with my personal accounts on Twitter ([@NeilFultonSD](#)) and LinkedIn. We are also looking at an updated internal newsletter that we can share with alumni and friends outside the building.

Third, we are finding more ways to reach out in person. I will be building my calendar to get around the state and meet. Please let me know if I'd be able to come visit with your local bar association, service group, or your firm. We are also working with the President and President-elect to try and expand the existing Hagemann-Morris Mentorship program to reach undergrad and high school students to build a

better pipeline of students interested in going back to their local communities, particularly rural South Dakota. Expect to see Liz Taggart, our admissions director, and Alisa Rosales, our placement and career services advisor, in person to help our pipeline of students. And connecting in person extends to a standing invitation for all of you to come see what's going on at the Law School when you're around. Come watch a class, judge a competition, provide a guest lecture, or just visit—you are always welcome to come home to USD Law.

Some of these new ideas will work, some will not and we'll move on and try others. The biggest point to me is that I want all of you to know that effective communication from the Law School to all of you is one of the most important parts of my job. If you see ways that it is not as good as it must be or that you think it might be better, please don't hesitate to let me know. To be effective, communication has to be rooted in honesty and openness, and that's something I look forward to working on together with the Bar.



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BOARD OF BAR COMMISSIONERS

Minutes, April 24, 2019
Ramkota – Needles Room
Rapid City, South Dakota

President Reed Rasmussen called the meeting to order at 8:00 a.m. MST on Friday, April 24, 2019, in Rapid City, South Dakota. Present at the meeting were Rasmussen, President-Elect Huff, and Commissioners Duncan, Ginsbach (by telephone), Hopper, Hruska, Pilcher (by telephone), Sutton (by telephone), Thompson Kerver, Tobin, Willert, Williams (Jennifer), Wurgler, and Zea, and Secretary-Treasurer Andrew Fergel. Also, present during part or all of the meeting were Strategic Plan Coordinator/ Access to Justice, Inc. Co-Coordinator Elizabeth Overmoe, Assistant Executive Director Nicole Ogan, Communications Director Tracie Bradford, and attorneys Amy Arndt (by telephone), Andrew Knutson (by telephone), Heath Oberloh (by telephone), Terri Williams, and Bob Riter.

Minutes of March 21, 2019 and April 3, 2019 Commission Meetings held by Teleconference: Commissioner Tobin moved to approve the minutes of the Board's March 21, 2019 and April 3, 2019 teleconference meetings. Commissioner Williams (Jennifer) seconded the motion. Motion passed.

Strategic Plan Update: Strategic Plan Coordinator Overmoe gave a brief report on the work of the Strategic Plan Committee and reminded the Commission that the Committee would be meeting to develop the State Bar's next strategic plan on May 9-10, 2019, in Sioux Falls.

Access to Justice Report (A2J): A2J Co-Coordinator Overmoe gave an update on the work of the A2J program this calendar year. As of April 5, 2019, A2J has closed 21 cases and opened 25 cases. Currently, A2J has 80 open cases with attorneys assigned and actively engaged.

Western States Bar Conference Report: President Rasmussen informed the Commission that he, Executive Director Fergel, and Pamela Reiter attended the Western States Bar Conference (WSBC) March 27 through March 30, 2019. The theme of the conference was *Wellness – The Path to Success*, and the attendees were able to engage in worthwhile and valuable conversations with other leaders from unified bars in the western states. He also informed the Commission that Pamela Reiter was this year's WSBC President.

Report on Meeting with New USD Law School Dean: President Rasmussen and President-Elect Huff informed the Commission that they had an opportunity to visit with newly selected Dean Fulton when the Law School Committee visited the law school this spring. Both said that the meeting was productive, and that Dean

Fulton desires to work with the Bar on current activities and to explore new ideas with the help of the Bar in the future.

Special Meeting of Bar Commission on Wednesday, June 19, 2019 at Annual Meeting: Executive Director Fergel informed the Commission that leadership from the Lawyers Assistance Committee and Lawyers Concerned for Lawyers has requested a meeting with the Commission during the Bar Convention in Rapid City to discuss funding a one-year pilot program for Lawyers Concerned for Lawyers. The program will provide funding for a person to recruit and train more volunteers so that more lawyers can be helped. After a short discussion, the Commission directed Executive Director Fergel to work the meeting into the Bar Convention schedule and give notice.

Group Term Life Insurance Policy Issued to State Bar of South Dakota: Executive Director Fergel informed the Commission that the Bar Office received a letter from Voya Affinity Group informing it that ReliaStar Life Insurance Company will terminate the group term life insurance policy issued to the State Bar of South Dakota effective October 1, 2019. The reason given for the termination notice was that participation in the plan has fallen over the years such that the remaining number of insureds no longer meets the company's minimum size guidelines for continuation of coverage under the group policy.

Lawyer Referral Service Update: Executive Director Fergel updated the Commission on the Bar's on-line Lawyer Referral Service Program. Fergel reported that the Lawyer Referral Service Committee is continuing to work on implementing a marketing plan to promote the Lawyer Referral Service Program to the public.

Request for Bar to Create New Committee: President Rasmussen informed the Commission that he had been contacted by a chairperson for a county mental health board asking the Commission to create a new committee to work in the area of mental health commitments. President Rasmussen reported the request arose because attorneys that deal with the mental health holds were not consulted on a couple of bills being offered during this year's legislative session that affected mental health proceedings, and they did not have a way to effectively communicate with each other regarding bills. During discussion about the request, a few commissioners wondered if there existed another way for the Bar to facilitate the request without forming a committee. After the discussion, Commissioner Willert made a motion to form a new Bar committee as requested. The motion died for lack of a second. President Rasmussen indicated he would contact the requesting person and direct the person to Bar staff to pursue an alternative through the State Bar's website that would assist attorneys working on mental health holds to communicate with each other.

Legislative Report: Bob Riter, a member of the State Bar's 2019 lobby team, presented the 2019 legislative report to the Commission. Mr. Riter concentrated his report on the two legislative priorities tasked by the Commission for the 2019 legislative session. The first priority was to obtain additional money for the Equal Access to Our Courts Commission in order to provide more grant money to the state's legal service providers. The second was to assist the UJS in eliminating the sunset date on the rural attorney recruitment program. Mr. Riter reported that both priorities had been accomplished. In regard to the first, the 2019 general fund bill contained an ongoing appropriation of \$50,000.00 for the Equal Access to Our Courts Commission. On the second, the Legislature passed HB 1046, which removed the July 1, 2022 sunset of the rural attorney recruitment program. Mr. Riter completed his report by speaking briefly about the legislative process and additional bills the lobby team tracked and reported on throughout session.

Requested Support for Broadband Resolution: President Rasmussen referred the Commission to an email and letter he received from John Vaught, President of the Colorado Bar Association, asking the Bar to write a letter to the American Bar Association House of Delegates in support of the Colorado Bar Association's 2019 proposed resolution regarding the deployment of broadband access throughout the United States. After discussion, Commissioner Hopper made a motion to approve the request. The motion was seconded by Commissioner Duncan. Motion passed.

Resolution to Support Increased Judicial Compensation: The Commission reviewed a draft resolution from the South Dakota Judges Association Ad Hoc Committee on Judicial Compensation. The resolution seeks Bar support in the Committee's request for an increase in judicial compensation from the legislature in 2020. After discussion, the Commission decided changes to the proposal were necessary and that it would defer action on the proposal pending changes. After changes are made, the Commission will vote by email whether to support presenting the resolution to the Bar membership for a vote at the annual meeting in June.

Proposed Rules and Legislation of Family Law Committee: Terri Williams, Chair of the Family Law Committee, presented the Family Law Committee's proposals to amend the South Dakota Parenting Guidelines through the Supreme Court rules process; to promulgate a new rule, through the Supreme Courts rules process, requiring a party to demonstrate a prima facie showing of substantial and material change in circumstances by affidavit before a party may proceed on a motion for change of physical custody; and to amend SDCL 25-4A-19 and SDCL 25-5-13 (relocation laws) by legislation.

After discussion about the South Dakota Parenting Guidelines proposal, Commissioner Willert made a motion to present the proposal to amend the South Dakota Parenting Guidelines to the Bar membership for a vote at the annual meeting in June. The motion was seconded by Commissioner Hruska. Motion

passed with Commissioner Williams (Jennifer) abstaining.

After a question and answer period concerning the proposal to promulgate a new rule, through the Supreme Court rules process, requiring a party to demonstrate a prima facie showing of substantial and material change in circumstances by affidavit before a party may proceed on a motion for change of physical custody, Commissioner Willert made a motion to present the proposal to the Bar membership for a vote at the annual meeting in June. Commissioner Sutton seconded the motion. Motion passed with Commissioner Williams (Jennifer) abstaining.

After discussion about the proposal to amend the relocation statutes, SDCL 25-4A-19 and SDCL 25-5-13, through legislation, Commissioner Willert made a motion to present the proposal to the Bar membership for a vote at the annual meeting in June. President-Elect Huff seconded the motion. Motion passed with Commissioner Williams (Jennifer) abstaining.

Proposed Legislation of the Business Law Committee: Appearing by telephone, Amy Arndt, Chair of the Business Law Committee, and Andrew Knutson and Heath Oberloh, members of the Business Law Committee, presented information about the Committee's proposed legislation for the 2020 legislative session.

Mr. Knutson explained the Committee's proposed South Dakota Uniform Power of Attorney Act. After discussion, Commissioner Tobin made a motion to present the proposed Act to the Bar membership for a vote at the annual meeting in June. Commissioner Thompson Kerver seconded the motion. Motion passed with Commissioner Williams (Jennifer) abstaining.

Mr. Oberloh explained the Committee's proposed legislation to add several sections to the South Dakota Limited Liability Company Act to provide for series limited liability companies. After a question and answer period, Commissioner Tobin made a motion to present the proposal to the Bar membership for a vote at the annual meeting in June. President-Elect Huff seconded the motion. Motion passed with Commissioner Williams (Jennifer) abstaining.

Rule 8.4 of the South Dakota Rules of Professional Conduct: After having gathered input from membership concerning amending Rule 8.4 of the South Dakota Rules of Professional Conduct, the Commission revisited the issue whether to propose an amendment to Rule 8.4. Commissioner Thompson Kerver presented the Commission with a new proposal that would add a new subsection (g) to Rule 8.4:

(g) Engage in harassing or discriminatory conduct by the known use of words or actions based upon race, sex, religion, national origin, disability, age, or sexual orientation when that conduct is directed to

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

After discussion, Commissioner Thompson Kerver moved that the Commission adopt the language above to amend Rule 8.4 and present the proposed Rule 8.4 amendment to the Bar membership for a vote at the annual meeting in June. The motion was seconded by Commissioner Tobin. The motion passed with 7 aye votes, 5 no votes and Commissioner Williams (Jennifer) abstaining.

Financial Report: Secretary-Treasurer Fergel updated the Commission on the Bar's current finances using a PowerPoint presentation. As part of the financial report, a request was made by Fergel that the FY 2018-2019 budget be supplemented as follows:

Audit - \$533.80
Professional Liability Insurance - \$763.05
Ethics Committee - \$9.14
Law School Committee - \$566.56

Commissioner Willert made a motion to supplement the FY 2018-2019 budget as requested. Commissioner Williams (Jennifer) seconded the motion. Motion passed.

Following the financial report, Secretary-Treasurer Fergel and Assistant Executive Director Nicole Ogan presented a proposed budget for FY 2019-2020 to the Commission and answered questions about the proposal. No action was taken on the proposed budget as it will be finalized by the Commission at its July 2019 board meeting.

Executive Session: A motion was made by Commissioner Williams (Jennifer) to go into executive session at 1:30 p.m. The motion was seconded by President-Elect Huff. Motion passed. The Commission declared out of executive session at 1:53 p.m.

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

Respectfully submitted,

Andrew L. Fergel
Secretary-Treasurer

Experience Matters



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

Paul Thorstenson,
CPA/ABV, CVA, Partner
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The Decision to Hire Contract Attorneys Should Never Be Just About the Money

Mark Bassingthwaite, Esq.
mbass@alpsnet.com

Firms hire contract attorneys for a variety of reasons, not the least of which is an attempt to control expenses. While reducing expenses is a good thing, the financial savings shouldn't be the only issue in play as unintended consequences could follow if no thought is ever given to a few other concerns. The issues that come to mind most readily for me are conflicts of interest, accountability for work product, disclosure, and insurance coverage were an allegation of negligence ever to arise.

Addressing these issues is problematic however, because the term "contract attorney" means different things to different people. IRS definitions and regulations aside, contract attorneys can run the gamut from fulltime "employees" who are held out as members or associates of a firm to temporary part-time attorneys who never step foot within the walls of the firm. For the purposes of this article, I am going to focus on contract attorneys who will never be held out publicly as being associated with the firm at which they are working.

Let's look at the insurance coverage concern first. Don't assume that coverage for contract attorneys under your existing policy is a given. While some insurance companies make no distinction between "contract attorneys" and "employed" attorneys, others do. This means that some insurance carriers will automatically add contract attorneys to your policy, once notice has been given and the appropriate amount of premium paid, and others will not. Why won't they? One reason is that contract attorneys are often temporary and/or part-time and some firms hire quite a few. Do these part-timers have their own clients, to include other firms that they work for under contract? Is there frequent turnover of contract attorneys at the firm? In short, contract attorneys represent an unknown risk to a malpractice insurance carrier. If your insurance carrier will not extend coverage under your existing policy, the contract attorney may need to purchase his or her own coverage if they feel coverage is necessary. I would suggest that coverage should be mandatory if the contract attorney will be doing things like appearing in court or taking depositions. It

may not be necessary if there will never be any client contact and the hiring firm will be reviewing and accepting accountability for the contract attorney's entire work product. Regardless, always confer with your insurance carrier when thinking about hiring a contract attorney (or attorneys) so that the situation can be fully understood, documented, and appropriately underwritten by the carrier if they are willing.

The decision as to whether to use contract attorneys is not something that should lie exclusively with the firm. Clients may or may not be comfortable with contract attorneys and thus clients should be included in the decision-making process. Certainly our ethical rules require disclosure; but ethical rules aside, whose matter is it? It's the clients. I would argue that clients fundamentally deserve to know who will be working on their matters due to confidentiality, competency, and financial concerns at a minimum. Explain to your clients why the use of contract attorneys is necessary. Let them know who they are and what skill set they bring to the table. Then detail what the savings will be and share the steps that will be taken to ensure that confidences will be maintained. In the end, it's all about respecting the attorney/client relationship.

The accountability piece is an interesting issue. Under agency principles, the firm is going to be liable for what the contract attorneys do within the scope of their employment. Sometimes firms will try to do an end run around this concern and treat the contract attorneys as independent contractors. This may be partially effective if the contract attorneys are fully independent (think in accordance with the IRS definition) and the client has not only been made aware of the situation but consented to it in writing. I say partially effective because there will always be the possibility of a negligent hire claim should any of the independent contract attorneys commit malpractice. Given this, appropriate risk management practices are called for whenever utilizing the services of contract attorneys. Adequate supervision and work product review are a given. Have the contract attorneys sign a confidentiality agreement and instruct staff

to never discuss unrelated firm matters in front of them. You would also be well advised to inquire into the background, education, and experience of every potential contract attorney hire as well as ask about past claims or disciplinary matters prior to making any hiring decision.

Perhaps the most significant issue with contract attorneys is the imputed conflict problem. Here the specifics of the working relationship will matter. There is going to be a real difference in how the conflict problem plays between contract attorneys who will never step foot inside your firm's physical space, have no access to firm files, and will only work on one project for your firm versus contract attorneys who will work internally, will be employed there for an extended period of time, will be working on multiple projects, and have access to the firm's client files. The issue can be further compounded if any of the contract attorneys will also be working at one or two other firms at the same time. To minimize the risk of unintended conflict problems arising, limit

the contract attorneys' access to client files to the greatest degree possible. An isolated or off site work space coupled with no access to the firm's computer network or the area where client files are maintained can be an effective way to manage the problem. In contrast, the greater the degree to which any contract attorney becomes integrated within a firm the greater the likelihood that all the conflicts this attorney carries will be imputed to the firm. Understand that this isn't about how contract attorneys are paid. It's about length of time in your employ, scope of the relationship with the firm, degree of client contact, access to client files, the clients' understanding of the relationship, and the list goes on.

The decision to use contract attorneys can be an appropriate decision that brings real value to your firm and the clients you serve. Just don't rush into this for the expense savings alone because there can be unintended consequences that in the end could prove more costly than if you had never hired the contract attorneys in the first place.

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.

WHAT A TREAT!

July 2019

Law for Lunch

Navigating Common FMLA Mistakes

Presented By:
Meghann Joyce,
Goosmann Law Firm

Tuesday, July 16
11:30 AM - 12:30 PM CDT



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focus on improving the well-being of your employees and your business. Meghann protects your company's name and money when problems arise and proactively gets ahead of issues before they're known. With several years of legal experience, Meghann has brought and defended several appeals to the South Dakota Supreme Court and has worked with solo and small law firms as they navigate an appeal to the South Dakota Supreme Court. From complex litigation involving employment issues and construction disputes to appeals, Meghann's priority is to ensure the comfort and confidence of her clients during challenging moments – to make it worth it for her clients.



By: Melanie Dumdei

USD Law Public Interest Network (PIN) is a student-led organization with a focus on public interest work within the legal community. The mission of PIN is to provide support for University of South Dakota law students who volunteer their time working unpaid summer internships with public interest organizations, such as government agencies, nonprofit organizations, Native American legal services, and public defender offices. Each year, PIN hosts an auction to raise money for the student grants offered to those volunteering their time within the public interest community.

The annual PIN Auction is an event that the PIN board is proud to host, especially as it has grown and developed a reputation within the law school and the bar. This year, PIN is proud to announce that \$8,235.00 was raised at the 2019 Auction. With this amount, ten USD law students were able to receive grants to help cover the cost of living and travel expenses during their summer internships. The ten 2019 PIN Fellows are: Jessica Allen, Kylie Beck, Josey Blare, Myla Brown, Connor Donohoe, Melanie Dumdei, James Eggert, David Levine, Brian Meis, and Nicolas Thompson. Kudos to these students for their continued dedication to service!



PIN would also like to thank every business and individual who donated items for the auction, and all those who were able to come to the auction and bid on items. Without you, the aid PIN is able to provide to our PIN Fellows would not be possible. We are extremely grateful to all of you for your continued support of the USD Law Public Interest Network, and look forward to seeing you again at the 2020 Auction! Stay tuned for a save the date announcement.

Interested in finding out more about PIN? You can reach the PIN President, Melanie Dumdei, at melanie.dumdei@coyotes.usd.edu, and the PIN Faculty Advisor, Wendy Hess, at wendy.hess@usd.edu.

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ANNOUNCEMENTS

Goosmann Law Firm, P.L.C. is pleased to announce that

Matthew J. Abel

has joined the firm effective June 10, 2019.

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Telephone: (605) 371-2000

AbelM@goosmannlaw.com

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Sioux Falls, SD 57108

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mandy@epslawfirm.com
evan@epslawfirm.com

Redstone Law Firm LLP is pleased to announce that

Tony Venhuizen

has joined the firm as a partner, effective June 3, 2019.

Redstone Law Firm LLP
101 North Phillips Avenue, Suite 402
Sioux Falls, SD 57104

Telephone: (605) 331-2975
Facsimile: (605) 791-5459

tony@redstonelawfirm.com

Woods, Fuller, Shultz & Smith is pleased to announce that

Sterling Nielsen & Julie Allen

have joined the firm as associate attorneys.

Woods, Fuller, Shultz & Smith
PO Box 5027
300 S. Phillips Ave., Suite 300
Sioux Falls, SD 57117

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State Bar of South Dakota Committee Assignments 2019-2020

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Mallori Barnett, Pierre
Steve Blair, Pierre
Megan Borchert, Pierre
Niclas Dahlvang, Wessington Springs
Catherine Duenwald, Pierre
Kristen Edwards, Pierre
Holly Farris, Pierre
William Golden, Hartford
Kody Kyriss, Pierre
Amber Mulder, Sioux Falls
Graham Oye, Sioux Falls
John Richter, CH, Pierre
J.G. Schultz, Sioux Falls
Roger Thomas, Apple Valley MN
Rosa Yeager, Pierre
Brian Zielinski, Sioux Falls

AGRICULTURAL LAW

Elliot Bloom, Rapid City
Brian Donahoe, Sioux Falls
Craig Evenson, Clear Lake
Dennis Evenson, Clear Lake
Jacob Fischer, St. Paul MN
Amanda Gaikowski, Sioux Falls
Thomas Geu, Vermillion
David Larson, Chamberlain
Jason Shanks, Sioux Falls
Danny Smeins, Britton
Kelsea Sutton, Co-CH, Burke
Jacob Tiede, Mitchell
Michael Traxinger, Co-CH, Aberdeen
Paul Tschetter, Sioux Falls
Chelsea Wenzel, Pierre
Todd Wilkinson, De Smet

ALTERNATIVE DISPUTE RESOLUTION

Holly Behrens, Sioux Falls
Patrick Burns, Minneapolis, MN
Corey Denevan, Sioux Falls
Charles Dorothy, Sioux Falls
Catherine Duenwald, Pierre
Hon. David Gienapp, Madison

Chet Groseclose, Sioux Falls
Katie Johnson, Beresford
James Marsh, Tripp
Michael McKnight, CH, Sioux Falls
Greg Peterson, Aberdeen
Lori Rensick, Vermillion
Olivia Siglin, Vermillion
Heidi Thoennes, Sioux Falls
Marilyn Trefz, Vermillion
Linda Lea Viken, Rapid City

BUSINESS LAW

Amy Arndt, Co-CH, Sioux Falls
Frances Becker, Rapid City
Lisa Carrico, Watertown
James Cremer, Sioux Falls
Thomas Dadrack, Pierre
Matthew Dorothy, Harrisburg
Amanda Engel, Sioux Falls
Eric Erickson, Sioux Falls
Patrick Goetzinger, Rapid City
Chad Hansen, Dell Rapids
Laura Hodson, Rapid City
Curtis Jensen, Rapid City
Darrell Jesse, Dakota Dunes
Andrew Knutson, Co-CH, Sioux Falls
Seth Lopour, Sioux Falls
David Lust, Rapid City
Carey Miller, Sioux Falls
Heath Oberloh, Sioux Falls
Erika Olson, Rapid City
Aaron Pilcher, Huron
Richard Pluimer, Spearfish
David Rezac, Sioux Falls
Jamison Rounds, Crooks
Timothy Thomas, Rapid City
Matthew Tobin, Sioux Falls
Rodrick Tobin, Aberdeen
Paul Tschetter, Sioux Falls
Bobbi Thury, Sioux Falls
Jordan Veurink, Sioux Falls
Jayna Voss, Sioux Falls
Andrew Wilka, Sioux Falls
Sheila Woodward, Yankton

CONTINUING LEGAL EDUCATION

Tara Adamski, Pierre
Stanton Anker, Co-CH, Rapid City
Alecia Fuller, Rapid City
Eric Hanson, Sioux Falls
Sara Hughes, Sioux Falls
Meghann Joyce, Co-CH, Sioux Falls
Cesar Juarez, Sioux Falls
Jessica Larson, Rapid City
Sarah Richardson Larson, Sioux Falls
Cassandra McKeown, Vermillion
Jana Miner, Pierre
Melissa Neville, Aberdeen
Hon. Craig Pfeifle, Rapid City
Pamela Reiter, Sioux Falls
Victoria Reker, Sioux Falls
Brandy Rhead, Rapid City
Carrie Sanderson, Sioux Falls
William Sims, Sioux Falls
Jason Sutton, Sioux Falls
Jeffrey Tronvold, Pierre
Jennifer Williams, Rapid City

CLIENT ASSISTANCE FUND

Pat Archer, CH, Pierre
Amy Bartling-Jacobsen, Gregory
Bath Baloun, Sioux Falls
Matt Naasz, Rapid City
Nancy Oviatt, Watertown

CRIMINAL LAW

Jason Adams, Co-CH, Sioux Falls
James Billion, Sioux Falls
Eric Bogue, Faith
Paul Brankin, Rapid City
Philip Carlson, Co-CH, Pierre
Linton Clarke, Rapid City
Melissa Fiksdal, Sioux Falls
Koln Fink, Sioux Falls
Grant Flynn, Pierre
Ellery Grey, Rapid City
Raleigh Hansman, Sioux Falls
George Johnson, Gregory
Ryan Kolbeck, Sioux Falls

CRIMINAL LAW continued...

Joseph Kosel, Lead
Hon. Heidi Linngren, Rapid City
Katie Mallery, Sioux Falls
Cassandra McKeown, Vermillion
Kenneth Meyer, Madison
Robert Pasqualucci, Rapid City
N. Bob Pesall, Flandreau
Amber Richey, Deadwood
Lara Roetzel, Rapid City
Jason Rumpca, Sioux Falls
Eric Schlimgen, Rapid City
Traci Smith, Sioux Falls
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With Paul S. Lee, J.D., LL.M., the
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QSBS: The Quest for Quantum Exclusions (Queries, Qualms & Qualifications)

Qualified Small Business Stock (QSBS) under Section 1202 is not just for tech companies anymore. It's time to reconsider QSBS because the new tax act has paved the way for closely-held companies to benefit "bigly." QSBS provides an exciting array of benefits (and a surprising alternative) for owners of new and pre-existing business (large and small): (i) 100% gain exclusion on sale; (ii) tax-free rollover of gains; and (3) a chance to "stack" (multiply) and "pack" the exclusion by 10 times (maybe more). While the benefits of QSBS are straightforward, the qualifications and questions surrounding QSBS planning are far from it. This presentation will discuss planning opportunities, unanswered questions, potential pitfalls, and best practices in the quest for quantum QSBS exclusions.

Top Tax and Estate Planning Techniques after "Tax Reform" (Sorting Through the COVFEFE)

Tax reform (whether you call it the "Tax Cuts and Jobs Act" or the "Tax COVFEFE and Jibberish Act") is here to stay... sort of. Regardless, it's clear that income tax planning, tax basis management, and planning with the temporary doubling of the applicable exclusion amount will be at the forefront of estate, tax, and family business planning. This session will discuss straightforward and innovative planning opportunities for families (and their businesses) that best take advantage of both the "expiring" and "permanent" provisions of the new tax act, along with the latest IRS guidance and court decisions.

Brought to you by: The First National Bank, SD Continuing Legal Education Committee and The Sioux Falls Estate Planning Council

STRESS and DEPRESSION HELP

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

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



SOLACE PROGRAM

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

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

July 2019

Official Publication of the State Bar of South Dakota

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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.

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Rules: 1.5, 1.15, 1.16

Subjects: Fees; client property; termination of representation

Summary: Lawyer may not deposit a flat fee directly into the operating account when it is possible that the entire fee may not be earned and must refund any unearned amounts upon termination of representation

Lawyer is engaged to defend a criminal case. Lawyer and Client have entered a written agreement charging a flat fee for providing representation through certain case milestones. Lawyer has asked if that money must be deposited into Lawyer's trust account or if it may be deposited directly into the operating account.

BACKGROUND

Lawyer is engaged to represent Client on a felony charge. They entered a written fee agreement providing that, for a flat fee of \$██████, Lawyer will "defend client until the charges are dismissed, through a jury trial, or through sentencing should client enter into a plea agreement or should client be found guilty at trial." The agreement further provides that Lawyer may deposit the fee directly into the office operating account rather than the trust account and designates the flat fee as Lawyer's property.

Lawyer does not send Client monthly bills or statements of work but keeps "diligent records" of the work performed. Lawyer states that this is done to demonstrate compliance with the factors of Rule 1.5(a), which are used to determine what constitutes a reasonable fee. Additionally, Lawyer states that financial stability is maintained so that, should Client terminate Lawyer's representation, Lawyer can refund "any unearned portion of the fee."

Lawyer now asks if the \$██████ can be deposited directly into an operating account or if it must be held in Lawyer's trust account. Lawyer poses this question against the backdrop of several identified rules. First, Lawyer recognizes the requirement that any fee must be reasonable according to the factors in Rule 1.5. Second, Lawyer recognizes that under Rule 1.16(d), should Client discharge Lawyer, it triggers a duty to refund any unearned portions of the fee. Lastly, Lawyer recognizes that under Rule 1.15 there is a duty to segregate disputed funds if discharge by Client occurs even if the original flat fee is deposited in Lawyer's operating account as a "non-refundable," "flat fee," "retainer," or other designation.

Although Lawyer has asked the specific question of whether the fee may be deposited directly into an operating account rather than a trust account, that question ultimately depends on several subordinate questions. The Committee restates the ultimate question as follows:

May Lawyer deposit directly into their operating account a non-refundable flat fee for a defending a criminal case through dismissal, trial, or sentencing?

ANALYSIS

To address Lawyer's question it is necessary to work, in order, through the questions of non-refundable fees, flat fees, refunding fees upon termination of a representation, and fee reasonableness. The answers to these subordinate questions lead to the ultimate answer of whether Lawyer may deposit the fee at issue here directly into the operating account.

1) "Non-refundable fees" are permissible only in limited circumstances

The first question turns on Lawyer's description of the \$[REDACTED] as a "non-refundable flat fee" for representation through dismissal, trial, or sentencing upon conviction. The written agreement between Lawyer and Client states this sum is Lawyer's property upon payment. Lawyer acknowledges, however, that if Client discharges Lawyer prior to one of these events, a refund may be required under Rule 1.16(d).

Although Lawyer has not specifically asked, it is necessary to consider if it is permissible to charge a non-refundable fee. Typically, it is not. It is not in the circumstances presented.

Unsurprisingly, this question has been considered in most jurisdictions. See Professional Responsibility in Criminal Defense Practice 3d, § 7:9.50. Many states explicitly bar charging a non-refundable fee. *Id*; see e.g., Alaska Opinion 2009-1; Minn. RPC 1.5(b)(3). Other states do not bar non-refundable fees, but limit their scope and terms. *Id*; see also *Matter of Hirschfeld*, 960 P.2d 640 (Ariz. 1998). The fundamental limit on any "non-refundable" fee arrangement is that it may not preclude, explicitly or in effect, the ability of a client to discharge a lawyer. See e.g., *In re Mance*, 980 A.2d 1196, 1204-05 (D.C. 2009); Georgia Op. 03-1. Many jurisdictions conclude that a flat fee is inevitably tied to completion of some task, act, or milestone in the representation such as drafting a document or completing a trial, and a fee is not "earned" until completion of that task. Absent such completion, some or all of the fee collected may be required to be refunded under Rule 1.16(d) if the lawyer is discharged. See e.g., *In re Kendall*, 804 N.E.2d 1152 (Ind. 2004); *Iowa Supreme*

Court Bd. of Professional Ethics and Conduct v. Frerichs, 671 N.W.2d 470, 476 n.1 (Iowa 2003); *Matthew v. State Bar*, 781 P.2d 952 (Cal. 1989). Overall, almost 39 jurisdictions either explicitly bar, or only allow with significant limits, non-refundable fees while only four allow a truly non-refundable fee. See *Professional Responsibility in Criminal Defense Practice* 3d, § 7:9.50.

An exact picture of what jurisdictions allow is blurry because an important distinction exists between a “non-refundable fee” and a “retainer.” The former commonly refers to lump sums attributable to particular services, the latter a charge to guarantee a lawyer’s availability. See e.g., Louisiana RPC 1.5(f) (2004) (fees paid to retain lawyer’s general availability become the property of lawyer upon payment); Texas Ethics Op. 611 (2011) (only fees reasonably necessary to obtain lawyer’s future availability may be made non-refundable). For this analysis, it is crucial to distinguish between a “general retainer” paid to ensure the lawyer will be available during a defined time period (regardless of whether work is actually undertaken) and a “specific retainer” which is paid to engage the lawyer on a specific representation. What may be made non-refundable is highly dependent on this distinction. See e.g., *Iowa Supreme Court Bd. of Professional Ethics and Conduct v. Apland*, 577 N.W.2d 50, 54-55 (Iowa 1998).

Confusion is heightened by the common use of the term “retainer” to refer to advance payment of fees held in trust to be applied to future billings. See ABA/BNA Lawyer’s Manual on Professional Conduct, 41:2007, *citing* Ethics and Practice of Collecting a Fee Owed by a Client, 20 Fam. L. Forum, no. 1, at 3 (2011). A true “retainer” paid to ensure attorney availability or to confirm engagement is earned at the time of payment so may be non-refundable; advance payment of fees tied to particular work is not earned until the work is done and therefore must be refundable. *Apland*, 577 N.W.2d at 57-58.

The Committee has previously considered non-refundable fees. See South Dakota Ethics Opinion 2000-5; South Dakota Ethics Opinion 2000-5A. Our position was in line with the majority of districts: 1) flat fee agreements are not prohibited by the Rules; 2) any fee must be reasonable under Rule 1.5; 3) fees may not be strictly “non-refundable” regardless of the scope of work actually performed as it unduly infringes on the client’s freedom to select, or change, their lawyer; and 4) a non-refundable fee is distinct from a “retainer” paid to “ensure the lawyer’s availability.” *Id.*

In line with these ideas, the Committee holds that Lawyer cannot charge a “non-refundable fee” which is fully earned at the outset of the representation.

2) Flat fees are permissible

A second included question is the propriety of flat fees generally. Flat fees for particular services are not prohibited or even disfavored. South Dakota Ethics Opinion 2000-5A. A flat fee must be reasonable, however. *See e.g., In re Disciplinary Action Against Hoffman*, 834 N.W.2d 636, 644-45 (N.D. 2013). The facts in *Hoffman* are strikingly similar to Lawyer's situation (Lawyer called the case to the Committee's attention). The Committee agrees with the majority view that charging a flat fee for a criminal representation is permissible. *See e.g., In re Connelly*, 55 P.3d 756, 761-62 (Ariz. 2002). In this respect, the agreement between Lawyer and Client for a flat fee is acceptable.

3) Unearned fees must be refunded upon termination of representation and must be segregated pending any dispute about the fee amount

The next question that presents itself is what happens if Lawyer and Client end their relationship prior to completion of the work set out in their written agreement (dismissal, trial, or sentencing after conviction)? As Lawyer acknowledges, Rule 1.16(d) provides the answer: upon termination of representation, advance fee payments not earned must be refunded.

Hoffman held that it was unreasonable not to refund any portion of a flat fee when discharged by the client prior to dismissal, completion of the trial, or sentencing. *Hoffman* at 643, 647. So too here, Lawyer's agreement with client is a fee of \$[REDACTED] for representation through dismissal, trial, or sentencing upon conviction; if Client dismisses Lawyer prior to one of those benchmarks, the entire fee would not be "earned" and some portion would need to be refunded. *Id.* Indeed, Lawyer seems to recognize this, citing sufficient financial stability and liquidity to segregate funds in the amount of any disputed fee should the need arise. The Committee agrees with *Hoffman* that Lawyer would have an obligation to refund some portion of the fee if discharged prior to the case milestones stated in the fee agreement.

The Committee likewise agrees with the *Hoffman* court that if the need to refund some portion of the flat fee arises, Lawyer has an obligation to segregate the disputed fees until the dispute is resolved. *Id.* at 647; Rule 1.15. Lawyer again seems to acknowledge this obligation.

It is important to note that *Hoffman* required a refund of fees because the lawyer had not completed the scope of work identified in the written fee agreement. A different result may have followed with a different statement of work. For example, Lawyer could state other fee amounts for different units of work such as representation through a preliminary hearing, any suppression or

pretrial litigation, trial, sentencing, etc. An expanded statement of units of work, and corresponding flat fees, may ease the obligation to segregate funds if Lawyer is discharged or the full scope of work triggering the full fee is not completed.

4) Any fee must be reasonable for the work actually performed

Any fee must be reasonable for the work performed in the end. *Id* at 646. Lawyer has not asked Committee if the total fee is reasonable here. While it is not strictly necessary to resolve that issue to answer the question posed, it inevitably inserts itself in the discussion. *Id* at 647 (flat fee may constitute lawyer windfall if client terminates representation and all fees must be assessed for reasonableness). Reasonableness is always a fact specific determination so it becomes impossible to opine on every permutation of how the course of Lawyer's representation of Client may progress. At one end of the spectrum, the flat fee agreed to seems reasonable for representation through trial; at the other end, it is excessive if Client terminates Lawyer's representation early in the case. What fee is reasonable will inevitably depend on how much and what work is done and the other criteria of Rule 1.5.

5) Fees may not be directly deposited into an operating fund until they are earned without the prospect of refund

We have stated in our prior opinion that a fee arrangement "that would not, under any circumstances" allow for a reasonableness review under Rule 1.5 violates the Rules. South Dakota Ethics Opinion 2000-5A. Here, direct deposit of the full fee in Lawyer's operating account could frustrate repayment of unearned or unreasonable fees. It is therefore not a permissible arrangement under the collective operation of Rules 1.5, 1.15, and 1.16. The Committee concludes that lawyer may not deposit the full \$ [REDACTED] directly into Lawyer's operating account.

In reaching this conclusion, the Committee is persuaded by the reasoning of the Iowa Supreme Court in *Apland*. 577 N.W.2d at 55-56. This is the position of most to have addressed the question. See Lester Brickman, *Nonrefundable Retainers Revisited*, 72 N.C. L. Rev. 1, 41 (1993) citing Lester Brickman, *The Advance Fee Payment Dilemma: Should Payments Be Deposited to the Client Trust Account or to the General Office Account?*, 10 Cardozo L. Rev. 647, 650 n.20, 654 nn. 47-48 (1989). It is the position adopted in Colorado, one of the jurisdictions most tolerant of non-refundable fees. See *In re Sather*, 3 P.3d 403, 411 (Colo. 2000), opinion modified on denial of reh'g, (June 12, 2000). It is the position taken by the Committee here.

The Committee believes that this is a felicitous and harmonious reading of Rules 1.5, 1.15, and 1.16. Additionally, it is superior public policy: it shields client funds from creditors of a lawyer, prevents misappropriation by those lawyers less scrupulous than Lawyer in keeping adequate funds for refunds, and facilitates resolution of a fee dispute by having tracked and segregated funds. *Apland*, 577 N.W.2d at 56. The Committee is persuaded this is the preferable course.

However, it is not the position of all. *See* Professional Responsibility in Criminal Defense Practice, § 7:9, n. 6. While action in conformity with an opinion of the Committee is protected, it is difficult to say that action in conformity with the binding opinions of other jurisdictions is precluded. In short, this is not a situation where the Committee can opine with certainty that its opinion is the necessary course to avoid discipline. That authority lies elsewhere. *See* SDCL § 16-19-29.

CONCLUSION

Lawyer has asked if it is permissible to collect a non-refundable fee then deposited directly into Lawyer's operating account under the circumstances presented. We conclude that it is not.

This conclusion, while simple in the end, does rely on each step in the chain of reasoning. To the degree they are instructive to Lawyer and others, the Committee restates them explicitly:

- A) Flat fees are permissible under the terms and requirements in Rule 1.5.
- B) While a general retainer to guarantee attorney availability may be charged and deemed fully earned when it is charged, a totally non-refundable fee for services typically may not be.
- C) While a lawyer may require an advance fee "retainer" at the outset of the representation, and require replenishment or supplementation of that amount, a lawyer must refund any unearned portions of the fee upon termination of the representation under Rule 1.16(d).
- D) All fees must be reasonable under the criteria of Rule 1.5 and any fee arrangement must not preclude a reasonableness review of the fee.
- E) If a dispute occurs, funds equal to the total fee or amount in dispute must be held segregated from all other funds.
- F) Because a direct deposit of the entire fee into Lawyer's operating account in this case would frustrate achieving these purposes, the Committee concludes that the fee must initially be deposited into Lawyer's trust account to be drawn upon only as fees are earned.

As a final matter, while many of these principles are of general application, the Committee cautions that each fee agreement will likely be fact specific and lawyers should assess those situations individually.

LAWYERS CONCERNED FOR LAWYERS LAWYERS ASSISTANCE COMMITTEE

Your Bar Leadership has been concerned that members needing help with chemical dependency or mental health issues may be reluctant to call State Bar Headquarters to inquire where to seek help. Phone calls seeking help for themselves or a loved one or a partner have always and will continue to be kept strictly confidential. That said, Bar Leadership has determined that a referral agency independent of the State Bar staff may reduce any reluctance to call. Thus, beginning July 1st, we have entered into a contract with Disability Rights South Dakota. Both LCL and LAC committees have provided names and contact information for referrals. You will be provided with the names and phone numbers and 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.

Caribou Coffee Club

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:
cariboucoffeclub@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.

Sand Creek

WORKPLACE WELLNESS

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

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

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

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

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

The Sand Creek website, www.sandcreekeap.com,

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

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

Sand Creek is a HIPPA compliant service.

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Or call 800-632-7643

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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.



State of South Dakota Unified Judicial System



Office of the State Court Administrator

Telephone: (605) 773-3474
FAX: (605) 773-8437

500 East Capitol Avenue
Pierre, SD 57501-5070

June 18, 2019

RE: Summit on Improving Criminal Justice Responses to Those with Mental Illness

Criminal Justice System Stakeholder:

The Unified Judicial System and system partners invite you to attend a Summit on Improving Criminal Justice Responses to those with Mental Illness at the Arrowwood Resort and Conference Center in Oacoma on August 13-14.

With the help of local and national experts, the Summit panels and speakers will examine key decision points in the criminal justice system, starting with the first interaction with law enforcement and concluding with reentry back into the community from jail. The Summit is designed to help participants identify local challenges, existing local resources, and priorities for action. By doing so, each community will leave the conference with a unique action plan to help improve the local response for individuals with a mental illness in the criminal justice system.

One of the purposes of the summit is to increase local collaboration. Participation of the various stakeholders will help each community identify their local strengths and needs, as well as the creation of a local action plan. Our goal is that each community send a multidisciplinary team that includes individuals from the various facets of the justice system. Your involvement in your local process makes you an asset to your team and gives you a unique perspective that can be used to improve the system's response and better serve the community, as well as the individual with a mental illness.

The suggested team composition includes, but is not limited to, the following representation:

- Police
- Sheriff's Office
- Jail Administration
- Judges
- Prosecutors
- Defense Attorneys
- County Commissioners
- Mental Health Providers
- Legislators
- Probation Officers

***Our Mission:** Justice for All*

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

The lack of a full team does not preclude an individual from registering. All are invited to participate.

Attached to this invitation you will find a draft agenda outlining the panels, speakers, and sessions. The summit begins at 1pm on August 13 at Arrowwood Resort and Conference Center in Oacoma. It will conclude the afternoon of August 14. Summit registration can be made at <https://ujsmis.sd.gov/>. While it is not necessary to register as a team, we encourage you to reach out to your other system stakeholders in your area prior to the summit. Participants are responsible for making their own hotel reservations. Information about the hotel blocks is available on the conference webpage.

We look forward to seeing you in August. Please let me know if you have any questions.



Greg Sattizahn
State Court Administrator

South Dakota Sheriffs' Association • State Bar of South Dakota • South Dakota Municipal League • South Dakota Police Chiefs' Association • South Dakota Council of Community Behavioral Health • South Dakota State's Attorneys Association • South Dakota Department of Social Services • Minnehaha County Commission

Summit on Improving Criminal Justice Responses to those with Mental Illness

*August 13, 1-5:15pm
August 14, 8-4pm
Arrowood Resort and Conference Center
1500 Shoreline Drive
Oacoma, South Dakota 57365*

Purpose of Conference

The purpose for convening is to increase local collaboration to better address mental illness in the criminal justice system by engaging law enforcement, jails, courts, and mental health providers.

Conference Objectives

- ❖ Determine local challenges in each community;
- ❖ Identify existing local mental health resources;
- ❖ Develop action plans to better connect people to mental health services at different points in the criminal justice system

Conference Outcome

Participants will leave with a detailed community action plan to disrupt the cycle of criminal justice system involvement among people with serious mental illness. The action plan may include steps to increase opportunities to divert and connect people to mental health services before arrest, in the early part of the court process, and/or when they are released from jail.

Conference Partners

- Unified Judicial System
- Department of Social Services
- State Bar of South Dakota
- South Dakota Municipal League
- South Dakota Police Chiefs' Association
- South Dakota Council of Community Behavioral Health
- Minnehaha County Commission
- South Dakota Sheriffs' Association
- South Dakota State's Attorneys Association

Tuesday, August 13

1:00 Welcome *Chief Justice David Gilbertson*

1:15 Guest Speaker *38th Lt. Gov. Matt Michels*

Session 1: Law Enforcement Challenges and Gaps

Law enforcement contact with an individual with mental illness poses unique challenges to law enforcement when the individual is experiencing a mental health crisis. In a rural state, such challenges can be compounded by geographic difficulties when there are limited resources outside of placing the individual into custody. Session 1 explores ways that law enforcement can be better equipped to address such a situation in a way that is more beneficial for the officer, as well as the individual.

1:40 Panel *Chad Mosteller, Tessa Mitchell, and Sheriff Mike Milstead*

Participants will learn about Crisis Intervention Team (CIT) training and the new statewide CIT Coordinator available to coordinate CIT training in local communities. Additionally, participants will learn about an online crisis response training resource currently in development.

2:15 Work Session 1 Introduction *TBD*

2:20 Work Session: Law Enforcement

Teams will be asked to identify and discuss the following items:

- Law enforcement challenges in responding to crises
- Law enforcement gaps in responding to crises

3:00 Report Out *Greg Sattizahn*

3:15 Break

Session 2: Jail Mental Health Resources and Challenges

By default, some jails have become a frequent provider of mental health services. However, jails are often not fully equipped to handle the needs of individuals with serious mental illness (SMI). Session 2 focuses on jail detention. The work session will challenge participants to consider what services are available to their local jails and what community resources might be available to assist jails.

3:30 Session 2 Introduction *Commander Rob Yantis*

3:40 Work Session: Jail Detention

Teams identify:

- Available resources for jails to provide MH services
- Jail challenges in detaining people with SMI

4:20 Report Out *Greg Sattizahn*

4:35 Panel *Sheriff Kurt Hall and Dr. Tom Stange*

Partnering is one way that rural communities can overcome regional challenges. In South Dakota, there are several examples of local organizations working together to improve the responses to mental illness. During this panel, Faulk County's Sheriff Hall and Dr. Stanage of Lewis and Clark Behavioral Health Services will discuss how local collaboration has improved access to mental health services in local jails.

- 5:00** Wrap-up *Greg Sattizahn*
- 5:15** Day 1 Concludes

DRAFT

Wednesday, August 14

8:30 Welcome *Greg Sattizahn*

8:35 Opening Speaker *TBD*

Session 3: Initial Court Hearing Decision-Making Tools

Interaction with the judicial system is a vital point for any individual involved in the justice system. Defendants with mental health concerns call for unique considerations. Session 4 will present participants with ideas about how initial court hearings can be an opportunity to connect people to services.

8:40 Panel *Judge Patrick McCann, Judge Jeffrey Connolly, TBD*

During this panel, participants will learn how judges in Codington County use mental health information from the jail in court, how the Pennington County Mental Health Court helps individuals post-adjudication, and diversion practices.

9:25 Work Session: Initial Court Hearing

Teams identify:

- Tools and resources judges have available for decision making
- Community-based options or supports judges have available for people with SMI released pretrial

10:00 Report Out *Greg Sattizahn*

10:30 Guest Speaker *Doris Fuller, Treatment Advocacy Center*

11:00 Break

Session 4: Community Reentry From Jail

One way to break the cycle of recidivism for individuals with a mental illness leaving a correctional facility is to connect them to mental health services. Session 4 will explore community mental health resources and ways to connect individuals to these resources.

11:10 Introduction to Session 4 *Terry Dosch*

11:15 Work Session: Reentry

Teams identify:

- Community mental health resources
- How people leaving jail are currently connected to those resources

11:50 Report Out *Greg Sattizahn*

12:00 Lunch

1:30 Guest Speaker *Former Sheriff Gary Raney, Former Ada County (Idaho) Sheriff*

Session 5: Putting it All Together: Creating a Community Action Plan

2:00 Introduction to Session 5 *Minnehaha County Commissioner Cindy Heiberger*

Building off all prior sessions, Session 5 is an opportunity for participants to create a community-specific action plan to address local priorities.

2:15 Work Session: Putting it All Together

Teams Identify:

- Teams do priority setting exercise
- Teams discuss possible solutions using structured questions
- Teams put together a community action plan using template

3:15 Report Out *Greg Sattizahn*

3:45 Conclusion *Greg Sattizahn*

4:00 Summit Concludes

*Agenda subject to change.

General Counsel(Job Id 12021)

Location: Pierre

Employment Type: Permanent Employee

Agency: Education

Post Date: 05/17/2019

Description

PLEASE ATTACH THE ADDITIONAL REQUIREMENTS LISTED AT THE BOTTOM OF THIS PAGE

Job ID: 12021

Agency: Department of Education - Division of the Secretary

Salary: \$79,000 - \$85,000 annually, depending on experience

Closing Date: Open Until Filled

For more information on the Department of Education, please visit <http://doe.sd.gov/>.

The South Dakota Department of Education is seeking a full-time attorney to provide legal services to department staff and associated boards and commissions. This position reports directly to the Secretary of Education and is supported by one deputy attorney and a legal assistant.

Responsibilities include:

- represent the department as a Special Assistant Attorney General in administrative proceedings and litigation in State and federal court;
- provide legal advice and representation to the Secretary, Deputy Secretary, Division Directors of the department, the South Dakota Board of Education Standards, teacher and administrator ethics commissions, and the State Library Board;
- coordinate investigations regarding teacher and administrator ethics issues;
- provide legal advice and counsel to department staff regarding interpretation and application of State and federal laws related to education, schools, public finance, and public agencies;
- lead legislative efforts by drafting bills, advocating for department policies, and testifying before legislative committees;
- draft administrative rules and coordinate the department's rules process;
- respond to legal inquiries from school districts and the public;
- review contracts, joint powers agreements, and related documents;
- other duties as assigned.

Minimal travel required.

This position is exempt from the Civil Service Act.

Licenses and Certifications:

Graduate of an accredited law school. Licensed to practice law in South Dakota or ability to become licensed within one year of employment.

The Ideal Candidate Will Have:

- excellent written and verbal communication skills;
- prior experience or interest in education law and policy;
- the ability to organize and prioritize tasks;
- ability to analyze complex technical issues, facts, evidence and precedents to arrive at a logical

interpretation;

- ability to develop and maintain strong relationships with diverse groups;
- a strong work ethic, interpersonal skills, and a positive attitude.

Additional Requirements: Please attach a resume, cover letter and three references.

The State of South Dakota does not sponsor work visas for new or existing employees. All persons hired will be required to verify identity and eligibility to work in the United States and complete an Employment Eligibility Verification, Form I-9.

The State of South Dakota offers paid employee health insurance plus ten paid holidays, generous vacation leave accrual, and medical, dental, vision, and other benefits. For more information please visit <https://bhr.sd.gov/job-seekers/work-for-state-government/index.html>. This position is a member of Class A retirement under SDRS.

Apply at: <http://tinyurl.com/y4s7e578>

South Dakota Bureau of Human Resources

500 East Capitol

Pierre, SD 57501-5070

Telephone: 605.773.3148 Fax: 605.773.4344

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

ATTORNEYS

Experienced Litigation Attorney – Sioux Falls

Lynn, Jackson, Shultz & Lebrun, P.C., is a progressive and diverse full-service law firm with three offices in South Dakota, serving clients locally, regionally, and nationally. Our Sioux Falls office is seeking to add an experienced attorney to its litigation group. Our Firm's litigation group not only does insurance defense work, but also personal injury, commercial, construction, and trust litigation. The ideal candidate for this position must have at least five years of litigation experience, including trial work, and must be a problem solver and detail-oriented. Candidates for this position must possess excellent written and verbal communication skills, and must be licensed in South Dakota or willing to sit for the next South Dakota bar exam. Lynn Jackson offers a competitive salary, as well as an excellent benefit package, and our attorneys are provided with the latest in technology and continuing education to assist in their practice area. All applications will be confidential and should be directed to Eric Kerkvliet, 110 N. Minnesota Ave., Suite 400, Sioux Falls, SD 57104 or ekerkvliet@lynnjackson.com.

Attorney – Department of Revenue: Pierre

Innovation – We are always looking for new ways to push forward and evolve.

Professional growth – We provide new challenges for you to tackle and provide valuable trainings.

Career development – Investing in our employees' development through our onboarding, mentoring, and leadership programs.

Who we want

- An attorney interested in practicing within a broad range of legal subjects, including, but not limited to: taxation, Indian law, motor vehicle, alcoholic beverages, tobacco, lottery, and gaming.
- A highly motivated and experienced attorney with a

passion for service and desire to make a difference.

- A dedicated individual who will represent the Department of Revenue with strong leadership skills and legal advice on a wide range of highly visible and sensitive issues.

What you will do

The duties of the Attorney include:

- Representing the department before state and federal court.
- Preparing briefs and participating in oral arguments.
- Providing legal services to all divisions with the department.
- Drafting administrative rules and assisting with the promulgation process.
- Providing legal advice to the Secretary, Deputy Secretary, and Division Directors of the department.
- Drafting and reviewing contracts and Requests for Proposals.
- Collaborating with other State agencies and departments.

What you need

Education/Licenses:

- Graduate of an accredited law school.
- Licensed to practice law in South Dakota or ability to become licensed within six months of employment.

The ideal candidate will have:

- Experience in state and federal court.
- Knowledge of litigation practice and strategies.
- Prior experience or interest in Indian law.
- Excellent written and verbal communication skills.
- Ability to analyze complex technical issues, facts, evidence and precedents to arrive at a logical interpretation.
- Ability to develop and maintain strong relationships with diverse groups.

Equally as important will be a strong work ethic and interpersonal skills, discretion, confidentiality, and a positive attitude!

Salary: \$65,000 - \$85,000 annually, depending on experience. Apply on line at <http://bhr.sd.gov/workforus> and reference job #11916.

FINANCIAL INSTITUTION EXAMINER—South Dakota Division of Banking

The Division of Banking is seeking inquisitive and analytical applicants with excellent communication skills to join our team of professional Financial Institution Examiners in Pierre or Sioux Falls. The Division regulates the state's banking, trust, and financial services industries to assure confidence in financial markets and services. Examiners determine the condition of state-chartered banks, trust companies, and other licensed financial institutions; evaluate adequacy of internal control procedures; determine compliance with State and Federal statutes related to banking, trust, licensing, and consumer protection; evaluate trust and loan administration and corresponding investment portfolios for prudence, quality, and suitability; make recommendations on findings; and investigate consumer complaints related to supervised financial institutions.

Bachelor's degree in banking, finance, accounting, business, economics, or a related field, and advanced degrees (JD, MBA, etc.) preferred.

Starting salary: \$40,000 - \$45,000 annually, depending on experience. Excellent training and salary advancement opportunities.

No previous examination experience necessary.

Overnight travel is required. For more information visit <https://bhr.sd.gov/job-seekers/work-for-state-government/index.html>. Apply at: <http://tinyurl.com/y2syfka5>. "An Equal Opportunity Employer"

To be considered, please attach a letter of interest, post-secondary transcripts, and a writing sample. The State of South Dakota offers paid employee health insurance, ten paid holidays, generous vacation leave accrual, plus medical, dental, vision, and other benefits.

Special Assistant U.S. Attorney: Rosebud Sioux Tribe

Closing Date: Ongoing

Salary: DOE

Qualifications:

Applicants must possess a J.D. degree, be an active member of the bar in good standing, as well as being admitted to practice in federal court, District of South Dakota, (applicants not licensed in South Dakota will have one year to gain admittance to the South Dakota Bar), and have at least 2 years post-J.D. professional experience. Outstanding academic record, criminal

litigation experience, including trial and courtroom experience. Experience in managing investigations and violent crime experience, as well as appellate experience and strong legal research and writing ability. Investigative grand jury experience would be helpful. Experience in Indian Country criminal prosecution is preferred.

The appointment is subject to the completion and a favorable adjudication of any background checks required by Rosebud, the U.S. Attorney's Office (USAO), and the United States Department of Justice. Completion of Questionnaire for Public Trust Position https://docs.wixstatic.com/ugd/724f9e_4dc5004377d24908b72cf675f7c9ec27.pdf and the Investigative Questionnaire for Law Enforcement Position https://docs.wixstatic.com/ugd/724f9e_9439c43c8dc24634ac18364d88ed7773.pdf

In addition to the documentation listed above, the Rosebud Sioux Tribe requires that you complete its application found at https://docs.wixstatic.com/ugd/ed1fef_fa630cec5fb140beb2fb43e15f823075.pdf and send to the address listed on the Application. No packets will be processed or considered without all of the information requested. Please include resume and cover letter.

Responsibilities shall include, but not be limited to working full time on the investigation and prosecution of cases concerning domestic violence, dating violence, sexual assault, human trafficking, stalking, and related offenses, that are committed within the boundaries of the Rosebud Sioux Indian Reservation. Although cases of sexual assault involving young children may be covered by this project, the USAO and the Rosebud Tribe will prioritize using resources allocated to this project to investigate and prosecute cases where adult and adolescents are victimized.

The Tribal SAUSA will divide their time between Rosebud and the USAO. The Tribal SAUSA will have responsibilities at the USAO in Pierre, South Dakota, and Rosebud, South Dakota. The Tribal SAUSA will spend the first 120 days of work exclusively at the USAO in Pierre. Thereafter, the Tribal SAUSA will develop a schedule, with the approval of Rosebud Sioux Tribe and the USAO, keeping in mind the purpose of the OVW grant that created the position. The Tribal SAUSA shall be subject to the same laws, rules, regulations and policies as are applicable to all federal employees of the Department of Justice, the

Executive Office for United States Attorneys and the United States Attorney's Office, including personnel policies and procedures and ethics laws, regulations, and policies. These include the standards of ethical conduct for employees of the Executive Branch, 5 C.F.R. Part 2635; supplemental standards of ethical conduct for employees of the Department of Justice, 5 C.F.R. Part 3801; federal conflict of interest laws, 18 U.S.C. Sections 202-211; and political activity restrictions, 5 U.S.C. Section 7321 et seq.

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COMPLIANCE MANAGER

Operations/Compliance Manager - Pierre

Reports to: Chief Financial Officer

The Operations/Compliance Manager is a newly created position responsible for the policies, systems, and practices that drive the work of the Foundation. Leading the Foundation's administrative practices and compliance protocols while challenging the Foundation to complete continuing systems improvement requires high attention to detail and an ability to zoom out to see and apply best practices in the industry. This individual must be comfortable working in a fast-paced environment and possess the ability to be proactive in managing competing priorities. The successful candidate will have excellent interpersonal skills and a high level of integrity and professionalism.

Compliance

- Provide structure and oversight to fund administration ensuring accuracy is maintained and donor intent is followed
- Ensure funds are administered in accordance with fund agreements
- Ensure the expenditure of funds complies with the terms of the gift instrument, applicable legal and accounting standards, and Foundation policy

- Review and approve all fund agreements prior to execution
- Review and approve changes to existing fund agreements
- Maintain endowment and gift documentation and its accessibility to end users
- Promote best practices that result in greatest utilization of gift funds consistent with applicable legal standards and foundation policies
- Provide interpretations of donor intent as matters arise
- Coordinate with development team on periodic stewardship reports as needed
- Provide oversight of fee structure for funds

Systems Management

- Oversee administrative processes and ensure efficient operating systems
- Construct and monitor reliable risk management systems including disaster preparedness
- Create, monitor, and refine policies and procedures to provide responsive customer service within control structure and applicable laws and regulations
- Ensure key processes and timelines are documented in all departments
- Act as an advisor to SDCF's business operations
- Assist with internal control processes to ensure adequate control environment
- Maintain official records of SDCF and ensure directors have resources and information required to fulfill fiduciary duty
- Monitor administrative policies and procedures in human resources
- Oversee maintenance and updating of employee policies and handbook
- Lead in assuring physical plant, technology, and capital equipment plan are keeping pace with Foundation growth

Program Administration

- Provide input, structure, and process for Foundation grantmaking programs, including Nonprofit Savings Account (NSA) and, Community Savings Account (CSA) programs to help ensure efficient and successful programs
- Assist with ad hoc reporting required by third party funding agencies, fundholders, and other constituent groups
- Ensure that SDCF remains in compliance with national standards for community foundations

Desired Education and Experience

- Minimum Bachelors level degree, masters preferred

- At least five years of progressive professional work experience
 - Legal, business, finance, project management, philanthropy or related field with demonstrated experience in policy, procedures, practices, and systems improvement applications is desired
- This position is based in Pierre. For a complete job description and required qualifications, please email info@sdcommunityfoundation.org.



THE STATE BAR OFFICE

WILL BE CLOSED JULY 4&5, 2019

SO STAFF CAN SPEND TIME WITH FAMILY.



HAPPY INDEPENDENCE DAY!!





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Law For Lunch.....	July 16.....	
Bar Commission Retreat.....	July 23-24.....	Drifters, Pierre
Disciplinary Board.....	September 12-13.....	Lodge at Deadwood
2019 Estate Planing CLE.....	September 20.....	Ramkota, Sioux Falls
Swearing In Ceremony.....	October 18.....	Pierre
September Law For Lunch.....	September 26.....	
Nuts & Bolts. CLE	October 18.....	Red Rossa, Pierre
Disciplinary Board.....	January 9-10, 2020.....	Red Rossa, Pierre