



# State Bar of South Dakota

# 2020

## VIRTUAL ANNUAL BUSINESS MEETING

JUNE 18, 2020

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9:30 AM CST

JUNE  
2020  
NEWSLETTER

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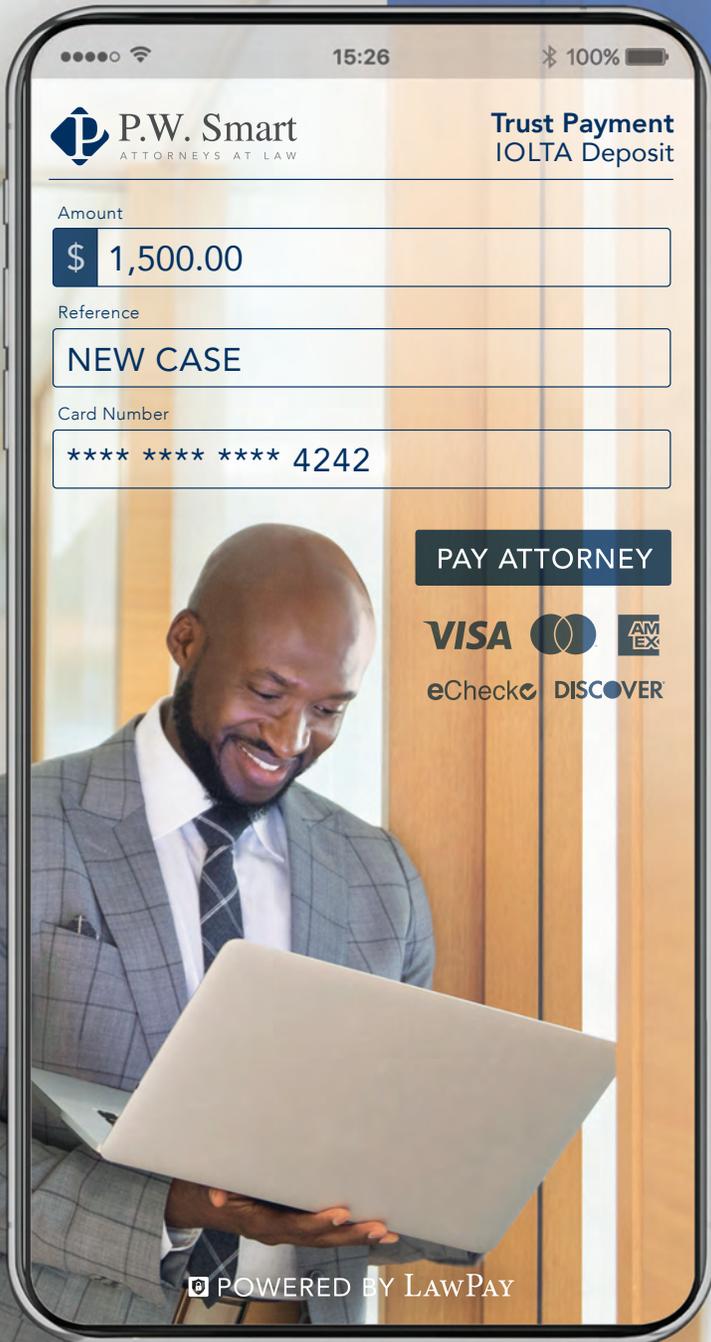
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State Bar of South Dakota



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# State Bar of South Dakota

June 2020

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# President's Corner

Steven K. Huff

## *A Final Word/Requiem of a Presidential Term*

I took a late lunch break. With my kids at home for the summer, I called to ask them if they wanted lunch and, of course, they did. They went with their regular orders at Jimmy Johns. Abby had the #6 Veggie and Nathan the #7 Spicy Italian.

It was a really nice mid afternoon day and after a long week, it was nice to see some sun, taking in the day with CCR blaring through the 87 Camino. Even the guy handing me the order said he was hoping to get off early to enjoy the day with a ride out to the lake.

I got home and the kids were chipper. Nathan was enjoying some Guitar Hero and Abby and he were talking current affairs, politics and just funny/stupid things they see or hear on Twitter. We had our sandwiches and as I drove back to work, I lamented how I was going to miss things like that when Nathan heads off to Wayne State University this fall.

In some ways, I feel the same way about this one year term. It's been a wild, Okoboji roller coaster ride kind of year which started at the annual convention with final disposition of 8.4(g), then the process of moving state headquarters to a new location, to all the fun one could possibly have in the midst of the pandemic.

Yet, I have guarded optimism for our collective futures. I think there will be more demand for legal services. I know there will be more demand for pro bono services.

I know we have good people both in house as your bar leadership and staff. Despite sometimes failing them with my intemperance or unavailability, they were always there to help. I also know we have a good

commission that will only get better over the next few years. We will face challenges and most likely a dues increase sooner rather than later, but I know we can all work together to make it work best for all.

I deliberately did not start naming individuals who were essential to my personal and our collective successes. The list would be too long and cumbersome and I would likely forget some names that were truly deserving of mention.

I just want all of you to know how much it meant to me that I could lean on you this year and I owe you for your guidance, candor and assistance. A special thank you to my wife, my kids and family and to my partners, associates and staff at the MWH home office for your help leading up to and through this term.

I will be taking a bit of a break once our June virtual meeting concludes, but I can promise you this, from time to time, I will just drop in to see what condition our condition is in.

Yes, that's a Kenny Rogers reference. Give it a listen, it will not disappoint.

<https://www.youtube.com/watch?v=AULOC--qUOI>



# YOU ARE INVITED TO JOIN!

## Fellows of the South Dakota Bar Foundation

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

Full Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

*I would like to contribute:*

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- Life Patron Fellow – \$100,000 or more, cumulative.
- Sustaining Life Fellow – \$50,000 or more, cumulative.
- Life Fellow – \$25,000 or more, cumulative.
- Diamond Fellow – over \$10,000, cumulative.
- Platinum Fellow – \$10,000, cumulative.
- Gold Fellow – \$5,000, cumulative.
- Silver Fellow – \$1,000 per year.
- Fellow – \$500 per year.

### In Memoriam

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

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

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

Or you can email this form to:

[tracie.bradford@sdbar.net](mailto:tracie.bradford@sdbar.net) or call 605-224-7554 to set up a payment.

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



STATE BAR OF SOUTH DAKOTA  
YOUNG LAWYERS SECTION



by: Nathan Chicoine  
YLS President

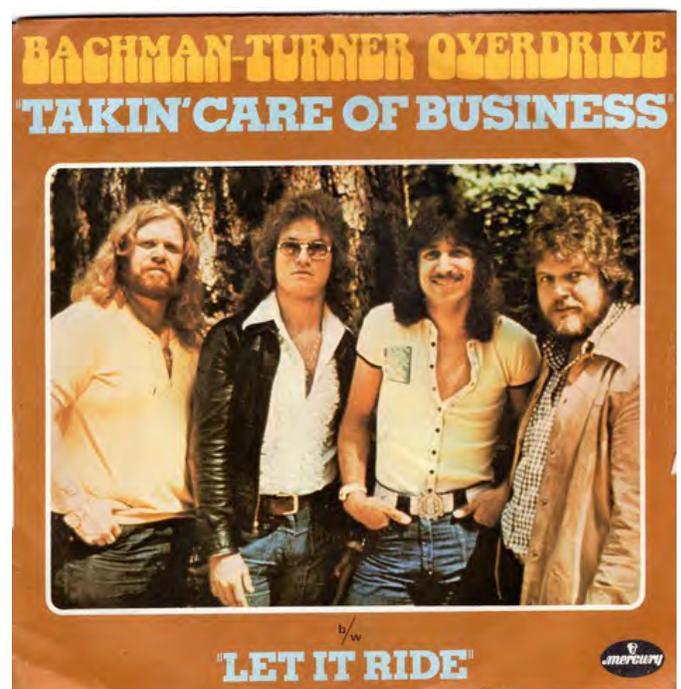
The Annual Meeting is going to be different this year, but Young Lawyers is still going to TCB – Take Care of Business. We will elect new board members in even-numbered circuits and will elect officers. Nominations can still be taken during the annual meeting for anyone interested in taking on a leadership role. Young Lawyers will also announce the Young Lawyer of the Year award. While we won't have a reception to honor the recipient, all state bar members present at the annual meeting will be able to recognize the recipient's achievement. For all other Young Lawyers Section business, you can reference my annual report.

The Annual Meeting will serve as the end of my term as President of the Young Lawyers Section. I have enjoyed my time serving the State Bar and working with other bar leaders and young lawyers to foster connections and mentorship, provide CLE programming to our members, and to serve the public. Involvement in the State Bar presents opportunities to network and make friends among other bar members, to broaden one's knowledge, and to serve the community. As part of my sendoff, I'll use the platform to encourage all young lawyers to get involved with your local or state bar organization. It will take only a small fraction of your time, and I promise you will find it rewarding.

I now introduce President-Elect Caroline Srstka who will take the reins in serving as the Young Lawyer Section President. Carrie has helped me tremendously, and I'm confident she will continue to TCB throughout the next year and will improve and expand upon the foundation that has been laid by past young lawyers. That said, special thanks to Tamara Nash, Steve Huff, bar commissioners, Andy Fergel, Nicole Ogan, Tracie Bradford, and Elizabeth Overmoe for guiding the board and me through this year's programs. I also owe thanks to

the other Board members who dedicated their time and energy during the past year – Ole Olesen, Bert Bucher, Anthony Sutton, Tony Teesdale, Mariah Bloom, Jenny Jorgenson, Holly Farris, Kelsey Weber, Kelsey Knoer, Tyler Coverdale, and Whitney Petersen. These board members carried the load of organizing and executing programming this year, and I greatly appreciate their efforts.

I must also take the opportunity to thank my law partners for picking up my slack and helping me find the time to serve on the Young Lawyers Section Board. Michael DeMersseman served as Young Lawyers President in 1973-1974, and we've enjoyed sharing stories and discussing the similarities and differences in our respective terms. I am reminded that we all share the connection of having been a young lawyer at one time. I have enjoyed connecting with other lawyers over the year and look forward to the next chapter.





## YOUNG LAWYERS SECTION STATE BAR OF SOUTH DAKOTA

### **PRESIDENT**

NATHAN CHICOINE  
P.O. Box 1820  
516 Fifth Street  
Rapid City, SD 57709  
(605) 342-2814  
Nathan@demjen.com

### **PRESIDENT-ELECT**

CAROLINE SRSTKA  
2000 52<sup>nd</sup> Street North  
Sioux Falls, SD, 57104  
(605) 367-5880  
Caroline.Srstka@state.sd.us

### **SECRETARY/TREASURER**

OLE OLESEN  
130 Kansas City Street Ste 310  
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(605) 394-2181  
Ole.Olesen@pennco.org

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May 26, 2020

South Dakota State Bar  
University of South Dakota School of Law

### STATEWIDE SWEARING-IN CEREMONY CHANGE OF DATE

Dear Members of the Bar:

Please be advised that the 2020 Statewide Swearing-In Ceremony has been rescheduled for **Friday, November 6, 2020**, at 3:00 p.m. The Ceremony will be held at the Capitol Rotunda in Pierre, South Dakota.

Our new lawyers look forward to this event every year and we are happy to assist in making the day special for them. The Young Lawyers Section very much appreciates the participation of members of the State Bar, and we look forward to another successful event.

Thank you for your continued support of the Young Lawyers Section.

Sincerely,

Caroline A. Srstka  
President-Elect

# 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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## Sustaining Life Fellow - \$50,000 plus

(cumulative, including pledges & testamentary gifts)

- \* Fred & Luella Cozad

## Life Fellow - \$25,000 plus

(cumulative, including pledges & testamentary gifts)

- \* Frank L. Farrar

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## Diamond Fellows - \$10,000 plus

(cumulative, including pledges & testamentary gifts)

- \* Thomas C. Barnett, Jr.
- \* Robert E. Hayes

## Platinum Fellows - \$10,000

(cumulative, including pledges & testamentary gifts)

- \* Hon. Richard H. Battey
- \* Hon. John B. Jones
- \* Scott C. Moses
- \* Charles L. Riter
- \* William Spiry
- \* Hon. Jack R. Von Wald

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## Gold Fellows - \$5,000

(cumulative, including pledge)

- \* Richard A. Cutler
- \* William F. Day, Jr.
- \* P. Daniel Donohue
- \* Dana J. Frohling
- \* Richard L. Kolker

## Silver Fellows - \$1,000 (per year)

- \* Kimberley A. Mortenson
- \* William C. Garry
- \* Timothy J. Rensch
- \* James E. Smith

# Fellows of the South Dakota Bar Foundation

## Presidential Fellows - \$10,000

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- \* Hon. Charles B. Kornmann
- \* Bob Morris
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- \* Stephanie E. Pochop
- \* Reed A. Rasmussen
- \* Pamela R. Reiter
- \* Robert C. Riter, Jr.
- \* Eric C. Schulte
- \* Jeffrey T. Sveen
- \* Charles M. Thompson
- \* Richard L. Travis
- \* Thomas J. Welk

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## Fellows - \$500 (per year)

- \* Hon. John Bastian
- \* Hon. John L. Brown
- \* Mary Jane Cleary
- \* Andrew L. Fergel
- \* Craig A. Kennedy
- \* Hon. Bobbi Rank
- \* Thomas Eugene Simmons
- \* Jason R.F. Sutton
- \* Barry R. Vickrey



Our Profession. Our Responsibility.

## Dean's List: News from the Law School



by: *Neil Fulton*  
*Dean*  
*USD School of Law*

I am excited to welcome another guest columnist this month. Tove Hoff Bormes is the new USD Foundation Law School Development Representative. While Tove is new to this role, she is not new to USD Law. She is a 1995 alumna of the Law School, so this is not “hello,” but rather “Welcome Home!”

A few things make me particularly excited to welcome Tove home. First, her career has given her many connections in many settings across South Dakota. She is exceptionally prepared to help broaden and deepen the Law School’s community and connections as a result. Second, she is passionate and prepared to help tell the Law School’s story. When we first sat down over coffee to talk about this role, it was clear how much Tove loves the Law School, talking about how it can contribute to South Dakota, and how to find ways for alumni and friends to be connected to it. She will be a great ambassador for the Law School. Third, and most important to me, she shares my vision for how to approach development work.

All too often, “development” gets oversimplified to just asking for money in a transactional fashion. To truly sustain an organization, however, it needs to be something much deeper and holistic. It must be about connection. It must be about building partnerships to advance goals your partners are passionate about. For the Law School, that means finding ways to welcome home all our alumni and friends in different ways. It means providing those of you passionate about mentorship the chance to assist in preparing our competition teams or hosting students in internships. For those of you with gifts in strategic thinking, it means providing guidance about trends in the law and how to respond as a profession. For those of you passionate about your area of practice expertise, it means serving as an adjunct professor. There are boundless opportunities for people to be engaged—finding the proper match

of partner and partnership is central to my vision of development. People will invest their time, talent, and treasure in ideas and causes that matter to them and that they are connected to. My goal for development is to draw everyone into the Law School community in the ways that work for them, not just asking for money. THAT sustains the Law School in the longer term. We’ve seen that in the COVID-19 disrupted world as so many of you have stepped forward as allies to host students, advise me, offer support, and keep the Law School community vital and engaged. Tove shares that vision and I am excited to welcome her home and let her introduce (or reintroduce) herself to all of you.



Thank you, Dean Fulton for that glowing introduction. As someone who delights in both strategic planning and philanthropy, I am heartened by the challenges my new career with USD School of Law and the USD Foundation offer. But first, allow me to introduce myself, and the diverse career path that has brought me here.

My path after law school has not been a conventional one, which will not come as a surprise to those of you who know me. After a clerkship with the 5th Circuit and a short stint in private practice, I took a position with Northern State University teaching law and government courses. I earned tenure with NSU in 2003. In 2005, I left to join my husband in Sioux Falls to operate Rug & Relic, a direct import business specializing in Turkish antiquities. While international trade was not even remotely part of my ten year plan when I finished law school, the number of times my legal education was vital to negotiating the labyrinth of regulatory challenges of the next sixteen years made every hour spent at the Law School worth its weight in gold.

A major portion of our strategy for Rug & Relic was to build and maintain a strong national following via our website, which we launched in January of 2010. As anniversaries often do, the arrival of 2020 brought thoughts of change; when the numbers indicated it was possible to close our retail location in favor of an online-only/warehouse operation, we began to slowly roll out the idea to friends and business associates. As such things typically go in South Dakota, as soon as I let people know I was looking for a new mission, several friends connected me and the USD Foundation position and I jumped at the chance!

For some, the idea of “jumping at the chance” to be a development professional may seem a bit foreign. Who actually enjoys asking for money, right? I’m no exception there, either. But here’s the thing: at its core, development is all about strategy. It is about shaping a vision of the future, developing a means for getting there, and about empowering those who care about the institution to contribute their time, talents, and yes, money in furtherance of those goals. In my first meeting with Dean Fulton, it was immediately

obvious to me he understands how important strong relationships between the law school, alumni, and institutions like the SD Bar Association are to the health of legal practice in South Dakota. His passion for South Dakota is apparent, his vision for USD Law is clear, and I am delighted to be charged with putting together the brass tacks to facilitate that vision.

Yes, that includes raising money. What doesn’t? But it’s also about building connection and community to foster the institution – and the profession - that gave each of us what we needed to prosper. It’s about ensuring that the next generation of aspiring attorneys have the same opportunity for a quality South Dakota legal education that so many of us enjoyed. It’s about a transformative vision for what the Law School can provide to the State of South Dakota, its economy, and most importantly, its people. My job is to facilitate those who share that vision to advance their philanthropic goals, whether that be through financial gifts, or through enhancing opportunities for connection between alumni and our student body. I look forward to becoming reacquainted with old friends, and meeting new ones!

**PANDEMIC RESOURCES BLOG**

**CLICK HERE**

**EXTRA ARTICLES AT YOUR FINGERTIPS**

**PLEASE SHARE ARTICLES FOR THE BLOG WITH NICOLE OGAN!**

# A2J JUSTICE SQUAD

Thank you to the following attorneys for accepting a pro bono or reduced rate case from Access to Justice, Inc., this month! You are now a member of the the A2J

Justice Squad - an elite group of South Dakota lawyers who accept the responsibility to defend justice, uphold their oath and provide legal representation to those who need it.

- **MEGHANN JOYCE**
- **DUSTY GINSBACH**
- **CLAIR GERRY**
- **MARILYN TREFZ**
- **REBECCA RONAYNE**
- **PAUL ENGEL**

AND MUCH THANKS TO:

Scott Moses

Beth Baloun

Sarah Bouwman

Joseph Hogue

Kyle Krause

Margaret Bad Warrior

FOR THEIR HELP ON  
SD FREE LEGAL ANSWERS!

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

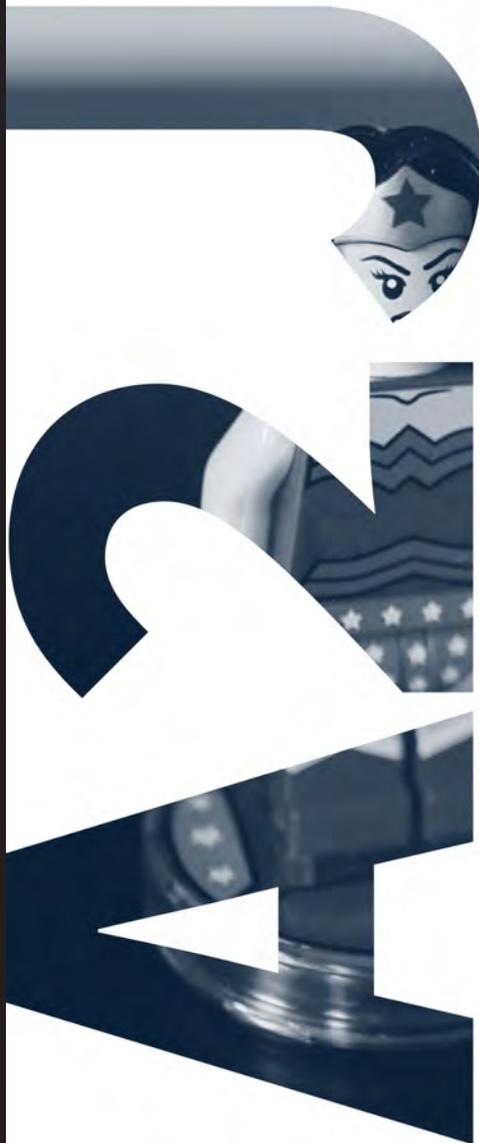
PLEASE SEND A MESSAGE TO DENISE LANGLEY AT:  
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“  
ALTHOUGH  
THE  
WORLD  
IS FULL  
OF  
SUFFERING,  
IT IS  
ALSO  
FULL OF  
OVERTCOMING  
IT.”

“  
**HELEN KELLER**

**TRIVIA: Helen Keller  
was born June 27, 1880**



## HERO

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

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

*by: Chuck Schroyer*

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



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

a practice in Huron.

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



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

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

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

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

Since announcement of the donor opportunities for State Bar Members to assist with the funding of the statue of Governor Coe Crawford to be placed near the front door of the new Bar Headquarters, the following members and friends of the Bar have contributed:

Jason Glodt and the Glodt Family will be sponsor donors of one quarter of the cost.

Robert C. Riter, Jr. of Pierre

Bill Van Camp, Jr. of Pierre

Bob and Kim Hayes of Sioux Falls

Ron Schmidt and Chuck Schroyer, formerly of the Firm Schmidt, Schroyer, Colwill, Zinter & Barnett, PC of Pierre, in Memory of their deceased former partners, Gary F. Colwill & Steven L. Zinter.

Several other members have indicated an interest in participation. The names of all donors will be included on the Trail of Governors website and in future editions of the Newsletter.

**T H A N K  
Y O U!**

# ANNOUNCEMENTS

## ANNUAL BUSINESS MEETING

THURSDAY | JUNE 18 | 9:30AM CST

2020

### YOU'RE INVITED

## Statewide Swearing-In Ceremony

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

3:00 P.M.  
Friday, November 6

Capitol Rotunda  
Pierre, South Dakota



Please **RSVP** by October 23rd to  
Caroline.Srstka@state.sd.us  
Or (605) 367-5883

Reception to  
Follow

# BILL GARRY

**CANDIDATE  
FOR 2020  
BAR PRESIDENT  
ELECT**



I hope you will join me in the Annual Meeting to be conducted via Zoom on June 18, 2020, commencing at 9:30 Central Time.

## **ANNUAL BUSINESS MEETING**

We are going virtual.



**REGISTER  
HERE!**

# RETIREMENT ACCOUNTS: PLANNING FOR INHERITED ACCOUNTS AND FOR MARITAL RIGHTS

**PROFESSOR CHRISTOPHER R. HOYT,  
UNIV. OF MISSOURI SCHOOL OF LAW**



**September 18,  
2020 8:30 am**



**Ramkota  
Hotel,  
Sioux  
Falls**

The SECURE Act eliminated the “stretch IRA” for inherited retirement accounts. This session will explain the new rules and various planning strategies that can reduce taxes and thereby increase benefits for both family and charity. In addition, the session will examine the legal rights that one spouse has in the other spouse’s retirement assets. The rules for 401(k) plans are different than those for IRAs. What are each spouse’s rights? What arrangements and strategies can avoid unpleasant surprises?

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

**JOE DYLLA, CHAIR**

**Registration will  
open this summer.**

[www.statebarofsouthdakota.com](http://www.statebarofsouthdakota.com)

# AUDIT REPORT

2018/19 COMBINED  
FINANCIAL REPORT  
SD STATE BAR  
SD CLE, INC.  
A2J, INC.

CLICK HERE  
(LOGIN REQUIRED)



## LAW PRACTICE FOR SALE DEADWOOD, SOUTH DAKOTA

### RACHETTO LAW OFFICE

A profitable legal practice is for sale to an attorney who would like to take over a retired attorney's practice. This law firm has been in Deadwood for over 40 years and has numerous ties to the community and a great reputation. The law firm recently relocated to a great new location with parking and a view at 470 Main Street in Deadwood.

The leased building has multiple office spaces available and is shared with an accountant and his staff.

**QUALIFICATIONS:** Applicants must have a JD degree and be licensed to practice, or by reciprocity to be able to obtain a license to practice, in South Dakota or be qualified to take the next South Dakota Bar Exam. Must be willing to take over current cases as needed. This is a great opportunity for a self-motivated attorney to take over an existing practice with potential to grow.

**SALE PRICE:** Asking \$60,000 but willing to negotiate.

**CLOSING DATE:** Open until sold.

**CONTACT INFORMATION:** Aprille Ostert abostert1@gmail.com  
**PHONE:** 910-315-4327



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# *50 - Year Veterans*

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*Robert D. Hiaring, Billings, MT*

*Phil N. Hogen, Black Hawk*

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*Congratulations*

# WE HAVE HIS T ORY WITH YOU

**South Dakota, you've been with us since the beginning. We're proud to be here for you now.**

The State Bar of South Dakota is one of the original four state bars that came together to form ALPS back in 1988 at a time when lawyers' malpractice insurance was either unaffordable or inaccessible, particularly for the rural legal community. We're still here for South Dakota lawyers, during the COVID-19 crisis with risk management resources, CLE or just a listening ear.



**Stay safe. Stay healthy.**  
[alpsinsurance.com/wearehereforyou](https://alpsinsurance.com/wearehereforyou)



**The deadline for the 1<sup>st</sup> annual Diversity & Inclusion award has been extended to**

**June 30, 2020!!**

## **1<sup>st</sup> Annual Diversity and Inclusion Award**

***Sponsored by: The Lawyers Committee on Diversity and Inclusion***

On behalf of the State Bar of South Dakota's Lawyer's Committee on Diversity and Inclusion (LCDI), nominations are being sought for the first annual Diversity and Inclusion Award.

### **Purpose**

The Diversity and Inclusion Award serves to recognize members of the State Bar of South Dakota who actively promote diversity and inclusion in the legal profession. Recipients of the award contribute to and enhance the environment of inclusion in the legal profession, particularly in South Dakota.

### **Eligibility Criteria**

To be eligible to receive the Diversity and Inclusion Award, an individual must be a member in good standing of the State Bar of South Dakota and must demonstrate an exceptional understanding of diversity and inclusion beyond the call of duty as represented by the following criteria:

- Enhances inclusion through positive communication between persons of different backgrounds
- Demonstrates a commitment to the values of diversity and inclusion through documented efforts that are above and beyond the routine expectations
- Develops innovative methods for increasing and valuing diversity through wide-ranging activities
- Demonstrates outstanding efforts to promote an environment free from bias and discrimination
- Organizes, creates, and facilitates various professional or community events promoting diversity, respect, and inclusion
- Shows efforts to recruit and retain individuals who increase the diversity of the State Bar of South Dakota
- Promotes the sponsorship of, or active participation in, programs, initiatives, or projects in the area of diversity and inclusion

### **Nomination Criteria**

Individuals may nominate a member of the State Bar of South Dakota by submitting a Nomination Form. Completed Nomination Forms, and attachments thereto, may be emailed to [access.to.justice@sdbar.net](mailto:access.to.justice@sdbar.net) or mailed to:

**Diversity & Inclusion Award Committee**  
**C/O Access to Justice, Inc.**  
**111 W. Capitol Ave. #1**  
**Pierre, SD 57501**

Deadline: Nominations must be received by ~~Tuesday, March 31, 2020~~ **Tuesday, June 30, 2020.**

For further information, please contact Denise Langley, Access to Justice, Inc., at [access.to.justice@sdbar.net](mailto:access.to.justice@sdbar.net) or by phone at 855-287-3510.

### **Nomination Process and Presentation of Award**

Every year in the spring, the Lawyers Committee on Diversity and Inclusion (LCDI) will publish an invitation in the South Dakota State Bar Newsletter soliciting nominations for the Award. To be considered, nominations must be received by LCDI no later than ~~March 31~~ June 30, 2020. Each nomination should include a brief synopsis of the nominee's commitment to diversity, inclusion, and equal participation in the legal profession. Each nominee's materials will then be reviewed by a subcommittee of the LCDI. The LCDI will then, by a majority vote, select one or more recipients who best exemplify the eligibility criteria. All recipients of the Award will be notified no later than ~~May~~. ~~The Award will be presented during the State Bar annual meeting in June. The Awards will be presented by a representative of the LCDI (to be determined at a later date).~~

**2020 Diversity and Inclusion Award  
Nomination Form**

**1. Nominee Information**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

**2. Nominator's Information:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

*How do you know the Nominee:* \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**3. Synopsis**

*A one-page synopsis must be attached to this nomination form. The synopsis should clearly identify the qualifications & attributes of the nominee.*

Completed nomination forms, and attachments thereto, are to be emailed to:

[access.to.justice@sdbar.net](mailto:access.to.justice@sdbar.net)

Or mailed to:

**Diversity & Inclusion Award Committee  
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Deadline: **Nominations must be received by Tuesday, June 30, 2020.**



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## BOARD OF BAR COMMISSIONERS

Minutes, March 19, 2020

Meeting Held by Teleconference

President Steve Huff called the meeting to order at 9:00 a.m. on Thursday, March 19, 2020. Present by telephone were: President Huff, President Elect Westergaard, Commissioners Aasen, Christensen, Ginsbach, Hruska, Kempema, Roby, Tobin, Willert, Williams, Wurgler, and Zea. Also present by telephone were Secretary-Treasurer Andrew Fergel, Strategic Plan Coordinator Elizabeth Overmoe and Assistant Director Nicole Ogan.

Minutes of February 28, 2020 Bar Commission Meeting: Commissioner Aasen made a motion to approve the minutes of the February 28, 2020 Bar Commission meeting. The motion was seconded by Commissioner Willert. Motion passed.

Executive Director's Report: Executive Director Fergel updated the Commission on the 2020 legislative session and things staff has been working on since the February teleconference.

Judicial Qualifications Commission Appointments: President Huff informed the Commission that the first terms of Mark Haigh and Rebecca Porter on the Judicial Qualification Commission ("JQC") were coming to an end. President Huff asked the Commission to reappoint each to a second term on the JQC to become effective at the end of their current terms. A motion was made by Commissioner Tobin to appoint both Mark Haigh and Rebecca Porter to a second term on the JQC to become effective after the expiration of their current terms. The motion was seconded by Commissioner Kempema. Motion passed.

Miscellaneous: During the meeting, the Commission also discussed the Supreme Court's letter to the Bar concerning the Rule 8.4 proposed amendment, the Bar's preparation for the COVID-19 pandemic, and the April Bar Commission meeting. No formal action was taken on these items.

Motion to Adjourn Meeting: A motion was made by Commissioner Willert to adjourn the meeting. The motion was seconded by Commissioner Kempema. The motion passed and the meeting was adjourned.

Respectfully submitted,

Andrew L. Fergel  
Secretary-Treasurer

BOARD OF BAR COMMISSIONERS  
Minutes, April 1, 2020 Special Meeting  
Meeting Held by Teleconference

President Steve Huff called the meeting to order at 9:00 a.m. on Wednesday, April 1, 2020. Present by telephone were: President Huff, President Elect Westergaard, Commissioners Aasen, Christensen, Ginsbach, Hruska, Kempema, Pilcher, Roby, Tobin, Trefz, Willert, Williams, Wurgler, and Zea. Also present by telephone were Secretary-Treasurer Andrew Fergel, Strategic Plan Coordinator Elizabeth Overmoe, Access to Justice Co-Coordinator Denise Langley, and Assistant Director Nicole Ogan.

Request of ERLS for Bar to Sign on to Letters to Governor and Supreme Court concerning Moratorium on Eviction Proceedings: East River Legal Services drafted letters to Governor Noem and Chief Justice Gilbertson asking both, in some form, to order the suspension of eviction and foreclosure proceedings during the COVID-19 pandemic. ERLS asked that the State Bar sign on to the letters in support of the stated request in each. After discussion, a motion was made by Commissioner Hruska to table the matter. The motion was seconded by Commissioner Willert. Motion passed with President Huff and Commissioner Williams abstaining.

Thereafter, a motion was made by Commissioner Pilcher to recess as the Board of Bar Commissioners and convene as the Board of Access to Justice, Inc. The motion was seconded by Commissioner Willert. The motion passed and President Huff convened the meeting of the Access to Justice, Inc. Board of Directors.

Request of ERLS for Access to Justice, Inc., to Sign on to Letters to Governor and Supreme Court concerning Moratorium on Eviction Proceedings: East River Legal Services drafted letters to Governor Noem and Chief Justice Gilbertson asking both, in some form, to order the suspension of eviction and foreclosure proceedings during the COVID-19 pandemic. ERLS asked that Access to Justice, Inc. sign on to the letters in support of the stated request in each. After discussion, a motion was made by Director Willert to table the matter. The motion was seconded by Director Ginsbach. Motion passed with President Huff and Director Williams abstaining.

Thereafter, a motion was made by Director Willert to adjourn as the Board of Access to Justice, Inc. and reconvene as the Board of Bar Commissioners. The motion was seconded by Director Hruska. The motion passed and the Board of Bar Commissioners meeting was reconvened by President Huff.

Annual Meeting: The Commission discussed options for holding the annual meeting, how to install a new president, and how to conduct elections for president elect and new commissioners, in the current COVID-19 environment. After discussion,

Commissioner Tobin made a motion to not hold an in person annual meeting in June. The motion was seconded by Commissioner Willert. Motion passed.

Miscellaneous: Other matters discussed for which no action was taken were agenda items for the April 30, 2020, Bar Commission meeting, the need for remote notarization of wills and living wills during the pandemic, and the increased need for the services of the LAP Director during the pandemic.

Motion to Adjourn Meeting: A motion was made by Commissioner Aasen to adjourn the meeting. The motion was seconded by Commissioner Ginsbach. The motion passed and the meeting was adjourned.

Respectfully submitted,

Andrew L. Fergel  
Secretary-Treasurer

## Northern Plains Weather Services

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



# BOARD OF BAR COMMISSIONERS

## Minutes, April 30, 2020 Meeting Held by Teleconference

President Steve Huff called the meeting to order at 1:00 p.m. Central Time on Thursday, April 30, 2020. Present at the meeting were Huff, President Elect Westergaard, and Commissioners Aasen, Ginsbach, Hruska, Kempema, Pilcher, Roby, Tobin, Trefz, Willert, Williams, Wurgler, and Zea, and Executive Director/Secretary-Treasurer Andrew Fergel. Also, present during all or part of the meeting were Strategic Plan Coordinator Elizabeth Overmoe, Assistant Executive Director Nicole Ogan, Access to Justice, Inc. Co-Coordinator Denise Langley, Lawyers Assistance Program Director Rebecca Porter, and John Burke.

Minutes of March 19, 2020 Meeting by Teleconference: Commissioner Williams moved to approve the minutes of the March 19, 2020 meeting held by teleconference. Commissioner Willert seconded the motion. Motion passed.

Minutes of April 1, 2020 Special Meeting: President Elect Terry Westergaard moved to approve the minutes of the April 1, 2020 Special Meeting held by teleconference. Commissioner Hruska seconded the motion. Motion passed.

Access to Justice Report: A2J Co-Coordinator Denise Langley gave an update on the work of the A2J program since her last report to the Commission in January. Points highlighted in Ms. Langley's report included the following information.

- 1/1/20 – 4/30/20: A2J matched 36 new cases with an attorney; 16 completed cases closed.
- A2J anticipates a decrease in case matching due to the impact of COVID-19 on S.D. attorneys.
- Due to the impact of COVID-19 on attorneys, A2J is implementing temporary changes to counter the reduction in the number of attorneys available to volunteer (focusing on simple legal matters for pro bono matches and increasing Judicare funding to assist with more complex legal matters).
- A2J expects an increase in the need for legal assistance in a variety of legal areas due to COVID-19 (family law, protection orders, bankruptcy).
- A2J submitted a joint CEAC grant with ERLS and DPLS; A2J requested \$20,000 in CEAC funds to supplement A2J Judicare funding.

Ms. Langley's report also included the following information on the South Dakota Free Legal Answer's program:

- 1/1/20 – 4/30/20: S.D. attorneys answered 91 legal questions via SDFLA.
- The 91 questions answered stemmed from 75 separate individuals.

- 41% of the questions related to family law matters.
- Since the opening of the SDFLA program in October 2016 through April 20, 2020: S.D. attorneys have answered 684 legal questions for 595 individuals; with 55% of the questions relating to family law matters.

Strategic Plan Progress Report: Strategic Plan Coordinator Overmoe presented a progress report on implementation of the State Bar's 2019-2022 strategic plan. Ms. Overmoe's report included information about what plan items were still moving forward in the wake of the COVID-19 pandemic and what pivots and adjustments in focus have been made because of the current environment.

Lawyer Referral Service Update: Elizabeth Overmoe updated the Commission on the Bar's on-line Lawyer Referral Service Program. The report included up-to date numbers on consultations, engagements, and participating attorneys. Ms. Overmoe also reported that the yearly fee for attorneys to take part in the program has been suspended for now and that the reporting and insurance requirements have been removed as conditions for attorney participation.

Update on "Life Above the Bar" Pilot Project: Lawyers Assistance Program Director Rebecca Porter provided the Commission with an extensive report concerning her work for the Life Above the Bar Pilot Project. The report confirmed again the need for wellness services by members of the Bar. At the conclusion of Ms. Porter's report, Executive Director Fergel asked the Commission for the authority to hire Ms. Porter as a full-time LAP Director for the State Bar of South Dakota with an effective start date of June 1, 2020. Fergel presented a proposed budget that included a starting salary and reimbursables for the full-time LAP Director and informed the Commission that the Lawyers Assistance Program Workgroup and the South Dakota Bar Foundation was unanimously supportive of hiring Rebecca Porter as full-time LAP Director pursuant to the outlined budget. President Elect Terry Westergaard moved to hire Rebecca Porter as a full-time LAP Director for the State Bar of South Dakota, effective June 1, 2020, at the starting salary of \$80,000.00 as set forth in the budget presented for the position. The motion was seconded by Commissioner Aasen. Motion passed.

Financial Report: Fergel presented a financial report to the Commission that included information about fund balances in all the operational accounts for the State Bar of South Dakota, SD CLE, Inc., and Access to Justice, Inc. After the financial report, a request was made to supplement the FY 19-20 remote deposit credit card fees budget line of the State Bar of South Dakota by \$400.00. Subsequently, a motion was made by Commissioner Ginsbach to supplement the FY 19-20 remote deposit credit card fees budget line of the State Bar of South Dakota by \$400.00. The motion was seconded by Commissioner Kempema. Motion passed.

Preliminary Fiscal Year 2020-2021 Budgets: Following the financial report,

Secretary-Treasurer Fergel and Assistant Director Nicole Ogan presented proposed FY 2020-2021 budgets for the State Bar of South Dakota, SD CLE, Inc., and Access to Justice, Inc., to the Commission and answered questions about the proposals. No action was taken on the proposed budgets as they will be finalized by the Commission at its July 2020 board meeting.

2021 Legislative Session and Potential Rule Amendments: Executive Director Fergel gave a brief recap of the 2020 Legislative Session and summarized what type of legislation the Bar may be looking at during the 2021 Legislative Session. Thereafter, John Burke, Chair of the Practice Rules Revision Committee, presented the Commission with the Committee's proposals to amend SDCL 15-6-45(a), SDCL 15-6-56(c), SDCL 15-6-26(a)(4), and 15-6-5(a) by petitioning the Supreme Court to amend the same by Court rule. Thereafter, Commissioner Willert moved to present the Practice Rules Revision Committee's proposals to amend SDCL 15-6-45(a), SDCL 15-6-56(c), SDCL 15-6-26(b)(4)(A)(i), and 15-6-5(a) to the bar membership for approval at the annual business meeting. The motion was seconded by Commissioner Ginsbach. Motion passed with Commissioner Williams abstaining.

Appointment to Judicial Qualifications Commission: The Commission considered four members of the Bar for an appointment to an open spot on the Judicial Qualification Commission. The four members considered for appointment were Robert Morris, Rick Ribstein, Ron Volesky, and Sherri Wald. The Commission found all four interested members worthy of appointment to the position. After discussion, President Elect Westergaard moved to appoint Robert "Bob" Morris to the Judicial Qualifications Commission. The motion was seconded by Commissioner Willert. Motion passed with Commissioner Kempema abstaining.

Virtual Annual Business Meeting in June: The Commission discussed options for holding a virtual annual business meeting in June 2020. After a short discussion, Commissioner Tobin moved to hold a virtual annual meeting of the State Bar of South Dakota on June 18, 2020. President Elect Westergaard seconded the motion. Motion passed.

Association Health Care Plan: President Elect Westergaard provided an update on his continuing efforts to explore establishing an association health care plan by the State Bar for use by law firms to provide health insurance to firm members and employees.

First and Second Circuit WORKS Program: Commissioner Trefz provided the Commission with a brief update on the First and Second Circuit WORKS Program. Trefz informed the Commission that the Program intends to request a grant from the South Dakota Bar Foundation for FY 20-21 to enable it to continue providing services to those that are eligible.

Pro Bono Program Approval: Under SDCL 16-17-4.1 Bar members with emeritus status may take pro bono referrals from East River Legal Services, Dakota Plains Legal Services, Access to Justice, Inc., or such other pro bono programs recognized and approved by the State Bar. Executive Director Fergel informed the Commission that Dick Casey, an emeritus status member of the Bar, has been asked to take a case through The Advocates, a pro bono program out of Minnesota. Fergel asked the Commission to recognize and approve The Advocates pro bono program for the purpose of allowing Mr. Casey to accept this one case under his emeritus status. Bar staff would then come back to the Commission with recommendations on how to formally recognize and approve programs on an ongoing basis. Thereafter, a motion was made by President Elect Westergaard to allow Mr. Casey to accept the case through The Advocates under his emeritus status. Commissioner Trefz seconded the motion. Motion passed.

Client Assistance Fund Claim: Executive Director Fergel summarized a claim made on the Client Assistance Fund and reviewed by the Client Assistance Fund Committee. Fergel informed the Commission that the CAF Committee recommended not approving the claim at this time as at least one of the tests (obtaining a judgment based upon the fraudulent or dishonest conduct of the lawyer) under the Bar's Client Assistance Fund Policy for a claim to constitute a "reimbursable loss" had not yet been met by the applicant. Fergel also informed the Commission that the CAF Committee recommended that the claim remain open for reconsideration by the Client Assistance Fund Committee and Bar Commission once a judgment has been obtained by the applicant. After discussion, a motion was made by Commissioner Ginsbach to accept the recommendation of the CAF Committee concerning the claim on the fund. The motion was seconded by Commissioner Pilcher. Motion passed. Commissioners Aasen, Kempema, and Williams recused themselves from participating in the discussion and voting by leaving the meeting.

There being no further business, a motion was made by Commissioner Willert to adjourn the meeting. Commissioner Zea seconded the motion. The motion passed and the meeting was adjourned.

Respectfully submitted,

Andrew L. Fergel  
Executive Director/Secretary-Treasurer

## ATTORNEYS - OATH OF ATTORNEY

*I do solemnly swear, or affirm, that:*

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

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

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

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

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

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

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

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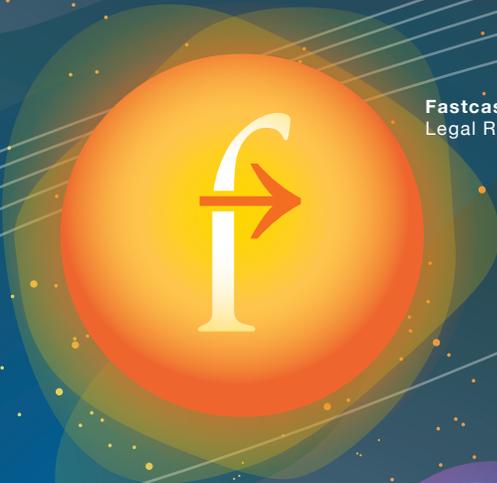
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## *How COVID-19 and a Recession Could Impact Malpractice Claims*

Mark Bassingthwaighe, Esq.  
Risk Manager, ALPS  
[mbass@alpsnet.com](mailto:mbass@alpsnet.com)

**D**uring a recession, and for the three years following, there has historically been a huge spike in paid claims, which is a number that typically doesn't return to a more normalized level until five years post-recession. In addition, and looking back at the events of 2008 specifically, legal malpractice insurers experienced a spike in paid claims above \$10,000 that ranged from 35% to 41%. I share this in order to explain why recessions always capture the attention of the insurance industry because given how the markets look of late, another recession appears to be imminent thanks to the COVID-19 pandemic. I wish it were otherwise, but it sure looks like history is going to repeat itself.

As a Risk Manager for a legal malpractice insurer, one interesting question for me is how will COVID-19 impact our insureds? While only time will tell, I have a few thoughts. Lawyers are already having to deal with telecommuting and all the associated risks, not the least of which is a significant increase in the risk of someone at a firm becoming a victim of a cybercrime. A number of lawyers and more than a few clients will be forced to deal with significant and potentially long-term reductions in household income. Some lawyers may simply say enough is enough and decide to retire while others may be forced into postponing retirement as a result of steep declines in their retirement accounts and this is just for starters. While I could continue on, I'll admit this is starting to make me feel a bit depressed, so I'll stop.

Here's the point I'm trying to make. Everyone, including lawyers, is trying to find a way to maintain some level of control and normalcy during very uncertain times. The challenge here is to not let emotions, such as fear and panic, cloud one's personal and professional judgment because that's when poor

decisions are made. For example, investments get sold at the market's bottom, an attachment to an email that claims to have the answer to preventing the spread of coronavirus is opened too quickly, or an important deadline never gets entered into a calendar all because worry and fear rule the day.

Now, based upon what has happened as a result of past recessions coupled with the realities of the response to COVID-19 from the individual level to that of governments, here's what legal malpractice insurers are currently concerned about. First, claim frequency and/or claims severity will change for any number of reasons. We just can't accurately predict how. At a minimum, clients will look to blame their lawyers when their business dealings go south as a result of the near-certain recession that's coming. Lawyers and staff will make mistakes that would otherwise not have been made due to the rapid transition to working from home and/or being under excessive stress. And clients, who are also experiencing excessive stress, will question decisions they made in light of the advice their lawyer gave them if their legal matter doesn't work out the way they expected it to. Regardless, there will be a new normal in terms of claims, at least for a few years.

Second, policy retention may be an issue; but again, we can't accurately predict how this might evolve. Lawyers facing difficult financial times may choose to leave the practice of law entirely or may decide to allow their policy to lapse and simply go bare as a way to save some money. Of course, there's the flip side, some who have previously been bare may decide now's the time to purchase coverage because the value of their assets have dropped, and their level of risk has risen. Only time will tell.

I do understand that right now it can be difficult to turn off the noise and stay focused on the tasks at hand; to stop worrying about finances and family and take care of the business side of the practice; and to keep emotions in check as you try to find the time to document your files, keep your clients informed, and struggle to deal with courthouse closures and emergency orders. It's a given that mistakes will be

made; but it seems to me that times like these truly underscore one of the values of having a malpractice policy. It's the comfort that comes with knowing that if some mistake does eventually turn into a malpractice claim, you've got coverage in place.

That said, I can't help myself. I need to add one final comment. For all of you who have up until now made a choice to forgo coverage, I can't imagine a better time to rethink that decision because as I stated above, the value of assets has dropped, and the level of risk has increased. The peace of mind that comes with the purchase of a legal malpractice insurance policy is worth every penny if you ask me.



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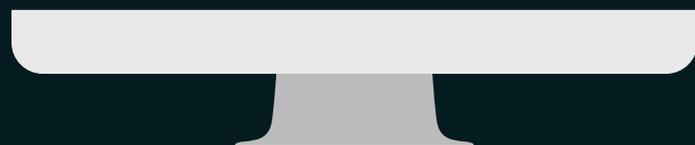




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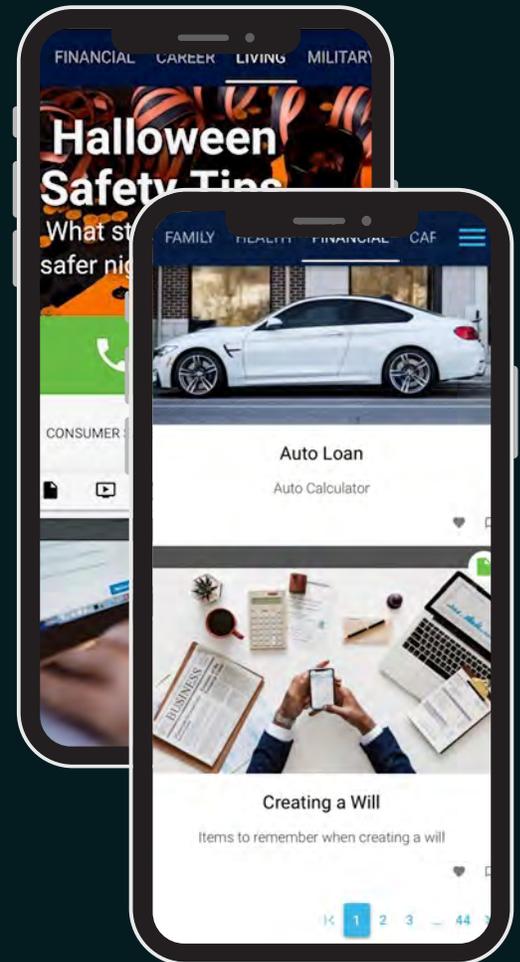
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# *In Memoriam*



Erik Sean Bunger  
April 21, 1982 -  
March 29, 2020

Erik Bunger, 37, passed away on March 29th due to long-term health complications.

Erik Sean Bunger was born on April 21, 1982 in Sioux Falls, SD, to Gaylon and Susan (Claussen) Bunger. He attended Cleveland Elementary, Whittier Jr High and graduated from Washington High School in 2000. Following high school, he entered the Army and became part of the 82nd Airborne 3rd BN 505th Panther Division. He rose to the rank of Sergeant, honorably discharged in 2004. During his time in the military he served in the Afghanistan and Iraq wars; and was a member of the 82nd ABN Honor Guard.

Upon returning from the military, Erik attended Augustana College (University) where he earned a BA in Government and International Affairs. He then attended USD law school, until his health restricted his ability to do so.

Erik worked at the Humane Society, and was quick to volunteer anywhere animals were in need. He also advocated for Disabled Veterans of America, and volunteered for Special Olympics.

A master at pottery and drawing, in 1999 Erik won an Augustana High School competition with a piece of pottery he coined "Perseus' Satchel." This allowed him, as a senior in high school, to take art classes at Augustana.

Erik was passionate about animals, plants, politics, and the written word. His never-ending thirst for knowledge made him a pleasure to engage in

conversation, and an insightful source from which to learn. After his discharge from the Army he was chosen to attend Sen. Tom Daschle's leadership seminar in the Black Hills. An experience he held dearly. A highlight of his life was when, in 2008, he was asked by the national Obama for President organization to introduce Barack Obama at a veteran's breakfast.

Although Erik loved to travel, his ability to do so was compromised by his disabilities, but much to his delight, he recently traveled to California and Louisiana.

Erik cared deeply for others. He was a caring son, brother, nephew, cousin, grandson, and friend. He especially excelled at being an uncle; and truly adored his nine nephews and nieces.

Grateful for sharing his life are his parents, Gaylon and Susan, brother Adam Bunger (Louisa), Harrisburg SD; sisters Amy Larsen, Sioux Falls SD, and Rachel (Tim) Rust SD, Sioux Falls; grandmother Audrey Wintersteen, Sioux Falls, SD; grandparents Ken and Loris Bunger, Albany, MN; nephews Aaron, Noah, and Seth Bunger, and Jacob and Ryan Larsen; and nieces Ava and Sera Rust, and Cora and Sabrina Larsen. Erik is also survived by a host of uncles, aunts, cousins, and friends. He was preceded in death by two grandfathers, Edwin Claussen and Glen Wintersteen; and three uncles, Rev. Lynn J. Claussen, Jerry Claussen, and Jeff Jones

A private family viewing will be held, with a public memorial service in September. Details to be announced at a later date.

Memorials can be directed to Sioux Falls Area Humane Society and Disabled Vets of America, Sioux Falls.

Cards and letters of condolence may be sent to the Bunger family at: 222 Devitt Drive, Harrisburg, SD 57032



## Cynthia Adams Howard

July 14, 1951 -

May 26, 2020

Cynthia Adams Howard, age 68 of Sioux Falls, passed away Tuesday May 26, 2020 after a long battle with cancer. A private family service will be held. A celebration of her life will be announced at a future date. Memorials may be directed to Feeding SD-Backpacks.

Cynthia Adams Howard was born July 14, 1951 to Eleanor and Robert Howard. She spent her early childhood in Cumington, MA. Her family moved to West Springfield and finally settled in Greenfield, MA. Upon graduating from Greenfield high school Cindy enrolled in Oberlin College and studied Political Science. After graduating from Oberlin she moved to Minneapolis, MN, and attended the University of Minnesota law school. Cindy moved to the Cheyenne Indian reservation, Standing Rock and worked as a legal aide. Cindy's next move was to Deadwood, SD where she entered private practice and eventually accepted the position as public defender for Lawrence County.

In 1988 Cindy met Thomas Lubeck in Deadwood and joined him in Sioux Falls, they were married in 1990. Cindy continued her career working in the Public Defender Office and later as the lead attorney and administrator in the Public Advocate office to her retirement in 2015. In 2001 she received a Bush Fellowship and attended Cambridge University where she earned a MA in criminology.

Cindy was dedicated to the idea of service to others, and throughout her life she participated in a variety of community organizations and projects. Cindy was chairperson for the YWCA board of directors. Cindy also served on a number of committees at First Presbyterian church. She worked closely with two organizations in particular: Feeding South Dakota,

which provides lunches and school supplies to students in need, and Glory House, which provides treatment for substance abuse and mental health problems. She was on the board of Directors for Glory House and also worked on the Glory House newsletter. Cindy had strong values of justice and caring for others, and through her job as a Public Defender and her work with these organizations, she lived out those values.

Beyond all her work and community, Cindy had a passion for nature. She loved the Black Hills. She had the energy to help build a log home in the Black Hills. She loved sitting on the front porch in the late afternoon and watched the evening shadows fill the meadow. Cindy's family will miss her curiosity and desire to see all there is to see in the world. Whether it was a trip to Morocco or to Nebraska to see Sandhill Cranes, Cindy had energetic drive to explore. Cindy also had a goofy side, and would find the cutest silliest Christmas presents every year. Cindy also served as a role model for her children with her personal strength and commitment to her work in a difficult field.

Cindy was a great example of how to be a positive influence in the world. She often worked on community projects such as volunteering with Glory House or the YWCA. Above all, she led by example, always trying to make the world a better place, which set a great example for her children and those around her. Another wonderful trait was her positive attitude and hard work ethic, which rubbed off on her children. Cindy was a person to be admired.





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*Alexa Moeller, Vermillion*  
Lindsey Quasney, Sioux Falls  
Lindsey Riter-Rapp, Pierre  
Jason Rumpca, Pierre  
Heather Sazama, Rapid City  
Janki Sharma, Rapid City  
*Olivia Siglin, Rapid City*  
Hon. Richard Sommers, Aberdeen  
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Jeffery Tronvold, Pierre  
Eric Witcher, Rapid City  
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Gregory Bernard, Rapid City  
**John Burke, CH, Rapid City**  
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Delia Druley, Sioux Falls  
Aaron Eiesland, Rapid City  
Gregory Erlandson, Rapid City  
Shannon Falon, Sioux Falls  
Gregory Grajczyk, Milbank  
Jeffrey Hurd, Rapid City  
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Shiloh MacNally, Rapid City  
Ann Mines-Bailey, Pierre  
Sander Morehead, Sioux Falls  
*Kristopher Reed, Aberdeen*  
Tim Shattuck, Sioux Falls  
Jay Schultz, Rapid City  
Hon. John Sogn, Sioux Falls  
Roger Sudbeck, Sioux Falls  
*Jason Sutton, Sioux Falls*  
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**Ex-Officio:**  
Shirley Jameson-Fergel, Pierre

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Chris Beesley, Custer  
Ryan Cwach, Bloomfield, NE  
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Thomas Frieberg, Beresford  
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Michael Ortnr, Hot Springs  
N. Bob Pesall, Flandreau  
Glen Petersen, Tyler MN  
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John Stekly, Platte  
Marilyn Trefz, Vermillion  
Lisa Von Wald, Selby  
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Gene Bushnell, Rapid City  
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Bram Weidenaar, Sioux Falls  
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## **PUBLIC NOTICE**

### **REAPPOINTMENT OF INCUMBENT MAGISTRATE JUDGE**

The current appointment of Magistrate Judge Patrick Schroeder is due to expire on September 26, 2020. Magistrate Judge Patrick Schroeder serves in the Second Judicial Circuit.

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

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

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

**Comments must be received by June 26, 2020**

**Bill Watch**

**House Bills**

<del>HB 1001</del>	*HB 1117
*HB 1002	*HB 1119
<del>HB 1003</del>	<del>HB 1121</del>
<del>HB 1004</del>	<del>HB 1122</del>
*HB 1010	*HB 1123
*HB 1011	<del>HB 1128</del>
HB 1012	<del>HB 1133</del>
<del>HB 1013</del>	<del>HB 1139</del>
*HB 1014	*HB 1140
*HB 1053	<del>HB 1146</del>
*HB 1067	<del>HB 1147</del>
*HB 1068	<del>HB 1148</del>
<del>HB 1072</del>	<del>HB 1149</del>
*HB 1074	<del>HB 1155</del>
*HB 1086	<del>HB 1158</del>
<del>HB 1087</del>	<del>HB 1167</del>
*HB 1088	<del>HB 1168</del>
*HB 1089	*HB 1178
*HB 1090	*HB 1179
HB 1092	<del>HB 1196</del>
<del>HB 1096</del>	*HB 1205
<del>HB 1107</del>	*HB 1207
*HB 1108	<del>HB 1215</del>
*HB 1109	<del>HB 1238</del>
*HB 1113	
*HB 1114	

**Senate Bills**

<del>SB 3</del>	<del>SB 79</del>
<del>SB 6</del>	*SB 80
<del>SB 7</del>	*SB 89
*SB 26	<del>SB 95</del>
*SB 27	*SB 96
*SB 44	<del>SB 104</del>
*SB 46	<del>SB 108</del>
*SB 47	<del>SB 114</del>
<del>SB 51</del>	<del>SB 115</del>
<del>SB 63</del>	<del>SB 121</del>
<del>SB 64</del>	<del>SB 138</del>
*SB 65	<del>SB 145</del>
*SB 71	*SB 148
*SB 73	
<del>SB 78</del>	

*Bills that are Struck Through have been killed in some manner.*

*\* Signed by Governor*

**Highlights:**

• The following bills that the State Bar supported have now been signed by the Governor:

- SB 148 (adopt the Uniform Power of Attorney Act);
- HB 1179 (authorize series LLC’s); and
- HB 1205 (revise provisions regarding the custodial parent relocating a minor child)

• The Governor’s veto of HB’s 1012 and HB 1013 was upheld. As a result, the cross reference error addressed in section 6 of the bill will not be corrected.

**HOUSE BILLS**

**HB 1001 An Act to repeal certain provisions regarding the organization of the Legislature.**

**Sponsor:** Representative Haugaard and Senator Greenfield  
**Summary:** Repeals certain provisions regarding the organization of the Legislature including the requirement for the legislature to meet at the seat of government on the second Tuesday of January at noon; elective officers of each chamber; Tie vote for organizing House of Representatives; appointment of legislative employees by presiding officers; assignment of interns; and administration of intern program.

**State Bar Position:** Monitor

**Status:** Passed House State Affairs Committee (9-4) on January 24; passed House of Representatives (42-26) on January 27; deferred to 41<sup>st</sup> legislative day by Senate State Affairs Committee (9-0) on March 4.

**HB 1002 An Act to revise certain provisions regarding documents of the Legislature.**

**Sponsor:** Representative Haugaard and Senator Greenfield  
**Summary:** Language is added to SDCL 2-7-5 to include “prefiled” bills, as well as foregoing the need to deliver copies to the printing contractor for pre-session printing, and the “electronic” delivery of the bill; the bill goes on to repeal numerous statutes that relate to contracts covering printing of bills, time of delivery of journals, time allowed of printing of bills, and fees for copies of bills.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 20.

**HB 1003 An Act to repeal certain provisions regarding legislative employees.**

**Sponsor:** Representative Haugaard and Senator Greenfield

**Summary:** Repeals SDCL 2-5-8 and SDCL 2-5-9 to be consistent with parts of HB 1001 relating to those elective officer positions.

**State Bar Position:** Monitor

**Status:** Passed House State Affairs Committee (8-4) on January 24; passed House of Representatives (55-13) on January 27; tabled in Senate State Affairs Committee (9-0) on March 4.

**HB 1004 An Act to provide for the defense of laws by the Legislature.**

**Sponsor:** Representative Haugaard and Senator Langer

**Summary:** This bill would allow the Legislature to defend any law, or intervene in the defense of any law, in any civil action or proceeding in which the state is an interested party; Bill further outlines and describes employment of legal counsel by the legislature in such an instance.

**State Bar Position:** Monitor

**Status:** Passed House State Affairs Committee as amended (12-1) on February 19; passed House of Representatives (52-15) on February 25; deferred to 41<sup>st</sup> legislative day in Senate State Affairs Committee (6-3) on March 4.

**HB 1010 An Act to revise provisions regarding testimony of qualified mental health professionals at involuntary commitment hearings**

**Sponsor:** Representative Johns and Senator Kennedy at the request of the Reduce the Overall use of Acute Mental Health Hospitalizations Task Force

**Summary:** The bill adds clarifying language to SDCL 27A-10-9 to make it clear that the board of mental illness conducting the involuntary commitment hearing shall order testimony by a qualified mental health professional other than the professional who submitted the petition.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 19.

**HB 1011 An Act to require certain examinations of persons awaiting involuntary commitment hearings**

**Sponsor:** Representative Healy and Senator Sutton at the request of the Reduce the Overall Use of Acute Mental Health Hospitalizations Task Force

**Summary:** The bill mandates that a qualified mental health professional that is not the same professional who brought the petition shall perform an examination for each twenty-four-hour period during which the person is detained.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 4.

**HB 1012 An Act to correct technical errors in the statutory cross-references**

**Sponsor:** The Committee on Judiciary at the request of the Code Commission

**Summary:** This 94-page bill corrects technical errors in the statutory cross-references by deleting and adding various references to statutes.

**State Bar Position:** Monitor

**Status:** Governor's veto upheld on March 30.

**HB 1013 An Act to correct technical errors in statutory cross-references**

**Sponsor:** The Committee on Judiciary at the Request of the Code Commission

**Summary:** This 15-page bill further corrects technical errors in the statutory cross-references by deleting and adding various references to statutes.

**State Bar Position:** Monitor

**Status:** Governor's veto upheld on March 30.

**HB 1014 An Act to place certain substances on the controlled substances schedule and to declare an emergency**

**Sponsor:** The Committee on Health and Human Services at the request of the Department of Health

**Summary:** This bill makes the following additions to controlled substances: Diphenidine and Ephenedine in Opium Schedule I; Noroxymorphone to Opium Schedule II; and Solriamfetol and Brexanolone to Opium Schedule IV.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 9.

**HB 1053 An Act to revise certain provisions regarding the submission process for ballot measures**

**Sponsor:** The Committee on Local Government at the request of the Office of the Secretary of State

**Summary:** This bill adds language to require that each version of the initiated measure or initiated amendment be submitted to the director of the LRC for review rather than the current law which is the most recent/current version.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 19.

**HB 1067 An Act to modify certain provisions regarding notice, service, and execution of judgments**

**Sponsor:** Representative Reed and Senator Ernie Otten

**Summary:** This bill allows a plaintiff to initiate service by publication on the same day as the first attempt at service under SDCL 21-16-6 without prior approval from the court. This bill also requires a sheriff or constable of the county to attempt to serve the lessee, subtenant, or party in possession with a minimum of four service attempts, six hours apart and within thirty days.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 24.

**HB 1068 An Act to include out-of-state convictions for the basis of an enhanced penalty for the crime of stalking**

**Sponsor:** Representative Hansen and Senator Kolbeck

**Summary:** This bill adds language to allow a person's past conviction of stalking in another state to be used to determine if the violation being charged in SD is a second or subsequent offense.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 18.

**HB 1072 An Act to place certain substances on the controlled substances schedule**

**Sponsor:** Representative Perry and Senator Novstrup

**Summary:** This bill adds 7-hydroxymitragynine, Mitragynine, and Mitragynine pseudoindoxyl to Schedule I substances schedule.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day by House Health and Human Services Committee (12-0) on February 20.

**HB 1074 An Act to revise certain provisions regarding the required time that sexual assault kits be preserved**

**Sponsor:** Representative Reed and Senator Soholt

**Summary:** This bill amends law to increase the time period of preserving sexual assault kits from one year to seven years or until the victim reaches the age of twenty-five, whichever is later.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 27.

**HB 1086 An Act to repeal certain fees charged by a clerk of courts**

**Sponsor:** The Committee on Judiciary at the request of the Chief Justice

**Summary:** This bill repeals the following fees charged by a clerk of courts: For a facsimile or electronic mail transmission of any opinion, record, or paper from an active or inactive file in the clerk's custody; Petition for protection orders and Ex parte temporary orders.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on February 27.

**HB 1087 An Act to authorize a clerk of courts to provide certain notices by electronic mail**

**Sponsor:** The committee on Judiciary at the request of the Chief Justice

**Summary:** This bill would allow the clerk to provide notice of sale or destruction of exhibits if not collected within thirty days by electronic mail if the electronic mail address is designated for service, or by first-class mail, if an electronic mail address is not designated.

**State Bar Position:** Monitor

**Status:** Tabled by House Judiciary Committee (11-0) on February 10.

**HB 1088 An Act to create a penalty for violation of a vulnerable adult protection order**

**Sponsor:** The Committee on Judiciary at the request of the Chief Justice

**Summary:** This bill adds new law to make a violation of a vulnerable adult protection order a Class 1 misdemeanor; This bill also states that if the violation is an assault then it is a Class 6 felony.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 24.

**HB 1089 An Act to provide for the discharge of certain persons who received a suspended imposition of sentence for a misdemeanor**

**Sponsor:** The Committee on Judiciary at the request of the Chief Justice

**Summary:** This bill states that discharge and dismissal may occur only once with respect to any person for a suspended imposition of sentence under a felony and only once with respect to any person for a suspended imposition of sentence under a misdemeanor.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 18.

**HB 1090 An Act to make an appropriation to evaluate the feasibility of the use of telehealth services within the criminal justice system and to declare an emergency**

**Sponsor:** The Committee on Judiciary at the request of the Chief Justice

**Summary:** This bill appropriates \$418,000 from fund expenditure authority from donations and other external sources to the Unified Judicial System for the purposes of evaluating the feasibility of the use of telehealth services within the criminal justice system to include the use of telehealth for mental health assessments and services.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 18.

**HB 1092 An act to establish immunity from liability for injuries to or the death of a person engaged in off-road vehicle activity under certain circumstances**

**Sponsor:** Representative Goodwin and Senator Otten

**Summary:** See title.

**State Bar Position:** Monitor

**Status:** Passed both chambers; delivered to the Governor on March 11.

**HB 1096 Title Amendment An Act to prohibit commercial surrogacy contracts, provide a penalty for facilitating a commercial surrogacy, and establish an interim committee to evaluate surrogacy in the state.**

**Sponsor:** Representative Hansen and Senator Novstrup

**Summary:** This bill prohibits any broker to knowingly engage in, advertise services for, or offer payments of money or other consideration for, profit from, or solicit a woman to assist or participate in commercial surrogacy. Said broker is guilty of a Class 1 misdemeanor. A new section was added on the House floor to establish an interim legislative committee to study surrogacy. The study is under the supervision of the Executive Board and LRC and staffed and funded as an interim legislative committee.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day by Senate Health and Human Services Committee (4-3) on February 26.

**HB 1107 Title Amendment An Act to define style and form and authorize the code ~~counsel~~ commission to make certain style and form edits to legislative acts**

**Sponsor:** Representative Johns and Senator Kennedy

**Summary:** This bill amends the law to allow necessary style and form edits to legislative acts, without altering legislative meaning or effect. The bar was successful in amending the bill in committee so that the code commission and not just code counsel is authorized to make such style and form changes.

**State Bar Position:** Oppose

**Status:** Passed House Judiciary Committee (11-1) on February 10; passed House of Representatives (62-0) on February 12; passed Senate State Affairs Committee (9-0) on March 2; failed Senate (6-28) on March 5.

**HB 1108 An Act to adopt the Uniform Civil remedies for Unauthorized Disclosure of Intimate Images Act**

**Sponsor:** Representative Johns and Senator Schoenbeck

**Summary:** See title above.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 23.

**HB 1109 An Act to revise the Uniform Limited Liability Company Act**

**Sponsor:** Representative Johns and Senator Rusch

**Summary:** This bill amends the existing law to repeal liability in SDCL 47-34A-303(c) and to state that a member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 4.

**HB 1113 An Act to provide for remote participation in a shareholders' meeting**

**Sponsor:** Representative Rounds and Senator Kennedy

**Summary:** This bill adds new law to allow the remote participation in a shareholders' meeting.

**State Bar Position:** Support

**Status:** Signed by the Governor on March 4.

**HB 1114 An Act to authorize additional abbreviations in naming corporations, limited liability companies, and limited liability partnerships**

**Sponsor:** Representative Rounds and Senator Kennedy

**Summary:** This bill amends law to allow the following abbreviations: "PC"; "Prof. LLC", "P.L.L.C." or "PLLC".

**State Bar Position:** Support

**Status:** Signed by the Governor on March 4.

**HB 1117 An Act to repeal and revise certain provisions regarding riot, to establish the crime of incitement to riot, and to revise provisions regarding civil liability for riot and riot boosting**

**Sponsor:** The Committee on State Affairs at the request of the Office of the Governor

**Summary:** This bill repeals numerous riot statutes such as SDCL 22-10-6 and SDCL 22-10-6.1; This bill also adds new law that states the incitement to riot is a felony.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 23.

**HB 1119 An Act to include certain offenses committed in another state for purposes of an enhanced penalty**

**Sponsor:** Representative Barthel and Senator Schoenbeck

**Summary:** This bill allows crimes committed in other states such as simple assault, aggravated assault, and intentional contact with bodily fluids, to be used for enhancement purposes if the violation to be charged is a third or subsequent offense.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 18.

**HB 1121 An Act to establish immunity from liability for the inherent risk of camping**

**Sponsor:** Representative Goodwin and Senator Phil Jensen

**Summary:** This bill adds a new law to provide immunity to a private campground, an owner or operator of a private campground, and any employee or officer of a private campground for acts or omissions related to camping at a private campground if a person is injured or killed, or property is damaged as a result of an inherent risk of camping; This bill does provide a few exceptions.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day by House Judiciary Committee (10-1) on February 24.

**HB 1122 An Act to require child abuse or neglect investigations upon the filing of truancy complaints**

**Sponsor:** Representative Cwach and Senator Kennedy

**Summary:** This bill amends existing law to require child abuse or neglect investigations upon the filing of truancy complaints.

**State Bar Position:** Monitor

**Status:** Deferred to the 41<sup>st</sup> legislative day by House Judiciary Committee (11-1) on February 12.

**HB 1123 An Act to ~~provide for the termination of a lease by a victim of alleged domestic abuse~~ revise provisions regarding termination of a lease by a victim of alleged domestic abuse.**

**Sponsor:** Representative Diedrich and Senator Castleberry

**Summary:** This bill adds a new section of law to states that a lease governing residential property may not include any term that authorizes the eviction of a tenant who calls or otherwise seeks assistance from law enforcement or other emergency responders because of an alleged incident of domestic abuse, unlawful sexual behavior, or stalking.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 24.

**HB 1128 An Act to modify the penalty for causing a child to be present during methamphetamine use, distribution, or manufacture**

**Sponsor:** Representative Reed and Senator Schoenbeck

**Summary:** This bill amends existing law by adding language to state that it is a Class 4 felony for any person to knowingly cause a child under the age of fourteen years to be present where any person is using, distributing, or manufacturing methamphetamine; This bill further amends existing law to clarify a child of fourteen years or old when stating it is a Class 1 misdemeanor for any person using or distributing with a child present.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day by House Judiciary Committee (10-2) on February 26.

**HB 1133 An act to provide a rebuttable presumption in favor of joint physical custody of a minor child**

**Sponsor:** Representative St. John

**Summary:** This bill would change the law to provide that in initial determinations regarding cases involving physical custody of a minor child there is a rebuttable presumption that equal or approximately equal time spent between the child and each parent is in the best interest of the minor child.

**State Bar Position:** Monitor

**Status:** Failed House Health and Human Services Committee (6-6) on February 13; passed Health and Human Services Committee (8-5) on February 18; passed House of Representatives (41-25) on February 20; deferred to the 41<sup>st</sup> legislative day (5-2) on March 5.

**HB 1139 An Act to require the payment of attorney's fees in cases addressing noncompliance with visitation orders**

**Sponsor:** Representative Pischke and Senator Phil Jensen

**Summary:** This bill amends existing law to state that if a court finds that any party has willfully violated or willfully failed to comply with any provision of a custody decree, the court may require the offender to pay, to the other party, court costs and reasonable attorney's fees incurred as a result of the noncompliance.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day by House Judiciary Committee (9-3) on February 21.

**HB 1140 An Act to provide for a regular review of parenting guidelines**

**Sponsor:** Representative Pischke and Senator Bolin

**Summary:** This bill was amended in committee per an agreement between the prime sponsor and the Unified Judicial System. The amended bill provides that "The Supreme Court shall establish rules pursuant to § 16-3-1 to provide for a public hearing process to review the standard guidelines and to recommend any amendments deemed to be necessary."

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 24.

**HB 1146 An Act to exclude second job income from child support obligations**

**Sponsor:** Representative Pischke and Senator Monroe

**Summary:** This bill eliminates the rebuttable presumption that a second job is included in child support obligations.

**State Bar Position:** Oppose

**Status:** Deferred to 41<sup>st</sup> legislative day by House Judiciary Committee (11-1) on February 24.

**HB 1147 An Act to recalculate abatement of the basic child support obligation**

**Sponsor:** Representative Pischke

**Summary:** This bill amends law to provide seven factors that must be met for the court to grant an abatement of the basic child support obligation.

**State Bar Position:** Oppose

**Status:** Deferred to 41<sup>st</sup> legislative day by House Judiciary Committee (8-5) on February 24.

**HB 1148 An Act to provide for protection orders**

**Sponsor:** Representative Pische

**Summary:** This bill amends the existing Protection Order statutes by requiring that a police report be filed with the Petition; This bill also requires the attorney general to prepare the forms for the petitioner to use in the proceedings.

**State Bar Position:** Monitor

**Status:** Withdrawn at the Request of the Prime Sponsor on February 21.

**HB 1149 An Act to establish qualifications for child custody evaluators**

**Sponsor:** Representative Pischke and Senator Phil Jensen

**Summary:** This bill amends existing law to list the different professionals that can be used in home study or custody evaluations.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day by House Judiciary Committee (10-2) on February 21.

**HB 1155 An Act to except certain retirements funds from division of property in a divorce**

**Sponsor:** Representative Frye-Mueller and Senator Ewing

**Summary:** This bill would exclude any retirement funds that were acquired before the marriage and held individually during the marriage in a fund or account exempt from taxation as it relates to equitable division of property.

**State Bar Position:** Oppose

**Status:** Deferred to 41<sup>st</sup> legislative day by House Judiciary Committee (10-3) on February 19.

**HB 1158 An Act to remove irreconcilable differences as a cause for divorce**

**Sponsor:** Representative Randolph and Senator Brock Greenfield

**Summary:** Removes irreconcilable differences as grounds for a divorce and conviction of a felony but replaces it with a criminal conviction resulting in incarceration.

**State Bar Position:** Oppose

**Status:** Deferred to 41<sup>st</sup> legislative day by House Judiciary Committee (10-3) on February 19.

**HB 1167 An Act to revise provisions regarding confidential communications between a student and certain school employees**

**Sponsor:** Representative Chris Johnson and Sue Peterson

**Summary:** This bill adds a new section of law to allow for the disclosure between communications of a student and counselor with written permission by the parent; This bill also allows the communication if the school counselor has reason to suspect the student may have been subjected to child abuse by that parent or legal guardian.

**State Bar Position:** Oppose

**Status:** Passed House Education Committee as amended (8-6) on February 19; failed House of Representatives as amended (30-37) on February 24; failed reconsideration on February 25.

**HB 1168 An Act to revise tenant and landlord rights**

**Sponsor:** Representative Mulally and Senator Phil Jensen

**Summary:** This bill amends numerous aspects of landlord tenant law including the violation of a material term of the written lease agreement between lessor and lessee as grounds for action; This bill further allows stay for execution for defendant for possession of a reasonable period, not to exceed five days.

**State Bar Position:** Monitor

**Status:** Tabled in House Judiciary Committee (13-0) on February 19.

**HB 1178 An Act to revise the seller’s property condition disclosure statement**

**Sponsor:** Representative Chase

**Summary:** This bill completely overhauls the property disclosure statement.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 11.

**HB 1179 An Act to authorize series limited liability companies**

**Sponsor:** Representative Hansen

**Summary:** This bill adds new law that states an operating agreement may establish or provide for the establishment of a series of members, manages, or limited liability company interests having separate rights, powers, or duties with respect to a specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations

**State Bar Position:** Support

**Status:** Signed by the Governor on March 23.

**HB 1196 An Act to authorize the revival of certain civil claims**

**Sponsor:** Representative Bordeaux

**Summary:** This bill adds a new section of law to state that any action for damages resulting from childhood sexual abuse that is barred because the applicable statute of limitations had expired is revived until July 1, 2022.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day by House Judiciary Committee (9-4) on February 24.

**HB 1205 An Act to revise provisions regarding a custodial parent relocating a minor child**

**Sponsor:** Representative Johns and Senator Rusch

**Summary:** This bill provides that if an objection to the relocation is filed, the court shall consider the traditional best interest of the child factors when determining a proposed relocation that would result in a substantial alteration to the existing parenting time arrangement.

**State Bar’s Position:** Support

**Status:** Signed by the Governor on March 24.

**HB 1207 An Act to extend the termination date for the Juvenile Justice Public Safety Oversight Council**

**Sponsor:** Representatives Jensen (Kevin), Chase, Diedrich, Duvall, Peterson (Sue), and Wiese and Senators Steinhauer, Bolin, Kennedy, Nesiba, Rusch, Soholt, and Stalzer

**Summary:** This bill would extend the work of the Juvenile Justice Oversight Council from 5 to 8 years.

**State Bar’s Position:** Monitor

**Status:** Signed by the Governor on March 18.

**HB 1215 An act to prohibit the state from endorsing or enforcing certain policies regarding domestic relations**

**Sponsor:** Representative Randolph

**Summary:** This bill creates new law to prevent the state from enforcing, endorsing, or favor 11 different policies, including permitting any form of marriage that does not involve a man and a woman.

**State Bar's Position:** Monitor

**Status:** Withdrawn at the Request of the Prime Sponsor.

**HB 1238 An Act to permit the modification of the term of a perpetual conservation easement after the death of the grantor**

**Sponsor:** Representative McCleerey and Senator Heinert

**Summary:** This bill amends law to state that the conservation easement shall be established by the parties to the easement, but if the term is perpetual, a person receiving a fee simple interest in the real property burdened by the easement may unilaterally modify the term of the easement after the death of the person who granted the easement.

**State Bar's Position:** Oppose

**Status:** Passed House Agriculture and Natural Resources Committee (8-5) on February 25; failed House of Representatives (27-38) on February 27.

**SENATE BILLS**

**SB 3 An Act to revise certain provisions regarding documents of the Legislature**

**Sponsor:** Senator Brock Greenfield and Representative Haugaard

**Summary:** This bill amends language impacting the documents of the legislature; This bill allows a bill or joint resolution to be introduced by any committee of either house of the legislature and that the committee must receive a written request for the introduction from the Governor or department head; This bill further repeals numerous statutes pertaining to documents such as journals as office record of proceedings, engrossment of bills and amendments, and enrollment of bill after passage by both houses.

**State Bar Position:** Monitor

**Status:** Tabled in Senate State Affairs Committee (8-0) on February 26.

**SB 6 An Act to revise certain conditions under which presumptive probation may be applied**

**Sponsor:** The Committee on Judiciary at the request of the Office of the Attorney General

**Summary:** This bill adds language to make it aggravating circumstance if the court determines the person failed to cooperate with law enforcement in an ongoing investigation.

**State Bar Position:** Monitor

**Status:** Passed Senate Judiciary Committee (5-2) on February 20; passed Senate (19-16) on February 25; deferred to 41<sup>st</sup> legislative day by House Judiciary Committee (8-5) on March 4.

**SB 7 An Act to revise the eligibility for presumptive probation**

**Sponsor:** The Committee on Judiciary at the request of the Office of the Attorney General

**Summary:** This bill adds language and a new section stating that a person is entitled to presumptive probation for two offenses within a ten-year period. The bill goes on to say that no previous conviction or plea of guilty occurring more than ten years prior to the date of the violation being charged may be used to determine that the violation being charged is a second, third, or subsequent offense.

**State Bar Position:** Monitor

**Status:** Tabled in Senate Judiciary Committee (5-0) on February 25.

**SB 26 An Act to increase the assessment of liquidated court costs and to revise the disposition of the funds collected**

**Sponsor:** The Committee on Judiciary at the request of the Office of the Attorney General

**Summary:** This bill increases the assessment of liquidated court costs from \$40 to \$50; This bill then increases the disposition of such funds to the respectively listed funds.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 18.

**SB 27 An Act to establish a missing persons clearinghouse**

**Sponsor:** The Committee on Judiciary at the request of the Office of the Attorney General

**Summary:** This bill establishes a missing persons clearinghouse which shall be used by all law enforcement agencies in the state as a central repository for information on missing persons.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 18.

**SB 44 An Act to authorize the use of crime victims' compensation funds to reimburse law enforcement for certain emergency expenses incurred for victims**

**Sponsor:** The Committee on Judiciary at the request of the Dept of Public Safety

**Summary:** The fund may be used if the law enforcement officer reasonably believes the person was the victim of a crime and no other services were reasonably available for the victim at the time.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 18.

**SB 46 An Act to revise provisions related to the restoration of competency of criminal defendants**

**Sponsor:** The Committee on Health and Human Services at the request of the Dept of Social Services

**Summary:** This bill allows defendants to be placed into a treatment program under the direction of an approved facility or for the defendant to be placed on outpatient status for treatment if the defendant is not considered to be a danger to the health and safety of others.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 18.

**SB 47 An Act to revise certain provisions regarding sex offender registration statutes**

**Sponsor:** The Committee on Judiciary at the request of the Office of the Attorney General

**Summary:** This bill amends the definition of a sex crime to include the felony use or dissemination of visual recording or photographic device without consent and with intent to self-gratify, harass, or embarrass.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 18.

**SB 51 An Act to authorize the possession of a concealed pistol by employees in county courthouses**

**Sponsor:** Senator Russell and Representative Goodwin

**Summary:** This bill allows the possession of a firearm or other dangerous weapon in a county courthouse by any person who is employed by the county and assigned to work in the county courthouse.

**State Bar Position:** Monitor

**Status:** Scheduled for hearing in Senate Judiciary Committee on January 28; motions made to amend; tabled in Senate Judiciary Committee (7-0) on February 4.

**SB 63 An Act to establish certain provisions regarding pore spaces**

**Sponsor:** Senator Maher

**Summary:** This bill defines pore space and states that title to any pore space in all strata underlying the surface of land and water is vested in the owner of the overlying surface ground.

**State Bar Position:** Monitor

**Status:** Failed Senate Agriculture and Natural Resources Committee (4-5) on February 6; deferred to 41<sup>st</sup> Legislative Day in Senate Agriculture and Natural Resources Committee (6-3) on February 6.

**SB 64 An Act to prohibit capital punishment for any person suffering from a severe mental illness**

**Sponsor:** Senator Rusch and Representative Duba

**Summary:** This bill prohibits capital punishment for an person who was severely mentally ill at the time of the commission of the offense, whose severe mental illness was manifested and documented prior to the commission of the offense, and whose offense was a product of the person's mental illness or due to an irresistible impulse that was caused by the person's mental illness.

**State Bar Position:** Monitor

**Status:** Scheduled for hearing in Senate Judiciary Committee on February 6; Hoghoused by Senate Judiciary Committee on February 6; deferred to the 41<sup>st</sup> legislative day by Senate Judiciary Committee (4-3) on February 20.

**SB 65 An Act to revise certain provisions pertaining to trusts**

**Sponsor:** Senators Partridge and Representative Johns

**Summary:** This bill amends numerous codified laws pertaining to trusts including an amendment stating that a settlor's creditors may not satisfy their claims from an irrevocable trusts if one of the three conditions take place; This bill also amends an existing statute to state that a court of this state has exclusive jurisdiction over an action brought under a claim for relief that is based on a transfer of property to a trust that is subject of this section; This bill also amends existing law to provide protections for trustees if they receive written directions from the settlor.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 11.

**SB 71 An Act to revise the offenses for which an order for interception of communications may be granted**

**Sponsor:** Senator Duhamel and Representative Milstead

**Summary:** This bill amends existing law to add crimes of violence, sex crimes, escape, and fugitives from justice with an active felony warrant to the list of crimes that may be intercepted by wire, electronic, or oral communications.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 18.

**SB 73 An Act to exempt certain persons from the requirement to publish name changes**

**Sponsor:** Senator Monroe and Representative Goodwin

**Summary:** This bill adds a new law stating that a court may grant an order changing a petitioner's name without publication of notice or a hearing in open court if the court finds that the petitioner is a victim of human trafficking, domestic abuse, or child abuse.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 24.

**SB 78 An Act to increase funding for court appointed special advocates**

**Sponsor:** Senator Klumb and Representative Post

**Summary:** This bill increases funding for court appointed special advocates from forty to forty-three dollars.

**State Bar Position:** Monitor

**Status:** Withdrawn at the Request of the Prime Sponsor.

**SB 79 An Act to modify provisions regarding the building of fences across certain unimproved highways**

**Sponsor:** Senator Klumb and Representative Borglum

**Summary:** This bill eliminates the language of "and never altered from its natural state in any way for the purpose of facilitating vehicular passage" from the definition of an unimproved county, township, or section-line highway.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day by Senate Local Government Committee (6-1) February 12; passed reconsideration by Local Government Committee (6-0) on February 21; deferred to 41<sup>st</sup> legislative day by Local Government Committee (5-2) on February 24.

**SB 80 An Act to revise certain sheriff's fees and costs**

**Sponsor:** Senator Schoenbeck and Representative Gross

**Summary:** This bill increases levy fees for sheriffs from \$15 to \$50 and allows sheriffs to collect any necessary costs for each sale rather than the current \$10 for each sale.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 16.

**SB 89 An Act to revise provisions regarding victim's rights**

**Sponsor:** Senator Rusch and Representative Bordeaux

**Summary:** This bill adds "and of any vehicle accident resulting in death" to SDCL 23A-28C-A, Rights of a crime victim.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 18.

**SB 95 An Act to modify certain provisions regarding the repayment of restitution**

**Sponsor:** Senator Russell and Ewing

**Summary:** This bill adds new law to state that a probationer given a term of probation on or after July 1, 2020 may not be awarded earned discharge credit if the probationer has not repaid the full amount of restitution ordered by the court; This bill goes on to state that instead, a probationer shall accumulate earned discharge credit, which may not be awarded to a probationer until the full amount of restitution has been repaid.

**State Bar Position:** Monitor

**Status:** Passed Senate Judiciary Committee (4-2) on February 13; failed Senate (11-24) on February 27.

**SB 96 An Act to prohibit the denial of benefits based solely on a controlled substance felony**

**Sponsor:** Representative Nisiba and Senator Healy

**Summary:** This bill adds new to prevent the department from denying benefits based solely on a controlled felony.

**State Bar Position:** Monitor

**Status:** Signed by the Governor on March 24.

**SB 104 An Act to limit entitlement to mechanics' liens**

**Sponsor:** Senator Cammack

**Summary:** This bill amends existing law by adding language that states entitlement to a first lien does not extend to a contractor or subcontractor who furnishes skills, labor, services, or materials, for the development, improvement, operation, or repair of a public highway or roadway if the development, improvement, operation, or repair is undertaken principally for the benefit of a private entity that is not the owner of the abutting property.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day by Senate Commerce and Energy Committee (4-2) on February 13; passed reconsideration (7-0) on February 18; passed Senate Commerce and Energy Committee (4-3) on February 25; passed Senate (29-6) on February 27; deferred to 41<sup>st</sup> legislative day by House Local Government Committee (9-3) on March 5.

**SB 108 An Act to revise the time period allowable for certain covenants not to compete**

**Sponsor:** Senator Brock Greenfield

**Summary:** This bill amends the covenants not to compete law by reducing the time period from not exceeding two years to not exceeding one year.

**State Bar Position:** Monitor

**Status:** Tabled in Senate Commerce and Energy Committee (5-1) on February 11.

**SB 114 An Act to require an incentive program to provide diversion opportunities for certain substance abuse offenses**

**Sponsor:** Senators Kennedy, Nesiba, and Partridge and Representative Bordeaux

**Summary:** This bill creates new law to state that the Department of Corrections shall develop a fiscal incentive program to incentivize county use of diversion opportunities for certain substance abuse offenses.

**State Bar Position:** Monitor

**Status:** Deferred to the 41<sup>st</sup> legislative day by Senate Judiciary Committee (4-3) on February 20.

**SB 115 An Act to revise the penalty for the ingestion of certain controlled substances**

**Sponsor:** Senators Kennedy, Nesiba, and Partridge and Representatives Johns, Bordeaux, Finck, and McCleerey

**Summary:** This bill would reduce the penalty for ingestion of a controlled substance from a felony to a misdemeanor unless it is a third offense within a 10-year period.

**State Bar Position:** Monitor

**Status:** Deferred to the 41<sup>st</sup> legislative day by Senate Judiciary Committee (5-2) on February 20.

**SB 121 An Act to revise parenting guidelines and repeal Supreme Court authority to promulgate guidelines**

**Sponsor:** Senator Russell and Representative Pischke

**Summary:** This bill revises parenting guidelines and repeals Supreme Court authority to promulgate rules by adding multiple new sections of law.

**State Bar Position:** Oppose

**Status:** Tabled in Senate Judiciary Committee (6-0) on February 25.

**SB 138 An Act to amend parole provisions regarding life sentences**

**Sponsor:** Senators Rusch, Duhamel, Kennedy, Nesiba, Partridge, Soholt, and Steinhauer and Representatives Bordeaux and Johns

**Summary:** This bill would authorize parole after a specified period of time for certain inmates receiving life sentences for conviction of a Class B or C felony.

**State Bar Position:** Monitor

**Status:** Deferred to 41<sup>st</sup> legislative day by Senate Judiciary Committee (5-2) on February 25.

**SB 145 An Act to recalculate abatement of the basic child support obligation**

**Sponsor:** Senator Jensen (Phil)

**Summary:** This bill amends law to provide seven factors that must be met for the court to grant an abatement of the basic child support obligation.

**State Bar Position:** Oppose

**Status:** Deferred to 41<sup>st</sup> legislative day (5-2) in Senate Health and Human Services Committee on February 19.

**SB 148 An Act to adopt the Uniform Power of Attorney Act**

**Sponsor:** Senators Partridge and Curd and Representatives Johns and Diedrich

**Summary:** This bill would adopt the provisions of the Uniform Power of Attorney Act.

**State Bar Position:** Support

**Status:** Signed by the Governor on March 20.

# Career Center



## STATE BAR OF SOUTH DAKOTA CLASSIFIEDS

Email your employment announcement to [tracie.bradford@sdbar.net](mailto:tracie.bradford@sdbar.net) by June 26th to have it included in the July Newsletter. Please be sure to include a closing date. To see more jobs listings, visit [www.statebarofsouthdakota.com](http://www.statebarofsouthdakota.com)

### **Deputy State's Attorney - Deadwood**

CONTACT PERSON: SHELLY BAUMANN  
CLOSING DATE: TO BE DETERMINED\START DATE JULY 1, 2020  
STARTING PAY: DEPENDING ON EXPERIENCE  
RESUMES TO BE SUBMITTED TO:  
LAWRENCE COUNTY STATE'S ATTORNEYS OFFICE  
90 Sherman Street  
Deadwood, South Dakota 57732  
FAX: 605-578-1468  
PHONE: 605-578-1707  
GENERAL DESCRIPTION OF WORK TO BE PERFORMED: CRIMINAL PROSECUTION  
EXPERIENCE EDUCATION: Graduation from a college of law and attainment of a Juris Doctorate degree.  
LAWRENCE COUNTY IS AN EQUAL OPPORTUNITY EMPLOYER

### **Associate Attorney - Sioux Falls**

Boyce Law Firm, LLP, a top-rated 20+ lawyer firm located in Sioux Falls, is accepting applications for ASSOCIATE ATTORNEYS in the firm's litigation section. Applicants must be self-starters with a strong desire to learn. Superior written and verbal communication skills are of utmost importance. Visit our website at [www.boycelaw.com](http://www.boycelaw.com) to learn more about the firm, our history, and our people. All applicants are welcome to apply. Preference will

be given to applicants in the top 1/3 of their class, to those who have prior work experience, and to those currently licensed to practice in South Dakota.

Start Date: Upon hiring.

Benefits include generous 401K match, profit sharing, health insurance, annual CLE tuition, professional dues and memberships, and numerous incidental benefits.

Direct resume, cover letter, and law school transcript to Michele Benson, Boyce Law Firm, LLP, PO Box 5015, Sioux Falls, SD 57117-5015 or to [mlbenson@boycelaw.com](mailto:mlbenson@boycelaw.com).

### **Deputy State's Attorney - Vermillion**

The Clay County State's Attorney's Office invites applications for a full-time Deputy State's Attorney to perform professional legal services on behalf of the State of South Dakota, Clay County and county departments in criminal and civil court, as well as administrative proceedings. This position serves under the general direction of the Clay County State's Attorney. Duties vary but include in the prosecution of criminal cases, juvenile crimes, and juvenile abuse and neglect cases. For more information and to apply, go to <http://www.claycountystatesattorney.org/> Clay County is an Equal Opportunity Employer. Position will be open until filled.

## Dual Government-Private Practice Attorney - Pipestone, MN

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

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

## Assistant County Attorney I - Worthington, MN

Nobles County Attorney's Office

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

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





Annual Business Meeting ..... June 18, 2020 ..... Online  
 Disciplinary Board ..... July 8-10, 2020 ..... Red Rossa, Pierre  
 Bar Commission Retreat ..... July 23-24, 2020 ..... Cadillac Jacks, Deadwood  
 Estate Planning CLE ..... September 18, 2020 ..... Ramkota, Sioux Falls  
 Nuts & Bolts CLE ..... November 6, 2020 ..... Ramkota, Pierre  
 Swearing-In Ceremony ..... November 6, 2020 ..... Capitol Rotunda, Pierre

For all upcoming webinars, check out the calendar on the State Bar website at  
[www.statebarofsouthdakota.com](http://www.statebarofsouthdakota.com).

2020 Annual Meeting Proposals  
 PROPOSED AMENDMENTS TO SDCL 15-6-45(a), SDCL 15-6-56(c), SDCL 15-6-26(b), AND  
 SDCL 15-6-5(a) BY PRACTICE RULES REVISION COMMITTEE  
 TO BE VOTED ON BY THE MEMBERSHIP DURING THE BUSINESS MEETING  
 Thursday, June 18, 2020

**Click the links below to download the file in PDF Format.**

- Practice Rules Revision Committee:
- [Proposed Amendment to 15-6-45\(a\). Subpoena for attendance of witnesses--Form--Issuance.](#)
  - [Proposed Amendment to 15-6-56\(c\). Motion for summary judgment and proceedings thereon.](#)
  - [Proposed Amendment to 15-6-26\(b\). Scope of discovery.](#)
  - [Proposed Amendment to 15-6-5\(a\). Service--When required.](#)