

March 2018

State Bar of
South Dakota
Newsletter

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www.statebarofsouthdakota.com

March 2018 - Issue 3

PRESIDENT'S CORNER - *Pamela Reiter*



After a three-year process, the Bar Commission selected Andrew L. Fergel to succeed Tom Barnett as Executive Director of our State Bar. The three-year process began during Past President Eric Schulte's term when he appointed a nine-member State Bar Transition Committee. The Committee, chaired by Past President Tom Frieberg, evaluated all aspects of the Executive Director position and made several recommendations to the Bar Commission. One significant recommendation—adopted by the Bar Commission and already implemented immediately—involved moving the intake process for disciplinary complaints from the State Bar office to disciplinary board counsel. Fortunately, Bob Frieberg has agreed to continue in his role as disciplinary board counsel to implement this move and provide continuity to the State Bar. Thank you, Bob, for your years of continued service to our Bar!

Armed with the Transition Committee's recommendations, Past President Stephanie Pochop appointed a four-member Transition Subcommittee within the Bar Commission to work with the nine-member Transition Committee to

further refine and develop the process that would be used to select the new executive director. Those two committees worked throughout the past year to develop a job description, advertisements, and a timeline governing the hiring process. The two committees also identified and ranked the most important duties for the executive director position. During the 2017 Annual Convention, these two committees met to develop a list of questions for the applicants to answer related to the executive director's most important duties. By November 2017, the applicants had submitted their materials and answers to the questions. Thereafter, a 34-member Review Team provided feedback on the applicants' submissions. In January 2018, an eight-member Interview Team, who had the benefit of the Review Team's feedback, conducted the initial interviews and recommended qualified candidates to the Bar Commission for final interviews. On February 8-9, 2018, the Bar Commission held a special meeting to conduct the final interviews, which consisted of a formal interview and a more informal social time with each candidate. I want to thank the members who participated in this extensive and exhaustive process. Your work and input greatly assisted the State Bar in hiring the next Executive Director—Andrew Fergel.

Andy, a long-time Pierre resident, is actively involved in community organizations. He is currently Chief Legal Counsel and Litigation Supervisor for the South Dakota Department of Revenue in Pierre. He is a seasoned attorney licensed in both South Dakota and North Dakota and a member of the United States Supreme Court Bar. He has been in private practice, has served as a prosecutor, and has worked in state government. His legislative experience began in 2003, including drafting legislation and administrative rules, providing testimony to various legislative committees, and lobbying. In addition, Andy has over two decades of experience supervising employees and creating

and managing budgets. His qualifications provide an excellent parallel to the needs of the State Bar.

As Executive Director, Andy will continue to work with the Bar Commission on a fiscally responsible budget to be presented to State Bar members in an understandable way. He also plans to focus on Continuing Legal Education and provide informative legal publications. Andy envisions improvements to the State Bar website utilizing a more intuitive structure to allow members better access to sought-after material while incorporating continuous updates to web page content. To assist him with this endeavor, I have appointed a Website Committee. The Committee will evaluate the functionality and organization of the website and develop recommendations for improvement. We intend to enlist the help of members willing to provide feedback to the Website Committee as it evaluates the website. If you are interested in assisting, please contact me.

Overall, Andy's inclusive and collaborative leadership style will focus on gathering information from stakeholders across the State and forging relationships to foster the practice of law and

advance the Strategic Plan of the State Bar. To that end, he intends to tour the State, meeting with local circuit bars, independent practitioners, and law firms. Finally, Andy hopes to continue fostering our strong relationship with the School of Law.

I asked Andy if he would like to add any comments to my message. In response Andy stated, "Being chosen as the next Executive Director of the State Bar of South Dakota is the greatest honor of my professional career. The vision, goals and values of this organization align with my desire and motivation to serve those seeking professional excellence and personal fulfillment through the practice of law. I am extremely grateful for the opportunity to work and collaborate with the members of this Bar in seeking to foster the highest quality of representation for our members' clients and integrity in the administration of justice. I can't wait to get started."

Andy will begin work on June 11, providing him seven weeks to work with Tom Barnett until Tom's retirement on July 31. Andy intends to meet with the Bar Commission, the Bar Foundation, and the Strategic Planning Committee in advance of his start date on June 11. Please join me in welcoming Andy as our State Bar's next Executive Director!



YOUNG LAWYERS SECTION

by: Abbey Howard, YLS President



I was recently reading an article from the ABA on the secrets of outstanding associates and thought that some of the secrets were worth repeating:

1. Work hard.
2. Care about building an excellent reputation.
3. Think like partners do.
4. View everyone as a client.
5. Treat professional development like a case.
6. Think like a student but don't act like you're in school.
7. Be enthusiastic.
8. Work to develop good judgement.
9. Cultivate informal mentors.

<https://www.americanbar.org/groups/young-lawyers/publications/tyl/topics/professional-development/the-secrets-superstar-associates.html>. Although these concepts seem quite basic, it is important to remember that we constantly have new, young attorneys joining our field, and some, with little to no guidance. Adhering to these “secrets” can quite certainly impact one’s career fresh out of law school. We have all had the opportunity to work with new attorneys just starting out, and it can be easy to forget what it was like when each of us started out in this profession. It bears repeating that the tenants above are not only good advice for new associates,

but good reminders for those of us a few (or many) years into the profession. Additionally, a good reminder to pay it forward. Young lawyers do not always recognize the importance of some of these ideas, and it can be beneficial for all involved to share your own wealth of knowledge with those you are working with.

For those young lawyers out there without a strong mentor in the field, the Young Lawyers Section is here to help. Please reach out to any of our Board Members or Circuit Representatives and we can assist with getting you matched up with a seasoned mentor attorney to help provide some of this guidance and input. You can also check out the Hagemann-Morris Mentorship Coin Program Guide Book on the State Bar website.

Inspiration can come not only from a mentor, but



from working with and watching our peers that perform at an outstanding level. My friend, Nicole Tupman, is one such attorney and a great example of a Superstar Young Attorney. I got to know Nicole through our years on the YLS together, and I am continually in awe of her intelligence and

general positive attitude and demeanor. She is an absolute asset to the Young Lawyers Board, and the State Bar in general. Thanks, Nicole, for sharing your story.

I was born and raised in Minneapolis by hard-working blue collar parents. I received a B.A. from the University of Chicago in 2005. Before attending law school, I taught Special Education with the Teach for America program in inner-city

St. Louis for two years. I graduated from St. Louis University School of Law in 2010. Fun fact - South Dakota is home to at least six proud Billiken attorneys.

After graduation, I clerked for the Honorable Karen E. Schreier in Sioux Falls for two years. During this time, I met my now-husband Jason Tupman, an Assistant Federal Public Defender. My first job after clerking was in the litigation group of a large Minneapolis law firm, but after we got engaged, Jason and I decided to settle in Sioux Falls. Upon moving back, I worked at Lindquist & Vennum LLP, now Ballard Spahr LLP, until joining Midco as Corporate Counsel in December of 2017. As Corporate Counsel, I have a broad practice that spans most areas of the law, with a telecommunications, internet, cable, and

technology focus.

Among many other programs, events, and training, the Young Lawyers Section provides the opportunity for young lawyers to develop flexibility and an open-minded attitude. My involvement with the Young Lawyers Section allowed me to engage with attorneys who I would have otherwise not had the opportunity to meet, and work on projects within sections of the public that I do not generally interact with in my practice. I encourage all attorneys, but especially young attorneys, to get involved with the bar and expand your typical zone of comfort—attend the Bootcamp or a CLE outside your practice, volunteer for a public service initiative, or become a member of a Bar committee or section.



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Fellows of the South Dakota Bar Foundation

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

Raising the Bar: Our Profession. Our Responsibility.

LIFE PATRON FELLOW: \$100,000 plus – <i>Cumulative, including Pledges & Testamentary Gifts</i>		
SUSTAINING LIFE FELLOW: \$50,000 plus – <i>Cumulative, including Pledges & Testamentary Gifts</i>		
<u>Fred & Luella Cozad</u>		
LIFE FELLOW: \$25,000 plus – <i>Cumulative, including Pledges & Testamentary Gifts</i>		
<u>Frank L. Farrar</u>		
DIAMOND FELLOWS: \$10,000 plus – <i>Cumulative, including Pledge & Testamentary Gifts</i>		
<u>Thomas C. Barnett, Jr.</u>	<u>Robert E. Hayes</u>	
PLATINUM FELLOWS: \$10,000 – <i>Cumulative, including Pledge & Testamentary Gifts</i>		
<u>Hon. Richard H. Battey</u>	<u>Charles L. Riter</u>	<u>Hon. Jack R. Von Wald</u>
<u>Hon. John B. Jones</u>	<u>William Spiry</u>	
\$10,000 PRESIDENTIAL FELLOWS		
<u>John P. Blackburn</u>	<u>Robert E. Hayes</u>	<u>Reed A. Rasmussen</u>
<u>Richard D. Casey</u>	<u>Patrick G. Goetzinger</u>	<u>Pamela R. Reiter</u>
<u>Hon. Michael Day</u>	<u>Terry L. Hofer</u>	<u>Robert C. Riter, Jr.</u>
<u>Robert B. Frieberg</u>	<u>Hon. Charles B. Kornmann</u>	<u>Eric C. Schulte</u>
<u>Thomas H. Frieberg</u>	<u>Bob Morris</u>	<u>Jeffrey T. Sveen</u>
<u>David A. Gerdes</u>	<u>Thomas J. Nicholson</u>	<u>Charles M. Thompson</u>
<u>Hon. David R. Gienapp</u>	<u>Gary J. Pashby</u>	<u>Richard L. Travis</u>
<u>G. Verne Goodsell</u>	<u>Stephanie E. Pochop</u>	<u>Thomas J. Welk</u>
GOLD FELLOWS: \$5,000 – <i>Cumulative, including Pledge</i>		
<u>Richard A. Cutler</u>	<u>P. Daniel Donohue</u>	<u>Richard L. Kolker</u>
<u>William F. Day, Jr.</u>	<u>Dana J. Frohling</u>	<u>Scott C. Moses</u>
SILVER FELLOWS: \$1,000 per year		
<u>Scott C. Moses</u> In Memory of William Janklow	<u>Herb C. Sundall</u> (renewed 17-18)	<u>Kimberly A. Mortenson</u> (renewed 17-18)
<u>Timothy J. Rensch</u> (renewed 17-18)	<u>Brandon M. Taliaferro</u> (renewed 17-18)	<u>Gregory A. Yates</u> (renewed 17-18)
FELLOWS: \$500 PER YEAR		
<u>Hon. John Bastian</u> (renewed 17-18)	<u>Richard Kolker</u> (17-18)	<u>Mrg Simon</u> (renewed 17-18)
<u>Hon. John L. Brown</u> (renewed 17-18)	<u>Hon. Judith Meierhenry</u> (renewed 17-18)	<u>Thomas E. Simmons</u> (renewed 17-18)
<u>Mary Jane Cleary</u> (renewed 17-18)	<u>Hon. Bobbi Rank</u> (17-18)	<u>Jason Robert-Feil Sutton</u> (17-18)
<u>Craig A. Kennedy</u> (renewed 17-18)	<u>Robert C. Riter</u> (renewed 17-18)	

YOU ARE INVITED TO JOIN!

Fellows of the South Dakota Bar Foundation

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

Full Name _____

Address _____

City _____ State _____ Zip Code _____

I would like to contribute:

in Lump Sum Annually Semi-Annually Quarterly Monthly

- 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.

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

I am paying ___ by check, ___ by credit/debit card.

Credit/Debit Card Payments:

Name on Card (if different than above) _____

Address Tied to Card (if different than above):

Card Number: _____

Expiration Date: _____

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

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



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

Attendance is limited to lawyers.

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

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

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

LAWYERS CONCERNED FOR LAWYERS LAWYERS ASSISTANCE COMMITTEE

Your Bar Leadership has been concerned that members needing help with chemical dependency or mental health issues may be reluctant to call State Bar Headquarters to inquire where to seek help. Phone calls seeking help for themselves or a loved one or a partner have always and will continue to be kept strictly confidential. That said, Bar Leadership has determined that a referral agency independent of the State Bar staff may reduce any reluctance to call.

Thus, beginning July 1st, we have entered into a contract with South Dakota Advocacy. Both LCL and LAC committees have provided names and contact information for referrals.

You will be provided with the names and phone numbers and proceed to call whomever you select from the appropriate list.

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

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



You are not Alone

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

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

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

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

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

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

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

Sand Creek is a HIPPA compliant service.



Go to www.sandcreekeap.com
Click the Work Life Wellness Login Link
Our Company ID is sbsd1
Or call 800-632-7643
Monday-Friday, 7:30am-5pm CT

Immediate, Confidential Support
24 hours a day/7 days a week:
888-243-5744

All discussions and services are kept strictly confidential.

The State Bar of South Dakota will not know you are using the service. These services are FREE. You are encouraged to use this valuable benefit.

Important Announcements

Please note that

Cutler Law Firm, LLP

has relocated their office to

140 N. Phillips Avenue, 4th Floor
Sioux Falls, SD 57104

www.cutlerlawfirm.com

(All phone numbers and email addresses will
remain the same)

Please note that

Peterson Law Office, PC

has relocated their office to

6201 E. Silver Maple Circle, Suite 102
Sioux Falls, SD 57110

Telephone (605) 331-1031

Facsimile (605) 271-6096

www.johnpetersonlaw.com

Boyce Law Firm, LLP
is pleased to announce that

*Matthew D. Murphy and
Patrick J. Knecht*

have become partners in the firm effective
January 1, 2018.

Boyce Law Firm, L.L.P.
300 S. Main Avenue
P.O. Box 5015
Sioux Falls, SD 57117-5015

Telephone (605) 336-2424
Facsimile (605) 334-0618

www.boycelaw.com

Goosmann Law Firm, PLC
is pleased to announce that

Cesar Juarez

has been named partner at our firm.

5010 S. Minnesota Ave. #100
Sioux Falls, SD 57108

Telephone: 605-371-2000

Facsimile: 605-275-2039

www.goosmannlaw.com

2018 YOUNG LAWYER OF THE YEAR

Members of the State Bar of South Dakota are invited to submit nominations for the 2018 South Dakota Young Lawyer of the Year. This award will be presented at the Annual Meeting in June. Please consider nominating a South Dakota Young Lawyer for this prestigious award. In order to be considered, the nominee must be a member of the State Bar of South Dakota in good standing, and must not have reached the age of 36 years by June 20, 2018, or been admitted to practice in South Dakota or any other state for more than 10 years. Lawyers are only eligible to receive the award one time and lawyers serving on the Young Lawyers Board are not eligible for consideration. Nominees should exemplify the following characteristics:

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

Nominating attorneys should submit a brief letter in support of their nominee to Young Lawyer President-Elect Tamara Nash at Tamara.Nash@state.sd.us no later than Friday, April 27, 2018. The letter should detail how the nominee meets the above-referenced characteristics.



**JOIN US.
March 22-23, 2018
9:00AM-3:00PM
Watertown & Sioux Falls, SD**

Dear South Dakota Bar Member:

The University of South Dakota School of Law Veterans Legal Education Group is holding a two-day drop in clinic for veterans on the east side of the state. On **March 22nd, 2018**, VLEG will be at the Armory Building located in Watertown, SD (1951 N Highway 20). The time of the clinic will be from 9:00AM to 3:00PM. We hope to reach nearly 30 veterans this day.

The second day, **March 23rd, 2018**, will be at the DAV in Sioux Falls, SD (1519 W. 51st Street). The time of this clinic will also be from 9:00AM to 3:00PM. We hope to reach an additional 40 veterans on day two of the clinic.

We currently have ten law students planning to attend both days. **We are currently in need of attorneys for both days.** If you would like to volunteer or have any questions about the clinics, please reach out to me at Kaleb.Paulsen@coyotes.usd.edu or by cell phone at 605-496-5475.

We continue to appreciate all of the support from the State Bar of South Dakota Veterans Committee, Young Lawyers Section Board, and our volunteer attorneys. This project would not be possible without you.

**Sincerely,
Kaleb Paulsen
President, Veterans Legal Education Group**

volunteer

USD SCHOOL OF LAW VETERANS LEGAL EDUCATION GROUP

Registration – 7:30 am, Program – 8 am

Ramkota Hotel, Sioux Falls

this CLE is free to all active bar members – all others, cost is \$100

- 8:00 a.m. Introductions
- 8:10 a.m. Best Practices: Representing the Parent in A&N Cases – Lyndsay DeMatteo, Minnehaha Co. Public Advocate's Office
- 8:50 a.m. Best Practices: Representing the Child in A&N Cases – Meghan McCauley, East River Legal Services
- 9:30 a.m. Break
- 9:40 a.m. CPS's Role in A&N Cases, Vicki Burger, DSS
- 10:20 a.m. Pediatric Forensic Interviewer: Working with Traumatized Children in the Court Room, Amanda Liebl, Child's Voice
- 11:00 a.m. Break
- 11:10 a.m. Panel Discussion: Best Practices | FQA for A&N Manual, Judge – TBA, Prosecutor – Carrie Mees, CPS – Vicki Burger, DSS Attorney/ Client – Kasey Olivier, Heidepriem, Purtell, Siegel & Olivier

A CLE on Alternative Dispute Resolution will be held in the afternoon

Register online www.statebarofsouthdakota.com

April 13, 2018

The State Bar of South Dakota, and The Committee on Continuing Legal Education Present:

Juvenile Law



Carrie Sanderson & Tara Adamski, Co-Chairs

2018 ABA Midyear Meeting Report

The 2018 ABA Midyear Meeting was held in Vancouver, British Columbia. The meeting brought together hundreds of members of the ABA’s various sections and Divisions, including the Young Lawyers Division (YLD). During the meeting, the ABA Young Lawyers Division (YLD) hosted its own programming, Assembly, and networking events. Below is a summary of the events attended by South Dakota Young lawyers: Tamara Nash, Kassie Shiffermiller, and Joe Wiltse.

Tamara P. Nash

Tamara serves within the Division as the District Representative for North Dakota and South Dakota (District 21) and a Vice-Director for Diversity and Inclusion. Due to her role, Tamara serves on the YLD Council, the decision-making body of the YLD. This meeting, Tamara attended all governance events and as well as programming hosted by sister-entities. Tamara also had the honor of introducing ABA President-Elect Robert Carlson during the ABA YLD Assembly meeting. Conference highlights for Tamara include:

- **Judiciary Leadership Town Hall Meeting-** This program focused on educating and empowering the judiciary. Judges in attendance received updates from various liaisons and distinguished guests. Additionally, attendees heard from judges in British Columbia about the similarities and differences between our two judicial systems.
- **Diversity Dialogue Breakfast: Indigenous People of North America: Media Perspectives and Bias-** The diversity and Inclusion team hosted an all-star panel who spoke to attendees about the status of being Native American and what type of stereotypes are often faced by Native Americans when consuming main-stream media. The panel encouraged attendees to challenge their perspectives. Following the panel, attendees broke into small groups to discuss related topics.

Kassie Shiffermiller

Kassie had the opportunity to serve as one of the delegates for South Dakota in the ABA Young Lawyers Division Assembly (see below). She also had the chance to attend programming jointly hosted by the Young Lawyers Division and the Tort Trial and Insurance Practice Section of the ABA. A particular favorite was the “evidence conga line,” designed to help attendees lay proper foundation for a variety of exhibits. However, the most valuable part of any meeting is networking with other attendees and exchanging information. Kassie had the opportunity to meet many attorneys from all over the United States and share information, stories, and ideas to advance the practice of law.

Joe Wiltse

Joe had the opportunity to serve as one of the delegates for South Dakota in the ABA Young Lawyers Division Assembly (see below). While in Vancouver, he also attended several other meetings and events, including a session on Hot Topics in Diversity Law and the Business Law Section meeting. Joe was also able to partake in several events specifically targeted at young lawyers, including a “dine-around dinner” where he was able to network with other young lawyers from across the United States and Canada. This was Joe’s first ABA meeting, and from the number of connections he made, he stated that it is not a matter of if it will pay dividends, but when.

YLD Assembly

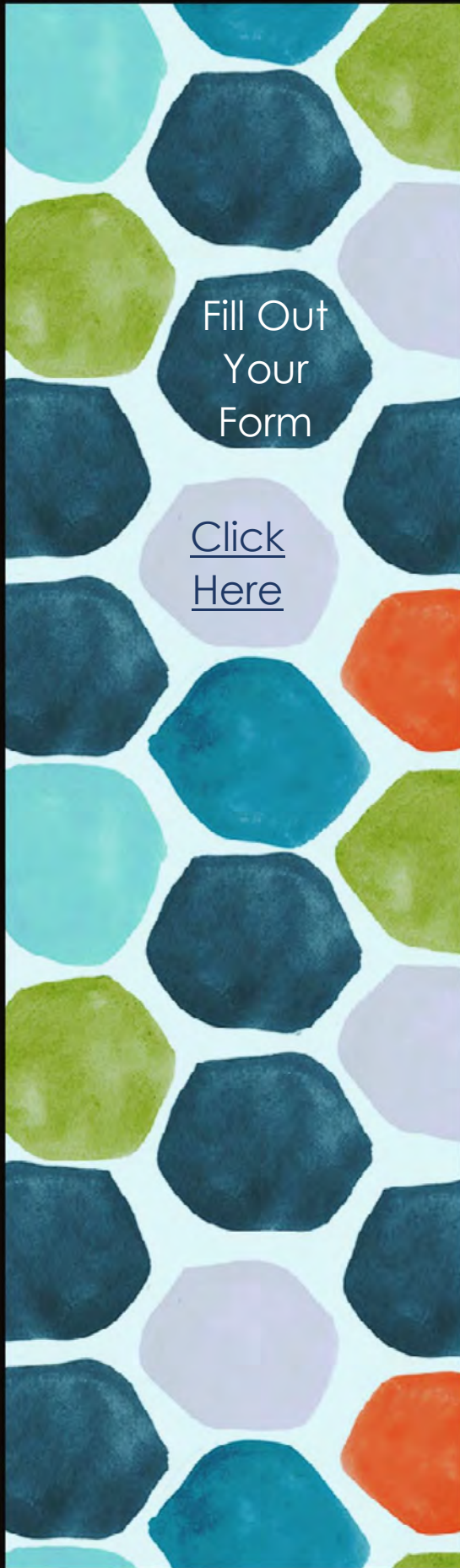
The ABA Young Lawyers Division Assembly (“Assembly”) is the principal policy-making body of the ABA YLD. Assembly convenes during the ABA’s Midyear and Annual meetings. During Assembly, young lawyer issues and resolutions are debated and voted upon. This meeting marked the first ever “live-streamed” Assembly in YLD history! The following resolutions were debated by the delegation, comprised of 186 young lawyers from across the country.

Resolution 3 YL	This Resolution urges all jurisdictions to adopt a Parental Leave Rule.	Passed by majority vote
Resolution 5YL	This Resolution requires the ABA to implement accreditation rules that require all for-profit law schools to implement and maintain transition plans to aid students enrolling in the school in the three years prior to the school’s closing. It also encourages state bars and legislatures to require that for-profit law schools in their state implement and maintain transition plans to aid students enrolling in the school in the three years prior to closing as a precondition of allowing its graduates to sit for the state bar exam.	Passed by majority vote
Resolution 8YL	This Resolution urges Congress to enact legislation requiring major party Presidential candidates to make certain financial disclosures, particularly disclosure of tax returns, and in the alternative, this Resolution urges states to require major party presidential candidates to disclose tax returns prior to being included on their election ballots.	Passed by majority vote
HOD-108E	This Resolution urges the Executive Branch to rescind its decision to end the Deferred Action for Childhood Arrivals (DACA) program and urges Congress to enact legislation protecting DACA recipients and other undocumented immigrants who were brought to the United States as children and who meet age, residency, educational and other qualifications as set forth by the U.S. Citizenship and Immigration Service (aka “DREAMers”).	Passed and will be voted on by the ABA HOD

Thank you to the SD Young Lawyers Section and State Bar of South Dakota for your continued support as we learn and grow through our involvement in the ABA YLD!

If you have interest in becoming involved in the ABA YLD or the State Bar Young Lawyers Section, please feel free to contact the Section President Abbey Howard or President-Elect Tamara Nash.

ABA YLD conferences for the 2017-2018 bar year are the YLD Spring Conference (May 10-May 12, 2018), and ABA Annual (August 2-4, 2018).



Fill Out
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Form

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GET INVOLVED



COMMITTEE
PREFERENCE
REQUESTS

DUE
JUNE 29



Trial Academy 2018

July 9-13, 2018

USD School of Law

Vermillion, South Dakota

Trial Academy will provide a step by step, hands-on learning experience where participants will individually develop their courtroom presence in the process of presenting a civil jury trial from jury selection through closing argument. It is designed for new lawyers who want to develop or experienced lawyers who want to practice their jury trial skills in a real-time setting, with mentored support from experienced trial lawyers and judges.

-Stephanie Pochop, ABOTA member

Meet the Faculty:



Heather Lammers-Bogard
Rapid City, SD



Jim Roby
Watertown, SD



Lonnie Braun
Rapid City, SD



Bob Morris
Belle Fourche, SD



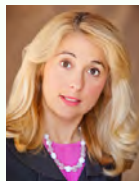
Dick Casey
Sioux Falls, SD



Clint Sargent
Sioux Falls, SD



Tom Welk
Sioux Falls, SD



Renee Christensen
Sioux Falls, SD



Hon. David Gienapp
Madison, SD



Shawn Nichols
Sioux Falls, SD



Jana Miner
Pierre, SD



Trial Academy Registration

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

July 9 to 13, 2018 (Vermillion, SD)

Name: _____ Date: _____

Address: _____

Phone: _____

Email: _____

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

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

Size of law firm _____ Years of practice _____

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

Brief description of your current law practice:

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

To:

State Bar of South Dakota

222 E. Capitol Ave.

Pierre, SD 57501

Trial Academy Scholarship Application

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

Name: _____

Address: _____

Phone: _____

Email: _____

Years as a Lawyer: _____ Size of firm: _____

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

Brief description of my career as a lawyer: _____

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

Signed: _____

Dated: _____



Ramkota Hotel, Sioux Falls

CLEs:

*ALPS, *Legal Potpourri

*Early Bird, *Business Law,

*General Litigation,

*Mental Health Training for

Court Appointed Attorneys

Registration coming in March!



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Thursday, April 26 and Friday, April 27, 2018
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The Kansas City Estate Planning Symposium features nationally-recognized speakers at a fraction of the cost of other leading national conferences. You'll advance your career, earn continuing education credits and gain knowledge and relationships that will help you better serve your clients.

Presented in cooperation with the Estate Planning Society of Kansas City and the University of Missouri Kansas City School of Law. To register online or for a complete schedule and information, visit KCEPS.org or call 816-235-1648.

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

Students from South Dakota Law School will join law students from the University of Denver May 21 through May 24 to provide free wills and related documents to tribal members. **We are seeking volunteer attorneys licensed in South Dakota to help with the project.**

The law students are given extensive training on the application of A.I.P.R.A. (the American Indian Probate Reform Act), and will be assisted by volunteer attorneys from Colorado. During the last four years University of Denver law students have accepted invitations to take the Tribal Wills Project to Indian Reservations in Colorado, New Mexico, Arizona, Utah, and Montana.

Now the Yankton Sioux Tribe has graciously offered to host the project in South Dakota. Likely locations for the will writing clinics are the communities of Marty, Lake Andes, and possibly Wagner.

If you would be interested in volunteering to assist, or would like further information on the Tribal Wills Project, please contact Prof. Lucy Marsh, Director of the Tribal Wills Project, University of Denver Sturm College of Law.

E-mail: lmars@law.du.edu

Thank you.

ADR MATTERS: Preventing Family Rifts through Elder Decision Mediation

By: Marilyn Trefz

With our senior population increasing, Elder Decision Mediation is taking a more prominent position in the world of Family Mediation.

Elder Decision Mediation can be done preventatively as well as when conflicts arise. Since many disputes about an elderly loved one are emotionally charged, countless situations can result in serious breakdowns in communication among family members. While some families are able to discuss and work through these issues, some families benefit greatly from having a third party, neutral mediator step in and assist when impasses on these topics are reached. A professional mediator can facilitate difficult conversations, help keep the atmosphere calm and encourage participants to focus on the most important issues, putting emotions aside.

Preventative mediation for a senior loved one can be most effective. However, such conversations are often avoided because families falsely think making decisions about an aging parent's care makes it more real or happen more quickly. We elude these conversations because, frankly, change is difficult and we think it is easier to avoid these tough conversations completely and hope for the best.

These are heavy topics and most families need help in starting the conversation and sorting them out by organizing the topics. For example, a discussion about "living arrangements" can really be broken down to discussion points about safety, finances, meal preparation, transportation and future health needs.

A mediator also knows where to take the discussion. Often times, the first or easiest solution is not necessarily the best one. Mediators can keep the focus on the difficult, more uncomfortable conversations exploring all options, while still letting the family members remain in control of the decision making part of the process. The mediator does not make decisions on behalf of the parties. The

mediator simply listens to all sides and encourages participants to remain focused on the issues at hand with a goal of solving problems by helping family members find common ground.

Some topics to be addressed may include:

- Alternative living arrangements/facilities, staying at home
- Estate planning
- Treatment and care management
- Guardianship
- Power Of Attorney
- Inheritance
- End of life
- Liquidating assets to pay for care
- Transportation and driving

Mediation can be a very empowering process by providing a platform for family members to be openly heard and have their ideas and views be taken seriously. Knowing that a family meeting will be controlled, balanced and meaningful will help all participants feel more positive about attending and contributing.



STRESS and DEPRESSION HELP

Contact information for the regional mental health centers in South Dakota is located at www.statebarofsouthdakota.com ("For SDBAR Members" Under the Health & Wellness tab, click on the Stress/Depression/Addiction link. We have reached an understanding with all these centers and all will honor our agreement. If you are stressed out or you believe that you may be suffering from depression, the State Bar encourages you to seek a professional evaluation. If you don't have insurance or otherwise lack the financial resources, the State Bar project, funded by ALPS and the SD Bar Foundation, will cover the evaluation and several follow-up counseling sessions if indicated. You need only schedule the appointment and show them your 2017 active membership card. This is a confidential project. Counseling records are not, repeat, are not made available to the State Bar. We just pay the bill for those who can't afford it, up to the limit of \$500 per lawyer.

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



SOLACE PROGRAM

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

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

March 2018

Official Publication of the State Bar of South Dakota

If you wish to advertise in our publication or post job opportunities, please contact:

Tracie at tracie.bradford@sdbar.net.

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

Address Changes:

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

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ATTORNEYS - OATH OF ATTORNEY

I do solemnly swear, or affirm, that:

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

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

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

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

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

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

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

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THE JUSTICE SQUAD

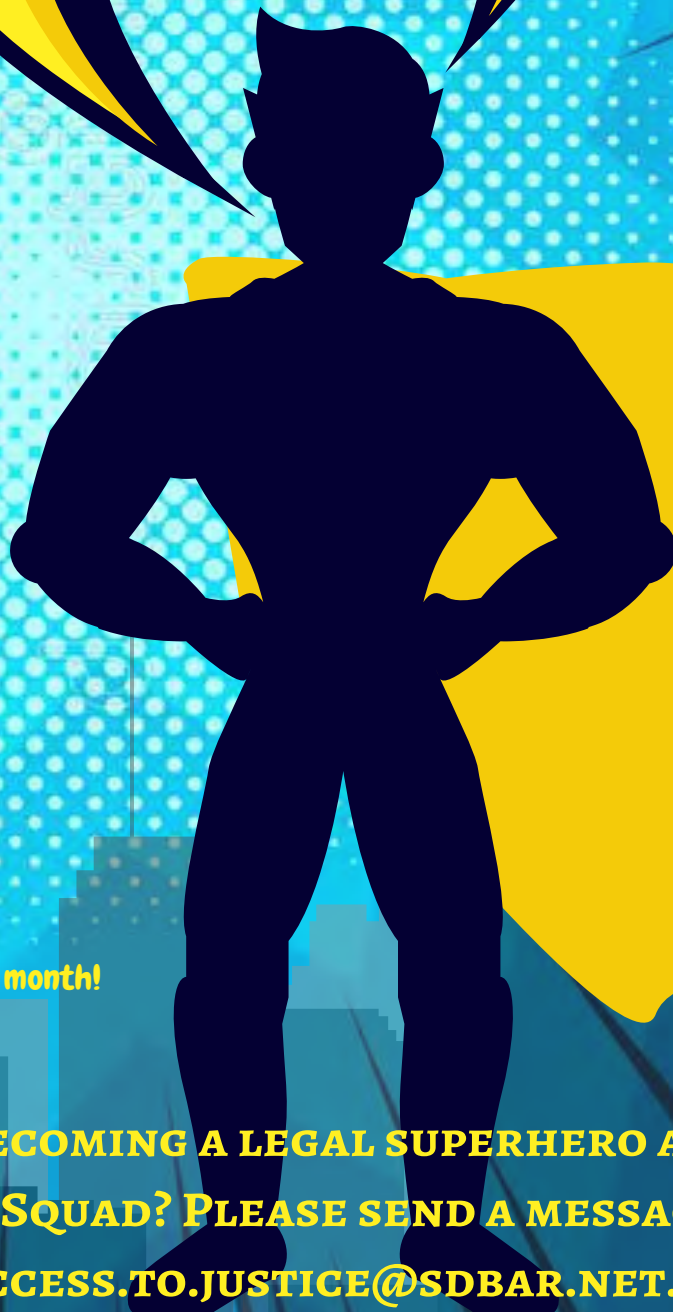
Wow! The 2018 Justice Squad continues to grow! Thank you to the following attorneys for accepting a pro bono or modest means case from Access to Justice, Inc. Welcome to the A2J Justice Squad – an elite group of South Dakota lawyers who accept the responsibility to defend justice, uphold their oath and provide legal representation to those who need it. You are a **LEGAL SUPERHERO!**

And thank you to:
SCOTT MOSES
for his help answering questions on SD Free Legal Answers this month!

- STEVEN HUFF****
- CURT MORTENSON**
- KRISTEN KOCHEKIAN**
- EDWARD HRUSKA**
- GEORGE GRASSBY**
- JON LAFLEUR**
- MARILYN TREFZ**
- TERRA FISHER**
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- JIM JEFFRIES**
- KAREN PAIGE HUNT**
- DAVID JENCKS ***
- RACHAEL JENCKS ***
- LORI STANFORD ***
- MATTHEW DOROTHY**
- DAVID BARARI**

*Indicates two cases accepted this month!

**Bar Commissioner



ARE YOU INTERESTED IN BECOMING A LEGAL SUPERHERO AND MEMBER OF THE A2J JUSTICE SQUAD? PLEASE SEND A MESSAGE TO DENISE LANGLEY AT: ACCESS.TO.JUSTICE@SDBAR.NET.

No longer need a paper copy of the directory?
Email Tracie at the address below if you would
prefer not to receive the mailing. You can
make the subject of your email "Saving Trees"

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Email your updates to:
tracie.bradford@sdbar.net

The subject of your email should be "Directory Updates"
Address updates needed include:
Firm Name, Address, City, State, Zip Code, Phone, Fax and Email.

Deadline: March 8th

Legal Writing Across South Dakota: Surveying the Bar

Wendy Hess, Associate Professor & Director of Fundamental Legal Skills
University of South Dakota School of Law

As law school professors, we want to ensure that we provide students with what they need to successfully practice law (and, of course, to pass the bar). A 2012 national survey of new attorneys revealed that written communication is the most significant skill needed to practice law. Similarly, a recent regional survey found that Minneapolis legal employers considered effective written and oral communication skills among the most important competencies for attorneys.

The Fundamental Legal Skills (FLS) program at the University of South Dakota School of Law is a year-long course, designed to teach first-year law students the skills of legal analysis and reasoning, legal writing, legal citation, legal research, and oral advocacy. In the summer of 2016, the FLS program sought input from the South Dakota Bar about members' research and writing experiences and preferences to better inform ourselves about how to best prepare our students for practice. We learned about what you write, how you write, how you research, and how you cite to legal authority. Some of the takeaways from the survey include:

- The most common legal documents are emails and letters. South Dakota attorneys most frequently write emails and letters, followed by trial level documents such as pleadings, trial briefs, and discovery.
- Online legal research is most popular. The most frequently used legal research tool is Westlaw. Attorneys still use books, but far less frequently than online research tools (only 16% of their research is conducted using books).
- Attorneys' pet peeves are grammar errors & typos. Attorneys are most put off by grammar and typographical errors, including run-on sentences, misspellings, and punctuation errors. With respect to punctuation, one impassioned survey respondent told us that "omission of the

Oxford comma is a virulent plague affecting all facets of our society."

- Good legal writing advice. Some of the best legal writing advice attorneys have received: "be concise."
- The Bluebook still matters. All attorneys responded that Bluebook citation matters. Half said they prefer formal citations that completely and substantially conform to Bluebook citation rules. The other half were less concerned with format so long as the information is accurate and they can still locate the source.

So how does your experience measure with our survey findings? Do they ring true to your practice? The FLS program wants to continue to get to know the Bar so we can best prepare students for practice. Less than 10% of the practicing South Dakota Bar responded to our survey, most of whom worked in law firms. We would love to hear more from everyone, including government attorneys, prosecutors, public defenders, and judges.

Please share your thoughts. For example, what do you think our graduates should know about legal writing when they begin their legal careers? What writing skills do you wish you could improve upon, even now, as a practitioner?

Don't be a stranger! Email me at wendy.hess@usd.edu.



The State Bar of South Dakota, The Committee on Continuing Legal Education and the Alternative Dispute Resolution Committee Present:

Alternative Dispute Resolution

Mike McKnight, Chair

April 13, 2018

Ramkota Hotel, Sioux Falls



Registration – 12:30 pm, Program 1 pm

This CLE is free to all active bar members – all others, cost is \$100.

Agenda:

- | | |
|----------------|--|
| 1-2 pm | Family Law and Divorce - Marilyn Trefz & Honorable David Gienapp |
| 2-2:10 pm | Break |
| 2:10-3:20 pm | Arbitration Basics - Catherine Duenwald and Michael McKnight |
| 3:20-3:30 pm | Break |
| 3:30 – 4:30 pm | Elder Law Mediation - Charlie Dorothy and Corey Denevan |

Preregister online: www.statebarofsouthdakota.com

Watch Out for These Common Conflict of Interest Traps

Mark Bassingthwaighe, Esq.

mbass@alpsnet.com

I've spent years trying to encourage solo and small firm lawyers to develop and consistently use a formal conflict checking system that tracks all of the information best practices currently dictate. In all honesty, I will admit that I have had limited success in this endeavor. This doesn't mean I won't keep trying; but it does mean I've got to accept the reality of the situation because, truth be told, conflict missteps in the solo and small firm arena are not typically a "whoops, we missed that name" kind of thing. More often than not the attorney simply failed to recognize that a conflict was in play, or if she did see it, decided that the issue wasn't significant enough to worry about. Given this, I'm changing my approach and instead of trying to convince you to expand your conflict database and run every name under the sun through it, I thought I'd share a few general tips that can help you avoid many of the more common conflict missteps.

- ◆ **Be wary of representing two or more parties at once** such as a divorcing couple, a husband and wife wanting wills, multiple plaintiffs in a personal injury matter, multiple partners forming a new business, or the buyer and seller in a real estate transaction just for starters. I'm not saying you can never take on multiple parties. There are situations where it is ethically permissible and entirely appropriate. However I would advise that if you do, fully disclose to each of the multiple clients the ramifications of agreeing to joint representation. Discuss how both potential and any actual conflicts will affect your representation of everyone. Advise the clients that on matters concerning the joint representation there is no individual client confidentiality among the group. In addition, consider advising each of them to seek independent outside advice as to whether they should agree to joint representation. Regardless, do not proceed with the representation until all clients have given you their informed consent which should be in writing.

Now, two quick side notes are in order. First, I can share that non-waivable conflicts do exist, in spite of what some of our peers choose to believe, and they often appear in these types of settings. When in doubt, seek advice from someone well versed in our ethical rules. Second, in an attempt to avoid dual representation problems some attorneys will agree to represent one of the parties and document that the other has been advised to seek independent counsel. Should the remaining non-client decide to proceed without representation, understand that you don't get it both ways. In spite of any documentation to the contrary, if you continue to interact with this individual by answering questions to help move the matter along you can unintentionally establish an attorney client relationship and undo the precautions taken. Your actions will always speak louder than your written words. Never answer any legal questions from the non-client. Simply advise them to seek independent counsel, and if that slows things down, so be it.

- ◆ **Avoid joint representation in those potential conflict situations where there is a high probability that potential conflicts will evolve into actual conflicts** such as

with criminal co-defendants or with certain situations involving multiple plaintiffs. Remember Murphy's Law. More often than not the actual conflict will arise. If it does and is one that cannot be waived, your only option will be to completely withdrawal from the entire matter. Stated another way, in most multiple client representation matters if you're conflicted out for one client, you're conflicted out for all. This is just one of the risks that come with joint representation. In the world of ethics and malpractice, we call an attempt to stay in with one client while dropping another the "Hot Potato Drop." Should a claim ever arise as a result of your dropping all but one as a client, the lawyers on the other side will put this spin on your actions. They'll argue that you put your financial interests above the interests of the client or clients you dropped and that rarely turns out well for the lawyer being sued.

- ◆ **Always document the conclusion of representation with a letter of closure.** In terms of conflicts, an interesting question that arises from time to time is when does a current client become a past client for conflict resolution purposes? The temptation is to rationalize that the passage of time coupled with a bright line gets you there. After all, doesn't the fact that the deed was delivered four months ago, the settlement proceeds were disbursed two years ago, the judge signed the final order last year, or the contract was signed over five years ago mean these various matters are concluded and all of these clients are now past clients?

Our conflict rules don't speak of bright lines or the passage of time as being determinative. Keep it simple. For conflict resolution purposes, once someone becomes a current client, they are always a current client unless and until you clearly document otherwise. So, for example, one would be well advised to never alter a will for one party after having done wills for both parties a year or so earlier absent clear documentation that the prior representation of both had ceased. I would also caution you to keep this in mind if you ever get to the point where you're considering suing a client for fees. You can't sue current clients so make sure documentation that the client is a past client exists. Again, this is typically done in a closure letter that plainly states something along the lines of "this concludes our representation of you in this matter." In fact, this is the reason why conflict savvy firms keep all letters of closure even after destroying the related file years after closing it. The closure letter is part of the conflict database because it documents who is a current client and who is a past client.

- ◆ **Avoid becoming a director, officer or shareholder of a corporation while also acting as the corporation's lawyer.** This dual role can create all kinds of problems to include loss of attorney client privilege, an increased risk of a malpractice claim, and an inability to participate in certain decisions. If you do find yourself on a client corporate board, do not further compound the conflict issues by taking an ownership interest in the company that exceeds 5%. At that point the potential conflict problems reach a point where malpractice carriers will often decide to exclude the risk. The safest play is to never take a financial interest in a client entity

due to the difficulty in proving down the road that you never put your financial interests above the interests of your client.

- ◆ **Periodically stop and remind yourself just who the client is and act accordingly because sometimes it can get messy.** For example, an attorney was approached by the son of two long-term clients. Son introduced several non-clients to the attorney and asked the attorney to incorporate a startup business and handle related matters for a small stake in this new company. The son's contribution was to be his intellectual capital and the non-clients were the money guys. The attorney accepted the work and had frequent contact with the son and the investors throughout the process. Sometime later, one of the investors contacted the attorney and asked him to remove a preemptive rights clause from the organizing documents in order to facilitate a needed cash infusion from two additional investors who would only make a contribution if they were granted a substantial stake in the company. There were no funds available to pay the attorney for this additional work but he was offered the opportunity increase his own stake in the company. This request forced the attorney to determine who his client was. At that point he realized that his failure to clarify and document who was a client and who wasn't, coupled with past actions that seemed to allow corporate constituents and investors to believe that he represented everyone, resulted in his correctly deciding that he had no other option but to withdraw.
- ◆ **Never solicit investors on behalf of a client's business.** If and when that business goes south, you will be the one targeted for the recovery of all losses and guess what? Malpractice policies do not cover investment advice. This one will be on you.
- ◆ **Be extremely cautious about entering into business relationships with clients.** At the outset, Rule 1.8 is clear. The transaction must be fair and reasonable to the client. The client must be made fully aware of and clearly understand the terms of the transaction, the material risks and disadvantages to the client, any reasonable alternatives, the attorney's part in the transaction, and any potential conflicts of interest. The client must not only be advised to seek independent legal advice but actually given a reasonable amount of time to do so. Finally, the client must provide written consent.

The problem here is that the attorney needs to be particularly mindful that he cannot continue employment if his independent professional judgment will be affected by the business interest taken. Additionally, the full disclosure requirements of the rule brings about an obligation to disclose the fact that at some point the attorney and the client may potentially have differing interests in this business transaction that would preclude the attorney from continued service. Further, while the client should be encouraged to seek independent legal counsel, many times the reason that the issue comes up is that the client has no money to pay for legal services and the business deal being considered is an offer of stock in exchange for legal services. At a minimum, the client should be counseled to seek independent advice from another source, perhaps their CPA or financial advisor.

One real risk with these deals is that the business really does prosper or terribly falters. In either case the attorney can be in a difficult position. It's either that he has been substantially overpaid from the client's perspective or is now facing the reality that no payday is coming. While there are no specific boundaries as to how much of an ownership interest is too much, certainly the degree to which an attorney can maintain independent legal judgment would seem to be directly correlated to the percentage of ownership interest owned. As a guideline I would recommend that the ownership interest obtained never exceed 5% as the conflict concerns become too high at that point and beyond.

- ◆ Last but not least, **remember that memory doesn't cut it** and conflict checking systems are only as good as the people who use them. Always keep the system current and use it consistently or it will be ineffective. Check and update your conflict database every time you consider taking on a new matter, regardless of whether the matter was accepted or declined. Circulate new client/matter memos throughout the firm. Make sure the memo affirmatively documents that all attorneys and staff have reviewed the memo to include thinking about personal and business interest conflicts they may individually bring to the table. Finally, don't forget to look for potential conflicts that might exist if the firm has gone through a recent merger with another firm or had any new lateral or staff hires. (I know, I just couldn't stop myself.)

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3 years of Ag Lending
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ALPS Risk Manager Mark Bassingthwaite, Esq. has conducted over 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management and technology. Check out Mark's recent seminars to assist you with your solo practice by visiting our on-demand CLE library at alps.inreachce.com. Mark can be contacted at: mbass@alpsnet.com.

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Experience Matters!



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

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

Meet the KTLLP Business Valuation Team

Certified Business Appraisals

A QUESTION OF VALUE:

Is your client's buy-sell agreement still relevant?

As you know, buy-sell agreements can get stale. Just because your client can "check the box" that he/she has such agreement, doesn't mean they are "in the clear" of avoiding a legal battle with a shareholder. It is time to brush the dust off the agreement, review the language, and fix what's outdated. Oftentimes, these agreements include a formula to calculate value. While these formulas are usually written to withstand the test of time, it is unrealistic to think they will work forever.

Contact your favorite certified valuation analyst to review the valuation formula or to devise a new one.

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Representing Asylum Seekers in Removal Proceedings for South Dakota attorneys

Hundreds of families and children who have valid claims for protection from deportation under U.S. law have to appear before the Immigration Court without any legal representation, including many families from South Dakota. These South Dakota families need your help!

This free seminar led by the staff of The Advocates for Human Rights will provide training for attorneys on representing asylum seekers and will emphasize best practices in representing asylum seekers in court, tailored to South Dakota based *pro bono* attorneys. The goal is to enable South Dakota based volunteer attorneys to practice successfully before the Fort Snelling Immigration Court in representing asylum seekers. This training is designed for South Dakota based attorneys with little or no immigration law experience. However, because this training will cover more advanced information, we recommend that attendees who have not already attended our asylum basics training view the recording [here](#) before attending this training.

The training will include the opportunity to practice portions of a Mock Hearing, as well as to observe a real master calendar hearing taking place from the South Dakota Federal Courthouse via Video Conference. South Dakota-based attorney Casey Eekhoff will share insights following her recent success representing a family of asylum seekers in attaining protection from deportation before the Immigration Court.

3.0 standard CLE credits will be requested from the Minnesota State Board of Continuing Legal Education. **Ballard Spahr LLP will generously offer complimentary lunch to training participants.** Please be sure to include your dietary restrictions in the registration link below. We look forward to speaking with you!

Date and Time

Fri, March 16, 2018

9:00 AM to 12:00 PM CDT, Lunch to follow from 12:00 PM to 1:00 PM

Location

United States Courthouse
400 South Phillips Avenue
Sioux Falls, SD 57104

Please register [here](#).

PLEASE NOTE THAT YOU WILL NEED TO REGISTER SEPARATELY FOR THE AFTERNOON TRAINING

Immigration Law for Criminal Defense Attorneys in South Dakota

This CLE will provide criminal defense attorneys with an overview of important issues to consider when representing noncitizen clients in criminal proceedings. Topics will include immigration detention, bond basics, consequences of certain criminal charges, and how to remedy pleas and convictions.

The session will be led by Kathy Moccio who is an immigration law professor with the James H. Binger Center for New Americans at the University of Minnesota Law School. She is a nationally recognized expert on "crim-imm" issues and formerly served as a Hennepin County Assistant Public Defender where she focused on helping noncitizens navigate criminal and immigration law.

2.0 standard CLE credits will be requested from the Minnesota State Board of Continuing Legal Education.

Date and Time

Fri, March 16, 2018
1:00 PM – 3:00 PM CDT

Location

United States Courthouse
400 South Phillips Avenue
Sioux Falls, SD 57104

Please register [here](#).

PLEASE NOTE THAT YOU WILL NEED TO REGISTER SEPARATELY FOR THE MORNING TRAINING

BOARD OF BAR COMMISSIONERS

Minutes, January 5, 2018

Pierre, SD

President Reiter called the meeting of the Bar Commission to order at 9:01, a.m., Friday, January 5, 2018, in Pierre, SD. Attending were President Reiter, President Elect Rasmussen, Commissioners Sutton, Thompson Kerver, Duncan, Huff, Hopper, Tobin, R Williams, Miner, Zea, J Williams, Willert, Secretary-Treasurer Barnett, Beth Overmoe, Denise Langley, and Nicole Ogan.

Beth Overmoe gave the Young Lawyers report. She advised that the YLS had finished its updates to the Hagemann-Morris guidebook, forms and procedures.

Denise and Beth presented the Access to Justice report. Denise requested that the Board authorize the Modest Means project to permit income guideline up to 300% for veterans, elderly and the disabled. Moved by Rasmussen, seconded by Tobin, to grant the 300% recommendation, which motion passed unanimously. Denise and Beth advised that the statewide website for online intake will be ready in approximately two weeks. Denise further advised that the Legal Services Committee could help assist in volunteer lawyer recruitment.

Beth gave an update on the strategic plan. Noteworthy, the Lawyers Concerned for Lawyers and the Lawyers Assistance Committee had recently completed the taping of public service videos to help educate our members and which videos will be shared with other professions.

President Reiter discussed plans of USD President Jim Abbott for fund raising for scholarships at the USD School of Law. The scholarship project is intended to help keep more of our highly qualified SD undergrads here in SD to attend our law school. Currently, too many law schools have substantial scholarships available and they are “stealing” these SD students away from our law school. President Reiter’s challenge to each graduating class from the USD School of Law to fund one full-ride scholarship of \$45,000 was discussed as well.

For the ensuing hour, there were two consecutive on-line presentations. The first was from Community Lawyer, the nonprofit with whom the State Bar will partner in developing an on-line lawyer referral system. The second was from Higher Logic, purchaser of our current software/website company (Socius), which was highlighting improvements and options available through Higher Logic not available with our current company.

A brief discussion was held concerning the pending Supreme Court rules hearing scheduled for February. Barnett informed the Commissioners that the proposed changes to chapter 16-19 are now in good shape, including those changes desired by LCL and LAC committees. Neil Fulton will handle the proposed changes to the Rules of Professional Conduct. Barnett noted that a proposal to substantially limit the use of recusal of circuit judges was pending before the court. With J Williams abstaining, the Commissioners unanimously voted to oppose the proposed change. Next, Barnett advised that a proposed bill would permit out of state licensed professionals to practice their professions in SD for up to 18 months before having to qualify for our licensing rules, which proposal was broad enough to include admission of out of state lawyers w/out supreme court approval. With J Williams abstaining, the commissioners unanimously voted to oppose the bill or alternatively, take no position if the bill was amended to remove application to lawyers (motion by Tobin, second by Hopper).

The Commissioners returned to the discussion on lawyer referral and our website. A question was raised about possible claims for negligent referral. Barnett said he would consult with our insurance carrier and provide Commissioners with answers. The discussion then changed to whether the lawyer referral project should be a traditional referral service or an online directory of lawyers belonging to the referral program. President Reiter advised that the referral committee had

completed its work on the practice area panels and subpanels, were working on a marketing plan and would advise the commissioners when ready to launch.

The Commissioners then discussed Higher Logic. The consensus was that the state bar website needs improvement. However, the cost over the next year or two, given the transitions occurring in bar management, was problematic. President Reiter announced her intention to appoint a committee to study and suggest practical, identifiable solutions to improve our members experience when using our website.

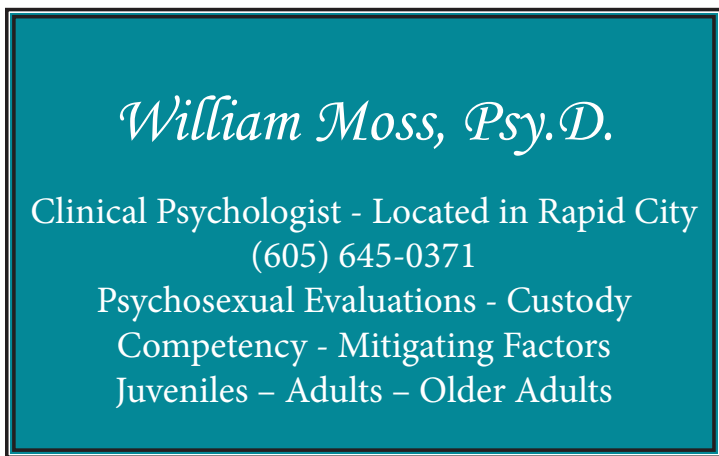
Tobin gave a report on the subcommittee reviewing the bylaws of the state bar. He promised to have his “total rewrite” ready before the April meeting.

The Commissioners then took up approval of the October minutes. Commissioner Zea recommended changing one sentence which, by consensus, was accepted, whereupon moved by Zea, seconded by Williams, to approve the minutes which was unanimously approved. Moved by Sutton, seconded by Huff, to approve the December (telephonic) minutes which was unanimously approved.

President Reiter advised that it was time for her to appoint a Young Lawyer Representative to the ABA House of Delegates and announced her appointment was Beth Overmoe. Reiter then gave a brief update on transition, indicating that the following week the Interview Team would interview all candidates for the Executive Director/Secretary-Treasurer position and would recommend qualified candidates to the Bar Commission. The Commission will interview the recommended candidates on February 8 and 9 during a special meeting, where the new Executive Director/Secretary-Treasurer will be selected.

There being no further business, the meeting adjourned.

Thomas C. Barnett, Jr.
Secretary-Treasurer



William Moss, Psy.D.
Clinical Psychologist - Located in Rapid City
(605) 645-0371
Psychosexual Evaluations - Custody
Competency - Mitigating Factors
Juveniles – Adults – Older Adults

2018 PIN Auction

When: April 12th, 5-10pm

Where: Eagles, Downtown Vermillion



Featuring:

Live and Silent Auctions

Serving Walking Tacos

Live Auction will begin around 7pm

Cash or Check Only - Must Pay at Event

All proceeds fund scholarships for law students working in unpaid summer internships.

FOR QUESTIONS CONTACT:

Caitlyn Dommer at (605) 592-6134 - Caitlyn.Dommer@coyotes.usd.edu

or

Brianna Eaton at (712) 898-3042 - Brianna.Eaton@coyotes.usd.edu

or

Crystal Duneman (605) 280-3850 or Ryan Armstrong (605) 202-0463

If you are a person with a disability and need a special accommodation to fully participate, please contact Disability Services 48 hours before the event at 605-677-6389

Job Postings and Classified Advertisements

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

ATTORNEYS

Transactional Attorney: Mankato, MN
Stinson Leonard Street LLP (www.stinson.com), an Am Law 200 firm with offices in 13 cities nationally, is seeking an attorney with experience in the areas of corporate law, business transactions, business succession planning, secured lending transactions and/or commercial real estate to join our Mankato, Minnesota office. The preferred candidate is self-motivated and team-orientated, with the ability to work in a fast-paced collaborative environment. While this position is based in Mankato, MN, the attorney will have the ability to partner with our greater Stinson team and serve clients throughout our offices. Qualifications Required: Qualified candidates will have at least three (3) years of experience in the areas of corporate law, business transactions, business succession planning, secured lending transactions and/or commercial real estate. The successful candidate is a professional who can provide exceptional customer service both to our clients and our internal team. Qualified applicants will possess excellent academic credentials and have strong writing, analytical, organizational, and communication skills. Applicant must be licensed to practice law in the State of Minnesota.

To Apply: Please send cover letter, resume, unofficial law school transcript, and writing sample by e-mail to: Anna Lloyd

Attorney Recruiting Manager
Stinson Leonard Street
1201 Walnut, Suite 2900
Kansas City, MO 64106
recruiting@stinson.com

Stinson Leonard Street is an EEO employer. We encourage qualified minority, female, veteran and disabled candidates to apply to be considered for open positions. We offer a competitive compensation and benefits package. We conduct criminal background checks of all individuals offered employment.

For information about Stinson Leonard Street, visit us at www.stinson.com.

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

Deputy State's Attorney: Hughes County

Full-time permanent position now open for a Deputy State's Attorney in the Hughes County Office of the State's Attorney in Pierre, South Dakota. Looking for a civil and/or criminal attorney to handle a variety of complex matters and responsibilities. Pay is commensurate with experience and competitive with other local agencies.

This position would be responsible for misdemeanor and juvenile cases, criminal charging decisions, and evidentiary hearings. Looking for a team player who would be willing to cover felony hearings, advise local law enforcement agencies, deal with juvenile justice issues, provide information to victims and witnesses, perform civil work on behalf of the County, and help fulfill the statutory responsibilities of the office.

Please send a resume to Roxanne Hammond, Hughes County State's Attorney, 104 E. Capitol, Pierre, SD 57501. Resumes will also be accepted via facsimile at 605-773-7460 and email at roxanne.hammond@co.hughes.sd.us. Deadline for applications is March 16, 2018 at 5:00 p.m. All inquiries are confidential. Hughes County is an Equal Opportunity Employer

Deputy State's Attorney: Brookings County, South Dakota

The Brookings County State's Attorney's Office has an immediate opening for a Deputy State's Attorney to perform routine professional legal work in the prosecution criminal crimes, juvenile crimes, and juvenile abuse and neglect cases in Brookings County. Responsibilities of the Deputy State's Attorney vary and may include reviewing offenses and evidence to make determination on charges and prosecuting violations of state law; reviewing requests for petitions and determining appropriate course of action; making recommendations for child custody and parental rights; and attending legal proceedings. Annualized compensation for appointment as a Deputy State's Attorney will be \$65,068.00.

Examples of duties include: Prepare and manage a caseload of predominantly low-level felonies, juvenile violation cases, abuse and neglect cases, and magistrate court cases. Assist law enforcement with involuntary mental health committals. Assist with civil representations of the County. Present cases for legal proceedings. Perform legal research. Prepare, draft, and file legal documents and correspondence. Review offenses, police reports, and evidence to make determination on charges. Prepare, send, and track subpoenas for witnesses and records. Prepare and interview witnesses for legal proceedings. Stay informed on changes in relevant law and statutes and proposed legislation and policy pertaining to criminal law, juvenile delinquency, and juvenile abuse and neglect. Communicate, correspond, and collaborate with parties involved in cases including victims, parents, school personnel, attorneys, court personnel, and law enforcement regarding procedures and actions for those cases. Respond to inquiries from the public. Make recommendations for custody, parental rights, sentences, and restitution for juvenile and magistrate files. Represent the State's Attorney's Office at public, private, and inter-governmental programs and events. Train and educate volunteers, law enforcement, and social workers on their roles and duties on legal issues and the court process duties. Answer, handle, or direct phone calls and walk-in traffic from clients and the general public regarding legal concerns and questions.

Minimum Qualifications: Graduation from a college of law. Attainment of a Juris Doctorate degree from an accredited law school. Admission by the Supreme Court of South Dakota to practice law in the state of South Dakota; or be licensed to practice law in any other state and able to take the next available South Dakota bar examination; or be a recent or imminent law school graduate, eligible to sit for

the next available South Dakota bar examination. Comparable combination of education and experience may be considered. Must successfully complete pre-employment background process. Working knowledge of civil and criminal law and methods and practices of pleadings; court procedures and rules of evidence; principles, methods, materials and practices utilized in legal research; and general law and established precedents. Ability to prosecute cases. Ability to speak and write effectively in the preparation and presentation of legal matters. Ability to establish and maintain effective working relationships with coworkers, other agencies and the public. Ability to maintain professional appearance and demeanor. Preferred Qualifications: Strong oral argument skills.

To apply: Interested applicants should submit a cover letter, resume, law school transcript and writing sample to: Teree Nesvold, Brookings County States Attorney, 520 3rd St., Suite 330, Brookings, SD 57006 or electronically at tnesvold@brookingscountysd.gov. Deadline for applications is 3/15/18. Brookings County is an Equal Opportunity Employer.

Coverage Attorney: South Sioux City, NE

As a Coverage Attorney for Great West Casualty Company, you will focus on the Motor Carrier Policy, providing counsel, training, and assistance to the regions' claims departments to foster consistent, efficient, and appropriate claims practices. You will prepare coverage opinions and memoranda on claims legal topics as well as oversee litigation and declaratory judgement action while supervising outside counsel.

We are looking for candidates with:

JD degree. You must be licensed to practice in at least one state. CPCU/AIC designations helpful.

At least 3 years of litigation experience with insurance, regulatory compliance, and administrative law emphasis. Prefer Insurance Defense Litigation experience.

Strong attention to detail with above average multi-tasking skills and the ability to adapt quickly to situations that require immediate transition.

The ability to read and analyze a policy and apply that to a fact scenario while confidently laying out your reasoning and rationale.

Excellent communication and public speaking skills.

Who we are:

Great West Casualty Company provides specialized insurance products unique to the trucking industry and outstanding customer service to the thousands of truck drivers and trucking companies we serve.

Over the past 60 years, we have grown to five offices

serving insureds in over 40 states. We are now one of America's largest insurers of trucking companies. If your passion is to help others, you value education and continuous improvement, you enjoy participating in community activities, and you want to be valued for your contributions, come be part of our successful team.

For more information: [https://recruiting.adp.com/srccar/public/RTI.home?c=1111841&d=GWCC_Careers&r=5000315547106#/.](https://recruiting.adp.com/srccar/public/RTI.home?c=1111841&d=GWCC_Careers&r=5000315547106#/)

Associate Attorney: Rapid City, SD
Gunderson, Palmer, Nelson & Ashmore, LLP in Rapid City, South Dakota is seeking an associate litigation attorney with 0-5 years of experience. All inquiries will be treated as strictly confidential. The associate attorney will work primarily in litigation but may be asked to assist in other areas as well. The firm offers competitive salary and a comprehensive benefit plan. Salary will be commensurate with experience. Applicant must be licensed to practice law in South Dakota or willing to sit for the South Dakota Bar Exam. Please send cover letter, curriculum vitae and references to: Attorney Jason Smiley at jsmiley@gpna.com

Associate Attorney: Rapid City, SD
Nooney & Solay, LLP in Rapid City is seeking an associate attorney with 1-5 years of experience. The attorney in this position will focus primarily on litigation support for a fast-paced practice. Wage DOE. All applications will be kept confidential. Interested applicants should send a cover letter, writing sample, and resume to Nooney & Solay, LLP, Attn: Sandi, P.O. Box 8030, Rapid City, SD 57709-8030 or by email to sandi@nooneysolay.com.

Deputy/Senior Deputy State's Attorney:
Minnehaha County
The Minnehaha County State's Attorney's Office is looking for a prosecutor to join our top performing team of attorneys. Supported by experienced investigators, victim/witness assistants, paralegals, and legal office assistants, our attorneys enjoy a strong sense of camaraderie working in a think tank of legal minds. Incumbents will perform professional legal work on behalf of Minnehaha County in civil and criminal court and administrative proceedings. Requires graduation from law school, JD degree, and admission by Supreme Court of SD to practice law;

or out of state license & eligible to sit for next SD bar exam. Appointment at Senior level requires 2+ yrs of relevant experience. 5yrs complex felony prosecution, jury trial, and civil litigation experience preferred. Hiring range: \$2,552.00 - \$2,615.00/bi-weekly; Senior level, \$2,681.60 - \$3,032.80/bi-weekly with full earning potential to \$3,695.20/biweekly. Minnehaha County offers health, dental, vision and life insurance, a generous paid time off program, extended sick leave, retirement, and an employee assistance program.

For a full list of qualifications and the application process visit: <http://jobs.minnehahacounty.org>.
Posting will remain open until positions are filled.
Review of applications will begin February 21, 2018.
Contact HR with questions at 605-367-4337. EO/AA Employer.

Business and Estate Planning Attorney: Sioux City, IA

Crary Huff Law Firm is seeking an experienced business and real estate attorney for its office located in Sioux City, Iowa. Candidates should have at least two years of legal practice. Experience with estate planning, corporate law and real estate transactions is preferred. Applicants should have a strong work ethic and favor a collaborative team-oriented approach to the practice. Iowa bar admission required. All applications will be handled confidentially. Send resume and cover letter to Crary Huff Law Firm, Attention Mick Connealy, Personnel Partner, PO Box 27, Sioux City, IA 51102 or mconnealy@craryhuff.com. Equal Opportunity Employer.

Litigation Attorney: Sioux City, IA

Crary Huff Law Firm is seeking an experienced litigation attorney for its office located in Sioux City, Iowa. Candidates should have at least two years of practice, primarily in civil litigation. Excellent research and writing skills are required, and trial experience is preferred. Iowa bar admission required. All applications will be handled confidentially. Send resume and cover letter to Crary Huff Law Firm, Attention Mick Connealy, Personnel Partner, PO Box 27, Sioux City, IA 51102 or mconnealy@craryhuff.com. Equal Opportunity Employer.

TRUST MANAGER

Personal Trust Relationship Mgr: Sioux Falls, SD-170043568

At U.S. Bank, we're passionate about helping customers and the communities where we live and work. The fifth-largest bank in the United States, we're one of the country's most respected, innovative and successful financial institutions. U.S. Bank is an equal opportunity employer committed to creating a diverse workforce. We consider all qualified applicants without regard to race, religion, color, sex, national origin, age, sexual orientation, gender identity, disability or veteran status, among other factors.

Responsible for fiduciary oversight and account administration of South Dakota situs trust accounts and for Ascent accounts for an ultra-high net worth client base where the bank is acting as trustee, executor, administrator, conservator, guardian, agent or custodian. Provides expert advice and counsel in the area of personal trust products and services. Provides high level customer service to customers, attorneys, accountants, advisors, related parties and beneficiaries relating to these accounts. Administers accounts in a manner that ensures compliance with legal and regulatory requirements and business line policies and procedures. Shares responsibility for improving services and ensuring the retention of client relationships.

Qualifications

Basic Qualifications:

- Bachelor's degree with course work in Finance and Accounting
- Five or more years of wealth management experience in the financial services industry

Preferred Skills/Experience:

- Advanced degree (JD preferred)
- CTFA
- Strong personal trust and relationship management skills
- In-depth knowledge of fiduciary services
- In-depth knowledge of trust laws and regulations
- Thorough knowledge of Wealth Management products and services-
- Thorough knowledge of personal trust products and services (including trust tax)
- Positive presence through peer networking and community service
- Well-developed analytical and problem-solving skills
- Ability to make critical decisions independently
- Excellent presentation, verbal and written communication skills
- Strong people management skills

Job Relationship Management

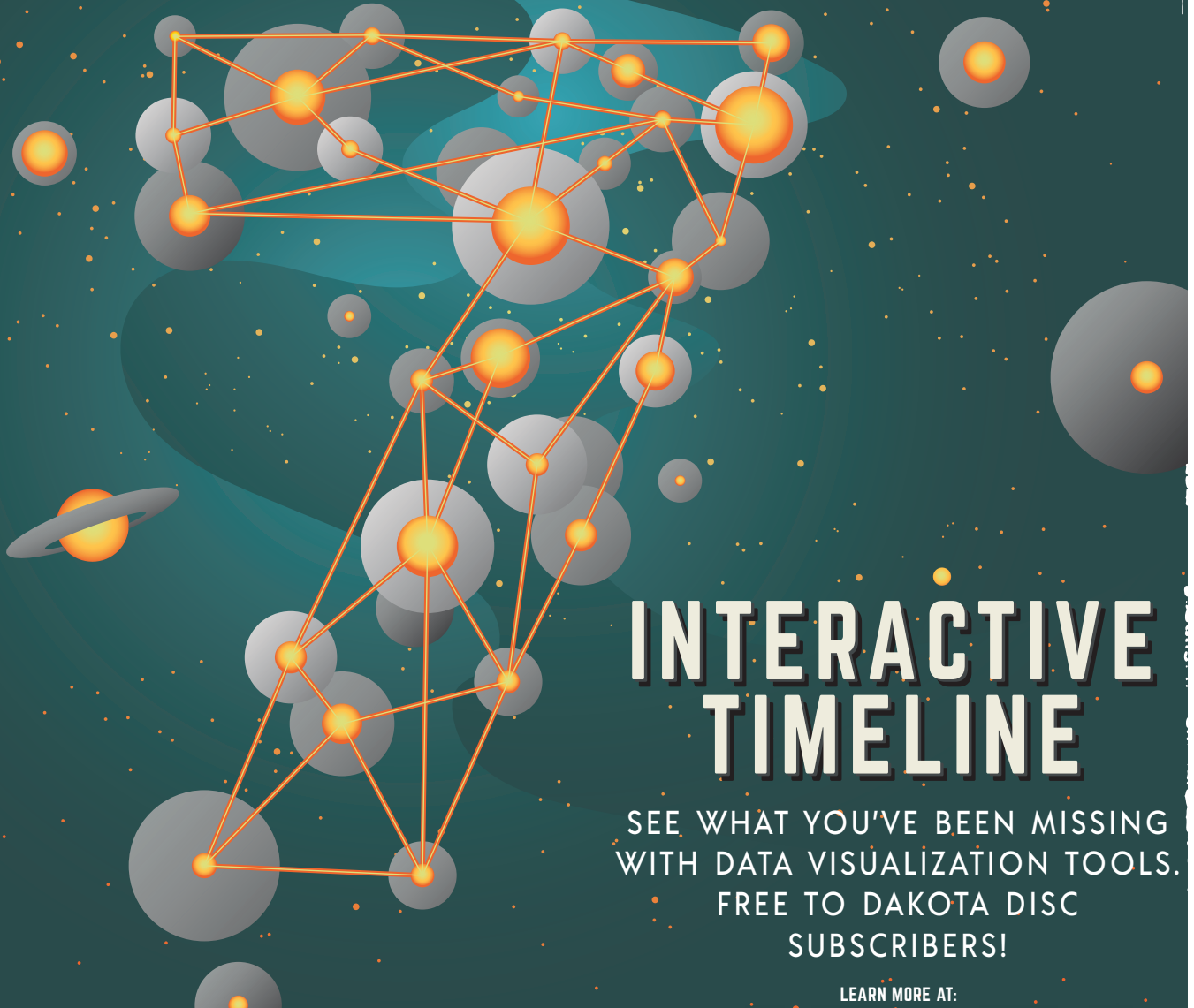
Primary Location South Dakota-SD-Sioux Falls

Shift 1st - Daytime

Average Hours Per Week 40



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IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT) RULE 18-01
SDCL 16-21A-2(4))

A hearing was held on February 13, 2018, at Pierre, South Dakota, relating to the amendment of SDCL 16-21A-2(4) and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-21A-2(4) be and it is hereby amended to read in its entirety as follows:

SDCL 16-21A-2(4). Electronic filing.

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

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

(3) Registered users will receive electronic notice when documents are entered into the system. Registration for electronic filing constitutes written consent to electronic service of all documents filed in accordance with these rules and the Rules of Civil Procedure. Electronic service through the

Rule 18-01

electronic filing system shall be deemed service by mail for purposes of adding an additional three days to any prescribed period.

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

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

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

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

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

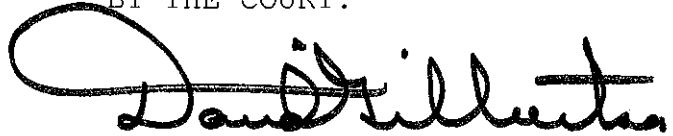
(8) All paragraphs, excluding attachments, shall be numbered in all documents, except briefs, filed electronically. Reference to material in such documents shall be to paragraph number, not page number.

Rule 18-01

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2018.

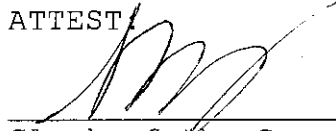
DATED at Pierre, South Dakota, this 20th day of February, 2018.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 20 2018

Shif A. Johnson Legal
Clerk

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT) RULE 18-02
SDCL 1-26-33)

A hearing was held on February 13, 2018, at Pierre, South Dakota, relating to the amendment of SDCL 1-26-33 and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 1-26-33 be and it is hereby amended to read in its entirety as follows:

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

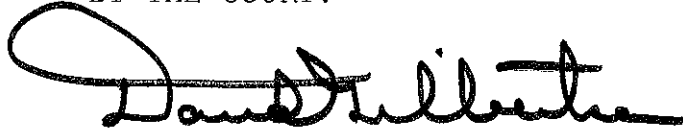
It shall be the duty of the agency to assemble and consecutively number the pages of all documents, papers, and exhibits filed with the agency, including any opinions and decisions which the agency may have filed or authorized for filing. The agency shall then prepare and attach an alphabetical and chronological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

Rule 18-02

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2018.

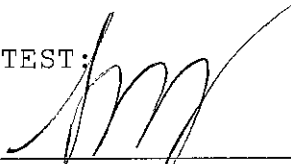
DATED at Pierre, South Dakota, this 20th day of February, 2018.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 20 2018



Clerk

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT) RULE 18-03
SDCL 15-6-5(g))

A hearing was held on February 13, 2018, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-5(g) and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-6-5(g) be and it is hereby amended to read in its entirety as follows:

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

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

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

Rule 18-03

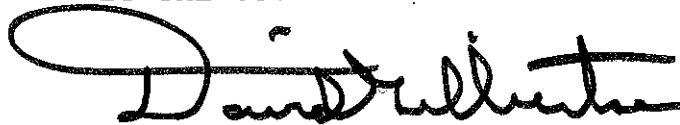
Depositions used by a party only for the purpose of contradicting or impeaching the testimony of deponent as a witness, pursuant to subdivision 15-6-32(a)(1), shall not be filed unless otherwise ordered by the judge presiding at the hearing or trial.

All depositions which have been read or offered into evidence by agreement of parties, or at the trial or submission of the case to the court, shall become a permanent part of the file.

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2018.

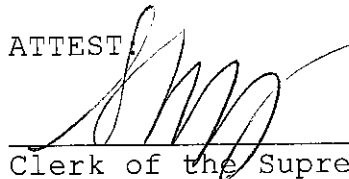
DATED at Pierre, South Dakota, this 20th day of February, 2018.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 20 2018



Clerk

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT) RULE 18-04
SDCL 15-6-30(f))

A hearing was held on February 13, 2018, at Pierre, South Dakota, relating to the amendment of SDCL 15-6-30(f) and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 15-6-30(f) be and it is hereby amended to read in its entirety as follows:

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

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

Rule 18-04

returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

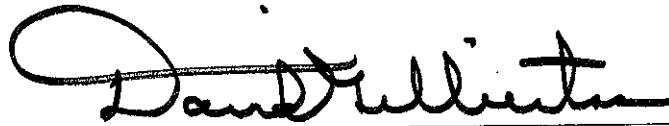
(2) Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

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

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2018.

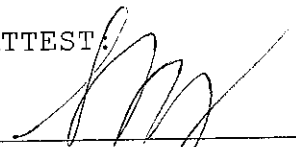
DATED at Pierre, South Dakota, this 20th day of February, 2018.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 20 2018


Clerk

Rule 18-05

(5) An analysis of how the change affects existing rules or statutes.

The clerk of the Supreme Court shall give thirty days' notice of an intention to adopt, amend, or repeal rules by electronic mail notification to members of the State Bar of South Dakota, by posting notice at the Unified Judicial System's website at <http://www.ujs.sd.gov/> or at the State Bar of South Dakota's website at <http://www.sdbar.org/>, or such other notice as the Court may order. Notice shall include a copy of the proposed rule and the explanation of proposal described above in (1)-(5). Any member of the State Bar of South Dakota may request notification of an intention to adopt, amend, or repeal rules through first class mail by contacting the clerk of the Supreme Court. The notice shall fix a time and place when any person interested may appear and be heard with reference to the adoption, amendment, or repeal of rules.

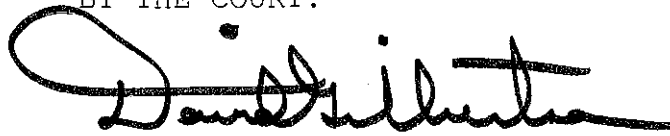
Notice of adoption of several rules, amendments, or repeals of rules may be given at one time and in one notice.

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

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2018.

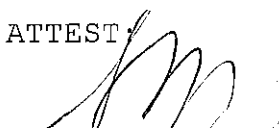
DATED at Pierre, South Dakota, this 20th day of February, 2018.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 20 2018


Clerk

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENTS) RULE 18-06
AND ADOPTIONS TO: APPENDIX A.)
TO CHAPTER 16-18 SOUTH DAKOTA)
RULES OF PROFESSIONAL CONDUCT)

A hearing was held on February 13, 2018, at Pierre, South Dakota, relating to the amendments and adoption to Appendix A. to Chapter 16-18, South Dakota Rules of Professional Conduct, and the Court having considered the proposed amendment, the oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that Appendix A. to Chapter 16-18 South Dakota Rules of Professional Conduct be and it are hereby amended to read as follows:

**APPENDIX A. TO CHAPTER 16-18
SOUTH DAKOTA RULES OF PROFESSIONAL CONDUCT**

CLIENT-LAWYER RELATIONSHIP.

Rule 1.0 Terminology

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or video recording and ~~e-mail~~ electronic communications. A

"signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Rule 1.6 Confidentiality of Information

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

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

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

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

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

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

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

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

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

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

Rule 1.10 Imputation of Conflicts of Interest General Rule

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

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

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

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

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and of the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

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

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

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

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

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

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

Rule 1.13 Organization as Client

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

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law ~~which~~ that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances to the highest authority that can act on behalf of the organization as determined by applicable law. ~~In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. Such measures may include among others:~~

- ~~(1) asking for reconsideration of the matter;~~
- ~~(2) advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the organization; and~~
- ~~(3) referring the matter to higher authority in the organization, including, if warranted by the seriousness of the matter, referral to the highest authority that can act on behalf of the organization as determined by applicable law.~~

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

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

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

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

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

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

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

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

Rule 1.18 Duties to Prospective Client

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

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

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

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

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

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

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

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

ADVOCATE

Rule 3.5 Impartiality and Decorum of the Tribunal

A lawyer shall not:

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

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

Rule 18-06

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

- (1) the communication is prohibited by law or court order;
- (2) the juror has made known to the lawyer a desire not to communicate; or
- (3) the communication involves misrepresentation, coercion, duress or harassment; or
- (d) engage in conduct intended to disrupt the tribunal.

Rule 3.8 Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

- (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;
- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;
- (d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to exculpate the guilt of the accused, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged exculpatory information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;
- (e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence relating to the lawyer's representation of a past or present client unless the prosecutor reasonably believes:
 - (1) the information sought is not protected from disclosure by any applicable privilege;
 - (2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and
 - (3) there is no other feasible alternative to obtain the information;
- (f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees of other persons assisting or associated

with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

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

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

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

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

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

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

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS.

Rule 4.4 Respect for Rights of Third Persons.

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

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

LAW FIRMS AND ASSOCIATIONS.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistancets

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

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

person's conduct is compatible with the professional obligations of the lawyer;

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

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

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

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

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

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

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

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

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

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

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

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

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another

jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

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

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

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

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

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

(e) For purposes of paragraph (d):

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

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

INFORMATION ABOUT LEGAL SERVICES.

Rule 7.2 Advertising

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

(b) Permitted Advertising. Subject to the requirements of Rules 7.1 and 7.3, 7.4 and 7.5, a lawyer may advertise legal services through written, recorded, internet, computer, e-mail or other electronic communication, including public media, such as a telephone directory, legal directory, newspapers or other periodicals, billboards and other signs, radio, television and other electronic media, and recorded messages the public may access by dialing a telephone number, or through other written or recorded communication. This rule shall not apply to any advertisement which is broadcast or disseminated in another jurisdiction in which the advertising lawyer is admitted if such advertisement complies with the rules governing lawyer advertising in that jurisdiction and is reasonably expected by the lawyer not to be received or disseminated in the State of South Dakota.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Foreign language ability.

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

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

(7) Acceptance of credit cards.

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

(9) A listing of the name and geographic location of a lawyer as a sponsor of a public service announcement or charitable, civic or community program or event. Such listings shall not exceed the traditional description of sponsors of or contributors to the charitable, civic or community program or event or public service announcement,

and such listing must comply with the provisions of this rule and the other Rules of Professional Conduct.

- (10) Schools attended, with dates of graduation, degree and other scholastic distinctions.
 - (11) Public or quasi-public offices.
 - (12) Military service.
 - (13) Legal authorships.
 - (14) Legal teaching positions.
 - (15) Memberships, offices and committee assignments in bar associations.
 - (16) Memberships and offices in legal fraternities and legal societies.
 - (17) Memberships in scientific, technical and professional associations and societies.
 - (18) Names and addresses of bank references.
 - (19) With their written consent, names of clients regularly represented.
 - (20) Office and telephone answering service hours.
- (g) Permissible Fee Information.

- (1) Advertisements permitted under this Rule 7.2 may contain information about fees for services as follows:
 - (i) the fee charged for an initial consultation;
 - (ii) availability upon request of a written schedule of fees or an estimate of fees to be charged for specific legal services;
 - (iii) that the charging of a fee is contingent on outcome or that the fee will be a percentage of the recovery, provided that the advertisement conspicuously discloses whether percentages are computed before or after deduction of costs, and only if it specifically and conspicuously states that the client will bear the expenses incurred in the client's representation, regardless of outcome, except as permitted by Rule 1.8(e);
 - (iv) the range of fees for services, provided that the advertisement conspicuously discloses that the specific fee within the range which will be charged will vary depending upon the particular matter to be handled for each client, that the quoted fee will be available only to clients whose legal representation is within the services described in the advertisement, and the client is entitled without obligation to an estimate of the fee within the range likely to be charged;
 - (v) the hourly rate, provided that the advertisement conspicuously discloses that the total

fee charge will depend upon the number of hours which must be devoted to the particular matter to be handled for each client, and that the client is entitled without obligation to an estimate of the fee likely to be charged;

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

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

(h) Electronic Media. Advertisements by electronic media, such as television and radio, may contain the same information as permitted in advertisements by print media, subject to the following requirements:

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

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

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

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

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

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

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

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

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

(1) is a lawyer; or

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

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

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

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

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

(d) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a

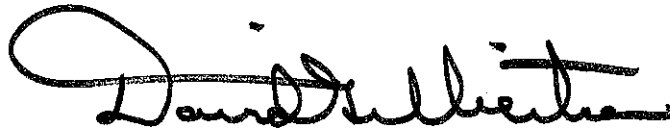
particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2). Where the communication is written,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

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

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2018.

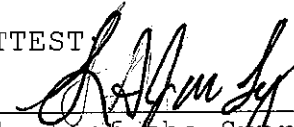
DATED at Pierre, South Dakota, this 20th day of February, 2018.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 20 2018


Clerk

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENTS) RULE 18-07
AND ADOPTIONS TO: APPENDIX A.)
TO CHAPTER 16-19 DISCIPLINE)
OF ATTORNEYS)

A hearing was held on February 13, 2018, at Pierre, South Dakota, relating to the amendments and adoptions relating to Appendix A. to Chapter 16-19, Discipline of Attorneys and the Court having considered the proposed amendments adoptions and being fully advised in the premises, now, therefore, it is

ORDERED that Appendix A. to Chapter 16-19, Discipline of Attorneys be and it is hereby amended to read as follows:

APPENDIX A. TO CHAPTER 16-19

DISCIPLINE OF ATTORNEYS.

SDCL 16-19-22. Supreme Court exclusive power to disbar or suspend attorney. The Supreme Court has the sole power to disbar and strike from the roster any attorney—~~or.~~ The Supreme Court also has the power to suspend any attorney from the practice for such time not to exceed three years, to publicly censure an attorney, and to impose probation or conditions as shall seem just for cause shown.

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

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

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

SDCL 16-19-28. Disqualification of board members in particular proceedings--Ad hoc appointments to restore full membership. Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain. In the event of recusal of attorney members of the board, the President of the State Bar shall appoint active members of the State Bar, preferably members with previous service on the board, to restore the board to full membership. In the event of the recusal of the lay member, the Chief Justice shall appoint a lay person having the qualifications set forth in ~~subdivision~~ § 16-19-24. Each such member shall fulfill all the responsibilities of the board member replaced.

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

- (1) To consider and investigate any alleged ground for discipline or alleged ~~incapacity~~ medical condition of any attorney called to its attention, or upon its own motion, and to

take such action ~~with respect thereto as shall be~~ appropriate to effectuate the purposes of this chapter. As used in this chapter, "medical condition" is any condition that deprives an attorney of the ability to act in compliance with the Rules of Professional Conduct and any other standards required of practicing attorneys.

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

(3) To hold informal conferences

(4) To privately reprimand attorneys for misconduct.

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

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

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

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

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

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

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

SDCL 16-19-32. Violations by attorneys as grounds for discipline. An act or omission by an attorney, individually or in concert with others, which violates the attorney's oath of office, the laws governing attorney conduct, or the Rules of

Professional Conduct, or other disciplinary rules adopted by the Supreme Court, is misconduct and is grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship.

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

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

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

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

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

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

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

SDCL 16-19-37. Suspension from practice on conviction of serious crime--Setting aside order. If any attorney has been convicted of a serious crime ~~as defined in § 16-19-36,~~ the Supreme Court may enter an order immediately suspending the attorney from engaging in the practice of law, pending final

disposition of a disciplinary proceeding to be commenced upon such conviction. The term "serious crime" includes any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves improper conduct as an attorney, interference with the administration of justice, false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a serious crime. Upon good cause shown, the Supreme Court may set aside such order suspending the attorney from engaging in the practice of law when it appears in the interest of justice so to do. An order suspending an attorney from the practice of law pursuant to this section is a suspension of the attorney for the purpose of §§ 16-19-74 to 16-19-82, inclusive, unless the Supreme Court shall otherwise order.

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

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

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

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

(1) Board counsel or an attorney board member shall dismiss complaints outside the board's jurisdiction, frivolous complaints, and complaints that fail to state a claim upon which

relief could be granted utilizing the same standard of review as would be used by a court reviewing a matter under § 15-6-12(b)(5).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SDCL 16-19-48. Transfer to medical inactive status of respondent pleading disability for a medical condition. If, during the course of a disciplinary investigation or proceeding, the respondent attorney claims to suffer from a disability by reason of mental or physical infirmity or illness, or an addiction to drugs or intoxicants, which makes it impossible for the respondent to make an adequate defense be unable to assist in the attorney's defense to a disciplinary complaint because of a medical condition, the Supreme Court shall enter an order immediately transferring the respondent attorney to disability medical inactive status until a determination is made of the respondent's capacity to continue to practice law in a proceeding instituted in accordance with the provisions of § 16-19-89 attorney's ability to comply with the Rules of Professional Conduct and § 16-19-31. The determination shall be made in a proceeding instituted in accordance with the provisions of § 16-19-89. An attorney transferred to disability medical inactive status shall not (be permitted to) practice law or. An attorney transferred to medical inactive status shall not act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive. The Supreme Court shall enter such orders as are necessary to notify the attorney's clients of the attorney's change in status.

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

SDCL 16-19-50. Accused attorney to be given opportunity to state position. Except in matters dismissed in accordance with subsection § 16-19-44 (B) (A) (1), no disposition shall be undertaken by the board or recommendation made by the

Attorney General until the ~~accused~~ attorney shall have been afforded a reasonable opportunity to state the attorney's position with respect to the allegations.

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

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

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

SDCL 16-19-55. Subpoena power of board and Attorney General--Disobedience as contempt. A member of the board, the ~~board secretary,~~ its counsel or the Attorney General may issue a subpoena requiring any witness to attend at any place within the state and requiring such witness to produce pertinent books, papers, and documents, including client files and records of client funds, and may administer oaths and take testimony in regard to such matters. The willful failure of any person to respond to a subpoena, or the willful refusal of any person to testify, is a contempt against the Supreme Court and may be punished accordingly.

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

SDCL 16-19-59. Dismissal of complaint on finding not meritorious. If the board determines after an investigation that

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

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

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

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

Rule 18-07

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

IN THE SUPREME COURT OF THE STATE OF SOUTH DAKOTA

In Re:)
)

(Name))
)
) RESIGNATION

Rule 18-07

State of _____) ss
)
)
County of _____)

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

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

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

I do not desire to contest or defend against the above-described complaints, allegations, or instances of alleged misconduct. I am aware of the rules of the Supreme Court and of the bylaws and rules of procedure of the State Bar of South

Rule 18-07

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

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

(Signature of Attorney)

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

Notary Public
My Commission Expires: _____

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

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

(1) After investigation as provided in this chapter, the investigating agency may file with the Supreme Court findings of fact, conclusions of law or conclusions pertaining to violations of applicable Rules of Professional Conduct, and a

recommendation for formal discipline. Such filing constitutes a formal accusation against the ~~respondent~~-attorney.

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

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

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

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

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

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

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

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

(a) State Bar of South Dakota. Costs and expenses incurred by the ~~Disciplinary Board of the State Bar of South Dakota~~ board in the investigation or prosecution of any disciplinary or reinstatement proceeding under this chapter shall be paid by the

State Bar, provided, however, that the expenses of a disciplinary proceeding may, in the discretion of the Supreme Court, be assessed against the attorney who is the subject of such proceeding.

(b) Attorney General. The Attorney General shall pay the costs and expenses ~~his~~ the Attorney General's office incurs in the investigation or prosecution of any disciplinary proceeding under this chapter.

(c) Unified Judicial System. The Unified Judicial System shall pay the costs and expenses incurred by the referee, the court reporter, and witnesses when a disciplinary action is referred to a referee under § 16-19-~~6867~~.

SDCL 16-19-70.2. Allowable costs and expenses. Expenses incurred by the board, the Attorney General, or the Unified Judicial System that were not covered by advance deposit and that have not been previously paid by the attorney who is the subject of a disciplinary or reinstatement proceeding, may be assessed by the Supreme Court against said attorney in favor of the State of South Dakota and/or the State Bar of South Dakota according to their respective interests ~~to~~. The assessments may cover the costs of a referee's mileage, meals, and rooms; a court reporter's mileage, meals, rooms, and transcript preparation; disciplinary counsel's mileage, meals, rooms, telephone charges, copying fees, and hourly charges for investigation and preparation for hearings, trials, and appeals, and appearances at hearings, trials, and appeals; witnesses' fees and mileage; and the board members' mileage, meals, and rooms, provided that proof of such costs shall be made as hereafter provided in § 16-19-70.3.

SDCL 16-19-70.3. Proof of costs and expenses required. An assessment for costs and expenses against an attorney requires the following proof:

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

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

SDCL 16-19-70.4. Judgment for costs against attorney. When judgment is rendered against an ~~accused~~ the attorney or whenever judgment for reinstatement of an attorney is entered, said attorney may, at the discretion of the Supreme Court, be directed to make appropriate reimbursement of costs and expenses as provided in §§ 16-19-70.1 and 16-19-70.2.

SDCL 16-19-72. Notice to attorney of disciplinary order from other jurisdiction. Upon receipt of a certified copy of an order demonstrating that an attorney admitted to practice in this state has been disciplined in another jurisdiction, the Supreme Court shall ~~forthwith~~ issue a notice directed to the attorney and a copy to the board containing:

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

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

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

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

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

SDCL 16-19-78. Notice to office clients of disbarment or suspension. A disbarred or suspended attorney shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the attorney's disbarment or suspension and consequent inability to act as an attorney after the effective date of the disbarment or suspension ~~and~~. The notice shall advise such clients to seek legal advice of the client's own choice elsewhere.

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

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

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

SDCL 16-19-80. Affidavit of compliance filed by disbarred or suspended attorney. Within ten days after the effective date of disbarment or suspension the disbarred or

suspended attorney shall file with the Supreme Court an affidavit showing:

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

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

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

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

SDCL 16-19-83. Reinstatement order required before resumption of practice--Time of application--Waiting period after denial of reinstatement. No attorney suspended for more than three months or disbarred may resume practice until reinstated by order of the Supreme Court. ~~A person~~ An attorney who has been disbarred may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment. No petition for reinstatement under § 16-19-87 may be filed within one year following denial of a petition for reinstatement filed by or on behalf of the same person. An attorney suspended or disbarred shall not be permitted to act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive.

SDCL 16-19-84. Petition and hearing on reinstatement--Advance cost deposit--Burden of proof. A petition for reinstatement by a disbarred or suspended attorney under § 16-19-87 may be filed with the board secretary. ~~or designee of the board and~~ The petition shall be accompanied by a deposit in an amount to be set by the board to cover prior proceedings and anticipated expenses of the reinstatement proceeding. Upon receipt of the petition and the deposit, the board shall promptly schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that the petitioner has the moral qualifications, competency, and learning in law required for admission to practice law in this state and that petitioner's resumption of the practice of

law within the state will not be detrimental to the integrity and standing of the bar, ~~or~~ the administration of justice, or subversive of the public interest.

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

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

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

~~impaired, including the examination of the attorney by such qualified medical experts as the court shall designate.~~
attorney's ability to competently practice law is adversely affected by a medical condition as defined by § 16-19-29(1). The Court may take or direct such action as it deems necessary to determine whether the medical condition adversely affects the attorney's ability to competently practice law, including the examination of the attorney by such qualified medical experts as the Court shall designate.

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

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

SDCL 16-19-92. Order transferring ~~disabled~~ attorney to medical inactive status--Pending disciplinary proceedings. If, upon due consideration of the matter, the Supreme Court concludes that the attorney is ~~incapacitated from continuing~~ not competent to continue to practice law because of a medical condition as defined by § 16-19-29(1), it shall enter an order transferring him the attorney to disability~~medical inactive status on the grounds of such disability for an indefinite period and until the further order of the court~~Court. Any pending disciplinary proceeding against the attorney shall be held in abeyance. An attorney transferred to disability medical inactive status shall not be permitted to practice law or act as a legal assistant except as provided by §§ 16-18-34.4 to 16-18-34.7, inclusive. The Supreme Court shall enter such orders as are necessary to notify the attorney's clients of the attorney's change in status.

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

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

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

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

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

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

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

SDCL 16-19-99. Attorney discipline--Proceedings confidential--Violation as contempt--Exceptions. All proceedings involving allegations of misconduct by an attorney or the disability of an attorney's competency to practice law because of a medical condition as defined by § 16-19-48 shall be kept confidential until

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

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

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

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

attorney to the national discipline data bank maintained by the American Bar Association.

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

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

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

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

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

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

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

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

2. Upon receipt of the ~~respondent~~ attorney's written response the assigned board member shall distribute copies to

the board members and board counsel and shall mail a copy to the complainant for a written reply.

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

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

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

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

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

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

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

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

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

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

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

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

(4) The complainant or other witnesses may be called and examined by board counsel and members of the board

~~with cross examination by respondent or respondent's counsel.~~
The attorney or the attorney's counsel may cross-examine the complainant or other witnesses called by the board.

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

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

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

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

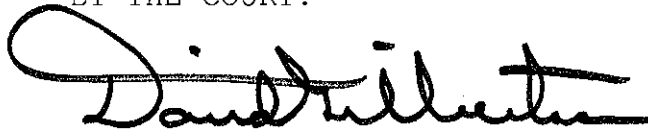
(g) The board shall notify the ~~respondent~~ attorney by mail of changes, if any, in the findings and recommendations made as a result of the objections.

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

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2018.

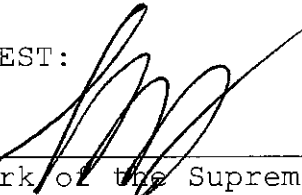
DATED at Pierre, South Dakota, this 20th day of February, 2018.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 20 2018


Clerk

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT) RULE 18-08
TO SDCL 23A-35-4.3)

A hearing was held on February 13, 2018, at Pierre, South Dakota, relating to the amendment to SDCL 23A-35-4.3, and the Court having considered the proposed amendment, the oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that **SDCL 23A-35-4.3** be and it is hereby amended to read in its entirety as follows:

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

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

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

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

installation authorized by the warrant during the daytime, unless the magistrate for good cause expressly authorizes installation at another time.

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

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

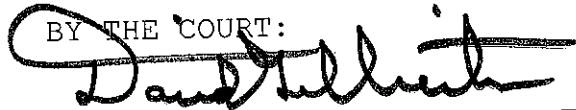
(f) Sealing of Contents of Warrant. With respect to the issuance of any warrant under this section, a judge may, upon a showing of good cause, seal the contents of a warrant and supporting documents until the termination of an investigation, an indictment or information is filed, or as otherwise ordered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

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

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2018.

DATED at Pierre, South Dakota, this 20th day of February, 2018.

BY THE COURT:



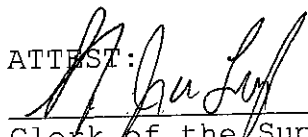
David Gilbertson, Chief Justice

**SUPREME COURT
STATE OF SOUTH DAKOTA
FILED**

FEB 20 2018


Clerk

ATTEST:



Clerk of the Supreme Court

(SEAL)

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT) RULE 18-09
TO SDCL 23A-44-5.1(5))

A hearing was held on February 13, 2018, at Pierre, South Dakota, relating to the amendment to SDCL 23A-44-5.1(5), and the Court having considered the proposed amendment, the oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 23A-44-5.1(5) be and it is hereby amended to read in its entirety as follows:

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

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

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

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

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

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

(b) The period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel provided it is approved by the court and a written order filed. A defendant without counsel shall not be deemed to

have consented to a continuance unless he has been advised by the court of his right to a speedy trial and the effect of his consent;

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

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

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

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

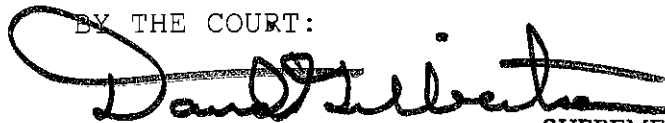
(g) Other periods of delay not specifically enumerated herein, but only if the court finds that they are for good cause. A motion for good cause need not be made within the one hundred eighty day period.

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

IT IS FURTHER ORDERED that this rule shall become effective July 1, 2018.

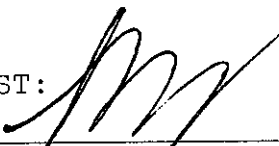
DATED at Pierre, South Dakota, this 20th day of February, 2018.

BY THE COURT:



David Gilbertson, Chief Justice
SUPREME COURT
STATE OF SOUTH DAKOTA

ATTEST:



Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 20 2018


Clerk

CALENDAR OF EVENTS

March 2018

Young Lawyer Boot Camp.....	March 2.....	Lumber Exchange Bldg., Sioux Falls
Young Lawyer Boot Camp.....	March 2.....	Penn. Co. Courthouse, Rapid City
Veterans Walk-In Legal Clinic.....	March 22.....	Watertown
Veterans Walk-In Legal Clinic.....	March 23.....	Sioux Falls
Disciplinary Board.....	April 5-6.....	ClubHouse, Sioux Falls
ABA Day.....	April 9-12.....	Washington D.C
Bar Commission Meeting.....	April 12.....	ClubHouse, Sioux Falls
Bar Foundation Meeting.....	April 12.....	Clubhouse, Sioux Falls
Juvenile Law CLE.....	April 13 am.....	Ramkota, Sioux Falls
Alternative Dispute Resolution.....	April 13 pm.....	Ramkota, Sioux Falls
Strategic Planning Retreat.....	April 13.....	Sioux Falls
2018 Jackrabbit Bar Conference.....	May 31 - June 2, 2017.....	Medora, ND
Disciplinary Board.....	June 18-20.....	ClubHouse, Sioux Falls
2018 Annual Meeting.....	June 20-22.....	Ramkota, Sioux Falls
Bar Commissioners Retreat.....	July 12-13.....	Red Rossa, Pierre